



# MOUNTAIN STATES LEGAL FOUNDATION

May 11, 2022

VIA ECF

Catherine O'Hagan Wolfe  
Clerk of the Court  
U.S. Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

**Re: *Everytown for Gun Safety Support Fund, et al. v. Zachary Fort, et al.*, No. 21-191 –  
Order dated May 6, 2022**

Dear Ms. Wolfe:

I write as counsel for Intervenor-Appellants (“Appellants”) and submit this letter on behalf of Appellants and Plaintiffs-Appellees (“Appellees”, and collectively, “the Parties”) pursuant to Federal Rule of Appellate Procedure 28(j) and this Court’s May 6, 2022 Order. ECF No. 99. In the Parties’ last letter, the Parties informed this Court that the parties to the district court litigation “filed a status update letter in which they state that they have requested that the district court administratively close the case without prejudice to reinstatement.” *Id.* This Court approved the Parties’ request “that they submit their next status update letter to this Court within five days of the district court ruling on the motion.” *Id.*

On May 6, 2022, the district court issued an order granting the request to administratively close the case below. *City of Syracuse, et al. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, et al.*, 20-cv-6885-GHW, ECF No. 136, at 2 (S.D.N.Y.). The district court order states:

All pending deadlines are terminated and any pending motions are deemed to have been withdrawn. The parties are directed to submit a joint letter regarding the status of this case no later than October 3, 2022.

By administratively closing this case, the Court is not endorsing the proposition that any litigation regarding any successor regulation is properly encompassed within the scope of this action.

The Clerk of Court is directed to terminate all pending motions and deadlines and to close this case administratively.

*Id.*



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The Parties before this Court submit the following:

**Appellants:** The procedural posture below provides this Court with an ideal opportunity to decide this appeal and provide direction for the lower court to implement once that case resumes. Given that the case below is stayed and that the district court withdrew all pending motions, the lower court case is essentially starting over. Accordingly, if this Court rules in favor of Appellants' intervention, any alleged prejudice from Appellants' inclusion will be thoroughly mitigated and Appellants will have the opportunity to fully participate in the litigation, once it restarts, including any potential briefing on mootness.

To that end, Appellants recognize that this Court is still awaiting a ruling in the pending Supreme Court case of *Berger v. North Carolina State Conference of the NAACP* (No. 21-248) and propose to maintain this Court's requirement that "no later than fourteen days after issuance of that decision, each party shall submit to this court a letter brief, not to exceed ten pages double-spaced, addressing the effect, if any, that the *Berger* decision has on this appeal." ECF No. 89. That briefing can be completed while the case below remains stayed. Further, the appropriate action of this Court may be to remand this case to be decided by the district court, upon reopening, in light of *Berger*. Either approach could be efficiently addressed by this Court while the case below remains stayed and will alleviate any potential harm to Appellants by that case proceeding without their inclusion.

In sum, Appellants respectfully request that this Court maintain its order that the parties submit letter briefs of not more than ten pages double-spaced to this Court within fourteen days of the Supreme Court's decision in *Berger*. Appellants request any further decision as to the status of this appeal be determined at that time.

**Appellees:** In the interest of judicial economy, Appellees respectfully request that this Court order the parties to jointly update this Court on the district court proceedings within five days of the submission of a status report to the district court made pursuant to the district court's May 6, 2022 order. 20 Civ. 6885, Dkt. 136. Appellant states that if this Court were to issue an opinion while the district court proceedings remain administratively closed, it would "provide direction for the lower court to implement once that case resumes." But it is not clear at this time that the case *will* in fact resume. *See* 20 Civ. 6885, Dkt. 135 at 1 (asking the district court to administratively close the case until a later date when the parties "will be in a better position to know *whether* further proceedings in this matter are necessary") (emphasis added).

Appellants are correct that, on February 28, 2022, this Court instructed the parties to submit briefs to this Court "no later than fourteen days after issuance" of the Supreme Court's decision in *Berger v. North Carolina State Conference of the NAACP*, U.S. No. 21-248. 21-191, No. 89. However, Appellees respectfully request that this Court supplement its February 28, 2022 order such that, should the Supreme Court issue a decision in *Berger* while the district court proceedings here remain administratively closed, the parties submit briefs on any effects of



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*Berger* within fourteen days of the district court lifting the administrative closure. That timing would ensure that this Court does not unnecessarily issue an opinion on intervention only to have the underlying district court proceedings end before this Court's opinion can be applied.

In sum, Appellees respectfully request that this Court order that (1) the parties shall jointly provide this Court with a status update on the district court proceedings within five days of the submission of a status report to the district court made pursuant to the district court's May 6, 2022 order; and (2) if the Supreme Court issues a decision in *Berger* while the district court proceedings here remain administratively closed, the parties shall submit briefs on any effects of *Berger* within fourteen days of the district court lifting the administrative closure.

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We thank the Court for its attention to this matter.

Sincerely,

/s/ Cody J. Wisniewski

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cc: All Counsel of Record (via ECF)