

The Honorable David G. Estudillo

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

GABRIELLA SULLIVAN, et al.,

Plaintiffs,

v.

BOB FERGUSON, in his official capacity as
Washington State Attorney General, et al.,

Defendants,

ALLIANCE FOR GUN RESPONSIBILITY,

Intervenor-Defendant.

NO. 3:22-cv-05403-DGE

REPLY IN SUPPORT OF
MOTION TO STAYNOTE ON MOTION CALENDAR:
November 17, 2023 at 11:00 a.m.

Plaintiffs concede that the 9th Circuit forthcoming *en banc* decision in *Duncan v. Bonta* “is likely to substantially simplify (if not completely resolve) the legal questions at the center of this case.” Dkt. # 141 at p. 2. Plaintiffs nonetheless oppose a stay on the ground that it will supposedly prejudice them. None of their arguments should prevent this Court from reaching the common-sense conclusion that a stay is appropriate here.

Plaintiffs argue first that a stay is inappropriate because Washington’s law supposedly infringes their “fundamental right” to purchase more deadly LCMs, and so any delay prejudices them. *Id.* But this argument not only fails on the merits (*see generally* Dkts. ## 110, 125, 131-1, 136, 137, 138), it is fundamentally undermined by the *en banc* court’s decision to stay the district court’s ruling in *Duncan*. *Duncan v. Bonta*, 83 F.4th 803, 806 (9th Cir. 2023). If a stay is

1 appropriate in that case, following a ruling in plaintiffs’ favor, it is *a fortiori* appropriate here,
 2 where this Court has yet to consider the merits.

3 Plaintiffs also assert that “the [Moving Defendants] gain[] *nothing* from a stay” because
 4 “*everyone* agrees these issues can be resolved without trial.” Dkt. # 141 at p. 3 (emphasis in
 5 original). But not *everyone* has agreed: this Court hasn’t, and this Court is the one who decides
 6 whether a trial is necessary. While trial deadlines have been stayed pending a ruling on the
 7 parties’ cross-motions for summary judgment, Moving Defendants are continuing to prepare for
 8 trial unless and until this Court tells them these preparations are unnecessary.

9 Moreover, Plaintiffs completely ignore the unnecessary burden to this Court in
 10 proceeding without a stay. Absent a stay, this Court will expend its resources analyzing the
 11 parties’ arguments and reviewing Moving Defendants’ expert reports, all without the benefit of
 12 the clarity the *en banc* court will soon provide—and with the possibility that this Court will have
 13 to re-do some or all of that work after the *en banc* court rules. This expenditure of the Court’s
 14 resources certainly merits consideration in determining whether a stay is appropriate.¹ *See, e.g.,*
 15 *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979) (“[S]ound
 16 reasons may exist . . . to stay the action under the [district court’s] powers to control its own
 17 docket and to provide for the prompt and efficient determination of the cases pending before
 18 it.”); *Centeno v. Inslee*, 310 F.R.D. 483, 491 (W.D. Wash. 2015) (concluding a stay was
 19 appropriate pending a Supreme Court ruling on a critical issue because “judicial economy would
 20 be served by avoiding the need to consider [a party’s] fact-intensive arguments” and “the
 21 reasoning the Supreme Court uses in discussing . . . the central question in this case[] is highly
 22 likely to influence this Court’s understanding of the issue”).

23 Finally, Plaintiffs assert a stay is inappropriate because “this Court’s views may be helpful
 24 to the Ninth Circuit” in deciding *Duncan*. Dkt. # 141 at p. 3. As the *Duncan* Court noted, however,

25 ¹ And as the Moving Defendants already noted, the fact that summary judgment is fully briefed does not
 26 mean there is no more work to be done; oral argument, if desired by the Court, will require significant preparation.
 Dkt. # 138 at p. 5.

“ten other federal district courts have considered a Second Amendment challenge to large-capacity magazine restrictions since *Bruen* was decided.” *Duncan*, 83 F.4th at 806. Additionally, both the First and Seventh Circuits have already heard oral argument in post-*Bruen* LCM cases, and are likely to issue opinions shortly. See *Ocean State Tactical, LLC v. State of Rhode Island*, Case No. 23-1072; *Bevis v. City of Naperville*, Case No. 23-1353. With all of this case law already or soon to be at the *Duncan* court’s disposal, the resources this Court would spend on this case absent a stay are likely better spent elsewhere.

Ultimately, given the similarities between this case and *Duncan*, it is difficult to see what Plaintiffs hope to gain by opposing a stay. *Duncan* is likely to significantly clarify, if not effectively resolve, this case within a few short months. A stay is appropriate here.

DATED this 27th day of October 2023.

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I certify that this memorandum contains 692 words, in compliance with the Local Civil Rules.

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification of such filing to all counsel of record.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 27th day of October 2023 at Seattle, Washington.

/s/ Andrew R.W. Hughes
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Assistant Attorney General