

No. 12-17808

**In the United States Court of Appeals
for the Ninth Circuit**

George K. Young, Jr.

Plaintiff-Appellant,

v.

State of Hawaii, et al.

Defendants-Appellees.

**Appeal from a Judgment of United States District Court
For the District of Hawaii
Civ. No. 12-00336-HG-BMK
United States District Court Judge Helen Gillmor**

MOTION FOR RECONSIDERATION

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Comes now, Appellant George K. Young, by and through counsel, and submits this, his Motion for Reconsideration (“Motion”) pursuant to Circuit Rule 27-10(a)(2)¹ and would show unto the Court the following:

This Court, *sua sponte*, stayed en banc proceedings in this matter “pending issuance of an opinion by the United States Supreme Court in *New York State Rifle & Pistol Association, Inc. v. City of New York*, No. 18-280...” less than one week after ordering this case to be heard en banc. *See* Docket No. 209. This is the second stay of proceedings in this case since Mr. Young’s case was first docketed in this Court on December 24, 2012.² Mr. Young has now been in the appeals process for approximately six years, two months and nine days.

“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55, 57 S. Ct. 163, 166 (1936) (additional citation omitted). But, “[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Id.*

¹ Counsel for Mr. Young requested Appellees’ position on this motion and Appellees’ counsel stated that they oppose said Motion. Ironically, Appellees petitioned this Court to take this matter *en banc*.

² *See* Docket No. 101 – (staying proceedings pending this Court’s mandate in *Baker v. Kealoha*, 12-16258); *See also* Docket No. 209, *supra*.

In *New York State Rifle & Pistol Association* (“NYSRPA”), the question presented to the Supreme Court is: “Whether the City’s ban on transporting a licensed locked, and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the Commerce Clause, and the constitutional right to travel.” *See* Petition for Certiorari, p.2.^{3,4} Neither the Commerce Clause nor the constitutional right to travel are at issue in Mr. Young’s case. Additionally, Mr. Young has not asked this Court whether he can transport a licensed locked and unloaded firearm to a second home or to a shooting range outside the city limits. Hawaii does not prohibit that activity as New York City does. As such, *NYSPRA* does not directly implicate Mr. Young’s issues.

The *NYSRPA* matter was granted certiorari on January 22, 2019 and the Order granting en banc in Mr. Young’s case was filed on February 8, 2019. In *NYSRPA*, counsel for petitioners requested that their brief be due on May 7, 2019 and respondents’ brief to be due on August 5, 2019.⁵ The parties have not briefed the

³ https://www.supremecourt.gov/DocketPDF/18/18-280/62499/20180904122332608_NYSRPA%20cert%20petition%209-04-18%20FINAL.pdf (last accessed 2/21/2019).

⁴ *See also* <https://www.supremecourt.gov/docket/docketfiles/html/qp/18-00280qp.pdf> (demonstrating question presented to the Court and granting certiorari).

⁵ https://www.supremecourt.gov/DocketPDF/18/18-280/88055/20190212144347429_2019-02-12%20extension%20letter%20FINAL.pdf (last accessed 2/21/2019).

matter and oral argument is not even scheduled in *NYSRPA*. Given that the matter has not been briefed; has not presented the questions at issue in *Young*; and has not been set for oral argument, it is quite possible that *Young*'s case will be stayed for at a minimum of a year and half, possibly more, while the Supreme Court decides *NYSRPA*, and it is speculation as to whether anything in *NYSRPA* will affect any issue presented in *Young*.

Had the Supreme Court already heard oral argument, one could anticipate that a decision would be forthcoming without much delay – a stay *may* make sense. However, given the current posture of *NYSRPA*, it is an open-ended question as to when Mr. Young will be able to have his matter resolved by the en banc panel. The Ninth Circuit has previously held that “[a] stay should not be granted unless it appears likely the other proceedings will be concluded within a reasonable time in relation to the urgency of the claims presented to the court.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979). Any “reasonable time” calculation is completely speculative at this point given the *NYSRPA* litigation’s procedural posture. We simply don’t know when it will be decided, nor do we know what issue the case will turn upon. The opinion could simply ignore the Second Amendment entirely and decide the issue on the Commerce Clause or the right to travel claim – claims that are not relevant to Mr. Young’s case.

As such, because there is no evidence that an opinion from the Supreme Court in *NYSPRA* will narrow (or resolve) the issues before this Court in this case and because the stay is open-ended and predicated on a decision from the Supreme Court which no one knows when will be handed down, Mr. Young respectfully urges this Court to allow his case to continue and be heard, as previously scheduled, during the March 25, 2019 en banc hearings. Mr. Young continues to be prejudiced by the time in this appeals process. Mr. Young strenuously opposed the en banc petition because he wants his day in court. *See* Mr. Young's Response to Petition to En Banc, Docket No. 171-1.

Conclusion

Mr. Young respectfully requests that this Court reconsider its Order staying this case until *NYSRPA* is decided by the Supreme Court given the length of the time the stay will likely affect Mr. Young's case and to reset the argument for the March 25, 2019 hearing schedule as previously ordered.

Respectfully submitted, this the 21st day of February, 2019.

s/ Alan Beck

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CERTIFICATE OF COMPLIANCE

1. This Motion complies with the type-volume limitations of Fed. R. App. P. 27 because it contains 906 words.
2. This Motion complies with the typeface requirements of Fed. R. App. P.32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman.

/s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh

CERTIFICATE OF SERVICE

I hereby certify that on February 21st, 2019, I filed the foregoing Document 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/ Stephen D. Stamboulieh
Stephen D. Stamboulieh