

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SHELLY PARKER, *et al.*,

Plaintiffs – Appellants,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants – Appellees.

No. 04-7041

UNOPPOSED MOTION OF APPELLEES DISTRICT OF COLUMBIA AND
MAYOR ADRIAN M. FENTY FOR STAY OF MANDATE

The District of Columbia and Mayor Adrian M. Fenty move the Court to stay the mandate for a ninety-day period to accommodate the time during which they may file a petition for a writ of certiorari in the Supreme Court. Counsel for appellants has authorized the representation that appellants will not oppose this motion. Under the Court's rules, the Clerk therefore may grant this motion. D.C. Cir. R. 41(a)(2).

On March 9, 2007, a divided panel of this Court issued its decision in this appeal holding that the District's longstanding laws governing firearms possession are unconstitutional under the Second Amendment. On May 8, 2007, this Court denied a timely petition for rehearing *en banc*, although four judges would have granted the petition. A stay of mandate is requested for the period during which the District and Mayor Fenty may seek Supreme Court review. The standards for a stay of mandate are met in that the certiorari petition would present substantial questions and there is good cause for a stay. Fed. R. App. P. 41(d)(2)(A).

1. A petition for certiorari in this case plainly would present substantial questions. This Court has held that important laws of the District of Columbia are invalid on constitutional grounds. The decision marks the first time in the Nation's history that a federal court of appeals

has struck down a law as unconstitutional under the Second Amendment. The substantial questions that a petition for certiorari potentially would present include (1) whether the panel majority's decision conflicts with the Supreme Court's decision in *United States v. Miller*, 307 U.S. 174 (1939), as Judge Henderson concluded in dissenting from the panel majority's decision; (2) whether the Second Amendment protects firearms possession or use that is not associated with service in a State militia; (3) whether the Amendment applies differently to the District because of its constitutional status, as Judge Henderson also concluded; and (4) whether the challenged laws represent reasonable regulation of whatever right the Amendment protects. That a petition for certiorari would present substantial questions is evident not only from the fact that Judge Henderson dissented from the panel majority's decision and four judges would have granted the petition for rehearing *en banc*, but also from the panel majority's acknowledgment that its decision conflicts with the decisions of most other federal courts of appeals, many State courts, and the highest local court in this jurisdiction, the District of Columbia Court of Appeals. Op. at 16–17 & nn.4–6, 46.

2. There is good cause for a stay. No party would suffer substantial harm from a stay of the mandate; indeed, appellants, the only parties who could be harmed by a stay, do not oppose the grant of a stay. The failure to grant a stay during the time when the District may file a petition for certiorari would inhibit the orderly progression of the case and could needlessly require the executive and legislative branches of the District's government to act to implement a judgment that may receive further review from the Supreme Court. Furthermore, the District of Columbia and its citizens could suffer irreparable harm absent a stay because of the proliferation of guns, illegal under the District's laws, while the Supreme Court is considering the case.

Given these considerations, the District and Mayor Fenty respectfully request that this unopposed motion for a stay of the mandate be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was mailed by first class mail, postage prepaid on May 15, 2007, to:

Alan Gura
101 N. Columbus Street, Suite 405
Alexandria, VA 22314

Courtesy copies were also mailed to counsel for amici.



TODD S. KIM
Solicitor General