



November 28, 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 August 23, 2022**

Dear Ms. Wolfe:

I write as counsel for Intervenor-Appellants (“Appellants”) and submit this letter on behalf of Appellants and Plaintiffs-Appellees (collectively, “the Parties”) pursuant to Federal Rule of Appellate Procedure 28(j) and this Court’s August 23, 2022 Order requiring the Parties to “jointly apprise this Court of any decision by the District Court to change the status of the proceedings no later than ten days after issuance of such a decision.” ECF No. 114. For the reasons set forth below, the Parties propose that they jointly provide this Court with an update on the status of the District Court proceedings within ten days of the District Court ruling upon Plaintiffs’ forthcoming motion to file an amended complaint.

On October 3, 2022, Counsel for Plaintiffs-Appellees filed a letter on behalf of the parties below providing the District Court with an update as to the status of Defendant Bureau of Alcohol, Tobacco, Firearms, and Explosives’ (“ATF”) Final Rule,<sup>1</sup> challenges to the Final Rule, and the parties’ positions on moving forward. *City of Syracuse, et al. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, et al.*, 20-CV-6885-GHW, ECF No. 138 (S.D.N.Y.) (“District Court Docket”). Plaintiffs below argued to the Southern District of New York that while the ATF’s Final Rule had an effective date of August 24, 2022, the “ATF appears to be continuing to implement a legally flawed interpretation of the [Gun Control Act].” *Id.* at 1. The Plaintiffs requested “that the Court issue an order ending the administrative closure and granting Plaintiffs 30 days to file an amended complaint.” *Id.*

Defendants below argue that “[a]s both the definition and the resulting classification decisions challenged here have been superseded by the new Final Rule that became effective on August 24, 2022 . . . Plaintiffs’ case is moot and the Court should not reopen the case. For the reasons stated below, should the Court re-open the case, Defendants intend to file a motion to dismiss this matter as moot.” *Id.* at 4.

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<sup>1</sup> The ATF’s Final Rule was published in the Federal Register on April 26, 2022. *Definition of “Frame or Receiver” and Identification of Firearms*, 87 Fed. Reg. 24,652 (Apr. 26, 2022), <https://www.federalregister.gov/documents/2022/04/26/2022-08026/definition-of-frame-or-receiver-and-identification-of-firearms>.



On November 18, 2022, the Southern District of New York held a telephonic status conference to discuss the parties' positions and issued an Order shortly thereafter. ECF No. 142. The District Court issued the following Order:

Plaintiffs' request to reopen this case administratively is granted. Plaintiffs' request for leave to file an Amended Complaint is denied. If Plaintiffs wish to file an Amended Complaint, they must file a motion for leave to amend, along with their proposed Amended Complaint, no later than December 9, 2022. Defendants' opposition is due no later than January 9, 2023. Plaintiffs' reply, if any, is due two weeks after the date of service of Defendants' opposition.

*Id.*

Given that the status of the case below turns on the Southern District of New York's decision on Plaintiffs' forthcoming motion to file an amended complaint, the Parties here propose that they jointly provide this Court with an update on the status of the District Court proceedings within ten days of the District Court ruling upon Plaintiffs' motion to file an amended complaint in the matter below.

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)