

No. 12-17803

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ESPANOLA JACKSON, et al.,

Plaintiffs-Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(CV-09-2143-RS)

**UNOPPOSED MOTION FOR 30-DAY EXTENSION OF TIME TO FILE
PETITION FOR REHEARING OR REHEARING EN BANC;
DECLARATION OF ANNA M. BARVIR**

C. D. Michel (S.B.N. 144258)
Glenn S. McRoberts (S.B.N. 144852)
Clinton B. Monfort (S.B.N. 255609)
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for Plaintiffs-Appellants certify the following:

NATIONAL RIFLE ASSOCIATION, INC.

The National Rifle Association of America, Inc. (“NRA”) is a New York not-for-profit membership corporation founded in 1871. NRA is not a publicly-held corporation, does not have a parent corporation, and no publicly-held corporation owns 10 percent or more of its stock.

SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION

The San Francisco Veteran Police Officers Association is a California nonprofit public benefit organization that represents the interests of veteran police officers in the City and County of San Francisco. The San Francisco Veteran Police Officers Association is not a publicly-held corporation, does not have a parent corporation, and no publicly-held corporation owns 10 percent or more of its stock.

Date: March 27, 2013

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for *Plaintiffs-Appellants*

REQUEST FOR EXTENSION OF TIME

Pursuant to Federal Rules of Appellate Procedure 40(a)(1) and 26(b), and Ninth Circuit Rule 31-2.2(b), Appellants respectfully submit this unopposed motion for a 30-day extension, through and including May 8, 2014, to file a petition for rehearing or rehearing en banc. This request is based on the declaration of Anna M. Barvir attached hereto.

Under Federal Rules of Appellate Procedure Rule 40(a)(1), any petition for panel rehearing must be filed within 14 days after entry of judgment, unless that time is extended. Any petition for rehearing or rehearing en banc must be filed “within the time prescribed by Rule 40 for filing a petition for rehearing.” Fed. R. Civ. Proc. 35(c). For good cause, the due date for filing the petition for rehearing or rehearing en banc may be extended. Fed. R. App. P. 26(b); Fed. R. App. P. 40(a)(1).

Appellants’ petition for rehearing or rehearing en banc is currently scheduled to be filed on or before April 8, 2014. For the reasons summarized here and attested to in Ms. Barvir’s attached declaration, Appellants have a substantial need for an extension of that deadline. The City and County of San Francisco, Mayor Edwin M. Lee, and Police Chief Greg Suhr (“the City”) have indicated that they do not oppose. (Barvir Decl., ¶ 10.) Appellants thus request this Court issue

an order granting Appellants an extension of thirty (30) days to file their petition for rehearing or rehearing en banc.

First, due to a sudden family emergency, Appellants' lead counsel, Clinton B. Monfort, began an indefinite leave of absence on March 17, 2014. (Barvir Decl., ¶ 3.) His emergency was unforeseeable, unavoidable, and will last for an indeterminate amount of time. (Barvir Decl., ¶ 3.) In Mr. Monfort's absence, Ms. Barvir will be the attorney primarily responsible for researching and drafting Appellants' petition for rehearing or rehearing en banc in this case raising serious constitutional questions of first impression—the kind of case that generally requires the efforts of more than one attorney. (Barvir Decl., ¶¶ 3-4.)

Second, since the date of the Ninth Circuit's ruling in this case, Ms. Barvir has been spending the majority of her time researching and drafting documents with set deadlines for filing in other federal appeals involving similarly complex constitutional challenges. (Barvir Decl., ¶¶ 5-6.) It is also anticipated Ms. Barvir will be spending time over the next few weeks assisting another attorney on meeting pressing discovery deadlines in two additional cases: *Gentry v. Harris*, No. 34-2013-80001667, and *Bauer v. Harris*, No. 1:11-cv-01440-LJO-MJS. (Barvir Decl., ¶ 7.) And she will be assisting in the preparation of a Reply Brief to the California Court of Appeal due April 9, 2014.

Third, Ms. Barvir, in her multiple roles as litigator and local legislative and policy analyst, has also been heavily involved in local legislative matters. (Barvir Decl., ¶ 8.) Deadlines in these matters regularly arise with just a moment's notice, and Ms. Barvir anticipates that she will have to devote many hours to such matters in the coming days and weeks. (Barvir Decl., ¶ 8.) For instance, Pleasant Hill, California, will be considering a zoning ordinance affecting firearms businesses and Ms. Barvir will be researching and drafting an opposition memorandum to distribute to the Pleasant Hill Planning Commission before the April 1, 2014 hard deadline. (Barvir Decl., ¶ 8.) Additionally, the Los Angeles Public Safety Committee will consider an ordinance regarding imitation firearms this Friday, March 28, 2014. Ms. Barvir is currently researching, drafting, and preparing an opposition memorandum to distribute to the Los Angeles Public Safety Committee before Friday.

The above reasons preclude Appellants' counsel from filing Appellants' petition for rehearing or rehearing en banc by the current deadline of April 8, 2014, without significantly impairing its quality. (Barvir Decl., ¶ 9.) An extension would provide Appellants with sufficient time to work simultaneously on approaching deadlines. (Barvir Decl., ¶¶ 5, 12.) Appellants have not previously asked for any other extension of time to file a petition for rehearing or rehearing

en banc in this case. (Barvir Decl., ¶ 11.) Appellants' motion for an extension is made in good faith and not for the purpose of delay. (Barvir Decl., ¶ 13.)

Appellants thus request this Court issue an order granting Appellants an extension of thirty (30) days to file a petition for rehearing or rehearing en banc. If approved by the Court, Appellants' petition shall be due on or before May 8, 2014. Alternatively, Appellants request an extension for a period of time the Court deems appropriate.

Date: March 27, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
C. D. Michel
Attorney for *Plaintiffs-Appellants*
Espanola Jackson, Paul Colvin,
Thomas Boyer, Larry Barsetti,
David Golden, Noemi Margaret
Robinson, National Rifle Association
of America, Inc., and San Francisco
Veteran Police Officers Association

DECLARATION OF ANNA M. BARVIR

I, Anna M. Barvir, declare:

1. I am an attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am an attorney at Michel & Associates, P.C., attorneys of record for Plaintiffs-Appellants Espanola Jackson, Paul Colvin, Thomas Boyer, Larry Barsetti, David Golden, Noemi Margaret Robinson, National Rifle Association of America, Inc., and San Francisco Veteran Police Officers Association. I am the attorney primarily responsible for preparing Appellants' petition for rehearing or rehearing en banc in this case. I have personal knowledge of the facts set forth herein and if called as a witness I could and would competently testify thereto.

2. Appellants' petition for rehearing or rehearing en banc is presently due on or before April 8, 2014.

3. Due to an unexpected family emergency, Appellants' lead counsel, Clinton B. Monfort, began an indefinite leave of absence on March 17, 2014. His abrupt absence was unforeseeable, unavoidable, and will last for an indeterminate amount of time. In Mr. Monfort's absence, I am now the attorney primarily

responsible for researching and drafting Appellants' petition for rehearing or rehearing en banc, as well as managing other matters associated with this litigation.

4. This case raises novel and critically important issues of constitutional law, involving a local government conflict with the Second Amendment to the United States Constitution. Normally, such a case requires more than one attorney to effectively litigate.

5. While I analyze the Ninth Circuit's ruling, determine whether to seek further review, and then research and draft a petition for rehearing or rehearing en banc in this case, I will simultaneously be the attorney responsible for the researching and drafting of an opening brief to this Court in *Fyock v. City of Sunnyvale*, No. 14-15408 [DC# CV 13-05807-RMW], due on May 2, 2014.

6. Since the date of the Ninth Circuit's ruling in this case, I have also been substantially and primarily involved in the research and drafting of substantive motions and oppositions under set deadlines in *Peruta v. County of San Diego*, No. 10-56971 [DC# CV 09-02371-IEG]. This federal case also raises

novel and critically important issues of constitutional law, involving a local government conflict with the Second Amendment to the United States Constitution.

7. Over the next few weeks, it is anticipated that I will be assisting another attorney in meeting pressing discovery deadlines in both *Gentry v. Harris*, No. 34-2013-80001667, and *Bauer v. Harris*, No. 1:11-cv-01440-LJO-MJS. And I will be assisting in the preparation of a Reply Brief to the California Court of Appeal due April 9, 2014.

8. In addition to my role as litigator, I am responsible for local legislative and policy analysis and regularly must weigh in on firearms laws pending before various California cities. Deadlines in these matters regularly arise with just a moment's notice, and I anticipate that I will devote many hours to such matters in the coming weeks. For instance, I must research and draft an opposition memorandum that must be distributed to the Pleasant Hill Planning Commission before April 1, 2014. This deadline is not flexible. The Los Angeles Public Safety Committee will also be considering a firearms related ordinance this Friday, March 28, 2014, and I am currently researching, drafting, and preparing an opposition memorandum in that matter as well.

9. The above reasons preclude Appellants' counsel from filing Appellants' petition for rehearing or rehearing en banc by the current deadline of April 8, 2014, without significantly impairing its quality. As such, Appellants respectfully request a thirty (30) day extension of time from the currently scheduled April 8, 2014, deadline to file a petition for rehearing or rehearing en banc.

10. Counsel of record for the City was contacted on March 25, 2014, regarding any objection to Appellants' request for an extension of time to file a petition for rehearing or rehearing en banc. Counsel of record for the City stated it does not oppose this motion.

11. Appellants have not previously asked for any other extension of time to file a petition for rehearing or rehearing en banc.

12. Counsel for Appellants have at all times exercised diligence to provide this Court timely and professional briefing. The requested extension of time will enable counsel to continue to do so, while at the same time fulfilling their obligations in other courts and other matters.

13. This motion is made in good faith for the reasons of actual need set forth herein and not for the purpose of delay. In fact, it is in Appellants' interest to expedite a resolution of this matter, but not at the expense of the quality of their

petition for rehearing or rehearing en banc.

14. To my knowledge, the requested extension will not prejudice any party.

I declare under penalty of perjury that the foregoing is true and correct.

Executed the 27th day of March, 2014, at Long Beach, California.

/s/ Anna M. Barvir
Anna M. Barvir
Attorney for *Plaintiffs-Appellants*

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2014, an electronic PDF of **UNOPPOSED MOTION FOR 30-DAY EXTENSION OF TIME TO FILE PETITION FOR REHEARING OR REHEARING EN BANC; DECLARATION OF ANNA M. BARVIR** was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: March 27, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for *Plaintiffs-Appellants*

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