No. 21-15562

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANDREW NAMIKI ROBERTS,
Plaintiff-Appellant,

v.

AL CUMMINGS, in his Official Capacity as the State Sheriff Division Administrator; CLARE E. CONNORS, in her Official Capacity as the Attorney General of the State of Hawai‘i,
Defendants-Appellees,

and

SUSAN BALLARD, in her Official Capacity as the Chief of Police of Honolulu County
Defendant.

On Appeal from the United States District Court for the District of Hawai‘i
Honorable Helen Gillmor, Senior United States District Judge
(Civil No. 1:18-cv-00125-HG-RT)

DEFENDANTS-APPELLEES' MEMORANDUM IN OPPOSITION TO PLAINTIFF-APPELLANT'S MOTION FOR SUMMARY DISPOSITION

CLARE E. CONNORS
Attorney General of Hawai‘i

KIMBERLY T. GUIDRY
Solicitor General of Hawai‘i

ROBERT T. NAKATSUJI
JOHN M. CREGOR, JR.
Deputy Attorneys General
Department of the Attorney General
425 Queen Street
Honolulu, Hawai‘i 96813
Telephone: (808) 586-1360
Fax: (808) 586-8116
E-mail: Robert.T.Nakatsuji@hawaii.gov
John.M.Cregor@hawaii.gov

Attorneys for Defendants-Appellees
AL CUMMINGS and CLARE E. CONNORS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Legislative History

Other Authorities

DEFENDANTS-APPELLEES' MEMORANDUM IN OPPOSITION TO PLAINTIFF-APPELLANT'S MOTION FOR SUMMARY DISPOSITION

Defendants-Appellees AL CUMMINGS, in his Official Capacity as the State Sheriff Division Administrator, and CLARE E. CONNORS, in her Official Capacity as the Attorney General of the State of Hawai'i ("Defendants"), hereby oppose the Motion for Summary Disposition filed by Plaintiff-Appellant ANDREW NAMIKI ROBERTS ("Plaintiff") on March 31, 2021.

I. BACKGROUND.

On April 2, 2018, Plaintiff filed his Complaint challenging the constitutionality of Haw. Rev. Stat. § 134-16, which generally prohibits the possession and sale of electric guns. ECF 1, 3.

On December 17, 2018, the parties stipulated to stay the proceedings based on the fact that legislation on electric guns was pending before the 2019 session of the Hawai'i State Legislature. ECF 41. Ultimately, the proposed legislation did not pass.

On August 2, 2019, Plaintiff filed his Motion for Summary Judgment. ECF 51. On September 4, 2019, Defendants filed their Cross-Claim for Summary Judgment and Memorandum in Opposition to Plaintiff's Motion. ECF 54.

On November 26, 2019, the District Court stayed the proceedings pending a decision by the U.S. Supreme Court in *New York Pistol and Rifle Association, Inc. v. City of New York*, No. 18-280 (U.S.). ECF 71. The Supreme Court eventually

issued its decision on April 27, 2020. *See New York Pistol & Rifle Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525 (2020).

On June 17, 2020, the District Court stayed the proceedings based on the pendency of the Ninth Circuit en banc proceedings in *Young v. Hawai'i*, No. 12-17808 (9th Cir.). ECF 79. The Court also based the stay on the fact that legislation on electric guns was pending before the 2020 Hawai'i State Legislature. *Id.*

On July 20, 2020, Plaintiff filed a Motion to Lift Stay. ECF 80.

On August 14, 2020, the District Court denied Plaintiff's Motion to Lift Stay and decided to continue the stay pending a decision in *Young*. ECF 81, 82. The Court also relied on "the reasons previously stated in the Minute Order dated June 17, 2020." ECF 82.

On March 24, 2021, the Ninth Circuit issued its en banc decision in *Young v. Hawai'i*, No. 12-17808, 2021 WL 1114180 (9th Cir. Mar. 24, 2021) (en banc).

On March 24, 2021, Plaintiff filed another Motion to Lift Stay. ECF 84.

On March 24, 2021, the District Court denied Plaintiff's Motion to Lift Stay. ECF 85. The Court noted that the mandate in *Young* had not been issued and decided not to act until the *Young* proceedings have concluded. *Id.* The Court further noted that, according to a report from the Honolulu Star-Advertiser, Alan Beck, who is the plaintiff's attorney in *Young*, and is attorney for Plaintiff in the

present case, stated that they will be asking the Supreme Court to review the *Young* decision. *Id.*

Plaintiff filed a Notice of Appeal on March 26, 2021. ECF 86. Plaintiff filed the instant Motion for Summary Disposition in the Ninth Circuit on March 31, 2021. DktEntry 2-1. Pursuant to Fed. R. App. P. Rule 27(a)(3)(A), Defendants have 10 days to file a response to Plaintiff's Motion.

II. ARGUMENT.

Plaintiff's Motion for Summary Disposition is based on Ninth Circuit Rule 3-6, which provides in relevant part:

> (a) At any time **prior to the completion of briefing** in a civil appeal or petition for review, if the Court determines:
>
> (1) that **clear error** or an intervening court decision or recent legislation **requires** affirmance, **reversal** or vacation **of the judgment or order appealed from**, the grant or denial of a petition for review, or a remand for additional proceedings; []
>
> . . .
>
> the Court may, **upon motion of a party**, or after affording the parties an opportunity to show cause, issue an appropriate dispositive order.

(Emphases added.) Plaintiff cannot demonstrate the "clear error" necessary to justify reversal of the District Court's order in this case. Therefore, Plaintiff's Motion for Summary Disposition should be denied.

A. Plaintiff's Motion Should Not be Considered by this Court Because Appellate Jurisdiction is Lacking.

Plaintiff's primary argument in favor of his Motion for Summary Disposition is that this Court has appellate jurisdiction to consider the stay issue. Motion, at 4-7. Defendants disagree.

"Ordinarily, a stay is not considered a final decision for purposes of [28 U.S.C.] section 1291." *United States v. Gen. Dynamics Corp.*, 828 F.2d 1356, 1360 (9th Cir. 1987).

> Since the general policy of the law is to permit an appeal only from final judgments or decisions, in the absence of a statute or rule specifically providing otherwise, merely interlocutory decisions are, as a rule, held not appealable.
>
> In line with this view, most courts have held that an order or decree staying, or refusing to stay, an action because another action was then pending is not reviewable by appeal or writ of error, although a few cases have held, under particular factual situations, that such an order is appealable.

See R.F. Chase, Annotation, *Appealability of order staying, or refusing to stay, action because of pendency of another action*, 18 A.L.R.3d 400, § 2 (1968) (updated Westlaw version) (footnotes omitted).

"However, a stay order is appealable if it places the plaintiff 'effectively out of court.'" *Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 723 (9th Cir. 2007). "A party is effectively out of court in either of two distinct situations. One is where the district court turns over decision-making

to a state court, effectively giving up its jurisdiction over a legal question." *George v. Manheim Investments, Inc.*, 731 F. App'x 624, 626 (9th Cir. 2018). The other situation is "where proceedings are stayed for a lengthy and indefinite period of time." *Id.* (citing *Blue Cross & Blue Shield of Ala.*, 490 F.3d at 724).

The present case does not turn over decision-making to a state court. Instead, the stay is pending a decision of the U.S. Supreme Court. As for the second situation, the stay will not be as lengthy as others that have been rejected and it is clearly not indefinite.

The District Court in the present case stayed the proceedings because even though an en banc decision in *Young* has been issued, certiorari proceedings in the Supreme Court are imminent. ECF 85. Plaintiff tries to suggest that the fact that a petition for a writ of certiorari has not yet been filed in *Young* means that the stay is "indefinite." Plaintiff states: "[T]here is no end in sight because the district court has stayed Roberts' matter pending the outcome of a non-related case **which may or may not be appealed to the Supreme Court** and then which may or may not be granted by the Supreme Court[.]" Motion, at 5 (emphasis added). This is disingenuous, given that the attorneys for the Plaintiff in the present case, Mr. Stamboulieh and Mr. Beck, also represent the plaintiff in *Young*. *See Young*, 2021 WL 1114180 (attorney listings). In fact, Mr. Beck announced to the news media that they plan to seek Supreme Court review of the *Young* decision. *See*

Associated Press, *Ruling upholds Hawaii's limits on carrying guns in public*, Honolulu Star-Advertiser (Mar. 24, 2021), https://www.staradvertiser.com/2021/03/24/breaking-news/ruling-upholds-hawaiis-limits-on-carrying-guns-in-public/ ("George Young's lawyer said he will ask the U.S. Supreme Court to review the case. 'We are hopeful the Supreme Court will grant review in Mr. Young's case,' attorney Alan Beck said.") (*See* Exhibit "A"). *See also* ECF 85. Taking Mr. Beck at his word, there is in fact no uncertainty as to whether there will be Supreme Court proceedings.

Consequently, there is a finish line in sight for the *Young* proceedings. The stay will end when the Supreme Court either denies Mr. Young's petition for a writ of certiorari or grants it and issues a decision. There will most likely be a decision by the end of the October 2021 term or even sooner if certiorari is denied. Plaintiff argues that he will also have to wait during remand proceedings after the Supreme Court's decision. *See* Motion at 7 ("And what then happens if *Young* is remanded for further proceedings after the Supreme Court's ruling?"). But that makes no sense. The stay is necessary primarily because of the risk that the Supreme Court will change the controlling law for Second Amendment cases. Once the Supreme Court issues its decision on the law, there will be no need to wait for further proceedings on remand.

In *Blue Cross and Blue Shield of Alabama*, the district court stayed a civil fraud case based on the claim that the defendants were facing criminal prosecution, and discovery in the civil case would implicate their Fifth Amendment rights. *Blue Cross & Blue Shield of Ala.*, 490 F.3d at 723. Apparently, none of the defendants had actually been indicted at the time the stay was requested. *Id.* The Ninth Circuit found appellate jurisdiction, holding that "[t]he stays [were] both indefinite and expected to be lengthy. They could easily last as long as the five- or six-year limitations period in the criminal cases, or even longer[.]" *Id.* at 724. "[A]n indefinite delay amounts to a refusal to proceed to a disposition on the merits." *Id.* In the present case, the District Court is not refusing to proceed to a disposition on the merits. The stay can be lifted and the proceedings can resume as soon as the Supreme Court either denies certiorari, or grants it and issues a decision. And it certainly will not take five or six years for the Supreme Court proceedings to be resolved.

Plaintiff also cites *Hines v. D'Artois*, 531 F.2d 726, 730 (5th Cir. 1976), for the proposition that "when a plaintiff's action is effectively dead, the order which killed it must be viewed as final. Effective death should be understood to comprehend any extended state of suspended animation." However, this case is not effectively dead. The stay will only last as long as the Supreme Court proceedings in *Young* are pending, then the case may proceed.

Plaintiff relies heavily on *Yong v. Immigration and Naturalization Service*, 208 F.3d 1116 (9th Cir. 2000), which did in fact permit appeal of an order that stayed district court proceedings during the pendency of a federal appeal in another case. However, *Yong* was a habeas corpus case and the appellant was held in INS custody at a half-way house and was subject to significant restrictions. *Id.* at 1118 & n.1. More importantly, the *Yong* decision explicitly relied on the special considerations associated with habeas proceedings:

> [H]abeas proceedings implicate special considerations that place unique limits on a district court's authority to stay a case in the interests of judicial economy. "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Ruby v. United States,* 341 F.2d 585, 587 (9th Cir. 1965). Special solicitude is required because the writ is intended to be a "'swift and imperative remedy in all cases of illegal restraint or confinement.'" *Fay v. Noia*, 372 U.S. 391, 400, 83 S .Ct. 822, 9 L.Ed.2d 837 (1963); *see also Johnson v. Avery*, 393 U.S. 483, 485, 89 S. Ct. 747, 21 L.Ed.2d 718 (1969) (noting that the Supreme Court has constantly emphasized the fundamental importance of the writ). Accordingly, the statute itself directs courts to give petitions for habeas corpus "special, preferential consideration to insure expeditious hearing and determination." *Van Buskirk v. Wilkinson,* 216 F.2d 735, 737–38 (9th Cir. 1954).
>
> A district court is explicitly directed to "summarily hear and determine the facts, and dispose of [a habeas petition] as law and justice require." 28 U.S.C. § 2243; *see also id.* ("A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted . . .").

Id. at 1120. The present case is not a habeas corpus case and the "special considerations" and "special solicitude" that are important when a party is in custody do not apply here.

It should also be noted that staying cases pending a decision by the Supreme Court is not unusual — the Ninth Circuit has itself issued such stays in the past. The Ninth Circuit en banc panel in *Young* did exactly that. *See Young v. Hawai'i*, No. 12-17808 (9th Cir. Feb. 14, 2019) (Order staying proceedings) (*See* Exhibit "B"). The Ninth Circuit also stayed an appeal pending a Supreme Court decision in *Consumer Financial Protection Bureau v. Cashcall, Inc.*, Nos. 18-55407 & 18-55479, 2019 WL 5390028 (9th Cir. Oct. 21, 2019) (Order staying proceedings). And in *Ganezer v. Directbuy, Inc.*, 571 F.3d 846 (9th Cir. 2009) (Order vacating and remanding), the Ninth Circuit vacated a District Court judgment and remanded with instructions for the District Court to stay the proceedings pending a Supreme Court decision. Clearly, there is nothing inherently improper (i.e., "lengthy and indefinite") about stays pending a Supreme Court decision. If that were so, the stays previously issued by this Court would also run afoul of Plaintiff's supposed rule.

Plaintiff has failed to demonstrate appellate jurisdiction sufficient to support the "clear error" standard necessary for summary disposition. Plaintiff's Motion should be denied.[1]

B. Even Assuming for the Sake of Argument that Appellate Jurisdiction Exists, the District Court Did Not Err on the Merits of the Stay Decision.

Plaintiff's argument in his Motion focuses almost exclusively on the jurisdictional issue and ignores the merits of the stay decision. This is probably because — even assuming for the sake of argument that jurisdiction exists — Plaintiff's Motion and appeal would fail on the merits.

"[A] District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.'" *Clinton v. Jones*, 520 U.S. 681, 706-07 (1997). Courts have the inherent power to stay proceedings "in the interests of judicial efficiency and fairness." *Fed. Home Loan Mortg. Corp. v. Kama*, Civ. No. 14-00137 ACK-KSC, 2016 WL 922780, at *9 (D. Haw. Mar. 9, 2016). "The trial

[1] It should be noted that Ninth Circuit Rule 3-6(b) also permits the Court of Appeals to dismiss an appeal for lack of appellate jurisdiction at any time: "At any time prior to the disposition of a civil appeal or petition for review if the Court determines that the appeal is not within its jurisdiction, the Court may issue an order dismissing the appeal without notice or further proceedings." Therefore, not only should this Court deny Plaintiff's Motion for Summary Disposition, but it can also dismiss Plaintiff's underlying appeal if appellate jurisdiction is indeed lacking.

court possesses the inherent power to control its own docket and calendar." *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983). 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 (1936).

> A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case. This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court.

Leyva v. Certified Grocers of Cal., Ltd., 593 F.2d 857, 863–64 (9th Cir. 1979); *Mediterranean Enterprises, Inc.*, 708 F.2d at 1465.

In considering whether to stay a pending proceeding, "the competing interests which will be affected by the granting or refusal to grant a stay must be weighed." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (citing *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). Those interests include:

> [T]he **possible damage** which may result from the granting of a stay, the **hardship or inequity** which a party may suffer in being required to go forward, and **the orderly course of justice** measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.

Id. (citing *CMAX*, 300 F.2d at 268) (emphases added).

1. The Orderly Course of Justice

The orderly course of justice, "measured in terms of the simplifying . . . of issues, proof, and questions of law," weighs overwhelmingly in favor of affirming the stay of these proceedings. *See id.*

Supreme Court review of *Young* could confirm the current Ninth Circuit law regarding the Second Amendment, or radically change it. The Ninth Circuit applies a two-step analysis in Second Amendment cases. *See Jackson v. City & County of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014) ("The two-step inquiry . . . '(1) asks whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny.'"). However, one of the dissenting opinions in the *Young* en banc decision disagreed with the majority in its application of the first step of the analysis. *See Young*, 2021 WL 1114180, at *47-*66 (O'Scannlain, J., dissenting). More importantly, the dissent disagreed with the nature of the "core" of the Second Amendment in applying the second step of the analysis. *Id.* at *66 ("*[T]here is no pecking order* between the "core" status of the Amendment's expressly enumerated guarantees. The right to armed self-defense — *both* by keeping a gun at home *and* by carrying one elsewhere — lies at the heart of the Second Amendment."). The two-step analysis — particularly whether electric guns fall under an exception in the first step of the analysis and whether they come close to

the core of the Second Amendment in the second step of the analysis — is important to the instant case. Should the Supreme Court reject the Ninth Circuit's two-step analysis or significantly modify it, the law governing this case will change as well.

There are strong reasons to stay proceedings in these circumstances. Where the controlling law is unclear, and an appellate court is set to decide that controlling law, "[t]he more efficient course is to await a pronouncement from the governing appellate bodies." *Hawai'i v. Trump*, 233 F. Supp. 3d 850, 855 (D. Haw. 2017). Litigating this case without the Supreme Court's controlling authority would "require[] the parties to expend significant time and expense to litigate issues . . . that may be completely invalidated by the [Court's] decision." *Karoun Dairies, Inc. v. Karlacti, Inc.*, Civil No. 08cv1521 AJB (WVG), 2013 WL 4716202, at *3 (S.D. Cal. Sept. 3, 2013). In this case, there is significant risk that the "[c]onsiderable resources necessary for litigating . . . may be wasted if the appellate court's controlling decision changes the applicable law or the relevant landscape of facts that need to be developed." *Trump*, 233 F. Supp. 3d at 856.

The possibility of inconsistent rulings also weighs in favor of staying these proceedings. *See id.* (noting that granting a stay would "reduce the risk of inconsistent rulings that the appellate courts might then need to disentangle"); *Kama*, 2016 WL 922780, at *10 (in *sua sponte* staying further proceedings, citing

concern "with the possibility of inconsistent rulings if the proceedings continue prior to resolution of the related appeals"). If proceedings in this case continue, and the District Court "reaches conclusions contrary to those reached by the [Supreme Court], it would result in significant confusion and would likely extend litigation in order to address the inconsistent decisions." *See Karoun Dairies*, 2013 WL 4716202, at *5.

2. Hardship or Inequity in Going Forward

Both parties are likely to suffer if the stay is reversed and proceedings in this case continue. Any litigation undertaken before resolution of the Supreme Court's proceedings in *Young* would lack the direction of controlling law, leaving the parties to guess at what the Court will hold on the relevant issues. This uncertainty would only compound the time and resources necessary to litigate this case. More significantly, the entire effort could very well be futile. The Supreme Court's decision in *Young* may "require relitigation of this case in accordance with its ruling," *see id.* at *3, resulting in additional expense to the parties, and burden on the Court's resources. This hardship is "not merely proceeding in the ordinary course of litigation." *Matera v. Google Inc.*, Case No. 15-cv-04062-LHK, 2016 WL 454130, at *4 (N.D. Cal. Feb. 5, 2016). "[I]t is proceeding . . . in the face of a pending decision that may substantially revise the [controlling] standard." *Id.*

Failure to impose a stay in these circumstances "would result in prejudice to both parties." *See Karoun Dairies*, 2013 WL 4716202, at *3.

3. Possible Damage

Any possible damage from the granting of a stay is more than outweighed by the other two factors. This case is at a relatively early stage, when potential damage from a stay, if any, is "minimal." *Matera*, 2016 WL 454130, at *4 ("In contrast with a case where a stay might disrupt proceedings after years of litigation, this case is at an early stage of litigation."). The only substantive motions filed have been Defendant SUSAN BALLARD's Motion to Dismiss (which was essentially resolved by agreement) and the two pending Motions for Summary Judgment. Plaintiff never filed a Motion for a Preliminary Injunction and apparently does not fear any imminent concrete injury. *See id.* ("Like all litigants, Plaintiff has a substantial interest in obtaining a prompt adjudication of his claims and a determination of whether the conduct of which he complains warrants injunctive relief. However, Plaintiff has not moved for a preliminary injunction[.]").

Based on the three interests described above, the District Court was justified in exercising its discretion to grant a stay pending a Supreme Court decision in *Young*. The Ninth Circuit itself grants stays pending Supreme Court decisions. *See, e.g.*, *Young*, No. 12-17808 (Feb. 14, 2019 Order); *Consumer Financial*

Protection Bureau, 2019 WL 5390028 (Oct. 21, 2019 Order); *Ganezer*, 571 F.3d at 846 (June 25, 2009 Order).

Because Plaintiff has failed to establish the "clear error" necessary to support his Motion for Summary Disposition, the Motion should be denied.

C. In Addition to Staying the Case Based on *Young*, the District Court Was Justified in Staying the Case Based on the Pending Legislation.

Although the District Court's March 24, 2021 Order denying Plaintiff's Motion to Lift Stay was based on the pendency of the *Young* case, it is well settled that in reviewing decisions of a District Court, a Court of Appeals may affirm on any ground finding support in the record. *See Cigna Prop. & Cas. Ins. Co. v. Polaris Pictures Corp.*, 159 F.3d 412, 418 (9th Cir. 1998). If the decision below is correct, it must be affirmed, even if the District Court relied on other reasoning. *See id.*

Other stays issued in this case were based not only on the pendency of Second Amendment cases in the Supreme Court or in the Ninth Circuit, but were also based on the fact that bills were pending in the Hawai‘i State Legislature that could significantly affect the regulation of electric guns in Hawai‘i. ECF 41, 79, 82. The amendments proposed in these bills represent a shift in approach from banning electric guns to regulating the sale of electric guns.

At the present time, one such bill is still advancing in the 2021 session of the Legislature. House Bill ("HB") 891 was introduced in the Legislature on January 27, 2021. *See HB 891 Measure Status*, Hawai'i State Legislature, https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=891&year=2021 (last visited April 8, 2021) (*See* Exhibit "C"). It passed the House Committee on Consumer Protection and Commerce on February 4, 2021. *Id.* It passed the House Committee on Judiciary and Hawaiian Affairs on March 3, 2021. *Id.* It passed the full House on March 9, 2021 and was transmitted to the Senate. *Id.* It passed the Senate Judiciary Committee on March 19, 2021. *Id.* It passed the full Senate with an amendment and was transmitted to the House on April 7, 2021. *Id.* It is now being considered again by the House. *Id.* Consequently, HB 891 is still alive and is working its way through the legislative process.

Regardless of whether the District Court was justified in staying the proceedings based on *Young*, the District Court's decision was also justified based on the pending legislation, which could have a significant impact on this case.

III. CONCLUSION.

For the foregoing reasons, Plaintiff has failed to demonstrate the "clear error" required before this Court can summarily reverse the District Court's decision. Defendants respectfully request that this Court deny Plaintiff's Motion for Summary Disposition.

DATED: Honolulu, Hawai‘i, April 9, 2021.

s/ Robert T. Nakatsuji

ROBERT T. NAKATSUJI
JOHN M. CREGOR, JR.
Deputy Attorneys General

Attorneys for Defendants-Appellees
AL CUMMINGS and CLARE E.
CONNORS