

**No. 12-10091**

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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NATIONAL RIFLE ASSOCIATION OF AMERICA, INCORPORATED;  
REBEKAH JENNINGS; BRENNAN HARMON; ANDREW PAYNE,

*Plaintiffs-Appellants,*

v.

STEVEN C. MCCRAW, in his official capacity as Director of the Texas  
Department of Public Safety,

*Defendant-Appellee.*

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On Appeal from United States District Court for the Northern District of Texas  
Civil Case No. 5:10-cv-00141-C (Honorable Sam Cummings)

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**APPELLANTS' RECORD EXCERPTS**

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# Tab 1

**CLOSED, APPEAL**

**U.S. District Court  
Northern District of Texas (Lubbock)  
CIVIL DOCKET FOR CASE #: 5:10-cv-00141-C**

National Rifle Association of America, Inc., et al v. McCraw et al	Date Filed: 9/8/2010
Assigned to: Judge Sam R Cummings	Jury Demand: None
Referred to:	Nature of Suit: 950 Constitutional - State Statute
Demand: \$0	Jurisdiction: Federal Question
Lead Docket: None	
Related Cases: None	
Cases in other court: None	
Cause: 42:1983 Civil Rights Act	

**Plaintiff**

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**James A. D'Cruz**  
*TERMINATED: 7/6/2011*

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**National Rifle Association of America,  
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**Charles J Cooper**  
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**Jesse Panuccio**  
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**Peter A Patterson**  
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**Peter A Patterson**  
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*ATTORNEY TO BE NOTICED*

V.

**Defendant**  
-----

**Steven C McCraw, in his official  
capacity as Director of the Texas  
Department of Public Safety**

represented by **Drew L Harris**  
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**Allan B Polunsky, in his official capacity as Chairman of the Texas Public Safety Commission**  
*TERMINATED: 12/3/2010*

represented by **Drew L Harris**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Carin M Barth, in her official capacity as a Member of the Texas Public Safety Commission**  
*TERMINATED: 12/3/2010*

represented by **Drew L Harris**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Ada Brown, in her official capacity as a Member of the Texas Public Safety Commission**  
*TERMINATED: 12/3/2010*

represented by **Drew L Harris**  
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*ATTORNEY TO BE NOTICED*

**Jr John T Steen, in his official capacity as a Member of the Texas Public Safety Commission**  
*TERMINATED: 12/3/2010*

represented by **Drew L Harris**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**C. Tom Clowe, Jr.**  
*TERMINATED: 12/3/2010*

represented by **Drew L Harris**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Amicus**  
-----

**Brady Center to Prevent Gun Violence**

represented by **Scott Medlock**  
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## ATTORNEY TO BE NOTICED

Filing Date	#	Docket Text
9/8/2010 (p.16)	1	COMPLAINT against All Defendants filed by James A. D'Cruz. Clerk to issue summons(es). In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the <u>Judges Copy Requirements</u> is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. (Filing fee \$350; Receipt number 0539-3455289) (Attachments: # (1) Cover Sheet, # (2) Certificate of Interested Persons) (Cooper, Charles) Per Attorney Jesse Panuccio, Attorney Fernando Bustos will prepare Summons(es) and deliver to Clerk's Office for issuance. Modified on 9/8/2010 (alb). Modified on 9/8/2010 (jdg). (Entered: 9/8/2010)
9/8/2010 (p.28)	2	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by James A. D'Cruz. (Cooper, Charles) (Entered: 9/8/2010)
9/8/2010 (p.30)	3	Application for Admission Pro Hac Vice with Cert. of Good Standing for Attorney Charles J. Cooper (Filing fee \$25; Receipt number 0539-3456052) filed by James A. D'Cruz (Attachments: # (1) Certificate of Good Standing) (Cooper, Charles) (Entered: 9/8/2010)
9/8/2010 (p.34)	4	Application for Admission Pro Hac Vice with Cert. of Good Standing for Attorney David H. Thompson (Filing fee \$25; Receipt number 0539-3456063) filed by James A. D'Cruz (Attachments: # (1) Certificate of Good Standing) (Cooper, Charles) (Entered: 9/8/2010)
9/8/2010 (p.38)	5	Application for Admission Pro Hac Vice with Cert. of Good Standing for Attorney Jesse Panuccio (Filing fee \$25; Receipt number 0539-3456074) filed by James A. D'Cruz (Attachments: # (1) Certificate of Good Standing) (Cooper, Charles) (Entered: 9/8/2010)
9/8/2010 (p.42)	6	Summons Issued as to All Defendants - Steven McCraw, Allan Polunsky, Carin Marcy Barth, Ada Brown, John Steen, C. Tom Clowe, Jr.. (bdg) (Entered: 9/8/2010)
9/9/2010 (p.54)	7	ORDER granting [3] Application for Admission Pro Hac Vice of Charles J. Cooper. Clerk shall deposit application fee to the Non-Appropriated Fund of this Court. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Sam R Cummings on 9/9/2010) (bdg) (Entered: 9/9/2010)



9/9/2010 (p.55)	8	ORDER granting [5] Application for Admission Pro Hac Vice of Jesse Panuccio. Clerk shall deposit application fee to the Non-Appropriated Fund of this Court. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Sam R Cummings on 9/9/2010) (bdg) (Entered: 9/9/2010)
9/9/2010 (p.56)	9	ORDER granting [4] Application for Admission Pro Hac Vice of David H. Thompson. Clerk shall deposit application fee to the Non-Appropriated Fund of this Court. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Sam R Cummings on 9/9/2010) (bdg) (Entered: 9/9/2010)
9/20/2010 (p.57)	10	SUMMONS Returned Executed as to Steven C McCraw ; served on 9/10/2010. (Bustos, Fernando) (Entered: 9/20/2010)
9/20/2010 (p.60)	11	SUMMONS Returned Executed as to Allan B Polunsky ; served on 9/10/2010. (Bustos, Fernando) (Entered: 9/20/2010)
9/20/2010 (p.63)	12	SUMMONS Returned Executed as to Ada Brown ; served on 9/10/2010. (Bustos, Fernando) (Entered: 9/20/2010)
9/20/2010 (p.66)	13	SUMMONS Returned Executed as to C. Tom Clowe, Jr ; served on 9/10/2010. (Bustos, Fernando) (Entered: 9/20/2010)
9/22/2010 (p.69)	14	SUMMONS Returned Executed as to John T Steen ; served on 9/21/2010. (Bustos, Fernando) (Entered: 9/22/2010)
9/22/2010 (p.71)	15	SUMMONS Returned Executed as to Carin M Barth ; served on 9/21/2010. (Bustos, Fernando) (Entered: 9/22/2010)
9/27/2010 (p.74)	16	Unopposed Motion for Extension of Time to File Answer filed by Carin M Barth, Ada Brown, C. Tom Clowe, Jr, Steven C McCraw, Allan B Polunsky, John T Steen (Attachments: # (1) Proposed Order) (Harris, Drew) (Entered: 9/27/2010)
9/28/2010 (p.78)	17	ORDER granting [16] Motion for Extension of Time to File Answer: It is ORDERED that the deadline for all Defendants to answer or otherwise respond to the Complaint for Declaratory Judgment and Injunctive Relief is extended to October 11, 2010. (Ordered by Judge Sam R Cummings on 9/28/2010) (bdg) (Entered: 9/28/2010)
10/7/2010 (p.79)	18	Unopposed Motion for Extension of Time to File Answer filed by Carin M Barth, Ada Brown, C. Tom Clowe, Jr, Steven C McCraw, Allan B Polunsky, John T Steen (Attachments: # (1) Proposed Order) (Harris, Drew) (Entered: 10/7/2010)
10/7/2010 (p.83)	19	ORDER granting [18] Unopposed Motion to Further Extend Answer Deadline as to all Defendants. All Defendants to answer

		or otherwise respond to the Complaint for Declaratory Judgment and Injunctive Relief filed on September 8, 2010 is extended to October 25, 2010. (Ordered by Judge Sam R Cummings on 10/7/2010) (lkw) (Entered: 10/7/2010)
10/20/2010 (p.84)	20	AMENDED COMPLAINT against All Defendants filed by James A. D'Cruz, National Rifle Association of America, Inc.. (Cooper, Charles) (Entered: 10/20/2010)
10/20/2010 (p.96)	21	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by James A. D'Cruz, National Rifle Association of America, Inc.. (Cooper, Charles) (Entered: 10/20/2010)
11/1/2010 (p.98)	22	Unopposed Motion for Extension of Time to File Answer <i>to Plaintiffs' Amended Complaint</i> filed by Carin M Barth, Ada Brown, C. Tom Clowe, Jr, Steven C McCraw, Allan B Polunsky, John T Steen (Attachments: # (1) Proposed Order) (Harris, Drew) (Entered: 11/1/2010)
11/2/2010 (p.102)	23	ORDER GRANTING [22] Defendant's Unopposed Motion to Extend Deadline to Answer Plaintiff's Amended Complaint. It is therefore ORDERED that the deadline for all Defendants to answer or otherwise respond to the Amended Complaint for Declaratory Judgment and Injunctive Relief filed on October 20, 2010 is extended to November 17, 2010. (lkw) (Ordered by Judge Sam R Cummings on 11/2/2010) (Entered: 11/2/2010)
11/17/2010 (p.103)	24	MOTION for Leave to File Application of Amici Curiae Brady Center to Prevent Gun Violence, Mothers Against Teen Violence, and Texas Chapters of the Brady Campaign To Prevent Gun Violence to File an Amicus Brief in Support of Defendant's Motion to Dismiss, filed by Brady Center to Prevent Gun Violence. Party Brady Center to Prevent Gun Violence added. (Medlock, Scott) Modified on text 11/17/2010 (cb). (Entered: 11/17/2010)
11/17/2010 (p.142)	25	Unopposed Motion for Extension of Time to File Answer filed by Carin M Barth, Ada Brown, C. Tom Clowe, Jr, Steven C McCraw, Allan B Polunsky, John T Steen (Attachments: # (1) Proposed Order) (Harris, Drew) (Entered: 11/17/2010)
11/18/2010 (p.146)	26	ORDER GRANTING UNOPPOSED MOTION TO FURTHER EXTEND DEADLINE TO ANSWER THE PLAINTIFFS' AMENDED COMPLAINT [25] Motion for Extension of Time to File Answer All Defendants. It is ORDERED that the deadline for all Defendants to answer or otherwise respond to the Amended Complaint for Declaratory Judgment and Injunctive Relief filed on October 20, 2010 is extended to November 24, 2010. (Ordered by Judge Sam R Cummings on 11/18/2010) (lkw) (Entered: 11/18/2010)

11/18/2010 (p.147)	27	Unopposed MOTION to Withdraw [24] MOTION for Leave to File Application of Amici Curiae Brady Center filed by Brady Center to Prevent Gun Violence (Medlock, Scott) (Entered: 11/18/2010)
11/19/2010 (p.152)	28	ORDER: GRANTING [27] Motion to Withdraw; WITHDRAWING [24] Motion for Leave to File Application of Amici Curiae Brady Center to Prevent Gun Violence, Mothers Against Teen Violence, and Texas Chapters of the Brady Campaign To Prevent Gun Violence to File an Amicus Brief in Support of Defendant's Motion to Dismiss. (Ordered by Judge Sam R Cummings on 11/19/2010) (bdg) (Entered: 11/19/2010)
11/23/2010 (p.153)	29	ANSWER to [20] Amended Complaint filed by Carin M Barth, Ada Brown, C. Tom Clowe, Jr, Steven C McCraw, Allan B Polunsky, John T Steen Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas should seek admission promptly. Forms and Instructions found at www.txnd.uscourts.gov, or by clicking here: <a href="#">Attorney Information - Bar Membership</a> (Harris, Drew) (Entered: 11/23/2010)
11/23/2010 (p.160)	30	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Carin M Barth, Ada Brown, C. Tom Clowe, Jr, Steven C McCraw, Allan B Polunsky, John T Steen. (Harris, Drew) (Entered: 11/23/2010)
11/24/2010 (p.162)	31	SCHEDULING ORDER: Defendants' dispositive motion due by 12/17/2010. Plaintiffs' response to Defendants' dispositive motion and Plaintiffs' motion for summary judgment due 01/14/2011. Defendants' reply in support of dispositive motion due and Defendants' response to Plaintiffs' motion for summary judgment due 02/14/2011. Plaintiffs' reply in support of motion for summary judgment due 03/11/2011. No discovery will proceed at this time; however, the parties may file a motion to modify this order if a need for discovery arises. (Ordered by Judge Sam R Cummings on 11/24/2010) (lkw) (Entered: 11/24/2010)
12/2/2010 (p.163)	32	Agreed STIPULATION OF DISMISSAL of <i>Defendants Polunsky, Barth, Brown, Steen, and Clowe</i> by James A. D'Cruz, National Rifle Association of America, Inc.. (Cooper, Charles) (Entered: 12/2/2010)
12/3/2010 (p.166)	33	Order Of Dismissal: Re: [32] Agreed Stipulation of Dismissal. Dismissing Parties without prejudice: C. Tom Clowe, Jr., Allan B. Polunsky, John T. Steen, Carin M. Barth and Ada Brown. (Ordered by Judge Sam R Cummings on 12/3/2010) (lkw) (Entered: 12/3/2010)
12/14/2010	34	Emergency MOTION to Amend/Correct <i>SCHEDULING</i>

(p.167)		<i>ORDER TO PERMIT DISCOVERY AND EXTEND DISPOSITIVE MOTION DEADLINES</i> filed by Steven C McCraw with Brief/Memorandum in Support. (Attachments: # (1) Brief for Motion to Amend Scheduling Order, # (2) Proposed Order) (Harris, Drew) (Entered: 12/14/2010)
12/15/2010 (p.178)	35	RESPONSE filed by James A. D'Cruz, National Rifle Association of America, Inc. re: [34] Emergency MOTION to Amend/Correct <i>SCHEDULING ORDER TO PERMIT DISCOVERY AND EXTEND DISPOSITIVE MOTION DEADLINES</i> (Attachments: # (1) Exhibit(s) Plaintiffs' Brief in Support of Their Response in Opposition) (Cooper, Charles) (Entered: 12/15/2010)
12/16/2010 (p.191)	36	ORDER: Granting Motion [34] Emergency MOTION to Amend <i>SCHEDULING ORDER TO PERMIT DISCOVERY AND EXTEND DISPOSITIVE MOTION DEADLINES</i> . Experts must be disclosed by 3:00 p.m. on February 15, 2011. All other pretrial motions, including motions for summary judgment, must be filed, and all discovery must be completed, by 3:00 p.m. on May 16, 2011. All parties will be notified by separate order of the date of trial and the date for filing the proposed pretrial order. (Ordered by Judge Sam R Cummings on 12/16/2010) (lkw) Modified text on 12/16/2010 (lkw). (Entered: 12/16/2010)
12/27/2010 (p.193)	37	***DOCUMENT FILED IN INCORRECT CASE*** MOTION for Leave to File Brief of Amici Curiae Brady Center to Prevent Gun Violence filed by Brady Center to Prevent Gun Violence with Brief/Memorandum in Support. (Medlock, Scott) Modified on 12/28/2010 (klw). (Entered: 12/27/2010)
12/29/2010 (p.225)	38	Application for Admission Pro Hac Vice with Cert. of Good Standing for Attorney Peter A. Patterson (Filing fee \$25; Receipt number 0539-3648161) filed by James A. D'Cruz, National Rifle Association of America, Inc. (Attachments: # (1) Certificate of Good Standing) (Patterson, Peter) (Entered: 12/29/2010)
12/30/2010 (p.229)	39	ORDER granting [38] Application for Admission Pro Hac Vice of Peter A. Patterson. Clerk shall deposit application fee to the Non-Appropriated Fund of this Court. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Sam R Cummings on 12/30/2010) (bdg) (Entered: 12/30/2010)
1/4/2011 (p.230)	40	PRETRIAL NOTICE AND ORDER: Bench Trial set for 8/15/2011 09:00 AM in US Courthouse, Courtroom C-216, 1205 Texas Avenue, Lubbock, TX 79401-4091 before Judge Sam R Cummings. See Order for further specifics. (Ordered by Judge Sam R Cummings on 1/4/2011) (lkw) (Entered: 1/4/2011)
2/15/2011	41	Designation of Experts by James A. D'Cruz, National Rifle

(p.232)		Association of America, Inc.. (Bustos, Fernando) (Entered: 2/15/2011)
2/24/2011 (p.254)	42	MOTION to Withdraw as Attorney filed by James A. D'Cruz, National Rifle Association of America, Inc. (Panuccio, Jesse) (Entered: 2/24/2011)
2/25/2011 (p.256)	43	ORDER granting [42] Motion to Withdraw as Attorney. Attorney Jesse Panuccio terminated. (Ordered by Judge Sam R Cummings on 2/25/2011) (bdg) (Entered: 2/25/2011)
3/28/2011 (p.257)	44	Plaintiffs' Motion to Amend the Complaint, Plaintiff James D'Cruz's Motion to Withdraw as Party Plaintiff, and Non-Parties Rebekah Jennings', Brennan Harmon's, and Andrew Payne's Motion to Join as Party-Plaintiffs and Brief in Support (Attachments: # (1) Exhibit(s) A, # (2) Exhibit(s) B, # (3) Proposed Order) (Cooper, Charles) Modified text on 3/29/2011 (lkw). (Entered: 3/28/2011)
4/18/2011 (p.281)	45	RESPONSE filed by Steven C McCraw re: [44] MOTION to Amend/Correct <i>the Complaint</i> (Attachments: # (1) Exhibit(s) A, # (2) Exhibit(s) B, # (3) Proposed Order) (Harris, Drew) (Entered: 4/18/2011)
4/21/2011 (p.338)	46	MOTION for Leave to File Reply Brief In Support of Plaintiffs' Motion to Add Parties as Party-Plaintiffs filed by James A. D'Cruz, National Rifle Association of America, Inc. (Attachments: # (1) Exhibit(s) A - Reply Brief In Support of Plaintiffs' Motion to Add Parties as Party-Plaintiffs, # (2) Exhibit(s) B - Appendix to Reply Brief) (Cooper, Charles) (Entered: 4/21/2011)
4/25/2011 (p.354)	47	ORDER granting [46] Motion for Leave to File Reply Brief in Support of Plaintiffs' Motion to Add Parties as Party-Plaintiffs, and the Court is of the opinion that the motion should be GRANTED. It is therefore ORDERED that Plaintiffs shall file their Reply Brief in Support of Plaintiffs' Motion to Add Parties as Party-Plaintiffs within three (3) days of the date of this order. (Ordered by Judge Sam R Cummings on 4/25/2011) (lkw) (Entered: 4/25/2011)
4/26/2011 (p.355)	48	REPLY filed by James A. D'Cruz, National Rifle Association of America, Inc. re: [44] MOTION to Amend/Correct <i>the Complaint</i> (Cooper, Charles) (Entered: 4/26/2011)
4/26/2011 (p.362)	49	Appendix in Support filed by James A. D'Cruz, National Rifle Association of America, Inc. re [48] Reply <i>in Support of Motion to Amend/Correct the Complaint</i> (Cooper, Charles) (Entered: 4/26/2011)
	50	

4/29/2011 (p.367)		Application for Admission Pro Hac Vice with Cert. of Good Standing for Attorney Brian S. Koukoutchos (Filing fee \$25; Receipt number 0539-3859102) filed by James A. D'Cruz, National Rifle Association of America, Inc. (Koukoutchos, Brian) (Entered: 4/29/2011)
5/2/2011 (p.371)	51	ORDER granting [50] Application for Admission Pro Hac Vice of Brian S. Koukoutchos. Clerk shall deposit application fee to the Non-Appropriated Fund of this Court. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Sam R Cummings on 5/2/2011) (lkw) (Entered: 5/2/2011)
5/16/2011 (p.372)	52	MOTION for Summary Judgment filed by National Rifle Association of America, Inc. (Cooper, Charles) (Entered: 5/16/2011)
5/16/2011 (p.375)	53	Brief/Memorandum in Support filed by National Rifle Association of America, Inc. re [52] MOTION for Summary Judgment (Cooper, Charles) (Entered: 5/16/2011)
5/16/2011 (p.434)	54	Appendix in Support filed by National Rifle Association of America, Inc. re [53] Brief/Memorandum in Support of Motion for Summary Judgment (Cooper, Charles) (Entered: 5/16/2011)
5/16/2011 (p.476)	55	Unopposed MOTION to Extend Time Time to File Motion for Summary Judgment by Two Hours filed by Steven C McCraw (Attachments: # (1) Proposed Order Granting Unopposed Motion to Extend Time to File Motion for Summary Judgment by Two Hours) (Harris, Drew) (Entered: 5/16/2011)
5/16/2011 (p.480)	56	MOTION for Summary Judgment filed by Steven C McCraw with Brief/Memorandum in Support. (Attachments: # (1) Additional Page(s) Brief in Support of MSJ, # (2) Additional Page(s) Appendix to Brief in Support of MSJ, # (3) Additional Page(s) Appearance of Counsel) (Mitchell, Jonathan) (Entered: 5/16/2011)
5/16/2011 (p.718)	57	Consent MOTION for Leave to File Amicus Brief of <i>Amici Curiae Brady Center to Prevent Gun Violence, Graduate Student Assembly and Student Government of the University of Texas at Austin, Mothers Against Teen Violence, Students for Gun-Free Schools in Texas, and Texas Chapters of the Brady Campaign to Prevent Gun Violence in Support of Defendants</i> filed by Brady Center to Prevent Gun Violence with Brief/Memorandum in Support. (Attachments: # (1) Exhibit(s) A, # (2) Proposed Order) (Medlock, Scott) (Entered: 5/16/2011)
5/17/2011 (p.763)	58	ORDER granting [55] Motion to Extend Time to File Motion for Summary Judgment by Two Hours. It is ORDERED that the deadline for Defendant to file his Motion for Summary Judgment

		is extended to 5:00 p.m. on May 16, 2011. (Ordered by Judge Sam R Cummings on 5/17/2011) (lkw) (Entered: 5/17/2011)
5/17/2011 (p.764)	59	ORDER granting [57] Motion for Leave to File Consent Motion of Amici Curiae Brady Center to Prevent Gun Violence, Graduate Student Assembly and Student Government of the University of Texas at Austin, Mothers Against Teen Violence, Students for Gun-Free Schools in Texas, and Texas Chapters of the Brady Campaign to Prevent Gun Violence to File an Amicus Brief in Support of Defendants. Amici shall have three (3) days to file their Brief (attached as Exhibit A) to the Consent Motion. (Ordered by Judge Sam R Cummings on 5/17/2011) (lkw) (Entered: 5/17/2011)
5/18/2011 (p.765)	60	Brief in Support filed by Brady Center to Prevent Gun Violence. Re: [59] Order on Motion for Leave to File, <i>Brief of Amici Curiae Brady Center to Prevent Gun Violence, Graduate Student Assembly and Student Government of the University of Texas at Austin, Mothers Against Teen Violence, Students for Gun-Free Schools in Texas, and Texas Chapters of the Brady Campaign to Prevent Gun Violence in Support of Defendants</i> (Medlock, Scott) Modified Text on 5/19/2011 (lkw). (Entered: 5/18/2011)
6/6/2011 (p.803)	61	***REDOCKETED AS #62*** RESPONSE filed by Steven C McCraw re: [52] MOTION for Summary Judgment (Mitchell, Jonathan) Modified on 6/6/2011 (cb). (Entered: 6/6/2011)
6/6/2011 (p.820)	62	RESPONSE filed by Steven C McCraw re: [52] MOTION for Summary Judgment (Mitchell, Jonathan) (Entered: 6/6/2011)
6/6/2011 (p.837)	63	RESPONSE filed by National Rifle Association of America, Inc. re: [56] MOTION for Summary Judgment (Cooper, Charles) (Entered: 6/6/2011)
6/6/2011 (p.840)	64	Brief/Memorandum in Support filed by National Rifle Association of America, Inc. re [63] Response/Objection (Cooper, Charles) (Entered: 6/6/2011)
7/6/2011 (p.880)	65	ORDER: The Court GRANTS Plaintiffs' [44] Motion to Amend Complaint; GRANTS Plaintiff James D'Cruz's Motion to Withdraw As Party Plaintiff; GRANTS Non-Parties Rebekah Jennings', Brennan Harmon's, and Andrew Payne's Motion to Join As Party-Plaintiffs; and GRANTS IN PART Defendant's request that the discovery period be extended by 20 days from the date of this Order. (Ordered by Judge Sam R Cummings on 7/6/2011) (bdg) (Entered: 7/6/2011)
7/11/2011 (p.884)	66	Second AMENDED COMPLAINT For Declaratory Judgment and Injunctive Relief against All Defendants filed by National Rifle Association of America, Inc., Andrew Payne, Brennan Harmon, Rebekah Jennings. (Cooper, Charles) Modified text on

		7/11/2011 (bdg). (Entered: 7/11/2011)
7/11/2011 (p.898)	67	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Brennan Harmon, Rebekah Jennings, National Rifle Association of America, Inc., Andrew Payne. (Cooper, Charles) (Entered: 7/11/2011)
7/14/2011 (p.901)	68	Consent MOTION to Continue filed by Brennan Harmon, Rebekah Jennings, National Rifle Association of America, Inc., Andrew Payne (Attachments: # (1) Proposed Order) (Cooper, Charles) Modified text on 7/15/2011 (lkw). (Entered: 7/14/2011)
7/15/2011 (p.912)	69	ORDER granting [68] Motion to Continue. The Court having considered Plaintiffs' Consent Motion for a Continuance, filed July 14, 2011, is of the opinion that the same should be GRANTED to the extent that trial is continued to November 7, 2011. All other relief requested is DENIED. Bench Trial set for 11/7/2011 09:00 AM in US Courthouse, Courtroom C-216, 1205 Texas Avenue, Lubbock, TX 79401-4091 before Judge Sam R Cummings. (Ordered by Judge Sam R Cummings on 7/15/2011) (lkw) (Entered: 7/15/2011)
7/15/2011 (p.913)	70	PRETRIAL NOTICE AND ORDER: Bench Trial set for 11/7/2011 09:00 AM in US Courthouse, Courtroom C-216, 1205 Texas Avenue, Lubbock, TX 79401-4091 before Judge Sam R Cummings. (Ordered by Judge Sam R Cummings on 7/15/2011) (lkw) (Entered: 7/15/2011)
7/26/2011 (p.915)	71	<i>Defendant's</i> ANSWER to [66] Amended Complaint filed by Steven C McCraw Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas should seek admission promptly. Forms, instructions, and exemption information may be found at <a href="http://www.txnd.uscourts.gov">www.txnd.uscourts.gov</a> , or by clicking here: <a href="#">Attorney Information - Bar Membership</a> . (Harris, Drew) (Entered: 7/26/2011)
10/6/2011 (p.923)	72	Agreed MOTION to Stay re [70] Scheduling Order <i>Pre-Trial Deadlines</i> filed by Brennan Harmon, Rebekah Jennings, Steven C McCraw, National Rifle Association of America, Inc., Andrew Payne with Brief/Memorandum in Support. (Bustos, Fernando) (Entered: 10/6/2011)
10/6/2011 (p.927)	73	ORDER granting [72] Motion to Stay Pretrial Deadlines. It is further ORDERED that the pre-trial deadlines are stayed pending further order of this court. (Ordered by Judge Sam R Cummings on 10/6/2011) (lkw) (Entered: 10/6/2011)
10/19/2011 (p.930)	74	PRETRIAL NOTICE AND ORDER: Bench Trial set for 2/6/2012 09:00 AM in US Courthouse, Courtroom C-216, 1205 Texas Avenue, Lubbock, TX 79401-4091 before Judge Sam R Cummings. (Ordered by Judge Sam R Cummings on



		10/19/2011) (bdg) (Entered: 10/19/2011)
10/19/2011 (p.932)	75	ORDER: The trial scheduled for November 7, 2011, is continued to 2/6/2012 09:00 AM in US Courthouse, Courtroom C-216, 1205 Texas Avenue, Lubbock, TX 79401-4091 before Judge Sam R Cummings, in accordance with the Court's Pretrial Notice and Order of even date. (Ordered by Judge Sam R Cummings on 10/19/2011) (bdg) (Entered: 10/19/2011)
10/20/2011 (p.933)	76	ORDER: The parties are ordered to file additional briefing within 30 days of the date of this order addressing the applicability of Eleventh Amendment immunity with regard to Plaintiffs' challenge to Texas Penal Code § 46.02, if any, as well as the applicability of the Ex parte Young exception, if any. (Ordered by Judge Sam R Cummings on 10/20/2011) (lkw) (Entered: 10/20/2011)
11/21/2011 (p.935)	77	Supplemental Document by Steven C McCraw as to [76] Order, <i>Additional Briefing on Penal Code Challenge</i> . (Harris, Drew) (Entered: 11/21/2011)
11/21/2011 (p.940)	78	Brief/Memorandum in Support filed by Brennan Harmon, Rebekah Jennings, National Rifle Association of America, Inc., Andrew Payne re [76] Order, (Bustos, Fernando) (Entered: 11/21/2011)
11/21/2011 (p.954)	79	Appendix in Support filed by Brennan Harmon, Rebekah Jennings, National Rifle Association of America, Inc., Andrew Payne re [78] Brief/Memorandum in Support of Motion <i>on Ex Parte Young and the 11th Amendment</i> (Bustos, Fernando) (Entered: 11/21/2011)
1/5/2012 (p.960)	80	Agreed MOTION to Stay <i>Pre-Trial Deadlines</i> filed by Brennan Harmon, Rebekah Jennings, Steven C McCraw, National Rifle Association of America, Inc., Andrew Payne (Attachments: # (1) Proposed Order) (Cooper, Charles) (Entered: 1/5/2012)
1/6/2012 (p.967)	81	ORDER granting [80] Motion to Stay Pretrial Deadlines. (Ordered by Judge Sam R Cummings on 1/6/2012) (bdg) (Entered: 1/6/2012)
1/19/2012 (p.970)	82	ORDER denying Plaintiff's [52] Motion for Summary Judgment. Granting Defendants' [56] Motion for Summary Judgment. Accordingly, with regard to the Equal Protection issues, Defendants' Motion for Summary Judgment is GRANTED and Plaintiffs Motion for Summary Judgment is DENIED. (Ordered by Judge Sam R Cummings on 1/19/2012) (bdg) (Entered: 1/19/2012)
1/19/2012 (p.985)	83	JUDGMENT: For the reasons stated in the Court's order of even date, IT IS ORDERED, ADJUDGED, AND DECREED that

		Plaintiffs, Rebekah Jennings, Brennan Harmon, Andrew Payne, and National Rifle Association of America, Inc., take nothing as against Defendant, Steven McCraw, in his Official Capacity as Director of the Texas Department of Public Safety. Costs of court are taxed against Plaintiffs. (Ordered by Judge Sam R Cummings on 1/19/2012) (bdg) (Entered: 1/19/2012)
1/23/2012 (p.986)	84	NOTICE OF APPEAL to the Fifth Circuit as to [83] Judgment, by Brennan Harmon, Rebekah Jennings, National Rifle Association of America, Inc., Andrew Payne. Filing fee \$455, receipt number 0539-4354814. T.O. form to appellant electronically at <u>Transcript Order Form</u> or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. Copy of NOA to be sent US Mail to parties not electronically noticed. (Cooper, Charles) (Entered: 1/23/2012)
1/30/2012 (p.988)	85	Transcript Order Form: re [84] Notice of Appeal,, transcript not requested. (Cooper, Charles) (Entered: 1/30/2012)

# Tab 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

**REBEKAH JENNINGS; BRENNAN  
HARMON; ANDREW PAYNE;  
NATIONAL RIFLE ASSOCIATION OF  
AMERICA, INC.,**

**Plaintiffs,**

v.

**STEVEN MCCRAW, in his official  
capacity as Director of the Texas  
Department of Public Safety,**

**Defendant.**

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**Case No. 5:10-cv-00141-C  
Judge Sam R. Cummings**

**PLAINTIFFS’ NOTICE OF APPEAL**

Notice is hereby given that Plaintiffs, Rebekah Jennings, Brennan Harmon, Andrew Payne, and National Rifle Association of America, Inc., appeal to the United States Court of Appeals for the Fifth Circuit from the Final Judgment entered in this cause on January 19, 2012, and all adverse rulings subsumed therein.

Dated: January 23, 2012

Respectfully submitted,

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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

On January 23, 2012, I electronically submitted the foregoing document to the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ Charles J. Cooper  
Charles J. Cooper

# Tab 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION


REBEKAH JENNINGS; BRENNAN )  
HARMON; ANDREW PAYNE; )  
NATIONAL RIFLE ASSOCIATION OF )  
AMERICA, INC., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
STEVEN McCRAW, in his official )  
capacity as Director of the Texas )  
Department of Public Safety, )  
 )  
Defendant. ) Civil Action No. 5:10-CV-141-C

**JUDGMENT**

For the reasons stated in the Court's order of even date,

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs, Rebekah Jennings, Brennan Harmon, Andrew Payne, and National Rifle Association of America, Inc., take nothing as against Defendant, Steven McCraw, in his Official Capacity as Director of the Texas Department of Public Safety. Costs of court are taxed against Plaintiffs.

Dated January 19, 2012.

  
SAM R. CUMMINGS  
UNITED STATES DISTRICT JUDGE

# Tab 4



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

REBEKAH JENNINGS; BRENNAN	)	
HARMON; ANDREW PAYNE;	)	
NATIONAL RIFLE ASSOCIATION OF	)	
AMERICA, INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
STEVEN McCRAW, in his official	)	
capacity as Director of the Texas	)	
Department of Public Safety,	)	
	)	
Defendant.	)	Civil Action No. 5:10-CV-141-C

**ORDER**

On this date, the Court considered:

- (1) Plaintiffs Rebekah Jennings, Brennan Harmon, Andrew Payne, and National Rifle Association of America, Inc.’s (“Plaintiffs”) Motion for Summary Judgment, Brief, and Appendix, filed May 16, 2011;
- (2) the Response and Brief filed by Defendant Steven McCraw, in his Official Capacity as Director of the Texas Department of Public Safety (“McCraw”) on June 6, 2011;
- (3) Defendant McCraw’s Motion for Summary Judgment, Brief, and Appendix, filed May 16, 2011;
- (4) Plaintiffs’ Response and Brief, filed June 6, 2011; and

- (5) Brief of *Amici Curiae* Brady Center to Prevent Gun Violence, Graduate Student Assembly and Student Government of the University of Texas at Austin, Mothers Against Teen Violence, Students for Gun-Free Schools in Texas, and Texas Chapters of the Brady Campaign to Prevent Gun Violence in Support of Defendants [sic], filed May 18, 2011.

After considering the relevant arguments and authorities, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiffs' Motion for Summary Judgment.

## **I. FACTS**

### ***a. Preliminary Statement***

Plaintiffs bring this action for declaratory and injunctive relief challenging the constitutionality of Texas statutes that prohibit persons under the age of 21 and who have not served or are not serving currently in the military from carrying a handgun outside the home. The crux of Plaintiffs' allegations is that the statutes violate both the Second Amendment to the United States Constitution, as it applies to the states through the Fourteenth Amendment, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

### ***b. Statutory Scheme***

Under Texas law, a "person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun . . . if the person is not: (1) on the person's own premises or premises under the person's control<sup>1</sup>; or (2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control."

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<sup>1</sup>It is undisputed that, under Texas law, the Individual Plaintiffs can carry a handgun in their own homes, among other specified locations not at issue here.

Tex. Penal Code § 46.02(a). If a person “is at least 21 years of age” (and meets other requirements), he or she “is eligible for a license to carry a concealed handgun” (“CHL”) (“the licensing scheme”). Tex. Gov’t Code § 411.172(a)(2).<sup>2</sup>

Moreover, if “a person . . . is at least 18 years of age but not yet 21 years of age,” he or she “is eligible for a license to carry a concealed handgun if the person is a member or veteran of the United States armed forces, including a member or veteran of the reserves or national guard” or “was discharged under honorable conditions, if discharged from the United States armed forces, reserves, or national guard” and meets other eligibility requirements except the age condition mentioned above.<sup>3</sup> Tex. Gov’t Code §§ 411.172(g).

***c. Plaintiffs***

Jennings, Harmon, and Payne are all Texas residents between the ages of 18 and 20. They have expressed a desire to carry a handgun outside of the home or automobile for self-defense purposes but currently do not because Texas law prohibits them from doing so. All of the Individual Plaintiffs allege that they meet each of the requirements for obtaining a Texas CHL save the age requirement. They have completed a handgun safety course taught by a CHL instructor licensed by the Texas Department of Public Safety and have passed both the written and range tests that are given to applicants for a CHL. The Individual Plaintiffs further allege

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<sup>2</sup>Texas Penal Code § 46.02(a) also does not apply to, in general, a person who is traveling or engaging in lawful hunting, fishing, or other sporting activity. Tex. Penal Code § 46.15. Various occupational exceptions also apply to the general prohibition. *See id.*

<sup>3</sup>For ease of reference, the Court will refer to those excluded from this classification as “non-military personnel.”

that but for the age requirement they would have been able to obtain a Texas CHL and would occasionally carry a handgun as permitted by the license.

The National Rifle Association (“NRA”) is a membership organization committed to protecting and defending the fundamental right to keep and bear arms as well as promoting the safe and responsible use of firearms for self-defense and other lawful purposes. Hundreds of the NRA’s members in Texas are 18 to 20 years old. But for the minimum age requirement imposed by Texas Government Code § 411.172, some of these 18- to 20-year-old NRA members, including Jennings, Harmon, and Payne, would be eligible to obtain a CHL and would carry a handgun for self-defense outside of the home or automobile.

## **II. STANDARD**

Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-movant, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); that is, “[a]n issue is material if its resolution could affect the outcome of the action.” *Wyatt v. Hunt Plywood Co.*, 297 F.3d 405, 409 (5th Cir. 2002). When reviewing a motion for summary judgment, the court views all facts and evidence in the light most favorable to the non-moving party. *United Fire & Cas. Co. v. Hixson Bros.*, 453 F.3d 283, 285 (5th Cir. 2006). In doing so, the court “refrain[s] from making credibility determinations or weighing the evidence.” *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007).

Where parties have filed cross-motions for summary judgment, the court must consider each motion separately because each movant bears the burden of showing that no genuine

dispute of material fact exists and that it is entitled to judgment as a matter of law. *Shaw Constructors, Inc. v. ICF Kaiser Eng'rs, Inc.*, 395 F.3d 533, 538-39 (5th Cir. 2004).

### **III. ANALYSIS**

#### ***a. Standing***

McCraw challenges the standing to bring suit of the Individual Plaintiffs where they have not actually applied for a CHL and they do not face immediate criminal prosecution,<sup>4</sup> as well as the associational standing of the NRA, who brings this suit on behalf of its 18- to 20-year-old members. Article III restricts the judicial power to actual “cases” and “controversies,” a limitation understood to confine the federal judiciary to “the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of law.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009); *see* U.S. Const. art. III, § 1. The doctrine of standing enforces this limitation. *Summers*, 555 U.S. at 492; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992).

#### 1. Texas Government Code § 411.172

In order to satisfy the standing requirement of an “actual or imminent” injury, a plaintiff generally must submit to the challenged policy before pursuing an action to dispute it. *See, e.g., Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166-71 (1972); *Grant ex rel. Family Eldercare v. Gilbert*, 324 F.3d 383, 388 (5th Cir. 2003). Strict adherence to this general rule, however, may

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<sup>4</sup>McCraw also challenges Plaintiffs’ standing based on their failure to exhaust administrative remedies. No argument accompanies this assertion in McCraw’s brief, nor does it identify any potential administrative remedies Plaintiffs could have pursued prior to the filing of this suit. Nevertheless, when a plaintiff’s claims are premised on 42 U.S.C. § 1983, as are the ones here, no exhaustion of administrative remedies is required. *Nat’l Solid Waste Mgmt. Ass’n v. Pine Belt Reg’l Solid Waste Mgmt. Auth.*, 389 F.3d 491, 497 n.10 (5th Cir. 2004).

be excused when a policy's flat prohibition would render submission futile. *Davis v. Tarrant Cnty. Tex.*, 565 F.3d 214, 220 (5th Cir. 2009) (citing *LeClerc v. Webb*, 419 F.3d 405, 413 (5th Cir. 2005)); *see also Ellison v. Connor*, 153 F.3d 247, 255 (5th Cir. 1998) (holding that plaintiffs did not need to apply for building permits to establish standing where the defendant had already "specifically stat[ed] that it would not permit the construction or placement of any structures on their land.").

Plaintiffs seek to carry a concealed handgun but are prevented from doing so because they do not possess a CHL. The right to carry a concealed handgun arguably touches on Plaintiffs' Second Amendment right to bear arms, and this Court could provide Plaintiffs the relief sought should it hold unconstitutional the age requirement of Texas Government Code § 411.172. Although Plaintiffs have not actually completed their applications for a CHL, to do so would be futile. The issuance of this license to non-military individuals under 21 years of age is categorically prohibited by statute. *See* Tex. Gov't Code § 411.172(a)(2) & (g). Plaintiffs have put forward evidence that they would be qualified for a CHL but for the minimum age requirement, and McCraw has not demonstrated evidence to the contrary. The futility of a formal application, coupled with the fact that Plaintiffs would qualify for a CHL but for the age requirement, is sufficient to confer standing.

Once a court has determined that at least one plaintiff has standing, it need not consider whether the remaining plaintiffs have standing to maintain the suit. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 n.9 (1977). Because the Court has held that the Individual Plaintiffs have standing to challenge Texas Government Code § 411.172, it need not reach the question of the NRA's associational standing to challenge the same statute.

2. Texas Penal Code § 46.02

To establish standing to challenge the constitutionality of a criminal statute, a plaintiff must show a “credible threat” that the statute will be enforced against the plaintiff. *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979). While a plaintiff need not first expose himself to actual arrest or prosecution to gain standing to challenge a criminal statute, “[w]hen plaintiffs ‘do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible,’ they do not allege a dispute susceptible to resolution by a federal court.” *Id.* at 298-299 (quoting *Younger v. Harris*, 401 U.S. 37, 42 (1971)).

Plaintiffs have not alleged facts sufficient to confer standing to challenge Texas Penal Code § 46.02 because they cannot demonstrate a credible threat that McCraw will enforce the statute against them.<sup>5</sup> The relief Plaintiffs seek, as detailed in their complaint, is the issuance of a CHL in order to lawfully carry a handgun. *See* Pls.’ Second Am. Compl. 7, 9, & 10 (“But for the age requirement, [Plaintiff] would have obtained [his or her] Texas CHL and occasionally would carry a handgun as permitted by the license.”). At no point in their complaint do Plaintiffs allege that they desire to carry a handgun openly (as opposed to concealed), concealed without a license, or in a manner inconsistent with the limitations governing licensed concealed carry. And because the possession of a validly issued CHL excepts the license holder from

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<sup>5</sup>Although the Court has misgivings as to whether McCraw, under *Ex parte Young*, 209 U.S. 123 (1908), is the proper defendant with respect to Plaintiffs’ challenge of Texas Penal Code § 46.02, it need not reach this question in light of its resolution of the Article III standing issue.

prosecution under Texas Penal Code § 46.02 for all intents and purposes, Plaintiffs have not demonstrated a credible threat of prosecution.

Therefore, the Court is of the opinion that Plaintiffs lack standing to challenge Texas Penal Code § 46.02. The Court is also of the opinion that, because the relief sought by the NRA with respect to its challenge to Texas Penal Code § 46.02 involves the issuance of CHLs for its otherwise qualified 18- to 20-year-old membership, it therefore lacks standing for the same reasons that are fatal to the Individual Plaintiffs' challenge.

***b. Second Amendment***

The text of the Second Amendment reads: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In 2008, the Supreme Court held in *District of Columbia v. Heller* that the Second Amendment confers an individual right to keep and bear arms apart from any connection with a state-regulated militia.<sup>6</sup> 554 U.S. 570, 595 (2008). The Court stated, however, that the right to bear arms is not absolute: “Like most rights, ***the right secured by the Second Amendment is not unlimited.*** From Blackstone through the 19th-century cases, commentators and courts routinely explained that ***the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.***” *Id.* at 626-27 (citations omitted and emphasis added).

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<sup>6</sup>Two years later, in *McDonald v. City of Chicago*, the Supreme Court held that the Second Amendment is fully applicable to the states. 130 S. Ct. 3020, 3026 (2010). While this case is of obvious importance with regard to constitutional challenges to state laws, the Court focuses its discussion on *Heller* because it is the case that more fully discusses the nature of the right conferred by the Second Amendment.



As groundbreaking as *Heller* was to the realm of constitutional jurisprudence, the Court's treatment of the Second Amendment is actually quite narrow in that the opinion focuses primarily on self-defense in the home. *See id.* at 635 (“In sum, we hold that the District’s ban on handgun possession *in the home* violates the Second Amendment, as does its prohibition against rendering any lawful firearm *in the home* operable for the purpose of immediate self-defense.”); *see also District of Columbia v. Heller*, 552 U.S. 1035, 1035 (2007) (The Supreme Court certified the following question for consideration: Whether the [D.C. gun laws] violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use *in their homes*?) (emphasis added).

While not addressed directly in any controlling authority of which the Court is aware, the specific relief requested by Plaintiffs, i.e., the right to carry a handgun outside of the home, seems to be beyond the scope of the core Second Amendment concern articulated in *Heller*. *See, e.g., Moreno v. N.Y. City Police Dep’t*, Civ. No. 10-6269, 2011 U.S. Dist. LEXIS 76129, at \*7-8 (S.D.N.Y. May 9, 2011) (noting that “*Heller* has been narrowly construed, as protecting the individual right to bear arms for the specific purpose of self-defense within the home.”), *report and recommendation adopted*, 2011 U.S. Dist. LEXIS 76131 (S.D.N.Y. July 14, 2011); *Osterweil v. Bartlett*, No. 1:09-CV-825, 2011 U.S. Dist. LEXIS 54196, at \*18 (N.D.N.Y. May 20, 2011) (quoting *Heller*, 554 U.S. at 635 (*Heller* “appears to suggest that the core purpose of the right conferred by the Second Amendment was to allow ‘law-abiding, responsible citizens to use arms in defense of hearth and home’”)); *United States v. Tooley*, 717 F. Supp. 2d 580, 596 (S.D. W. Va. 2010) (“[P]ossession of a firearm outside of the home or for purposes other than

self-defense in the home are not within the ‘core’ of the Second Amendment right as defined by *Heller*.”); *Gonzalez v. Vill. of W. Milwaukee*, No. 09-384, 2010 U.S. Dist. LEXIS 46281, at \*10 (E.D. Wis. May 11, 2010) (citing *Heller* for the proposition that “[t]he Supreme Court has never held that the Second Amendment protects the carrying of guns outside the home”); *Heller v. District of Columbia*, 698 F. Supp. 2d 179, 188 (D.D.C. 2010) (the “core Second Amendment right” is “the right of law-abiding, responsible citizens to use arms in defense of hearth and home”) (internal quotation marks omitted); see also *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011) (“[A]s we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense.”); *Yohe v. Marshall*, Civ. No. 08-10922-MBB, 2010 U.S. Dist. LEXIS 109415, at \*7-8 (D. Mass. Oct. 14, 2010) (quoting *McDonald v. City of Chicago*, 130 S. Ct. at 3047) (“Thus, incorporating the right to bear arms in the Second Amendment as a fundamental right applicable to the states through the Fourteenth Amendment ‘does not imperil every law regulating firearms.’”); *Beachum v. United States*, 19 A.3d 311, 320 n.11 (D.C. 2011) (“*Heller* does not address, and we have not decided, whether the Second Amendment protects the possession of handguns for other than defensive use in the home.”); *Little v. United States*, 989 A.2d 1096, 1100-01 (D.C. 2010) (rejecting defendant’s Second Amendment challenge to his conviction under D.C. gun statute because “[i]n *Heller*, the issue was the constitutionality of the District of Columbia’s law on the possession of usable handguns in the home,” and defendant conceded that he was outside of his home) (internal quotation marks and citation omitted); *State v. Knight*, 218 P.3d 1177, 1189 (Kan. Ct. App. 2009) (“It is clear that the Court [in *Heller*] was drawing a narrow line regarding the violations related solely to use of a handgun in the home for self-defense purposes.”).

Indeed, the D.C. laws at issue in *Heller* were extreme in that they totally banned handgun possession in the home and required that any lawful firearm in the home be disassembled or bound by trigger lock at all times, rendering it inoperable. *Heller*, 554 U.S. at 628. These laws essentially made it impossible for citizens to use guns for their core lawful purpose of self-defense. *See id.* at 630. By contrast, Texas law permits broad usage of long arms outside of the home<sup>7</sup> and actually confers wider protection with regard to handgun usage than that specifically addressed in *Heller* in that, in general, it permits anyone over the age of 18 to carry a handgun in his or her vehicle or watercraft, carves out various exceptions for hunting and sport, and provides for the concealed carriage of a handgun by most of the law-abiding population. *See* Tex. Penal Code §§ 46.02 & 46.15; Tex. Gov't Code § 411.172.

It is axiomatic that a statutory scheme that essentially provides more protection of an individual right than that conferred by the Constitution cannot, therefore, be unconstitutional. Absent further guidance from controlling authority, the Court is unwilling to expound upon the meaning of the Second Amendment beyond the parameters previously recognized by the Supreme Court. *See Williams v. State*, 417 Md. 479, 496 (Md. 2011) (“If the Supreme Court . . . meant its holding to extend beyond home possession, it will need to say so more plainly.”); *see also Dronenburg v. Zech*, 741 F.2d 1388, 1396 (D.C. Cir. 1984) (“If it is in any degree doubtful that the Supreme Court should freely create new constitutional rights, we think it certain that lower courts should not do so.”). The proper remedy to supply Plaintiffs’ desired relief is

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<sup>7</sup>The Court is cognizant of the fact that granting rights for the usage of long guns does not necessarily mitigate against the encroachment, if any, on the right to possess a handgun. *See Heller*, 554 U.S. at 629. Nevertheless, the Court mentions this aspect of Texas law merely to highlight the fact that the state law provides more broad-reaching protections than the right recognized in *Heller*.

legislative in nature, not judicial: either to petition the Texas Legislature for a change in state law or, on a national level, to rally for a constitutional amendment. *See Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963) (“Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation.”).

While not skirted entirely, the focus of the parties’ briefing does not center on the breadth of the Second Amendment but rather on the question of at what age does the right to keep and bear arms vest. This approach puts the cart before the horse. Because the Court is of the opinion that the Second Amendment does not confer a right that extends beyond the home, it need not reach the question regarding the age of investiture of such a right. *See United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010) (suggesting that a court’s inquiry into the constitutionality of a statute is complete upon holding that a challenged law does not burden conduct falling within the scope of the Second Amendment’s guarantee).

Therefore, with regard to the Second Amendment issue, Defendant’s Motion for Summary Judgment is **GRANTED** and Plaintiffs’ Motion for Summary Judgment is **DENIED**.

*c. Equal Protection*

The Equal Protection Clause of the Fourteenth Amendment provides that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The focus of Plaintiffs’ Equal Protection claim is on the allegedly unequal treatment effected by the licensing scheme between non-military personnel, ages 18 to 20 years, and those over the age of 20, as well as between those over the age of 18 who have served or are currently serving in the military.

While creating no substantive rights, the Equal Protection Clause embodies a general rule that states must treat like cases alike but may treat unlike cases accordingly. *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quoting *Tigner v. Texas*, 310 U.S. 141, 147 (1940) (“The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same.”)). A legislative classification or distinction that does not burden either a fundamental right or target a suspect class will be upheld if it bears a rational relation to some legitimate end. *Vacco v. Quill*, 521 U.S. 793, 799 (1997). “The burden is upon the challenging party to negative any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 367 (2001) (internal quotation marks omitted).

As the Court has discussed above, the licensing scheme does not burden the fundamental right to keep and bear arms.<sup>8</sup> Neither does the licensing scheme target a suspect class. Traditionally, suspect class status is applied to a class that has been “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973).

The Supreme Court has categorically rejected age as a suspect classification. *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 83 (2000) (“[A]ge is not a suspect classification under the Equal Protection Clause.”). Therefore, Texas “may discriminate on the basis of age without

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<sup>8</sup>Although pleaded in broad terms, Plaintiffs’ Equal Protection argument seems to center on the infringement of a fundamental right. The Court has rejected that argument. Therefore, the Court will conduct only a short analysis on suspect classification because, although not clear from the complaint, Plaintiffs’ briefing indicates that they likely did not intend to raise this issue.

offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest.” *Id.* The Constitution permits states to “draw lines on the basis of age when they have a rational basis for doing so at a class-based level, even if it ‘is probably not true’ that those reasons are valid in the majority of cases.” *Id.* at 86.

It follows, then, that Plaintiffs must demonstrate that no reasonably conceivable state of facts could provide a rational basis for the licensing scheme. McCraw avers that individuals under 21 are less suited to carry concealed handguns than persons over the age of 21 and that withholding licenses from underage residents promotes public safety and crime prevention. McCraw likens Texas Government Code § 411.172 to Texas Alcoholic Beverage Code § 106.06, which makes it a crime to furnish an alcoholic beverage to a minor, the policy basis of which considers the relative immaturity and poor judgment of young people. Therefore, in implementing Texas Government Code § 411.172, Texas has identified a legitimate state interest—public safety—and passed legislation that is rationally related to addressing that issue—the licensing scheme; thus, it acted within its constitutional powers and in accordance with the Equal Protection Clause. *See Madriz-Alvarado v. Ashcroft*, 383 F.3d 321, 332 (5th Cir. 2004) (quoting *FCC v. Beach Commc’ns*, 508 U.S. 307, 313 (1993) (“Under rational basis review, differential treatment ‘must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.’”)).

As for Plaintiffs’ companion claim under the Equal Protection Clause, the Court is of the opinion that what can best be described as “non-military personnel” does not constitute a suspect class. Therefore, like the age distinction, McCraw demonstrates merely that the issuance of

CHLs to military personnel between the ages of 18 and 20 and not to non-military personnel of the same ages is rationally related to a legitimate state interest. In so doing, McCraw avers that those who are serving currently or have previously served in the military are more equipped to handle concealed handguns than those members of the citizenry between the ages of 18 and 20 who have not served in the military. *See* Def.'s App. 22, Senate Comm. on Veterans Affairs and Military Installations, Bill Analysis, Tex. S.B. 322, 79th Leg., C.S. (2005) (“[M]ilitary personnel currently receive[] extensive training in handling weapons.”). The fact that most military personnel have extensive training in handling weapons is rationally related to the concept that they could be entitled to CHL privileges earlier than the general citizenry. Therefore, Plaintiffs’ Equal Protection challenge must fall.

Accordingly, with regard to the Equal Protection issues, Defendants’ Motion for Summary Judgment is **GRANTED** and Plaintiffs’ Motion for Summary Judgment is **DENIED**.

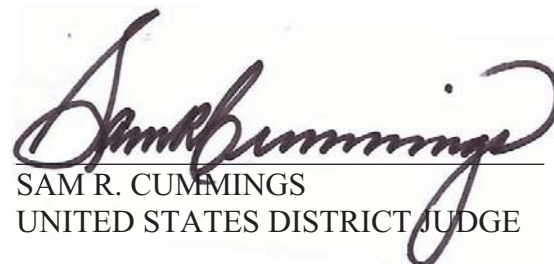
#### IV. CONCLUSION

For the reasons stated herein,

- (1) Defendant’s Motion for Summary Judgment is **GRANTED**; and
- (2) Plaintiffs’ Motion for Summary Judgment is **DENIED**.

SO ORDERED.

Dated January 19, 2012.



SAM R. CUMMINGS  
UNITED STATES DISTRICT JUDGE

# Tab 5



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

JAMES D'CRUZ; NATIONAL RIFLE )  
ASSOCIATION OF AMERICA, INC., )  
AMERICA, INC., )

Plaintiffs, )

v. )

STEVEN MCCRAW, in his )  
official capacity as Director of )  
the Texas Department of Public Safety, )

Defendant. )

Case No. 5:10-cv-00141-C  
Judge Sam R. Cummings

**DECLARATION OF ROBERT MARCARIO**

I, Robert Marcario, make the following declaration pursuant to 28 U.S.C. § 1746:

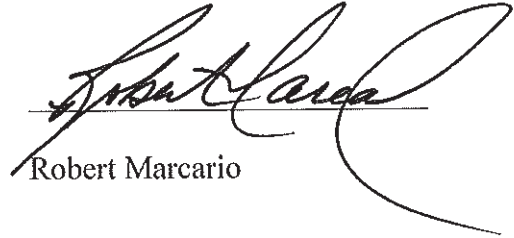
1. I am a resident of Virginia and am over eighteen years of age. My statements herein are based upon personal knowledge and experience.
2. I am the Managing Director of Membership for the National Rifle Association. I have held this position since 1991. In this capacity, I have access to, and personal knowledge of, the NRA's membership information and practices.
3. Founded in 1871, the NRA is America's foremost and oldest defender of Second Amendment rights. Among other things, the NRA promotes the safe and responsible possession and carriage of firearms by law-abiding adults for lawful purposes, such as self-defense, target practice, marksmanship competition, and hunting. The NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA also collects

and publishes real-life examples of citizens of all ages and from all walks of life whose lawful possession and carriage of firearms enabled them to protect themselves and others from violent criminals.

4. The NRA has approximately four million members.
5. The NRA does not ask or know the age of all of its members, but for members who joined as Junior Life Members (15 years of age or younger at the time of application), the NRA does ask their age at the time of the membership application. Thus, the NRA can report a minimum number of members who, based on their age at the time of acquiring Junior Life Memberships, are now 18 to 20 years of age. Likewise, the NRA can also report the number of members who, based on their age at the time of acquiring Junior Life Membership, are now 15 to 17 years of age and will thus turn 18 during the likely pendency of this litigation. It is important to stress, however, that these numbers are merely a minimum. Thousands of NRA members do not acquire life membership, but instead renew at regular intervals. Based on my personal observation and experience in the NRA, I can report that there are members between 18 and 20 years of age (and between 15 and 17 years of age) who do not report their age as part of their membership information.
6. In Texas, the NRA has at least 710 members who are currently 18, 19, or 20 years of age, and at least 671 members who are currently 15, 16, or 17 years of age.
7. Within the geographic region that is covered by the United States District Court for the Northern District of Texas, the NRA has at least 190 members who are currently 18, 19, or 20 years of age, and at least 194 members who are currently 15, 16, or 17 years of age.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND  
CORRECT.

Executed on 5/3, 2011



Robert Marcario

# Tab 6

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

**JAMES D'CRUZ; NATIONAL RIFLE  
ASSOCIATION OF AMERICA, INC.,  
AMERICA, INC.,**

**Plaintiffs,**

**v.**

**STEVEN MCCRAW, in his  
official capacity as Director of  
the Texas Department of Public Safety,**

**Defendant.**

**Case No. 5:10-cv-00141-C  
Judge Sam R. Cummings**

**DECLARATION OF BRENNAN HARMON**

I, Brennan Harmon, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of the State of Texas and am over eighteen years of age. My statements herein are based upon personal knowledge and experience.
2. I am a nineteen year old female and I attend college in San Antonio, Texas. I live in an off-campus apartment in San Antonio during the school year. In the summer, I live with my parents in Dallas, Texas.
3. I am a member of the National Rifle Association.
4. My father and other members of my family have owned firearms, including long guns and handguns, for my entire life. They have owned these firearms for several purposes, including self-defense, hunting, and sport.

5. Through my father's instruction, and through personal study, I am well acquainted with the proper and safe handling, use, and storage of firearms and ammunition.

6. I am the owner of a rifle and a shotgun. I do not find either the rifle or the shotgun sufficient for armed self-defense outside the home. First, unlike a long gun, a handgun cannot be easily redirected or wrestled away by an attacker. Second, I find a handgun easier to use and load, as the long guns require significant upper body strength and are not ideal for fast loading or accurate shooting in emergency situations. Third, a long gun requires two hands for operation, whereas a handgun would leave one hand free to call the police while pointing the gun at an assailant. Fourth, neither long gun is suitable for carriage outside the home (they are cumbersome and conspicuous), whereas a handgun is suitable for this purpose because of its size.

7. Texas law generally prohibits a person from carrying a handgun outside of that person's premises or motor vehicle. *See* Tex. Penal Code § 46.02(a). While there is an exception to this prohibition for persons who have a Texas Concealed Handgun License (CHL), *see id.* § 46.15(b)(6), because I am under 21 and not a member of or honorably discharged from the armed forces I am not eligible to obtain a Texas CHL, *see* Tex. Gov't Code § 411.172(a)(2), (g).

8. Because of these Texas laws, and because of my fear of being prosecuted for violating them, I currently do not carry a handgun outside of the home or motor vehicle for self-defense purposes. If Texas law did not prohibit me from doing so, I would carry a handgun outside of the home for self-defense and other lawful purposes.

9. For example, when visiting or staying with my parents, I sometimes meet friends at night in and around downtown Dallas. I would carry a handgun for self-protection on such occasions

if it was lawful for me to do so, and my father has indicated that he would lend me a handgun for that purpose.

10. Aside from the age requirement, I meet all the requirements for obtaining a Texas CHL.

11. On February 24, 2011, I completed a handgun safety course taught by a CHL instructor licensed by the Texas Department of Public Safety (DPS). The course consisted of a total of approximately 8 hours of classroom instruction and approximately 2 hours of range instruction. The course culminated with administration of the written and range tests that are given to applicants for a CHL. I passed the tests on my first attempt.

12. On March 9, 2011, I visited the DPS website, which provides an electronic CHL application. See <https://www.texasonline.state.tx.us/txapp/txdps/chl/>. The website stated that to apply, I “must be at least 21 years of age or at least 18 years of age if currently serving in or honorably discharged from the military.” Solely because of my failure to meet the age requirement, I was thus unable to apply for and obtain a Texas CHL. But for the age requirement, I would have obtained a Texas CHL and occasionally would carry a handgun as permitted by the license.

13. Indeed, because Texas law requires CHL applicants to submit an affidavit “stating that the applicant ...fulfills all the eligibility requirements” for obtaining a CHL, including the age requirement, Tex. Gov’t Code § 411.174(a)(8)(B), Texas law prohibits me from even applying for a CHL.

14. I have also completed a Texas CHL application form and attached it as an exhibit to this declaration.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND  
CORRECT.

Executed on May 5, 2011



Brennan Harmon





# ORIGINAL APPLICATION

## APPLICANT INFORMATION

Have you previously applied for a Texas Concealed Handgun License and/or Qualified Instructor Certification? (REGARDLESS IF ISSUED, TERMINATED, DENIED OR STILL VALID) Yes  No

I am applying for: (\*APPLICANTS FOR QUALIFIED INSTRUCTORS CERTIFICATION MUST ATTACH CHL-90 FORM)

Concealed Handgun License Only  Qualified Instructor Certification Only  Both  
 (\*SKIP APPLICATION CONDITION BELOW)

**Application Condition** (SEE INSTRUCTIONS FOR DETAILS)  
 Standard  Active Peace Officer  Active Military  Retired Judicial Officer  Indigent  
 ID Card  Retired Peace Officer  Veteran/Retired Military  Felony Prosecutor  Senior Citizen (60+ YEARS OLD AT TIME OF APPLICATION)  
 Retired Federal Officer  Active Judicial Officer  Other Prosecutor

Applicant Last Name (AS APPEARS ON DL/ID) **HAIRMON** First Name **BRENNAN** M.I. **M** Suffix (IF ANY)  
 Driver License Issuing State? **TX** DL/ID Number (\*PROVIDE COLOR COPY OF DL/ID) **26092216** Date of Birth (MM/DD/YYYY) **06/17/1991** SSN **[REDACTED]** **4044**  
 ID Card (2-LETTER CODE) (STATE) (COUNTRY) Born outside U.S. or U.S. Territory? Yes  No  \*If YES, attach legal status documentation.

## PERSONAL IDENTIFIERS

**Gender** Male  Female  **Race**  Asian/Pacific Islander  Black  Maroon  Gray/Partially  
 African Indian/Alaskan Native  Blue  Multicolor  Black  Red/Auburn  
 Black  Brown  Blonde/Strawberry  Sandy  
 Other/Unknown  Green  Pink  Brown  White  
 White/Hispanic  Gray  Unknown

**Height** **5** Ft. **2** In.  
**Weight** **130** Lbs.

## CONTACT INFORMATION

Residence Address (NO PO BOXES. MUST BE A PHYSICAL ADDRESS) **10216 CHISHOLM TRAIL**  
 City **DALLAS** State (2-LETTER CODE) **TX** ZIP **75243**  
 Have you lived at this residence address for the previous 5 years and is this the only residence information for the previous 5 years (60 months)? Yes  No  \*If NO, please fill out and attach Supplement CHL-78B  
 Is your mailing address different from the Residence Address listed above? Yes  No  \*If YES, provide mailing address in space below

Mailing Address (IF APPLICABLE) **P.O. BOX 180667**  
 City **DALLAS** State (2-LETTER CODE) **TX** ZIP **75218**  
 Are you currently employed and do you have an employment address different from the address listed above? Yes  No  \*If YES, provide employment address in space below

Employer Name/Address  
 City State (2-LETTER CODE) ZIP  
 Is this the only employment information for the previous 5 years (60 months)? Yes  No  \*If NO, please fill out and attach Supplement CHL-78B

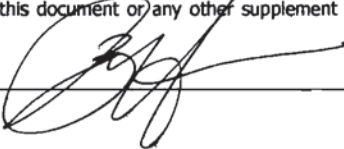
Applicant Contact Phone Number ( ) Applicant Alternate Number (OPTIONAL) ( )

Applicant Email (ONLY FOR CONTACT PURPOSES REGARDING THIS APPLICATION)

## REPORTED HISTORY

Have you ever been **arrested or charged** with a crime? (Regardless if pending, dismissed, committed as a juvenile, was long ago OR was in another state.) Yes  No  \*If YES, please fill out and attach Supplement CHL-78C  
 Have you ever been **treated and/or admitted** to a facility for drug, alcohol and/or psychiatric care; OR been **diagnosed** as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability; OR **pled** innocent by reason of insanity; OR **been found** mentally incompetent; OR had court ordered outpatient treatment? Yes  No  \*If YES, please fill out and attach Supplement CHL-78C

I verify that the information provided is true and correct, and I understand that any required fee is **non-refundable**. I also understand that this is an **official Government record** and that any missing information and/or false statement made on this document or any other supplement provided to the Department will cause a **delay** in the processing of my application and may result in **criminal prosecution**.

Applicant Signature  Date **05/04/2011**

# Tab 7

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

**JAMES D'CRUZ; NATIONAL RIFLE  
ASSOCIATION OF AMERICA, INC.,  
AMERICA, INC.,**

**Plaintiffs,**

**v.**

**STEVEN MCCRAW, in his  
official capacity as Director of  
the Texas Department of Public Safety,**

**Defendant.**

**Case No. 5:10-cv-00141-C  
Judge Sam R. Cummings**

**DECLARATION OF REBEKAH JENNINGS**

I, Rebekah Jennings, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of the State of Texas and am over eighteen years of age. My statements herein are based upon personal knowledge and experience.
2. I am a twenty-year-old female and reside in Boerne, Texas. I attend college in San Antonio, Texas.
3. I am a member of the National Rifle Association.
4. At the age of 13, I began competitive pistol shooting. I have been a member of the U.S. Olympic Development Team for pistol shooting and a member of the Texas State Rifle Association Junior National Team. Every year since 2005, I have attended the NRA National Shooting Championship as a member of the TSRA Junior Team. Either I, or the relay team of which I am a part, has broken seven national shooting records.

5. Because I engage in competitive shooting, I have spent thousands of hours practicing the safe and effective use of handguns. I have spent hundreds of hours discussing proper pistol technique with experts in the field. I have also taken a firearms course in home safety and defense. Given this background, I can confidently state that I am extremely well-trained and well-versed in the responsible, proper, safe, and proficient use of handguns for self-defense and other lawful purposes.

6. Although I do not own any firearms of my own, I use my father's pistols to practice my shooting.

7. I believe handguns are a useful tool for self-defense, and I desire to carry a handgun outside of the home for self-defense and other lawful purposes.

8. Texas law generally prohibits a person from carrying a handgun outside of that person's premises or motor vehicle. *See* Tex. Penal Code § 46.02(a). While there is an exception to this prohibition for persons who have a Texas Concealed Handgun License (CHL), *see id.* § 46.15(b)(6), because I am under 21 and am neither a member of nor honorably discharged from the armed forces I am not eligible to obtain a Texas CHL, *see* Tex. Gov't Code § 411.172(a)(2), (g).

9. Because of these Texas laws, and because of my fear of being prosecuted for violating them, I currently do not carry a handgun outside of the home or motor vehicle for self-defense purposes. If Texas law did not prohibit me from doing so, I would carry a handgun outside of the home for self-defense and other lawful purposes.

10. For example, I would like to carry a handgun when attending open-air art shows held in downtown San Antonio on Friday evenings. To reach the streets where the shows are held, I must walk from where I park through downtown San Antonio, and I must do the same to return

to the car after leaving the show. For safety reasons, I typically do not attend the shows alone. If it was lawful for me to do so, I would borrow one of my father's handguns and carry it for self-protection when attending the art shows. My father has agreed to lend me a handgun for such purposes.

11. Aside from the age requirement, I meet all the requirements for obtaining a Texas CHL.

12. On February 27, 2011, I completed a handgun safety course taught by a CHL instructor licensed by the Texas Department of Public Safety (DPS). The course consisted of a total of at least 10 hours of classroom instruction and range instruction. The course culminated with administration of the written and range tests that are given to applicants for a CHL. I passed the tests on my first attempt, scoring 98% on the written examination and 100% on the range examination.

13. On March 9, 2011, I visited the DPS website, which provides an electronic CHL application. See <https://www.texasonline.state.tx.us/txapp/txdps/chl/>. The website stated that to apply, I "must be at least 21 years of age or at least 18 years of age if currently serving in or honorably discharged from the military." Solely because of my failure to meet the age requirement, I was thus unable to apply for and obtain a Texas CHL. But for the age requirement, I would have obtained a Texas CHL and occasionally would carry a handgun as permitted by the license.

14. Indeed, because Texas law requires CHL applicants to submit an affidavit "stating that the applicant ... fulfills all the eligibility requirements" for obtaining a CHL, including the age requirement, Tex. Gov't Code § 411.174(a)(8)(B), Texas law prohibits me from even applying for a CHL.

15. I have completed a Texas CHL application form and attached it as an exhibit to this declaration.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND  
CORRECT.

Executed on 5/08, 2011



Rebekah Jennings



Texas Department of Public Safety  
Regulatory Services Division  
www.txdps.state.tx.us

- MUST USE MOST CURRENT FORM
- PRINT CLEARLY IN BLACK INK
- MAKE SURE ENTIRE CIRCLE IS FILLED

**CONCEALED HANDGUN LICENSING**

EXAMPLE:  
Yes  No

**ORIGINAL APPLICATION**

**APPLICANT INFORMATION**

Have you previously applied for a Texas Concealed Handgun License and/or Qualified Instructor Certification? (REGARDLESS IF ISSUED, TERMINATED, DENIED OR STILL VALID) Yes  No

I am applying for: (\*APPLICANTS FOR QUALIFIED INSTRUCTORS CERTIFICATION MUST ATTACH CHL-90 FORM)  
 Concealed Handgun License Only  Qualified Instructor Certification Only  Both  
(\*SKIP APPLICATION CONDITION BELOW)

THE ABOVE SPACE IS RESERVED FOR OFFICE USE ONLY

Application Condition (SEE INSTRUCTIONS FOR DETAILS)  
 Standard  Active Peace Officer  Retired Peace Officer  Retired Federal Officer  Active Military  Veteran/Retired Military  Active Judicial Officer  Retired Judicial Officer  Felony Prosecutor  Other Prosecutor  Indigent  Senior Citizen (60+ YEARS OLD AT TIME OF APPLICATION)

Applicant Last Name (AS APPEARS ON DL/ID) Jernings First Name Rebekah M.I. D Suffix (IF ANY)  
 Driver License Issuing State? TX DL/ID Number (\*PROVIDE COLOR COPY OF D/ID) 24355030 Date of Birth (MM/DD/YYYY) 03/22/1991 SSN [REDACTED] 0010  
 ID Card  
Place of Birth (CITY) San Antonio (STATE) TX (COUNTRY) USA Born outside U.S. or U.S. Territory? Yes  No  \*If YES, attach legal status documentation.

**PERSONAL IDENTIFIERS**

Gender Male  Female  Race  Asian/Pacific Islander  American Indian/Alaska Native  Black  Other/Unknown  White/Hispanic  
Eyes (\*MATCH DL/ID)  Black  Blue  Brown  Green  Gray  Hazel  Maroon  Multicolor  Pink  Unknown  
Hair (\*MATCH DL/ID)  Bald/Unknown  Black  Blonde/Strawberry  Brown  Gray/Partially  Red/Auburn  Sandy  White  
Height 5 Ft. 6 In. Weight 130 Lbs.

**CONTACT INFORMATION**

Residence Address (NO PO BOXES. MUST BE A PHYSICAL ADDRESS) 139 Ranch Dr.  
City Boerne State (2-LETTER CODE) TX ZIP 78015  
Have you lived at this residence address for the previous 5 years and is this the only residence information for the previous 5 years (60 months)? Yes  No  \*If NO, please fill out and attach Supplement CHL-78B  
Is your mailing address different from the Residence Address listed above? Yes  No  \*If YES, provide mailing address in space below

Mailing Address (IF APPLICABLE)  
City \_\_\_\_\_ State (2-LETTER CODE) \_\_\_\_\_ ZIP \_\_\_\_\_  
Are you currently employed and do you have an employment address different from the address listed above? Yes  No  \*If YES, provide employment address in space below

Employer Name/Address Home Depot, 633 W. Bandera Rd.  
City Boerne State (2-LETTER CODE) TX ZIP 78006  
Is this the only employment information for the previous 5 years (60 months)? Yes  No  \*If NO, please fill out and attach Supplement CHL-78B

Applicant Contact Phone Number (210) 834-0911 Applicant Alternate Number (OPTIONAL) ( )  
Applicant Email (ONLY FOR CONTACT PURPOSES REGARDING THIS APPLICATION) bekahspam@gmail.com

**REPORTED HISTORY**

Have you ever been arrested or charged with a crime? (Regardless if pending, dismissed, committed as a juvenile, was long ago OR was in another state.) Yes  No  \*If YES, please fill out and attach Supplement CHL-78C  
Have you ever been treated and/or admitted to a facility for drug, alcohol and/or psychiatric care; OR been diagnosed as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability; OR pled innocent by reason of insanity; OR been found mentally incompetent; OR had court ordered outpatient treatment? Yes  No  \*If YES, please fill out and attach Supplement CHL-78C

I verify that the information provided is true and correct, and I understand that any required fee is non-refundable. I also understand that this is an official Government record and that any missing information and/or false statement made on this document or any other supplement provided to the Department will cause a delay in the processing of my application and may result in criminal prosecution.

Applicant Signature [Signature] Date 05/08/2011



# Tab 8

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

<b>JAMES D'CRUZ; NATIONAL RIFLE</b>	)	
<b>ASSOCIATION OF AMERICA, INC.,</b>	)	
<b>AMERICA, INC.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 5:10-cv-00141-C</b>
	)	<b>Judge Sam R. Cummings</b>
<b>STEVEN MCCRAW, in his</b>	)	
<b>official capacity as Director of</b>	)	
<b>the Texas Department of Public Safety,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**DECLARATION OF ANDREW PAYNE**

I, Andrew Payne, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of Lubbock, Texas and am eighteen years of age. My statements herein are based upon personal knowledge and experience.
2. I am a member of the National Rifle Association.
3. I regularly accompany my father on visits to a shooting range. We also hunt together. These experiences have provided me with training in the proper and safe handling of firearms, including handguns. I take firearms safety seriously and I understand the appropriate uses of firearms. I do not, and would not, use a firearm for an inappropriate or illegal purpose.
4. I believe that I have the right to self-defense, and that use of arms is the most effective method of self-defense in some circumstances.

5. Although I own two long guns, I do not carry them outside the home for self-defense.

Long guns are cumbersome and conspicuous and thus not suitable for carriage outside the home for this purpose.

6. Texas law generally prohibits a person from carrying a handgun outside of that person's premises or motor vehicle. *See* Tex. Penal Code § 46.02(a). While there is an exception to this prohibition for persons who have a Texas Concealed Handgun License (CHL), *see id.* §

46.15(b)(6), because I am under 21 and not a member of or honorably discharged from the armed forces I am not eligible to obtain a Texas CHL, *see* Tex. Gov't Code § 411.172(a)(2), (g).

7. Because of these Texas laws, and because of my fear of being prosecuted for violating them, I currently do not carry a handgun outside of the home or motor vehicle for self-defense purposes. If Texas law did not prohibit me from doing so, I would carry a handgun outside of the home for self-defense and other lawful purposes.

8. For example, I sometimes go to a Wal-Mart store located in an area of town where I would feel safer carrying a handgun for self-protection. If legally permitted to do so, I would carry my father's handgun when patronizing this Wal-Mart.

9. Aside from the age requirement, I meet all the requirements for obtaining a Texas CHL.

10. On February 13, 2011, I completed a handgun safety course taught by a CHL instructor licensed by the Texas Department of Public Safety (DPS). The course consisted of a total of approximately 8.5 hours of classroom instruction and 1.5 hours of range instruction. The course culminated with administration of the written and range tests that are given to applicants for a CHL. I passed the tests on my first attempt, scoring 100% on the written examination and 96.8% on the range examination.

11. On February 17, 2011, I visited the DPS website, which provides an electronic CHL application. See <https://www.texasonline.state.tx.us/txapp/txdps/chl/>. The website stated that to apply, I “must be at least 21 years of age or at least 18 years of age if currently serving in or honorably discharged from the military.” Solely because of my failure to meet the age requirement, I was thus unable to apply for and obtain a Texas CHL. But for the age requirement, I would have obtained a Texas CHL and occasionally would carry a handgun as permitted by the license.

12. Indeed, because Texas law requires CHL applicants to submit an affidavit “stating that the applicant ...fulfills all the eligibility requirements” for obtaining a CHL, including the age requirement, Tex. Gov’t Code § 411.174(a)(8)(B), Texas law prohibits me from even applying for a CHL.

13. I have also completed a Texas CHL application form and attached it as an exhibit to this declaration.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND  
CORRECT.

Executed on May 10, 2011

Andrew Payne

Andrew Payne



Texas Department of Public Safety  
 Regulatory Services Division  
 www.txdps.state.tx.us

- MUST USE MOST CURRENT FORM
- PRINT CLEARLY IN BLACK INK
- MAKE SURE ENTIRE CIRCLE IS FILLED

**CONCEALED HANDGUN LICENSING**

EXAMPLE:  
 Yes  No

**ORIGINAL APPLICATION**

**APPLICANT INFORMATION**

Have you previously applied for a Texas Concealed Handgun License and/or Qualified Instructor Certification? (REGARDLESS IF ISSUED, TERMINATED, DENIED OR STILL VALID) Yes  No

I am applying for: (APPLICANTS FOR QUALIFIED INSTRUCTORS CERTIFICATION MUST ATTACH CHL-90 FORM)  
 Concealed Handgun License Only  Qualified Instructor Certification Only (SKIP APPLICATION CONDITION BELOW)  Both

THE ABOVE SPACE IS RESERVED FOR OFFICE USE ONLY J

**Application Condition** (SEE INSTRUCTIONS FOR DETAILS)  
 Standard  Active Peace Officer  Active Military  Retired Judicial Officer  Indigent  
 Retired Peace Officer  Veteran/Retired Military  Felony Prosecutor  Senior Citizen (60+ YEARS OLD AT TIME OF APPLICATION)  
 Retired Federal Officer  Active Judicial Officer  Other Prosecutor

Applicant Last Name *Payne* First Name *Andrew* M.I. *M* Suffix (IF ANY)  
 Driver License Issuing State? *Tx* DL/ID Number (PROVIDE COLOR COPY OF D/ID) *27432766* Date of Birth (MM/DD/YYYY) *07/30/1992* SSN *[REDACTED] 2546*  
 ID Card  
 Place of Birth (CITY) *Lubbock* (STATE) *Tx* (COUNTRY) *United States* Born outside U.S. or U.S. Territory? Yes  No  \*If YES, attach legal status documentation.

**PERSONAL IDENTIFIERS**

**Gender** Male  Female   
**Race**  Asian/Pacific Islander  Black  White/Hispanic  
**Height** *6* Ft.  In.  American Indian/Alaskan Native  Black  Other/Unknown  
**Weight** *243* Lbs.  White/Hispanic  
**Eyes** (\*MATCH DL/ID)  Black  Blue  Brown  Green  Gray  Hazel  Maroon  Multicolor  Pink  Unknown  
**Hair** (\*MATCH DL/ID)  Bald/Unknown  Black  Blonde/Strawberry  Brown  Gray/Partially  Red/Auburn  Sandy  White

**CONTACT INFORMATION**

Residence Address (NO PO BOXES. MUST BE A PHYSICAL ADDRESS) *4507 76th Street* State (2-LETTER CODE) *Tx* ZIP *79424*  
 City *Lubbock*  
 Have you lived at this residence address for the previous 5 years and is this the only residence information for the previous 5 years (60 months)? Yes  No  \*If NO, please fill out and attach Supplement CHL-78B  
 Is your mailing address different from the Residence Address listed above? Yes  No  \*If YES, provide mailing address in space below  
 Mailing Address (IF APPLICABLE)  
 City State (2-LETTER CODE) ZIP  
 Are you currently employed and do you have an employment address different from the address listed above? Yes  No  \*If YES, provide employment address in space below  
 Employer Name/Address  
 City State (2-LETTER CODE) ZIP  
 Is this the only employment information for the previous 5 years (60 months)? Yes  No  \*If NO, please fill out and attach Supplement CHL-78B  
 Applicant Contact Phone Number *(806) 784-0172* Applicant Alternate Number (OPTIONAL) *(806) 777-2921*  
 Applicant Email (ONLY FOR CONTACT PURPOSES REGARDING THIS APPLICATION) *brabbit-sooner@suddenlink.net*

**REPORTED HISTORY**

Have you ever been arrested or charged with a crime? (Regardless if pending, dismissed, committed as a juvenile, was long ago OR was in another state.) Yes  No  \*If YES, please fill out and attach Supplement CHL-78C  
 Have you ever been treated and/or admitted to a facility for drug, alcohol and/or psychiatric care; OR been diagnosed as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability; OR pled innocent by reason of insanity; OR been found mentally incompetent; OR had court ordered outpatient treatment? Yes  No  \*If YES, please fill out and attach Supplement CHL-78C

I verify that the information provided is true and correct, and I understand that any required fee is non-refundable. I also understand that this is an official Government record and that any missing information and/or false statement made on this document or any other supplement provided to the Department will cause a delay in the processing of my application and may result in criminal prosecution.

Applicant Signature *Andrew Payne* Date *07/10/2011*

# Tab 9

### Early State Militia Laws

State	Relevant Statutory Text	Source
Connecticut	<p>Be it Enacted... That all male Persons, from sixteen Years of Age to Forty-five, shall constitute the Military Force of this State... And be it further Enacted, That all such as belong to the Infantry Companies, and Householders under fifty-five Years of Age, shall, at all Times be furnished at their own Expence, with a well fixed Musket, the Barrel not less than three Feet and an Half long, and a Bayonet fitted thereto, with a Sheath and Belt or Strap for the same, with a Ram-rod, Worm, Priming-wire and Brush, one Cartouch-box carrying fifteen rounds of Cartridges, made with good Musket Powder and Ball, fitting his Gun, six good Flints, and each Militia Man one Canteen holding not less than three Pints, upon Penalty of forfeiting and paying a Fine of Three Shillings for want of such Arms and Ammunition as is hereby required, and One Shilling for each Defect, and the like Sum or Sums for every four Weeks he shall remain unprovided.... And be it further enacted, That every Light-Dragoon shall always be provided with... a Case of good Pistols... one Pound of good Powder, three Pounds of sizable Bullets, twelve Flints, a good pair of Boots and Spurs, on Penalty of Three Pounds for want of such Horse, and the Value of each other Article in which he shall be deficient.</p>	<p>An Act for Forming, Regulating, and Conducting the Military Force of this State (Conn. 1786) <i>in</i> ACTS AND LAWS OF THE STATE OF CONNECTICUT IN AMERICA 144, 150 (1786).</p>
Delaware	<p>§7 And be it enacted, That every person between the ages of eighteen and fifty, or who may hereafter attain to the age of eighteen years, except as before excepted, whose public taxes may amount to twenty shillings a year, shall at his own expence, provide himself; and every apprentice, or other person of the age of eighteen and under twenty-one years, who hath an estate of the value of eighty pounds, or whose parent shall pay six pounds annually towards the public taxes, shall by his parent or guardian respectively be provided with a musket or firelock, with a bayonet, a cartouch box to contain twenty three cartridges, a priming wire, a brush and six flints, all in good order, on or before the first day of April next, under the penalty of forty shillings, and shall keep the same by him at all times, ready and fit for service, under the penalty of two shillings and six pence for each neglect or default thereof on every muster day,</p>	<p>An Act for Establishing a Militia, §§7-8, 1785 Del. Laws 59.</p>



	<p>to be paid by such person if of full age or by the parent or guardian of such as are under twenty-one years, the same arms and accoutrements to be charged by the guardian to his ward, and allowed at settling the accounts of his guardianship.</p> <p>....</p> <p>§8 And be it enacted, That every male white person within this state, between the ages of eighteen and fifty, or who shall hereafter attain to the age of eighteen years ,except as before excepted, shall attend at the times and places appointed in pursuance of this act for the appearance of the company or regiment to which he belongs, and if any non-commissioned officer or private, so as aforesaid required to be armed and accoutered with his firelock and accoutrements aforesaid in good order, or if any male white person between the ages aforesaid although not required to be so armed and accoutered, shall neglect or refuse to appear on the parade and answer to his name when the roll is called over....shall forfeit and pay the sum of four shillings for every such neglect or refusal.</p>	
Georgia	<p>[A]ny male free inhabitant, between the age of sixteen and fifty years, who shall refuse or neglect to attend such company muster, shall be liable to a fine of two dollars....And any private who shall attend such company muster without a gun, in good order, or shall misbehave or disobey while under arms, shall be liable to a fine of six dollars, and shall have powder and lead equal to six common cartridges, or be liable to a fine not exceeding one dollar.</p>	<p>An Act for Regulating the Militia of the State, and for Repealing the Several Laws Heretofore Made for that Purpose, 1786 Ga. Laws.</p>
Maryland	<p>§II Be it enacted, by the General Assembly of Maryland, That a lieutenant in each county of this state, of undoubted courage, zeal and attachment to the liberties and independence of America....within ten days after the receipt of their several and respective commissions, shall, by warrant under their hand and seal, appoint fit and proper persons in every county, to make a true and exact list of the names of all able bodied white male persons, between sixteen and fifty years of age.</p> <p>....</p>	<p>An Act to Regulate the Militia, ch. XVII., §§ II, VI, 1777 Md. Laws 361-62.</p>

	<p>§VI And be it enacted, That the whole of the militia, so enrolled as aforesaid, shall be subject to be exercised in companies...on each of which days every militia man, so enrolled, shall duly attend, with his arms and accoutrements in good order...</p>	
<p>Massachusetts</p>	<p>Whereas the laws now in force for regulating the militia of the Commonwealth, are found to be insufficient for the said purpose:</p> <p>I. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the several laws heretofore made for regulating the militia aforesaid, be and herby are repealed. Provided nevertheless, That all actions and processes commenced and depending in any Court within this Commonwealth, upon or by force of the said laws, shall, and may be sustained and prosecuted to final judgment and execution; and that all officers elected, appointed and commissioned agreeably to law, shall be continued in commission, and hold their respective commands in the militia, in the same manner as they would in case the said laws were still in force.</p> <p>II. And be it further enacted by the authority of the aforesaid, That the said militia shall be formed into a train-band, and alarm-lift; the train-band to contain all able-bodied men, from sixteen to forty years of age, and the alarm-list all other men under fifty years of age, excepting in both cases such as shall be hereafter by this act exempted.</p> <p>....</p> <p>XIII. And be it further enacted by the authority aforesaid, That every non-commissioned officer and private folder of the said militia, not under the control of parents, masters or guardians, and being of sufficient ability therefore in the judgment of the selectmen of the town in which he shall dwell, shall equip himself, and be constantly provided with a good fire-arm, with a steel or iron ramrod, a spring to retain the same, a worm, priming wire and brush, a bayonet fitted to his fire-arm, and a scabbard and belt for the fame, a cartridge-box that will hold fifteen cartridges at least, six flints, one pound of powder, forty leaden balls suitable for this</p>	<p>An Act for Regulating and Governing the Militia of the Commonwealth of Massachusetts, and for Repealing All Laws Heretofore Made for That Purpose (Mass. 1785) <i>in</i> THE PERPETUAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, 338, 340-41, 346-47 (1789).</p>

	<p>firearm, a haversack, blanket, and canteen; and if any non-commissioned officer or private soldier shall neglect to keep himself so armed and equipped, he shall forfeit and pay a fine not exceeding three pounds, is proportion to the value of the article or articles in which he shall be deficient, at the direction of the Justice of the Peace before whom trial shall be at hand.</p> <p>XIV. And be it further enacted by the authority aforesaid, That all parents, masters and guardians, shall furnish those of the said militia who shall be under their care and command, with the arms and equipments aforesaid, under the like penalties for any neglect.</p> <p>XV. And be it further enacted by the authority aforesaid, That whenever the selectmen of any town shall judge any inhabitant thereof, belonging to the said militia, unable to arm and equip himself in manner as aforesaid, they shall, at the expense of the town, provide for and furnish such inhabitant [sic] with the aforesaid arms and equipments, which shall remain the property of the town at the expence of which they shall be provided; and if any soldier shall embezzle or destroy the arms and equipments, or any part thereof, with which he shall be to furnished, he shall upon conviction before some Justice of the Peace in the county where such offender shall live, be adjudged to replace the article or articles which shall be by him so embezzled or destroyed, and to pay the cost arising from the process against him; and in café he (hall not within fourteen days after such adjudication against him perform the same, it shall be in the power of the selectmen of the town to which he shall belong, to bind him out to service or labour, for such term of time as shall in the discretion of the said Justice, be sufficient to procure a sum of money equal to the amount of the value of the article or articles embezzled or destroyed, and to pay the cost arising as aforesaid...</p> <p>....</p> <p>XXXV. And be it further enacted by the authority aforesaid, That the non-commissioned officers and private soldiers belonging to the said corps of artillery, shall be armed and equipped in the same manner as the train-band of the said militia are in this act directed to arm and equip themselves.</p>	
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	<p>....</p> <p>XXXVIII. And be it further enacted by the authority aforesaid, That every officer, non-commissioned officer and private, belonging to the said cavalry, shall keep himself provided with a good horse, not less than fourteen hands and a half high, a saddle, bridle, holsters, pistols, sword, boots and spurs, carbine with a spring and sling, a cartouch-box, with twelve rounds of cartridge and ball for his carbine, and fix for each pistol, nine flints, a cloak and canteen.</p> <p>....</p> <p>XL. And be it further enacted by the authority aforesaid, That the officers, non-commissioned officers and privates belonging to the said corps of artillery and cavalry, shall be subject to the same rules and regulations as are by this act provided for the train-band in the militia aforesaid; and the several companies belonging to the said corps shall be subject to the immediate orders of the major-neral commanding the division within which the same shall be raised.</p>	
<p>New Hampshire</p>	<p>Whereas it is the duty and interest of every State, to have the militia thereof properly armed, trained, and in complete readiness to defend against every violence or invasion whatever: And Whereas the laws now in force respecting the regulation of the militia are insufficient for those purposes: Be it therefore enacted... That the training band, so called, shall consist of all the able bodied male persons within the State, from sixteen years old to forty...</p> <p>....</p> <p>And be it further enacted by the authority aforesaid, That every non-commissioned officer and soldier, both in the alarm list and training band, shall be provided and have constantly in readiness, a good musquet and bayonet fitted thereto, with a good scabbard and belt, a worm, priming-wire and brush, a cartridge-box that will hold, at least twenty-four rounds, six flints, and a pound of powder, forty leaden balls fitted to his gun, a knapsack, a blanket, and a canteen that will hold one quart.</p>	<p>An Act for Forming and Regulating the Militia within this State, and for Repealing All the Laws Heretofore Made for that Purpose (N.H. 1786) <i>in</i> THE LAWS OF THE STATE OF NEW HAMPSHIRE 356-57, 359-60 (1792).</p>

	<p>Such of the training band as are under the care of parents, masters, or guardians, are to be furnished by them with such arms and accoutrements; and such of the training band, or alarm list, as shall be unable to furnish themselves, shall make application to the selectmen of the town, who are to certify to his captain, or commanding officer, that he is unable to equip himself; and the said selectmen shall, at the expense of the town, provide for, and furnish such person with arms and equipments; which arms and equipments shall be the property of the town at whose expense they are provided...</p>	
<p>New Jersey</p>	<p>And Be It Enacted, That the Captain or Commanding Officer of each Company shall keep a true and perfect List or Roll of all effective Men between the Ages of sixteen and fifty Years, residing within the District of such Company....And Be It Enacted, That every Person enrolled as aforesaid shall constantly keep himself furnished with a good Musket, well fitted with a Bayonet, a Worm, a Cartridge-Box, twenty-three Rounds of Cartridges sized to his Musket, a Priming-Wire, Brush, six Flints, a Knapsack and Canteen, under the Forfeiture of Seven Shillings and Sixpence for Want of a Musket, and One Shilling for Want of any other of the aforesaid Articles, whenever called out to Training or Service....Provided always, That if any Person be furnished as aforesaid with a good Rifle-Gun, the Apparatus necessary for the same, and a Tomahawk, it shall be accepted in Lieu of the Musket and the Bayonet and other Articles belonging thereto.</p>	<p>An Act for the Regulating, Training, and Araying of the Militia and for Providing More Effectually for the Defence and Security of the State, ch. XIII, §§10-11 1781 N.J. Acts 39, 42-43.</p>
<p>New York</p>	<p>Be it enacted by the people of the State of New-York, represented in Senate and assembly, and it is hereby enacted by the authority of the same, That every able-bodied male person, being a citizen of this state, or of any of the United States, and residing in this state...and who are of the age of sixteen, and under the age of forty-five years, shall, by the captain or commanding officer of the beat in which such citizens shall reside, within four months after the passing of this act, be enrolled in the company of such beat. That every captain or commanding officer of a company, shall also enroll every citizen as aforesaid, who shall, from time to time, arrive at the age of sixteen years, or come to reside within his beat, and without delay notify such enrolment</p>	<p>An Act to Regulate the Militia (N.Y. 1786) <i>in</i> Thomas Greenleaf, ed., 1 LAWS OF THE STATE OF NEW YORK 227-28 (1792).</p>

	<p>to such citizen so enrolled, by some non-commissioned officer of the company, who shall be a competent witness to prove such notice.... That every citizen so enrolled and notified, shall within three months thereafter, provide himself, at his own expence, with a good musket or firelock, a sufficient bayonet and belt, a pouch, with a box therein to contain not less than twenty-four cartridges suited to the bore of his musket or firelock, each cartridge containing a proper quantity of powder and ball, two spare flints, a blanket and knapsack; and shall appear so armed, accoutered and provided when called out to exercise or duty, as herein after directed.</p>	
<p>North Carolina</p>	<p>§2 Be it therefore enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, that the Militia of this State be divided into six Brigades, viz.: One in each of the Districts of Edenton, New Bern, Wilmington, Halifax, Salisbury and Hillsborough. And each Brigade to be commanded by a Brigadier General. And the Militia of every County shall consist of all the effective men from sixteen to fifty years of age inclusive.</p> <p>....</p> <p>§4. And be it further enacted, that each Militia soldier shall be furnished with a good Gun, shot bag and powder horn, a Cutlass or Tomahawk, and every Soldier neglecting to appear at any muster, accoutered as above, shall forfeit for every such offence two shillings and six pence (unless he can make it appear that they were not to be procured) to be recovered as other fines. And where any person shall appear to the Field Officers not possessed of sufficient property to afford such arms and accouterments, the same shall be procured at the expence of the County, and given to such persons on muster Days, or when ordered into service, which Guns and Accouterments after such service, shall be returned to the Captain of the Company, and by him carefully preserved for future occasions.</p>	<p>An Act to Establish a Militia in this State, ch. 1, §§2, 4, 1777 Laws of N.C. 1-2.</p>
<p>Pennsylvania</p>	<p>§ I. Whereas a militia law upon just and equitable principles hath ever been regarded as the best security of liberty and the most effectual means of drawing forth and exerting the natural strength of a state...</p>	<p>An Act to Regulate the Militia of the Commonwealth of Pennsylvania, ch.</p>

	<p>....</p> <p>§III. Be it enacted..., and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in the General Assembly met, and by the authority of the same, That the president or in his absence [the] vice-president of the supreme executive council of this commonwealth shall commissionate one reputable freeholder in the city of Philadelphia and one in each county within this state to serve as lieutenant of the militia for the said city and counties respectively.</p> <p>....</p> <p>§ IV. And be it further enacted....That the said lieutenant or sub-lieutenants as aforesaid shall issue his or their warrant to the constable of each township, borough, ward, or district in the said city and counties respectively or to some other suitable person, commanding him in the name of this commonwealth to deliver to him or them...a true and exact list of the names and surnames of each and every male white person usually inhabiting or residing within his township, borough, ward, or district between the ages of eighteen and fifty-three years capable of bearing arms.</p> <p>....</p> <p>§ X. And be it further enacted...That the whole of the militia so enrolled as aforesaid shall be subject to be exercised in companies under their respective officers...and on each of which days every militia-man so enrolled shall duly attend with his arms and accoutrements in good order.</p>	<p>DCCL, §§I, III-IV, X, 1776-77 Penn. Stat. 75-78, 80.</p>
<p>Rhode Island</p>	<p>[A]ll effective Males between the Ages of Sixteen and Fifty . . . shall constitute and make the military Force of this State....And be it further Enacted by the Authority aforesaid, That each and every effective Man as aforesaid shall provide, and at all times be furnished, at his own Expense (excepting such persons as the Town-Councils of the Towns in which they respectively dwell or reside shall adjudge unable to purchase the same) with one good Musquet, and a Bayonet fitted thereto....Be it further enacted that every Person who</p>	<p>An Act for the Better Forming, Regulating and Conducting the Military Force of this State, 1780 R.I. Acts 29, 31-32, 35.</p>

	shall at any Time be found deficient in any of the Arms, Accoutrements and Equipage, as by this act prescribed and directed, excepting those before excepted, such Delinquent shall forfeit and pay a Fine for every such delinquency....All Male Persons between the Ages of Fifty and Sixty, if able in the Judgment of the respective Town-Councils, shall be at all Times armed, accoutered and equipped, in Manner aforesaid upon the same Penalty as though they were held to military Duty.	
South Carolina	[I]t shall be lawful for the Governor, or Commander in Chief of this State, to order the Militia of this State to assemble once in every six months in the City of Charleston, and once in every twelve months in the other districts throughout the state...That every person who, on being summoned, shall willfully neglect to turn out at a regimental muster, properly armed and accoutered...shall be fined in a sum not exceeding four dollars....And be it enacted by the authority aforesaid, that the following persons shall be excused from militia duty...all persons under the age of eighteen years, or above the age of fifty years.	An Act for the Regulation of the Militia in this State, 1784 S.C. Acts 68-69.
Vermont	And that every able-bodied male person, being a citizen of this state, or of any of the united states and residing in this state...who are of the age of sixteen and under the age of fortyfive [sic] years, shall by the captain or commanding officer of the beat in which such citizen shall reside, within four months after passing of this act, be enrolled in the company of such beat....And every citizen, so enrolled and notified, shall within nine months there after, provide himself, at his own expence with a good musket or firelock, with a priming wire and brush, a sufficient bayonet and belt, with a cartouch box, with three pounds of lead bullets suitable to the bore of his musket or firelock, a good horn containing one pound of powder, and four spare flints; and shall appear so armed, accoutred and provided, when called out to exercise or duty, if thereto required.	An Act Regulating the Militia of the State of Vermont. for Regulating the Militia of this State (Vt. 1787) <i>in</i> STATUTES OF THE STATE OF VERMONT REVISED AND ANNOTATED, 107 (1791).
Virginia	Be it enacted, That all free male persons between the ages of eighteen and fifty years...shall be enrolled or formed into [militia] companies....Every Officer and soldier shall appear...armed, equipped, and accoutered as follows: The County Lieutenants, Lieutenant Colonels Commandant and Majors with a sword: the	An Act for Amending the Several Laws for Regulating and Disciplining the



	<p>Captains, Lieutenants, and Ensigns, with a sword and espontoon; every non-commissioned officer and private, with a good clean musket carrying an ounce ball, and three feet eight inches long in the barrel, with a good bayonet and iron ramrod well fitted thereto, a cartridge box properly made, to contain and secure twenty cartridges fitted to his musket, a good knapsack and canteen; and moreover, each non-commissioned officer and private shall have at every muster, one pound of good powder and four pounds of lead; including twenty blind cartridges.</p>	<p>Militia, and Guarding against Invasions and Insurrections, ch. LXVII, 1784 Va. Acts 16.</p>
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## CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system, which will send notice of such filing to the following registered CM/ECF user:

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**United States Court of Appeals**  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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March 22, 2012

Mr. Charles Justin Cooper  
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No. 12-10091, Natl Rifle Assn of America Inc, et al v.  
Steven McCraw  
USDC No. 5:10-CV-141

The following pertains to your record excerpts electronically  
filed on 3/21/12.

You must submit the four paper copies of your record excerpts  
required by 5<sup>TH</sup> CIR. R. 30.1.2 within 5 days of the date of this  
notice pursuant to 5th Cir. ECF Filing Standard E.1.

Failure to timely provide the appropriate number of copies will  
result in the dismissal of your appeal pursuant to 5th Cir. R.  
42.3.

Sincerely,

LYLE W. CAYCE, Clerk

By: 

Steve A. Totor, Deputy Clerk  
504-310-7667

cc: Mr. Fernando Manuel Bustos  
Mr. Drew L. Harris  
Mr. Brian Stuart Koukoutchos  
Mr. Peter A. Patterson  
Mr. David H. Thompson