

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ELIZABETH E. NESBITT, et al.,)	
)	
Plaintiffs - Appellees,)	
)	
v.)	
)	
U.S. ARMY CORPS OF ENGINEERS,)	No. 14-36049
et al.,)	
)	
Defendants - Appellants.)	

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3

CIRCUIT RULE 27-3 CERTIFICATE

Counsel for the Army Corps of Engineers:

Abby C. Wright, 202-514-0664, Abby.Wright@usdoj.gov,
950 Pennsylvania Ave. N.W., Rm. 7252, Washington, D.C. 20530

Counsel for Plaintiffs:

Steven J. Lechner, 303-929-2021, ext. 21, lechner@mountainstateslegal.com
2596 South Lewis Way, Lakewood, CO 80227

The parties request urgent relief on this matter because this case is scheduled for oral argument on March 6, 2017.

Counsel for plaintiffs was notified of this motion on March 1, 2017, and consents to the motion. Service will be accomplished via CM/ECF.

CONSENT MOTION TO PLACE THIS APPEAL IN MEDIATION AND REMOVE ARGUMENT FROM CALENDAR

The government respectfully requests that this appeal be placed in mediation and that the Court remove this case from its oral argument calendar of March 6, 2017, to allow for possible resolution of the matter by the parties. The Army Corps of Engineers is reconsidering the firearms policy challenged in this case, as well as plaintiffs' requests for permission to carry firearms on Army Corps property. The district court entered a permanent injunction, and plaintiffs therefore will not be prejudiced by any delay in the resolution of this matter. Counsel for plaintiffs has informed us that plaintiffs consent to this motion.

1. The United States Army Corps of Engineers (Army Corps) constructs, operates, and maintains infrastructure and other public works projects on federal land throughout the United States. As authorized by Congress, the Army Corps allows public access to its land for recreational purposes when consistent with the public interest and national security. An Army Corps regulation generally restricts visitors from carrying loaded firearms and ammunition while on Army Corps land. 36 C.F.R. § 327.13. The regulation permits loaded firearms if possessed by a law enforcement officer, or if used at designated hunting areas or at Army Corps shooting ranges. *Id.* § 327.13(1)-(3).

Plaintiffs are two Idaho residents who wish to bring their firearms onto Army Corps land for self-defense, and who brought this lawsuit asserting that the Army Corps regulation violates the Second Amendment. In October 2014, the district court issued an order permanently enjoining the Army Corps from enforcing its regulation at Army Corps recreational facilities in Idaho. The government appealed, and argument before this Court is currently scheduled for March 6, 2017.

2. The Army Corps of Engineers is reconsidering the firearms policy challenged in this case, as well as plaintiffs' requests for permission to carry firearms on Army Corps property. This reconsideration has the potential to fully resolve plaintiffs' objections. At a minimum, any resulting modifications would be relevant to this Court's resolution of plaintiffs' Second Amendment challenge. In light of these developments, and the fact that plaintiffs have already secured an injunction allowing them to carry firearms while on Army Corps properties in Idaho, the government respectfully asks the Court to place this case in mediation and remove the currently scheduled argument from the March 6, 2017 calendar. Allowing this case to proceed in mediation will prevent the unnecessary expenditure of this Court's resources in a case that may resolve without need for additional litigation.

3. We have contacted counsel for plaintiffs, who has informed us that plaintiffs consent to this motion.

CONCLUSION

For the foregoing reasons, this Court should place this appeal in mediation and remove the currently scheduled argument from the March 6, 2017 calendar.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

MICHAEL S. RAAB
/s/ Abby C. Wright
ABBY C. WRIGHT
(202) 514-0664
Attorneys, Appellate Staff
Civil Division, Room 7217
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

MARCH 2017

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 591 words, according to the count of Microsoft Word.

/s/ Abby C. Wright
Abby C. Wright

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Abby C. Wright
ABBY C. WRIGHT