IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIANE J. SCHROER, Plaintiff, v. JAMES H. BILLINGTON, Librarian of Congress, Defendant.	No. 05-cv-1090 (JR)

PLAINTIFF'S MOTION TO SET DEADLINE FOR DEFENDANT TO SEEK CERTIFICATION AND TO SET DISCOVERY SCHEDULE

For the following reasons, Plaintiff requests that the Court set a deadline of May 31, 2006, for Defendant to seek certification of the Court's Memorandum and Order of March 31, 2006 (Docket No. 13), and to set a schedule to allow discovery to commence:

1. This Court issued its Memorandum and Order ("Order") denying Defendant's motion to dismiss on March 31, 2006. (Docket No. 13).

2. On that date, the Court also ordered the parties to attend a status conference on April 19, 2006.

3. At the status conference on April 19, 2006, counsel for Defendant informed the Court that the Department of Justice was considering whether to ask this Court to certify its March 31st Order pursuant to 28 U.S.C. § 1292(b), so that Defendant could seek to pursue an interlocutory appeal of that ruling to the U.S. Court of Appeals for the D.C. Circuit.

4. Plaintiff did not object to Defendant's request for additional time to consider whether to seek certification by the Court of the Order.

5. The Court accordingly set a further status conference for May 17, 2006.

6. On May 5, 2006, counsel for Defendant contacted Plaintiff's counsel to ascertain whether Plaintiff would object to a request by Defendant to continue the May 17, 2006 status conference. Defendant's counsel indicated that she would be seeking a continuance of the status conference because she did not anticipate that the government would have made its determination regarding a request for certification by May 17. Defendant's counsel asked Plaintiff's counsel to provide dates in the latter part of June when they would be available for a status conference.

7. While not objecting to Defendant's request that the May 17, 2006, status conference be postponed, Plaintiff's counsel indicated that they would ask the Court to set a deadline of May 31st for Defendant to seek certification by the Court of the Order.

8. Plaintiff's counsel indicated to Defendant's counsel, however, that Plaintiff would not make such a request of the Court if Defendant would agree to allow discovery to commence so that the progress of the case would not be further delayed.

9. On May 11, 2006, Defendant filed an unopposed motion to continue the May 17, 2006, status conference. (Docket No. 16). On May 12, 2006, the Court granted the motion and rescheduled the status conference for June 29, 2006.

10. On May 15, 2006, Defendant's counsel informed Plaintiff's counsel that Defendant would not agree to commence discovery prior to the resolution of the certification issue.

11. The language of the Court's March 31 Order indicated that the ruling was preliminary in nature. Plaintiff, whose Complaint was filed almost a year ago, is eager to proceed towards a resolution of this case on the merits.

12. Although Plaintiff believes that certification is inappropriate under the standard set forth in 28 U.S.C. § 1292(b), Plaintiff acknowledges that Defendant has the right to seek certification of the Order by the Court. Plaintiff respectfully requests, however, that the Court set a deadline by which Defendant must file any such request rather than allow Defendant to delay progress in this case indefinitely.

13. Pursuant to Rule 4(a)(1)(B) of the Federal Rules of Appellate Procedure, the federal government has sixty days to file a notice of appeal from a judgment or order. If the government can decide whether to take an appeal within sixty days, there is no reason why it cannot decide whether to seek an appeal within that same time frame. Accordingly, Plaintiff request that the Court require Defendant to file any motion for certification of this Court's March 31st Order no later than May 31, 2006.

14. Plaintiff also requests that the Court reject any request by Defendant to stay discovery in this case until the issue of certification has been resolved.

15. Plaintiff has already shared with Defendant a proposed discovery schedule, and is prepared to make any initial disclosures required by Rule 26 of the Federal Rules of Civil Procedure within whatever time period the Court deems appropriate.

For these reasons, Plaintiff requests that the Court set a deadline of May 31, 2006, for Defendant to file a motion for certification, and that the Court set a date for the parties to confer pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, and a date by

which the parties must submit a discovery plan for this matter pursuant to Rule 16 of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ Sharon M. McGowan
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ATTORNEYS FOR PLAINTIFF

Date: May 15, 2006

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIANE J. SCHROER,

Plaintiff,

v.

JAMES H. BILLINGTON,
Librarian of Congress,

Defendant.

No. 05-cv-1090 (JR)

ORDER

Upon consideration of Plaintiff's Motion to Set Deadline for Defendant to Seek Certification and to Set Discovery Schedule, and finding good cause therefor, it is hereby

ORDERED that Defendant shall file any motion requesting the Court to certify its Memorandum and Order dated March 31, 2006, (Docket No. 13), by May 31, 2006; and it is further

ORDERED that the parties shall make all required disclosures and shall otherwise meet and confer pursuant to Federal Rule of Civil Procedure 26(f) no later than _____, 2006; and it is further

ORDERED that, pursuant to Federal Rule of Civil Procedure 16, and Local Rule 16.3(d), the parties shall provide the Court with a schedule and plan for conducting discovery by _____, 2006.

This _____ day of _____, 200____

_____
Hon. James Robertson
United States District Judge