

1 ****E-filed 09/13/2010****

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 ESPANOLA JACKSON, et al.,

No. C 09-2143 RS

11 Plaintiffs,

**ORDER GRANTING MOTION TO
LIFT STAY**

12 v.

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14 CITY AND COUNTY OF SAN
FRANCISCO, et al.,

15 Defendants.
16 _____/

17 In this action challenging the constitutionality of the City and County of San Francisco's gun
18 control ordinances, the parties previously stipulated to a stay, pending the Ninth Circuit's *en banc*
19 decision in *Nordyke v. King*, No. 07-15763. In the interim, the United States Supreme Court has
20 decided *McDonald v. City of Chicago, Ill.*, 130 S.Ct. 3020 (2010), which held that that Second
21 Amendment right to keep and bear arms applies to the states by virtue of the Fourteenth
22 Amendment. Although this is the primary question the parties were expecting the *Nordyke en banc*
23 decision to resolve, defendants contend the stay should nevertheless remain in place because the
24 *Nordyke* decision may shed further light on additional issues such as the standard of review to be
25 applied when evaluating the constitutionality of gun control ordinances.

26 The possibility that the *Nordyke* decision may provide some relevant guidance or rules of
27 law is insufficient to warrant a continued stay. It would be an unworkable rule to stay district court
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1 litigation every time an appellate court has under consideration some issue relevant thereto. This is
2 unlike the incorporation issue for which the stay was initially imposed. In that instance, the matter
3 (1) was entirely dispositive of whether plaintiffs could bring a claim in the first instance, and (2)
4 appeared certain to be decided one way or the other by the *en banc* panel. Accordingly, the motion
5 to lift the stay is granted. Pursuant to the August 27, 2009 minute order imposing the stay,
6 defendants shall respond to the amended complaint within 20 days of the date of this order.¹

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Dated: 09/13/2010


RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

¹ Either party may seek consolidation of this action with Pizzo v. City and County of San Francisco, et al., C09-4493 CW by duly-noticed motion or by stipulation.