09-16852

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES ROTHERY and ANDREA HOFFMAN,

Plaintiffs - Appellants,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants - Appellees.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:08-cv-02064-JAM-KJM
The Honorable John A. Mendez, Judge

JOINT MOTION BY DEFENDANTS – APPELLEES FOR FURTHER STAY OF APPELLATE PROCEEDINGS

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I. RELIEF SOUGHT

Appellees, County of Sacramento, Lou Blanas, John McGinnis, Tim Sheehan and Kamala D. Harris, move this Court for an extension of the current stay of proceedings in this matter. At present, appellees' answering briefs are due October 1, 2014. Appellees request that the current stay be extended until ninety (90) days following issuance of the Ninth Circuit's mandate in *Peruta v. County of San Diego*, No. 10-56971.

II. POSITIONS OF ALL COUNSEL

All appellees, through the undersigned counsel, join in this Motion for Further Stay of Appellate Proceedings.

All appellants are represented by Gary W. Gorski. Mr. Gorski has stated to counsel that he has no objection to a continued stay of appellate proceedings. (See ¶ 6 of the attached Joint Declaration.)

III. NEED FOR EXTENSION OF THE CURRENT STAY

The present appeal has been stayed several times pending the resolution of other appeals. This Court's present stay order was entered July 11, 2014, and stays proceedings until October 1, 2014. (Dkt. # 59.) As set forth in that order, "At or prior to the expiration of the stay of appellate proceedings, the appellees shall file the answering briefs or file a motion for appropriate relief."

There is good reason to stay the present appeal pending resolution of the *Peruta* appeal. There is considerable overlap between *Peruta* and the present case. Both cases involve a constitutional challenge to California's Concealed Carry Weapon (CCW) statutes, and both cases present the underlying issue whether the Second Amendment extends to the right to carry a loaded handgun in public. On February 13, 2014, the *Peruta* panel—by a 2-1 vote—concluded that San Diego County's CCW permitting requirement impermissibly infringes on the Second Amendment right to bear arms. (*Peruta* Dkt. # 117.) On February 28, 2014, the *Peruta* panel issued an order staying issuance of the mandate and extending the deadline to file a petition for rehearing en banc pending a decision on Proposed Intervenor State of California's motion to intervene. (*Peruta* Dkt. # 126.) The stay is still in effect.

Peruta, once it is final, may resolve many of the issues presented in the present appeal. A further stay will allow the parties to better brief the Second Amendment issues presented here, and will allow the Ninth Circuit to avoid potentially conflicting or inconsistent decisions on the constitutionality of California's CCW licensing regime.

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Accordingly, appellees request that the current stay be extended until ninety (90) days following issuance of the Ninth Circuit's mandate in *Peruta v. County of San Diego*, No. 10-56971.

Dated: September 23, 2014

KAMALA D. HARRIS
Attorney General of California

/s/ GEORGE WATERS

GEORGE WATERS
Deputy Attorney General
Attorneys for Appellee
Kamala D. Harris

Dated: September 23, 2014

LONGYEAR, O'DEA & LAVRA

/s/ AMANDA L. MCDERMOTT

AMANDA L. MCDERMOTT
Attorneys for Appellees
County of Sacramento, Lou Blanas,
John McGinnis, Timothy Sheehan

JOINT DECLARATION OF AMANDA L. MCDERMOTT AND GEORGE WATERS IN SUPPORT OF APPELLEES' MOTION FOR FURTHER STAY

We, Amanda L. McDermott and George Waters, declare as follows:

1. We are attorneys licensed to practice law before all courts in the State of California and are admitted to practice before this Court. Amanda L. McDermott is an associate of the law firm of Longyear, O'Dea & Lavra, LLP, counsel of record for Defendants/Appellees, County of Sacramento, Lou Blanas, John McGinnis, and Tim Sheehan. George Waters is a Deputy Attorney General for the State of California and counsel of record for Defendant/Appellee Kamala D. Harris, Attorney General of the State of California.

2. In the present *Rothery* appeal, appellants' opening brief was filed on May 6, 2010. (Dkt. # 11.) Thereafter, appellate proceedings, including the filing of appellees' answering briefs, have been stayed by a series of court orders dated May 24, 2010 (Dkt. # 15), August 16, 2010 (Dkt. # 18), October 18, 2010 (Dkt. # 20), January 18, 2011 (Dkt. # 22), March 24, 2011 (Dkt. # 25), June 8, 2011 (Dkt. # 27), August 30, 2011 (Dkt. # 35), November 15, 2011 (Dkt. # 37), February 10, 2012 (Dkt. # 39), May 14, 2012 (Dkt. # 43), August 30, 2012 (Dkt. # 45), November 30, 2012 (Dkt. # 47), February 19, 2013 (Dkt. # 49), May 15, 2013 (Dkt. # 51),

August 13, 2013 (Dkt. # 53), November 22, 2013 (Dkt. # 55), March 25, 2014 (Dkt. #57), and July 11, 2014 (Dkt. # 59). At present, appellees' answering briefs are due October 1, 2014.

3. The present case (*Rothery*) was stayed several times pending resolution of *Mehl v. Lou Blanas, et al.*, Ninth Circuit No. 08-15773. Both cases involve a constitutional challenge to California's Concealed Carry Weapon (CCW) statutes. *Mehl* was argued twice to the Ninth Circuit: June 11, 2009 (*Mehl* Dkt. # 26), and December 10, 2012 (*Mehl* Dkt. # 50). On July 8, 2013, *Mehl* was resolved without resolving the constitutional issues presented. (*Mehl* Dkt. # 76.)

4. *Peruta v. County of San Diego*, Ninth Circuit No. 10-56971, also presents a constitutional challenge to California's CCW statutes. On February 13, 2014, the *Peruta* panel—by a 2-1 vote—concluded that San Diego County's CCW permitting requirement impermissibly infringes on the Second Amendment right to bear arms. (*Peruta* Dkt. # 117.) On February 28, 2014, the *Peruta* panel issued an order staying issuance of the mandate and extending the deadline to file a petition for rehearing en banc pending a decision on Proposed Intervenor State of California's motion to intervene. (*Peruta* Dkt. # 126.) The stay is still in effect. *Peruta* may resolve many of the issues presented in the present appeal.

5. Appellees have exercised diligence in this matter, but will have only one opportunity to address the Second Amendment and related issues raised by appellants. Because the constitutional and statutory issues presented here are similar to those presented by the *Peruta* appeal (both cases involve a constitutional challenge to California's Concealed Carry Weapon (CCW) statutes), it is appropriate to await for final resolution of *Peruta* prior to any further briefing in *Rothery*. The requested continuation of the stay to a date until ninety (90) days following issuance of the Ninth Circuit's mandate in *Peruta* is therefore reasonable and will enable appellees' counsel to fulfill their obligations to their clients and to this Court.

6. All Plaintiffs/Appellants in this action are represented by Gary W. Gorski. On September 23, 2014, George Waters discussed this motion with Mr. Gorski by phone. Mr. Gorski stated that he did not object to a continued stay of appellate proceedings.

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Declarants declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

EXECUTED this 23rd day of September, 2014, at Sacramento, California.

LONGYEAR, O'DEA & LAVRA, LLP

/s/ AMANDA L. MCDERMOTT

AMANDA L. MCDERMOTT
Attorneys for Appellees
County of Sacramento, Lou Blanas, John McGinnis, Timothy Sheehan

KAMALA D. HARRIS
Attorney General of California

/s/ GEORGE WATERS

GEORGE WATERS
Attorneys for Appellee
Kamala D. Harris

CERTIFICATE OF SERVICE

Case Name: ***James Rothery, et al. v. County of Sacramento***

Case No. **09-16852**

I hereby certify that on September 23, 2014, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

JOINT MOTION BY DEFENDANTS – APPELLEES FOR FURTHER STAY OF APPELLATE PROCEEDINGS

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 23, 2014, at Sacramento, California.

M. Baschiera	*/s/ M. Baschiera*
Declarant	Signature

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