

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.))	
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DEFENDANTS' MOTION TO STAY BRIEFING

Pursuant to Fed. R. Civ. P. 6(b)(1) and 7(b), the defendants hereby move this Honorable Court to stay briefing in the instant matter, until resolution of defendants' Motion to Consolidate. Defendants' 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 discussed the relief requested herein with plaintiffs' counsel, who declined to consent to such relief.

WHEREFORE, the defendants respectfully request that this Honorable Court:

- A. Grant the defendants' Motion to Stay Briefing, and
- B. Grant the defendants such other relief as the nature of their cause may require.

DATE: April 17, 2009

Respectfully submitted,

PETER J. NICKLES
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GEORGE C. VALENTINE
Deputy Attorney General, Civil Litigation Division

/s/ Ellen A. Efros

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Defendants.)	
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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF
DEFENDANTS’ MOTION TO STAY BRIEFING

Defendants (collectively, “the District”), by and through undersigned counsel, respectfully submit this Memorandum of Points and Authorities in Support of their Motion To Stay Briefing, pursuant to Fed. R. Civ. P. 6(b)(1) and 7(b). A proposed Order is attached hereto.

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

1. Defendants, on March 30, 2009, filed their Motion to Consolidate the instant matter with *Heller v. District of Columbia*, No. 08-01289 (RMU). Both suits challenge the use of the “California Roster of Handguns Certified for Sale” in the Firearms Control Amendment Act of 2008, D.C. Act 17-708, as violating the Second Amendment and the holding in *District of Columbia v. Heller*, ___ U.S. ___, 128 S. Ct. 2783 (2008).

2. On April 13, 2009, plaintiffs filed their Opposition to the defendants’ motion, and their own Motion for Summary Judgment.

3. Pursuant to LCvR 7(b) and Fed. R. Civ. P. 6(d), the District’s response to plaintiffs’ dispositive motion is due on or before April 27, 2009.

4. Fed. R. Civ. P. 6(b)(1) permits an enlargement of time, such as that requested herein, “if request therefor is made before the expiration of the period originally prescribed . . .” for cause shown.

5. For their good cause shown, the defendants state that staying dispositive briefing here until the Court resolves the pending motion to consolidate will conserve the resources of the Court and the District.

6. The Court has broad discretion to stay proceedings. *See, e.g., Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 879 n.6 (1998) (“[T]he 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.”) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). Such authority extends to stays sought pending a decision on a party’s motion. *E.g., Williams v. Johanns*, 498 F.Supp.2d 113, 134 (D.D.C. 2007).

7. In determining whether to grant a stay, “the court, in its sound discretion, must assess and balance the nature and substantiality of the injustices claimed on either side.” *Feld Entertainment, Inc. v. ASPCA*, 523 F.Supp.2d 1, 3 (D.D.C. 2007) (quoting *Gordon v. FDIC*, 427 F.2d 578, 580 (D.C. Cir. 1970)). The Court should exercise its judgment and “weigh [the] competing interests’ of itself, counsel, and the litigants involved.” *Barton v. District of Columbia*, 209 F.R.D. 274, 278 (D.D.C. 2002) (quoting *Dellinger v. Mitchell*, 442 F.2d 782, n.7 (D.C. Cir. 1971)).

8. The defendants aver that further briefing in the instant matter should await the decision of the Court on the pending motion to consolidate. If the Court *grants* the motion, a briefing schedule will issue, and the District (and plaintiffs) will presumably have additional time to analyze the issues and present argument. If the Court *denies* the motion (and establishes two

separate briefing schedules), the District will likely need additional time to respond to the instant plaintiffs' pending dispositive motion, in light of the press of other litigation and the complicated, *sui generis* legal issues at stake here.

9. Plaintiffs, in their opposition to the District's motion to consolidate, did not articulate any actual prejudice, and mentioned "delay" as the only "benefit" the defendants hoped to gain from that motion. P.Opp. at 4. A brief delay in obtaining one's "day in court" is insufficient to avoid a reasonable stay. *See Feld*, 523 F.Supp.2d at 4. Moreover, the public interest here would be served by a brief stay. *Id.* at 4–5 ("Especially in cases of extraordinary public moment, the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences, if the public welfare or convenience will thereby be promoted.") (quoting *Dellinger*, 442 F.2d at 786). The public welfare would plainly be served by a brief stay (and subsequent consolidation), to obtain a decision on the District's pending motion, not to mention that the District's efforts to respond to two substantially similar lawsuits may not need to be duplicated. The defendants aver that plaintiffs' (and the *Heller* plaintiffs') challenge to the District's firearms-registration law and regulations is a matter of "extraordinary public moment."

10. This enlargement is not sought for any improper purpose, but to conserve the resources of the Court and the defendants. Indeed, judicial economy and efficiency would be served by a brief stay here, because "[t]he administrative burden of managing two such suits concurrently would not be an efficient allocation of the Court's limited resources." *Feld*, 523 F.Supp.2d at 5.

11. The defendants respectfully request a short stay of the time to respond to plaintiffs' dispositive motion until the Court decides the District's pending motion to consolidate.

Based on the above, the defendants respectfully request that this Honorable Court enter an order pursuant to Fed. R. Civ. P. 6(b)(1), to stay the instant matter pending a decision by the Court on defendants' pending motion to consolidate.

DATE: April 17, 2009

Respectfully submitted,

PETER J. NICKLES
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GEORGE C. VALENTINE
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/s/ Ellen A. Efros

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