NO. 12-10091

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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.

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

PLAINTIFFS-APPELLANTS' AND PROPOSED PLAINTIFF-APPELLANT'S MOTION TO ADD A PARTY AND TO SUPPLEMENT THE RECORD ON APPEAL

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. National Rifle Association of America, Inc. ("NRA"), Plaintiff-Appellant. The NRA has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

2. Rebekah Jennings, Brennan Harmon, and Andrew Payne, Plaintiffs-Appellants.
3. Katherine Taggart, Proposed Plaintiff-Appellant.
4. Cooper & Kirk, PLLC, Counsel for Plaintiffs-Appellants and Proposed Plaintiff-Appellant (Charles J. Cooper, David H. Thompson, Howard C. Nielson, Jr., Peter A. Patterson).
5. Bustos Law Firm, P.C., Counsel for Plaintiffs-Appellants (Fernando M. Bustos).
6. Brian S. Koukoutchos, Counsel for Plaintiffs-Appellants.
7. Brady Center to Prevent Gun Violence, Amicus Curiae.
8. International Brotherhood of Police Officers, Amicus Curiae.
9. Graduate Student Assembly and Student Government of the University of Texas at Austin, Amicus Curiae.
10. Mothers Against Teen Violence, Amicus Curiae.
11. Students for Gun-Free Schools in Texas, Amicus Curiae.
12. Texas Chapters of the Brady Campaign to Prevent Gun Violence, Amicus Curiae.
13. Texas Civil Rights Project, Counsel for Amici Curiae (Scott C. Medlock).

14. Hogan Lovells US LLP, Counsel for Amici Curiae (Jonathan L. Diesenhaus, S. Chartey Quarcoo).

15. Brady Center to Prevent Gun Violence, Legal Action Project, Counsel for Amici Curiae (Jonathan E. Lowy, Daniel R. Vice).

Dated: June 11, 2013

Respectfully submitted,

s/ Charles J. Cooper
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Plaintiffs-Appellants National Rifle Association of America, Inc. ("NRA"), Rebekah Jennings, Brennan Harmon, and Andrew Payne, together with prospective Plaintiff-Appellant Katherine Taggart (collectively, "Movants"), respectfully move this Court to add Ms. Taggart as a plaintiff on appeal and, in addition and at a minimum, to supplement the record on appeal with Ms. Taggart's declaration as evidence of the NRA's associational standing. Pursuant to 5th Cir. R. 27.4, Movants respectfully request a decision on their Motion before July 30, 2013, when the youngest individual plaintiff will turn twenty-one.

Movants have informed counsel for Defendant-Appellee ("the State") of their intent to file this motion. Counsel for the State indicated that the State will oppose Movants' request to add Ms. Taggart as a party but has not indicated whether the State will oppose Movants' additional request to supplement the record with Ms. Taggart's declaration.

INTRODUCTION

This case involves Second Amendment and equal protection challenges to the State of Texas's restrictions on law-abiding, 18-20-year-old adults carrying handguns outside the home for self-defense. In particular, Texas law generally bars individuals from carrying a handgun outside of the individual's home, automobile, or watercraft (*i.e.*, in public). TEX. PENAL CODE § 46.02(a). While this prohibition does not apply to a person carrying a concealed handgun who also

is carrying a valid license to carry a concealed handgun, TEX. PENAL CODE § 46.15(b)(6), to be eligible for such a license an individual who is not a member of or honorably discharged from the armed forces must be at least twenty-one years of age, TEX. GOV'T CODE §§ 411.172(a)(2), (g). As a result, law-abiding, 18-20-year-old civilian adults in Texas are broadly prohibited from carrying handguns to protect themselves in public.

On May 20, 2013, a panel of this Court affirmed the district court's ruling that Texas's carry ban does not violate the Second Amendment or the Equal Protection Clause. Plaintiffs' petition for rehearing en banc, filed on June 3, is pending.

At the time they joined this suit, the three individual plaintiffs were all between the ages of eighteen and twenty. Today, only Mr. Payne is still under twenty-one, and he will turn twenty-one on July 30 of this year. Thus, to ensure the presence of an individual plaintiff who will be subject to the challenged restrictions, Movants request that this Court add Ms. Taggart as a plaintiff. Ms. Taggart desires to carry a handgun in public for self-defense, but she does not because, due to her age (she is nineteen), she is ineligible for the concealed handgun license that would make it lawful for her to do so. *See* Declaration of Katherine Taggart ("Taggart Decl.") ¶¶ 6-7. She thus has standing to challenge the laws at issue here, *see* Panel Op. 6-8, and adding her as a party at this time will not

complicate the case or prejudice the State in any way. In addition, and at a minimum, Movants request that Ms. Taggart's declaration, filed herewith, be added to the record of this case. Because Ms. Taggart is an NRA member, *see* Taggart Decl. ¶ 3, adding her declaration will ensure that the NRA maintains its associational standing after Mr. Payne has turned twenty-one.

Movants note that the district court has granted their request to add Ms. Taggart as a plaintiff in their separate action challenging the federal government's ban on licensed firearm dealers selling handguns to 18-20-year-olds. (The motion was made in district court in that case because it is ahead of this one procedurally; there, by the time Movants sought to add Ms. Taggart, a panel of this Court had affirmed the district court's judgment for the government, this Court, by an 8-7 margin, had denied Plaintiffs' motion for rehearing en banc, and this Court's mandate had issued.) The district court's reasoning applies equally to this case: "Good cause exists to add Taggart as a plaintiff because such action will conserve scarce judicial resources by affording Taggart the opportunity to exhaust appellate avenues in this case without having to start over in district court. Moreover, Defendants will not suffer undue prejudice from Taggart's addition." Order at 1, *Jennings v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, No. 10-CV-140-C (N.D. Tex. June 7, 2013), ECF No. 71.

ARGUMENT

I. THIS COURT SHOULD ADD MS. TAGGART AS A PLAINTIFF TO PRESERVE A LIVE CASE OR CONTROVERSY.

This Court's authority to add Ms. Taggart as a plaintiff is well established. To be sure, neither this Court's rules nor the Federal Rules of Appellate Procedure dictate any particular procedure for adding a party on appeal, and "[i]t is well settled that the Federal Rules of Civil Procedure apply only in the federal district courts." *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 840 (1989) (alteration omitted) (quotation marks omitted). Nevertheless, when considering a motion to add a party on appeal, "helpful analogies may be found . . . in the Federal Rules of Civil Procedure." *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. Local 283 v. Scofield*, 382 U.S. 205, 216 (1965). Here, both Rule 21 and Rule 24 support Movants' request to add Ms. Taggart as a plaintiff.

A. This Court Should Add Ms. Taggart as a Plaintiff by Analogy to Rule 21 of the Federal Rules of Civil Procedure.

Rule 21 of the Federal Rules of Civil Procedure provides that "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party." "Although the Federal Rules of Civil Procedure strictly apply only in the district courts, the policies informing Rule 21 may apply equally to the courts of appeals." *Newman-Green*, 490 U.S. at 832 (citation omitted); *see also Gentry v. Smith*, 487

F.2d 571, 580 (5th Cir. 1973) (recognizing that Rule 21 "has [long] been held to permit joinder of a party . . . even on appeal"). Indeed, adding a party on appeal is an "exercise of an appellate power that long predates the enactment of the Federal Rules." *Newman-Green*, 490 U.S. at 834.

The United States Supreme Court has exercised this power in a situation similar to this one. In *Rogers v. Paul*, 382 U.S. 198 (1965), the petitioners before the Court had brought a class action seeking to desegregate the public high schools of Fort Smith, Arkansas. *Id*. at 199. By the time the case reached the Supreme Court, one of the petitioners had graduated and the other was in the last year of high school. *Id*. The Supreme Court granted a motion to add two additional students as parties, because it was undisputed that the students were "in the 10th and 11th grades of high school and that they [were] members of the class represented, seeking the same relief for all the reasons offered by the original party plaintiffs." *Id.*

The motion to add Ms. Taggart as a plaintiff should be granted for the same reasons the Supreme Court granted the motion to add parties in *Rogers*. As in that case, the claims of the existing individual plaintiffs in this case will soon all be moot. And although this case is not a class action, as a member of the NRA, Ms. Taggart is a "member[] of the class represented" by the NRA's status as an associational plaintiff seeking relief on behalf of its members. *Id*. at 199. Finally,

Ms. Taggart is "seeking the same relief for all the reasons offered by the [existing] party plaintiffs." *Id*. at 199; *see* Taggart Decl. ¶ 16.

Mullaney v. Anderson, 342 U.S. 415 (1952), also supports adding Ms. Taggart as a plaintiff. There, the Alaska Fishermen's Union brought suit on behalf of its non-resident members to challenge a license fee Alaska imposed on non-resident fishermen. Before the Supreme Court, the defendant challenged the Union's standing to maintain the suit. Invoking Rule 21, the Supreme Court granted leave to add as plaintiffs two of the non-resident members to "remove the matter from controversy." *Id*. at 416. Doing so, the Court reasoned, could "in no wise embarrass the defendant," "[n]or would their earlier joinder have in any way affected the course of the litigation." *Id.* at 417. Thus, "[t]o dismiss the present petition and require the new plaintiffs to start over in the District Court would entail needless waste and [would] run[] counter to effective judicial administration." *Id*.

As in *Mullaney*, adding Ms. Taggart would secure the federal courts' jurisdiction over this case by mitigating the risk of it becoming moot pending the resolution of Plaintiffs en banc petition and any potential subsequent proceedings before the Supreme Court. And adding Ms. Taggart could "in no wise embarrass the" State. *Id*. at 417. Indeed, her presence will not make a difference to the substance of the litigation, as she raises the same claims and seeks the same relief

as the current Plaintiffs. *See* Taggart Decl. ¶ 16; *Cali. Credit Union League v. City of Anaheim*, 190 F.3d 997, 999 (9th Cir. 1999) ("a party may join a lawsuit on appeal under Rule 21 when the party seeking joinder requests the same remedy as the original party and offers the same reasons for that remedy"). "Nor would [Taggart's] earlier joinder have in any way affected the course of the litigation." *Mullaney*, 342 U.S. at 417. The State has never pursued discovery of any of the Plaintiffs in this case, and the issues it presents are purely legal in nature.

In short, adding Ms. Taggart as a plaintiff will not complicate this case or prejudice the State in any way, it will alleviate the risk of this case becoming moot, and it will save the parties and the court system of the "needless waste" that would be entailed by requiring Ms. Taggart to "start over in the District Court." *Mullaney*, 342 U.S. at 417; *see also Newman-Green*, 490 U.S. at 837; *Cali. Credit Union League*, 190 F.3d at 1001. Ms. Taggart should thus be added as a plaintiff under the long-standing policies that inform Rule 21.

B. Ms. Taggart Satisfies the Requirements for Intervention Under Rule 24 of the Federal Rules of Civil Procedure.

Intervention under Rule 24 of the Federal Rules of Civil Procedure provides an additional, independent ground for adding Ms. Taggart as a plaintiff. Like the policies underlying Rule 21, "the policies underlying intervention [under Rule 24] may be applicable in appellate courts." *Scofield*, 382 U.S. at 217 n.10. Indeed, this Court has applied the standard of intervention of right under Rule 24(a) to

intervention on appeal. *See Supreme Beef Processors, Inc. v. U.S. Dep't of Agric.*, 275 F.3d 432, 437 (5th Cir. 2001). Citing Rule 24, this Court held that

> [a] party is entitled to an intervention of right if (1) the motion to intervene is timely; (2) the potential intervener asserts an interest that is related to the property or transaction that forms the basis of the controversy in the case into which [it] seeks to intervene; (3) the disposition of that case may impair or impede the potential intervener's ability to protect [its] interest; and (4) the existing parties do not adequately represent the potential intervener's interest.

Supreme Beef Processors, 275 F.3d at 437 (alterations in original) (quotation marks omitted). When that standard is met, a nonparty is entitled to intervene, even while the appeal is pending. *See id.* at 437-38; *Baker v. Wade*, 769 F.2d 289, 291-92 (5th Cir. 1985) (en banc) (allowing district attorney who was legally bound by adverse district court decision to intervene to defend state law on appeal), *overruled on other grounds*, *Lawrence v. Texas*, 539 U.S. 558 (2003).

Because Ms. Taggart meets this standard, she is entitled to intervene. She also meets the standards for permissive intervention under Rule 24(b).

1. The Motion Is Timely.

This Court considers four factors in evaluating the timeliness of a motion to intervene:

> (1) the length of time between the would-be intervenor's learning of his interest and his petition to intervene, (2) the extent of prejudice to existing parties from allowing late intervention, (3) the extent of prejudice to the would-be intervenor if the petition is denied, and (4) any unusual circumstances.

In re Lease Oil Antitrust Litig., 570 F.3d 244, 247-48 (5th Cir. 2009). Applying these factors demonstrates the timeliness of Ms. Taggart's motion.

First, Ms. Taggart has acted promptly in seeking to be added to this case. "The timeliness clock does not start running until" the proposed intervenor becomes "aware that its interests would no longer be protected by the original parties." *Id.* at 248; *Sierra Club v. Espy*, 18 F.3d 1202, 1206 (5th Cir. 1994). Here, the current Plaintiffs will fully protect Ms. Taggart's interests until Mr. Payne turns twenty-one, an event that will not happen until the end of next month. With the issuance of the panel's decision on May 20 rejecting Plaintiffs' constitutional claims, however, it is highly unlikely that Plaintiffs will be able to succeed in this case before then. Plaintiffs' only chance of success is now with the en banc Court or the Supreme Court, and they just filed their petition for rehearing en banc on June 3. Ms. Taggart has acted with dispatch to attempt to ensure that Mr. Payne's twenty-first birthday does not threaten to moot this case before the en banc Court (and, if necessary, the Supreme Court) has a chance to consider it.

Second, "[t]he most important consideration in determining timeliness"—"whether any existing party to the litigation will be harmed or prejudiced by the proposed intervenor's delay in moving to intervene"—weighs strongly in favor of Ms. Taggart. *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. 1970). The relevant question is not whether *intervention* will prejudice any party—which

it will not here—but rather whether any *delay* by the proposed intervenor has harmed the parties. *See In re Lease Oil Antitrust Litig.*, 570 F.3d at 248 ("The second timeliness factor weighs the prejudice to other parties caused by the delay in seeking intervention. Any potential prejudice caused by the intervention itself is irrelevant, because it would have occurred regardless of whether the intervention was timely."). As we have just explained, any delay by Ms. Taggart has been minimal, and it certainly has not prejudiced the parties. Indeed, "we are utterly unable to perceive any way in which any party could have been prejudiced by the timing of [this] motion." *McDonald*, 430 F.2d at 1073. Ms. Taggart's intervention as a plaintiff will in no way affect the merits of this case, and the effect on the parties of her moving to intervene now is no different than if she had done so on her eighteenth birthday.

Third, if this Court were to deny intervention, Ms. Taggart would be significantly prejudiced. In order to challenge Texas's carry restrictions, she would have to file a duplicative complaint in the district court, and it is much less likely that she could litigate that case to conclusion before turning twenty-one than it is that she could see this case to its end.

Fourth, and relatedly, this case presents an "unusual circumstance[]" that should favorably influence the timeliness analysis. *In re Lease Oil Antitrust Litigation*, 570 F.3d at 248, 250. There is no guarantee that a case filed on an

individual's eighteenth birthday will conclude before he or she turns twenty-one. Indeed, this action was filed over two and a half years ago, and it has yet to reach final resolution. Thus, in the absence of any prejudice to the State, the equities clearly favor intervention. *See id.* (post-judgment motion to intervene was timely despite two-year delay because of the lack of prejudice to the existing parties and the significant prejudice to the movant if intervention was denied). Under these circumstances, the motion of a prospective intervenor should be deemed timely when, as here, granting it will significantly reduce the risk of mootness on appeal.

2. Ms. Taggart Shares Plaintiffs' Interest in Challenging Texas's Restrictions on Carrying Handguns.

The second factor that this Court considers in evaluating a motion to intervene on appeal is the relationship between the legal interest advanced by the current and prospective plaintiffs. *See Supreme Beef Processors*, 275 F.3d at 437. Given that Ms. Taggart is seeking to press the same claims and obtain the same relief as the current Plaintiffs, this factor certainly weighs in favor of intervention.

3. Denying Intervention Would Impede Ms. Taggart's Interest in Vindicating Her Constitutional Rights.

If Ms. Taggart is excluded from this case, her ability to challenge Texas's carry restrictions would be jeopardized. If she is not added as a party, there is a risk that any case Ms. Taggart were to file in district court would fail to reach final resolution before her twenty-first birthday.

Furthermore, if Ms. Taggart is right on the merits, the carry restrictions' "very existence stands as a fixed harm" to her and "to every [other civilian, 18-20-year-old Texan's] Second Amendment right[s]." *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011). Indeed, when a law infringes Second Amendment rights, "irreparable harm is presumed." *Id.* Because adding Ms. Taggart as a plaintiff will not prejudice the State in any way, there is no justification for extending the time required for Ms. Taggart to obtain a final ruling on her challenge to the carry restrictions by requiring her to start over in district court instead of permitting her to join this suit that has already progressed through the district court level and been decided by a panel of this Court.

4. The Existing Plaintiffs Do Not Adequately Represent Ms. Taggart's Interests.

"[A] potential intervenor need only show that representation by the existing parties *may* be inadequate," and the burden imposed by this requirement is "minimal." *Ross*, 426 F.3d 745, 761 (5th Cir. 2005) (quotation marks omitted). Ms. Taggart easily meets this modest test. Ms. Jennings' and Ms. Harmon's claims are moot because they have turned twenty-one, *see* Panel Op. 6, and Mr. Payne's will be moot when he turns twenty-one. And while about a year ago the NRA had over 1,300 members in Texas aged fifteen to twenty, *see* Marcario Decl. ¶ 6, USCA5 437, Ms. Jennings, Ms. Harmon, and Mr. Payne are the only specific NRA members that have been identified in this litigation. Thus, in the absence of

Ms. Taggart's declaration attached to this motion, it is not clear whether the NRA's presence as a plaintiff will secure this Court's jurisdiction after Mr. Payne turns twenty-one. *See Munsell v. Dep't of Agric.*, 509 F.3d 572, 584 (D.C. Cir. 2007) (holding that when an association sues on behalf of its members, its claims become moot if its members' claims become moot); *NAACP v. Kyle*, 626 F.3d 233, 237 (5th Cir. 2010) (rejecting associational standing when there was "no evidence in the record showing that a specific member of the NAACP has been unable to purchase a residence in Kyle as a result of the revised ordinances that went into effect in 2003").

Indeed, a finding of inadequate representation follows from this Court's decision in *Supreme Beef Processors*. There, this Court held that a proposed intervenor satisfied the inadequacy of representation requirement and granted intervention because there was a "*possibility* that the case could be mooted by" subsequent events, "*perhaps during the pendency of any petition for panel rehearing, rehearing en banc, or writ of certiorari before the U.S. Supreme Court*." *Supreme Beef Processors*, 275 F.3d at 438 (emphases added). In light of the passage of time, the same possibility exists here. It therefore follows that the existing parties do not adequately represent Ms. Taggart's interests in this litigation.

5. Permissive Intervention.

For the foregoing reasons, Ms. Taggart is entitled to intervene as of right. Even if that were not the case, however, this Court should exercise its discretion to grant permissive intervention. Permissive intervention is appropriate when "the applicant's claim . . . and the main action have a question of law or fact in common," *Newby v. Enron Corp.*, 443 F.3d 416, 421 (5th Cir. 2006) (quotation marks omitted), and when considering permissive intervention, the Court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," FED. R. CIV. P. 24(b)(3). These requirements are easily satisfied here: Ms. Taggart's claims are identical to the claims asserted by the existing Plaintiffs, and permitting her to intervene would not cause undue delay or prejudice.

"Intervention," this Court has explained, "should generally be allowed where no one would be hurt and greater justice could be attained." *Ross*, 426 F.3d at 753 (quotation marks omitted). This is the situation that obtains here. Thus, if this Court does not add Ms. Taggart as a plaintiff under the policies embraced by Rule 21, it should do so by granting her request to intervene.

II. IN ADDITION, THIS COURT SHOULD SUPPLEMENT THE RECORD WITH MS. TAGGART'S DECLARATION AS EVIDENCE OF THE NRA'S ASSOCIATIONAL STANDING.

In *National Rifle Association of America v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (2012) (hereinafter "*BATF*"), Movants' challenge to the federal government's ban on licensed firearms dealers selling handguns to 18-20-year-olds, this Court held that the NRA had associational standing to assert the interests of its 18-20-year-old members, including non-party 18-20-year-old members who "submitted sworn declarations that they cannot purchase handguns from [licensed dealers] because of the [federal sales] ban." *Id.* at 191-92 & n.5. Ms. Taggart is a member of the NRA, *see* Taggart Decl. ¶ 3, and, with the filing of this motion, she has submitted a declaration that she lawfully cannot carry a handgun in public because of Texas's carry ban. It thus should follow from *BATF* that the NRA's standing to assert the interests of its 18-20-year-old members is secured by the filing of Ms. Taggart's declaration. But, in an abundance of caution, in addition to adding Ms. Taggart as a plaintiff, Movants request that at a minimum this Court expressly supplement the record on appeal with her declaration to ensure the NRA's continued standing on behalf of its 18-20-year-old members.

"Appellate courts have the inherent equitable authority to supplement the record on appeal." *United States ex rel. Minna Ree Winer Children's Class Trust*

v. Regions Bank of La., 110 F.3d 794, No. 96-30581, at *3 (5th Cir. Mar. 13, 1997) (unpublished) (citing *Ross v. Kemp*, 785 F.2d 1467, 1474-75 (11th Cir. 1986)); *see also Gibson v. Blackburn*, 744 F.2d 403, 405 n.3 (5th Cir. 1984). And the courts of appeals have considered evidence filed on appeal "in settings similar to this one." *Thomas More Law Ctr. v. Obama*, 651 F.3d 529, 536 (6th Cir. 2011) ("consider[ing] . . . new declarations that . . . were filed during the pendency of th[e] appeal" establishing plaintiffs' "actual injury"); *Chamber of Commerce of U.S. v. EPA*, 642 F.3d 192, 200 (D.C. Cir. 2011) (considering member declarations submitted "[a]long with [a party organization's] briefs" when analyzing the issue of the party's associational standing); *Ouachita Watch League v. Jacobs*, 463 F.3d 1163, 1171 (11th Cir. 2006) (supplementing the record with new declarations that "resolve[d] [a] standing issue and illuminate[d] [a] mootness issue"); *Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1555 (11th Cir. 1989) (supplementing the record when "necessary for a final disposition of [the] issue" of "the existence of subject matter jurisdiction").

Here, supplementing the record with Ms. Taggart's declaration to support the NRA's associational standing will serve the interests of justice by mitigating the risk that this case will become moot before resolution of Plaintiffs' en banc petition or potential proceedings before the Supreme Court. Thus, at a minimum this Court should supplement the record with Ms. Taggart's declaration.

CONCLUSION

For the foregoing reasons, Movants respectfully request that this Court add Ms. Taggart as a plaintiff and supplement the record on appeal with her declaration as evidence of the NRA's associational standing.

Dated: June 11, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FILING STANDARD A(6)

I hereby certify that:

(1) any required privacy redactions have been made, *see* FED. R. APP. P. 25(a)(5); FED. R. CIV. P. 5.2(h);

(2) the electronic submission is an exact copy of the paper document; and

(3) the document has been scanned for viruses with Kaspersky Antivirus 2010, and is free of viruses.

June 11, 2013

s/ Charles J. Cooper
Charles J. Cooper
Counsel for Plaintiffs-Appellants and Proposed Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2013, 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 users:

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UNITED STATES COURT OF APPEALS
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v.

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

Defendant-Appellee.

DECLARATION OF KATHERINE TAGGART

I, Katherine Taggart, make the following declaration pursuant to 28 U.S.C. § 1746.

1. I am a resident of College Station, Texas; am nineteen years of age; and am a college student. My statements herein are based upon personal knowledge and experience.

2. I was born on December 29, 1993.

3. I am a member of the National Rifle Association, and I work as a martial arts instructor.

4. I have grown up going to the shooting range and know of several people who have defended their families and themselves by the use of a firearm, particularly a handgun. I believe that I have the right to self-defense and that

the use of a handgun is the most effective method of self-defense in some circumstances.

5. I desire to carry a handgun outside of the home for self-defense. Although I do not own a handgun of my own, my parents have lent me two handguns that I could carry if it were lawful for me to do so.

6. Texas law generally prohibits a person from carrying a handgun outside of that person's premises, motor vehicle, or watercraft (*i.e.*, in public). *See* TEX. PENAL CODE § 46.02(a). While there is an exception to this prohibition for persons who have a Texas Concealed Handgun License (hereinafter "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).

7. Because of these Texas laws, and because of my fear of being prosecuted for violating them, I currently do not carry a handgun in public for self-defense purposes. If Texas law did not prohibit me from doing so, I would carry a handgun in public for self-defense purposes.

8. As a woman who is often alone in public, there are many situations in which I would carry a handgun to protect myself if it were lawful for me to do so. For example, I sometimes take the two dogs I own for walks or runs in the evening. I would like to carry a handgun to protect myself and my dogs on

these outings. I also frequently walk or bicycle home late at night after studying at a coffee shop or similar place of business. These trips can be as long as five miles, and I would like to carry a handgun for my protection when making them.

9. In my view, carrying a long gun is not an acceptable substitute for carrying a handgun for self-defense in public. Because of its smaller size, a handgun is a more practical and effective self-defense weapon than a long gun. A handgun, for example, is more conducive to quick and accurate use in an emergency situation, and, unlike a long gun, it can readily be pointed at an assailant with one hand, leaving the other hand free to dial the police. And because a handgun is less cumbersome and conspicuous than a long gun, it is better suited for carrying in public.

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

11. On December 14 and 15, 2012, I successfully 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 10 hours of classroom time and 2 hours of range time, and I passed both the classroom and proficiency tests that are given to applicants for a CHL. Attached as

Exhibit A to this Declaration is a true and correct copy of the Certificate of Training Form that demonstrates my successful completion of the course.

12. I have also completed a Texas CHL application form; that form is attached as Exhibit B to this Declaration.

13. On June 10, 2013, I visited the DPS website, which provides an electronic CHL application. *See* https://txapps.texas.gov/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." Furthermore, after starting the application process by, among other things, submitting my date of birth, the website gave me a further "[w]arning" that "[p]ersons between the ages of 18 and 21 are only eligible to apply for license under the Active Military or Veteran conditions." Because of my failure to meet the age requirement, I was unable to apply for and obtain a Texas CHL.

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, TEX. GOV'T CODE § 411.174(a)(8), (8)(B), including the age requirement, Texas law prohibits me from even applying for a CHL. But for the age requirement, I would apply for a Texas CHL.

15. I desire to join this lawsuit as a plaintiff in order to vindicate my Second Amendment right to carry a handgun in public, to ensure that this case remains live until a final decision can be reached, and to avoid the burden to me, the defendants, and the court system that would result from the filing of a new suit in district court.

16. I desire to assert the same claims and seek the same relief as the current plaintiffs. *See* Second Amended Complaint, Count I, Count II, and Prayer for Relief, USCA5 274-76.

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

Executed on 10 June, 2013 in College Station, Texas

Katherine Taggart

EXHIBIT A

TEXAS DEPARTMENT OF PUBLIC SAFETY

CERTIFICATE OF TRAINING FORM

This is to certify that

Taggart	Katherine	E.
LAST	FIRST	M.I.

NAME:

successfully completed a course of instruction and demonstrated proficiency under Texas Government Code, §411.188 and is hereby awarded a certificate of training. By my signature below, I certify that I am currently certified by the Texas Department of Public Safety as an instructor. The classroom training provided to the individual named above meets all statutory and regulatory requirements under Chapter 411, Government Code and Title 37, Texas Administrative Code, Chapter 6. I also certify that all of the information on this form is true and correct to the best of my knowledge.

STUDENT'S STATE DRIVER LICENSE or IDENTIFICATION CARD NUMBER:	CLASSROOM	PROFICIENCY	
33168460	Pass PASS / FAIL	Pass PASS / FAIL	Renewal ○ Original ●

CLASSROOM TRAINING

Topic	Time allocation
Use of Force:	2 hr 45 min
Safe storage:	0 hr 45 min
Non-Violent Dispute:	1 hr 15 min
Handgun use:	1 hr 30 min
Law Enforcement Contact:	1 hr 0 min
Eligibility Requirements:	1 hr 45 min
Final Exam:	1 hr 0 min
Total Class Time:	10 hr 0 min

INSTRUCTOR INFORMATION

Printed Name: William D. Burdett
Instructor Number: #00002025
Location: 1055 Texas Ave., South College Sta., Texas 77840
Date(s): December 14 & 15, 2012

W D Burdett
Instructor Signature

PROFICIENCY TRAINING

Action Type: ● SA ○ NSA ○ Both
Total Range Time: 2 hr 0 min
(Instructor renewal requires both weapons)

W D Burdett
Instructor Signature

INSTRUCTOR INFORMATION

Printed Name: William D. Burdett
Instructor Number: #00002025
Location: Gunsmoke Shooting Range
10076 Co. Rd. 295, Snook, TX 77878
Date(s): December 15, 2012

Total Class Time	Total Range Time	Total Training Time
10 hr 0 min	2 hr 0 min	12 hr 0 min Renewal training time must be at least 4 hours Original training time must be at least 10 hours

Student's Signature _____

Attach **original** signed **CHL-100** to the completed application.

Retain a **copy** of the **CHL-100** for your records. CHL-100 (Rev. 08/11)

EXHIBIT B

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 FOF 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)	First Name	M.I.	Suffix (IF ANY)
Taggart	Katherine	E.	

● Driver License ○ ID Card | Issuing State? (2-LETTER CODE) | DL/ID Number (*PROVIDE COLOR COPY OF DL/ID) 33168460 | Date of Birth (MM/DD/YYYY) 12/29/1993 | SSN REDACTED 8851

Place of Birth (CITY) College Station | (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 ●

Height 5 Ft. 4 In.

Weight 145 Lbs.

Race
○ Asian/Pacific Islander
○ American Indian/Alaskan Native
○ Black
○ Other/Unknown
● White/Hispanic

Eyes (*MATCH DL/ID)
○ Black ○ Hazel
● Blue ○ Maroon
○ Brown ○ Multicolor
○ Green ○ Pink
○ Gray ○ Unknown

Hair (*MATCH DL/ID)
○ Bald/Unknown ○ Gray/Partially
○ Black ○ Red/Auburn
● Blonde/Strawberry ○ Sandy
○ Brown ○ White

CONTACT INFORMATION

Residence Address (NO PO BOXES. MUST BE A PHYSICAL ADDRESS)

City College Station | State (2-LETTER CODE) TX | ZIP 77840

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 ○ *If YES, provide mailing address in space below No ●

Mailing Address (IF APPLICABLE) N/A

City | State (2-LETTER CODE) | ZIP

Are you currently employed and do you have an employment address different from the address listed above? Yes ● *If YES, provide employment address in space below No ○

Employer Name/Address The Martial Arts Center ; 2551 Texas Ave. S.

City College Station | State (2-LETTER CODE) TX | ZIP 77840

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 (979) 255-1785 | Applicant Alternate Number (OPTIONAL) ( )

Applicant Email (ONLY FOR CONTACT PURPOSES REGARDING THIS APPLICATION) tmactaekwondo@gmail.com

THIS SIDE SPACE IS RESERVED FOR OFFICE USE ONLY

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 ○ *If YES, please fill out and attach Supplement CHL-78C No ●

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 ○ *If YES, please fill out and attach Supplement CHL-78C No ●

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 Katherine Taggart Date 6/10/2013

Applicant Name	Katherine Taggart	Social Security No.	REDACTED 8851

RESIDENCE HISTORY INFORMATION (*LIST ALL ADDRESSES LEADING UP TO THE RESIDENCE LISTED ON CHL-78)

You are required to provide all addresses for a **full five years (60 months)** preceding the date of this application (e.g. 04/2005 to 04/2010), with no gaps and explaining any overlaps by attaching a written statement.

DATE RANGE(S) (MM/YYYY)	ADDRESS(ES) (MUST BE COMPLETE ADDRESS INFORMATION FOR EACH ITEM)		
From (BEGAN) 08 / 1996	Address 1008 Madera Cir.		
To (ENDED) 08 / 2010	City College Station	State (2-Letter Code) TX	ZIP 77840
From (BEGAN) 08 / 2010	Address 7905 Spring Valley Rd.		
To (ENDED) 07 / 2011	City Dallas	State (2-Letter Code) TX	ZIP 75254
From (BEGAN) 07 / 2011	Address 7909 Pirate's Cove Dr.		
To (ENDED) 06 / 2012	City Plano	State (2-Letter Code) TX	ZIP 75025
From (BEGAN) 06 / 2012	Address 1008 Madera Cir.		
To (ENDED) Present	City College Station	State (2-Letter Code) TX	ZIP 77840
From (BEGAN) /	Address		
To (ENDED) /	City	State (2-Letter Code)	ZIP
From (BEGAN) /	Address		
To (ENDED) /	City	State (2-Letter Code)	ZIP

EMPLOYMENT HISTORY INFORMATION (*LIST ALL ADDRESSES LEADING UP THE EMPLOYMENT LISTED ON CHL-78)

From (BEGAN) 06 / 2008	Employer Name/Address The Martial Arts Center		
To (ENDED) Present	City College Station	State (2-Letter Code) TX	ZIP 77840
From (BEGAN) 02 / 2011	Employer Name/Address Sonic Drive-In / 6110 Frankford Rd.		
To (ENDED) 10 / 2011	City Dallas	State (2-Letter Code) TX	ZIP 75252
From (BEGAN) 10 / 2011	Employer Name/Address Sonic Drive-In / 1601 Custer Rd		
To (ENDED) 06 / 2012	City Plano	State (2-Letter Code) TX	ZIP 75025
From (BEGAN) 06 / 2012	Employer Name/Address Sonic Drive-In / 12755 FM 2154 Rd.		
To (ENDED) Present	City College Station	State (2-Letter Code) TX	ZIP 77840
From (BEGAN) /	Employer Name/Address		
To (ENDED) /	City	State (2-Letter Code)	ZIP
From (BEGAN) /	Employer Name/Address		
To (ENDED) /	City	State (2-Letter Code)	ZIP

I verify that the information provided is true and correct, and I 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 Kathrine Taggart Date 06 / 10 / 2013