

No. 21-55608

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JAMES MILLER, *et al.*,
Plaintiffs–Appellees,

vs.

ROB BONTA, in his official capacity as
Attorney General of the State of California, *et al.*,
Defendants–Appellants.

On Appeal from the United States District Court
For the Southern District of California
Hon. Roger T. Benitez
Case No. 3:19-cv-01537-BEN-JLB

**APPELLEES’ PRELIMINARY OPPOSITION TO APPELLANTS’
EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 TO STAY
JUDGMENT PENDING APPEAL**

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June 11, 2021

Counsel for Plaintiffs–Appellees

CORPORATE DISCLOSURE STATEMENT

Plaintiffs-Appellees submit this corporate disclosure and financial interest statement pursuant to Federal Rule of Appellate Procedure 26.1(a).

San Diego County Gun Owners PAC is a membership organization, which has no parent corporation, nor has it issued any stock.

California Gun Rights Foundation is a non-profit foundation which has no parent corporation, nor has it issued any stock.

Firearms Policy Coalition, Inc., is a non-profit corporation with no parent corporation, nor has it issued any stock.

Second Amendment Foundation, Inc., is a non-profit corporation with no parent corporation, nor has it issued any stock.

PWGG, L.P. is a limited partnership which has no parent corporation, nor is there any publicly held corporation that owns more than 10% of its stock.

Gunfighter Tactical, LLC is a limited liability company with no parent corporation, nor is there any publicly held corporation that owns more than 10% of its stock.

PRELIMINARY OPPOSITON TO EMERGENCY MOTION

Plaintiffs-Appellees James Miller, Wendy Hauffen, Neil Rutherford, Adrian Sevilla, Ryan Peterson, Gunfighter Tactical, LLC, John Phillips, PWGG, L.P., San Diego County Gun Owners PAC, California Gun Rights Foundation, Second Amendment Foundation, and Firearms Policy Coalition, Inc. (“Appellees”) respectfully submit this preliminary and procedural opposition to the Appellants’ EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 TO STAY JUDGMENT PENDING APPEAL (Ninth Cir. Dkt. 2-1), filed on June 10, 2021. (“Motion”). Appellees intend to file a substantive and thorough opposition to the Appellants’ Motion on its merits, as soon as the Court may allow. As set forth in this brief and preliminary opposition, however, Appellees here point out that: (1) Appellants have not shown the existence of an emergency, since the district court issued a stay through July 4, 2021; and (2) under the ordinary time allowed by FRAP 27, the Motion may and should be briefed and decided by July 4, 2021.

For the reasons which follow, Appellees respectfully submit that Appellants’ request for an immediate stay be denied, and request that the Motion be set for briefing and hearing on a regular track pursuant to FRAP 27.

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I.

APPELLANTS FAIL TO DEMONSTRATE THE EXISTENCE OF
AN “EMERGENCY” UNDER CIR. RULE 27-3

Appellants seek the relief of a stay of the district court’s Judgment, pursuant to Fed. R. App. Pro. 8(a)(2). (Motion, p. 1). Pursuant to Cir. Rule 27-3, however, Appellants have styled their Motion as an “emergency motion” and “request an *immediate* stay of the judgment from this Court to preserve the status quo during this appeal.” (Motion at p. 4, emphasis added). Appellants further assert that relief must be had by June 18, 2021, “so that, in the event that a three-judge panel denies any stay, there is time for Defendants to seek further relief from the en banc Court or the Supreme Court in advance of the July 4 effective date set by the district court.” (Motion at p. 5).

Appellants’ self-selected date of June 18, 2021 is highly arbitrary, and their demand for relief from this Court by that date is not supported by any good cause. Under their rationale as expressed, *any* party could claim an “emergency” simply by claiming that they need or intend to seek en banc review, or review in the Supreme Court should their motion be denied. Seeking to severely curtail the

ordinary time permitted under the Rules of Appellate Procedure based upon the mere *possibility* of further appellate review is simply conjecture at this point.¹

For what it's worth, Appellees will assert that they, too, intend to seek review in the Supreme Court should the Motion be *granted*, and that the continuing deprivation of their rights under the Second Amendment justifies immediate further review as well. But in every case, no pre-hearing circumstance prevents the Appellants' Motion from being briefed and heard in ordinary time, as we explain next.

II.

APPELLANTS' MOTION SHOULD BE BRIEFED AND HEARD IN ORDINARY TIME PURSUANT TO FED R. APP. PRO. 27

Fed. Rule of Appellate Procedure 27(a)(3)(A) states:

Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rule[] 8 [...] may be granted before the 10-day period runs *only if the court gives reasonable notice to the parties that it intends to act sooner.*

(Emphasis added). Appellants, however, request that this Court act upon their Motion immediately. Even if the time is curtailed either under this Rule, or Rule 8,

¹And to the extent that Appellants reasonably anticipate the possibility of losing on the merits of their Motion, and intend to seek review from the Supreme Court, nothing would prevent them from preparing that petition now.

the Rule under which the Motion is brought, “[t]he moving party must give reasonable notice of the motion to all parties[,]” and the motion must ordinarily be heard by a panel of the court except “in an exceptional case in which time requirements make that procedure impracticable,” in which case “the motion may be made to and considered by a single judge.” FRAP 8(a)(2)(C), (D).

Appellants filed their Notice of Appeal and Motion yesterday, June 10, 2021. Ten days from yesterday would ordinarily allow an opposition to be filed by June 20, 2021. To the extent that a true time “emergency” exists, Appellants might consider *waiving* a reply brief, but in any event, may otherwise submit one seven days later, by June 27, 2021. FRAP 27(a)(4). Ordinarily, a motion will be decided “without oral argument unless the court orders otherwise. FRAP 27(e). We would be pleased to accommodate the Court should it desire to entertain a hearing on the Motion, and would even encourage this, but as it stands now, it appears that the Motion may be fully briefed, submitted, and decided by the expiration of the district court’s stay on July 4, 2021.

CONCLUSION

For the foregoing reasons, the State’s request for immediate emergency relief should be denied, and their Motion should be set for briefing and hearing in accord with Fed. R. App. Pro. 27.

Dated: June 11, 2021

SEILER EPSTEIN LLP

/s George M. Lee

George M. Lee

Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2021, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

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

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 11, 2021

/s George M. Lee

George M. Lee