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February 14, 2018

RE: *Duncan, et al. v. Becerra*, Ninth Circuit, Case No. 17-56081
Citation of Supplemental Authority – Fed. R. App. P. 28(j)

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), we write to inform the Court of additional pertinent authority that was decided the day that Appellant’s reply brief, ECF No. 84, was filed in the above-titled matter.

In *Wiese v. Becerra*, No. 2:17-903 WBS-KJN, 2018 WL 746398 (E.D. Cal. Feb. 7, 2018), the district court dismissed plaintiffs’ Second Amended Complaint in another action challenging the constitutionality of California Penal Code section 32310, which bans the possession of large-capacity magazines. In dismissing plaintiffs’ Second Amendment claim, the court held that because there is a “reasonable fit” between Section 32310 and the State’s important interests, plaintiffs failed to allege that the law failed intermediate scrutiny. 2018 WL 74638 at *4. The court further held that “[n]otwithstanding plaintiffs’ allegations, California’s large capacity magazine ban does not operate as a physical taking” or as a regulatory taking. *Id.* At *5. The district court thus dismissed plaintiffs’ claim under the Takings Clause. *See id.* This authority is relevant to the Attorney General’s arguments regarding the district court’s abuse of discretion in finding that plaintiffs had established a likelihood of success on the Second Amendment claim, found on pages 24-54 in the opening brief, ECF No. 12, and pages 3-19 in the reply brief. This authority is also relevant to the Attorney General’s arguments regarding the district court’s abuse of discretion in finding that plaintiffs had established a likelihood of success on the Second Amendment claim, found on pages 55-61 in the opening brief and pages 20-28 in the reply brief.

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Sincerely,

/s/ Alexandra Robert Gordon
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ARG: enc.