

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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TRACEY AMBEAU HANSON, <i>et al.</i>	)	)	
	)	)	
Plaintiffs,	)	)	
	)	)	
v.	)	)	Civil Action No. 09-00454 (RMU)
	)	)	
DISTRICT OF COLUMBIA, <i>et al.</i> ,	)	)	
	)	)	
Defendants.	)	)	
_____		)	

DEFENDANTS’ MOTION TO CONSOLIDATE

Pursuant to Fed. R. Civ. P. 7(b) and 42(a), defendants (collectively, “the District”) hereby move this Honorable Court to consolidate the instant matter with *Heller v. District of Columbia*, No. 08-01289 (RMU), currently pending before this Court. The District’s Memorandum of Points and Authorities in support hereof is attached hereto and incorporated by reference herein. A proposed Order also is attached hereto.

Pursuant to LCvR 7(m), the undersigned counsel attempted to discuss the instant motion with opposing counsel, who did not respond to repeated voicemail messages prior to the filing of the instant motion.

WHEREFORE, the District respectfully requests that this Honorable Court:

- A. Grant the District’s Motion to Consolidate and
- B. Grant the District such other and further relief as the nature of its cause may require.

DATE: March 30, 2009

Respectfully submitted,

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Attorney General for the District of Columbia

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Deputy Attorney General, Civil Litigation Division

/s/ Ellen A. Efros

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<hr/>		)	

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF  
DEFENDANTS’ MOTION TO CONSOLIDATE

Defendants the District of Columbia and Chief of Police Cathy Lanier (collectively “the District”), by and through undersigned counsel, respectfully submits this Memorandum of Points and Authorities in Support of their Motion to Consolidate, pursuant to Fed. R. Civ. P. 7(b) and 42(a). A proposed Order is attached hereto.

In support of the instant motion, and for its good cause shown, the District states as follows:

1. On or about July 28, 2008, the District was served with a complaint challenging various provisions of District law regulating firearms as violating the Second Amendment and the holding in *District of Columbia v. Heller*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 2783 (2008). In that complaint, *Heller v. District of Columbia*, No. 08-01289 (RMU), plaintiffs challenged provisions of the Firearms Control Amendment Act of 2008, Act 17-708, and the Inoperable Pistol Amendment Act of 2008, Act 17-690.

2. The *Heller* plaintiffs subsequently amended their complaint, and the District answered it in due course. On or about January 5, 2009, the parties filed their Joint Report

pursuant to LCvR 16.3, and indicated that the challenged legislation had been transmitted to Congress for review, thus was not yet permanent.

3. By Minute Order dated January 6, 2009, the Court directed the parties to “submit a joint status report within 5 days of the effective date of the Firearms Control legislation or the Inoperable Pistol legislation, whichever is later.” The Firearms Control Act is projected to become effective on April 1, 2009, and the Inoperable Pistol Act is projected to become effective on May 21, 2009. See <http://www.dccouncil.washington.dc.us/lims/searchbylegislation.aspx> (as of March 24, 2009).

4. On or about March 10, 2009, the District was served with the instant complaint, challenging various provisions of District law regulating firearms as violating the Second Amendment and the holding in *District of Columbia v. Heller*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 2783 (2008). The *Hanson* plaintiffs challenge the use of the “California Roster of Handguns Certified for Sale” in the Firearms Control Amendment Act of 2008, because it is allegedly “irrational and arbitrary, and excludes innumerable guns whose possession is protected by the Second Amendment.” *Hanson* Complaint ¶ 15.

5. On March 25, 2009, the Court granted the *Heller* plaintiffs’ motion for leave to file their Second Amended Complaint. That complaint challenges, *inter alia*, the District’s use of the California Roster of Handguns Certified for Sale in the Firearms Control Amendment Act of 2008, and that Act’s “Prohibition on Commonly-Possessed Firearms and Magazines.” See *Heller* Second Amended Complaint, Count Two.

6. Both the *Hanson* and *Heller* operative complaints demand a declaratory judgment that the disputed provisions violate the Second Amendment, and permanent injunctive relief enjoining the District from enforcing those provisions.

7. Fed. R. Civ. P. 42(a) authorizes a court to consolidate separate actions if they “involve a common question of law or fact . . . .” *See also Blasko v. WMATA*, 243 F.R.D. 13, 15 (D.D.C. 2007) (Rule 42(a) allows consolidation on motion or *sua sponte*)).

8. Courts, when determining whether consolidation is appropriate, should consider equity and judicial economy, and particularly examine whether the actions involve some of the same parties or arise from substantially the same events or facts. *Id.* “[C]ourts weigh considerations of convenience and economy against considerations of confusion and prejudice.” *Id.* (quoting *Chang v. United States*, 217 F.R.D. 262, 265 (D.D.C. 2003)).

9. Here, both sets of plaintiffs challenge the District’s gun-control regime under both the Second Amendment and the Supreme Court’s decision in *District of Columbia v. Heller*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 2783 (2008), under similar theories, and seek the same relief. Consolidation is appropriate here on these bases. 9A FED. PRAC. PROC. CIV. 3d § 2384 (citing, *inter alia*, *Utah v. United States Dept. of the Interior*, 45 F.Supp.2d 1279, 1281 (D. Utah 1999) (consolidating actions where different plaintiffs seek same relief against federal agency and present the same issues)). *See also Dills v. Cobb County, Georgia*, 593 F.Supp. 170, 171 (N.D. Ga. 1984) (cases consolidated “because both plaintiffs are challenging the same statute on similar grounds”).

10. Consolidation is also appropriate here because “the suits are both in their nascent stages and have common parties and allegations . . . .” *Blasko*, 243 F.R.D. at 16. Moreover, consolidation would serve the interests of judicial economy and reduce the litigation burden on defendants. “[C]onsolidation would increase efficiency . . . by achieving judicial economy in the adjudication of potentially dispositive motions involving similar material facts . . . and common questions of law.” *Chang*, 217 F.R.D. at 266–67.

11. Based on the above, the District respectfully requests that this Honorable Court enter an order pursuant to Fed. R. Civ. P. 42(a), and consolidate the instant matter with *Heller v. District of Columbia*, No. 08-01289 (RMU).

DATE: March 30, 2009

Respectfully submitted,

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