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July 7, 2020

By eFile

Molly Dwyer
Clerk of Court
Ninth Circuit Court of Appeals
95 7th Street
San Francisco, CA 94103

Re: *Virginia Duncan v. Xavier Becerra*, No. 19-55376

Dear Ms. Dwyer:

Pursuant to Rule 28(j), Plaintiffs-Appellees respond to Defendant-Appellant's June 30, 2020 letter. The two non-binding supplemental authorities discussed therein provide no basis to reverse the decision below.

First, as the state acknowledges, the Colorado Supreme Court's decision in *Rocky Mountain Gun Owners v. Polis*, No. 18SC817 (Colo. June 29, 2020), was "not a Second Amendment case." Becerra Letter 1. Instead, the state court considered only whether Colorado's ban on magazines capable of holding more than 15 rounds violated *Colorado* law—and repeatedly emphasized that it was not "address[ing] whether the legislation runs afoul of the federal constitution" because "[t]hat separate question [wa]s simply not before [the court]." *Id.* Ex.1 at 5; *see id.* at 4, 19, 22-25. Accordingly, nothing in *Rocky Mountain*—which applied a different legal standard to a different law justified by a different record—calls into question the district court's holding that California's flat ban on the magazines that are standard for firearms typically owned by law-abiding citizens for lawful purposes infringes citizens' Second Amendment rights.

Second, setting aside whether the Fourth Circuit's divided decision in *Maryland Shall Issue, Inc. v. Hogan*, No. 18-2474 (4th Cir. June 29, 2020), was correct, the majority answered a materially different question than the one presented here. The majority viewed the Maryland law at issue there as "not requir[ing] owners of [the banned property] to turn [the property] over to the Government or to a third party" because the law contains a grandfathering clause, and thus analyzed the law under Fourth Circuit *regulatory* takings precedent. Becerra Letter Ex.2 at 17. To the extent its opinion could be read to suggest that there was no taking even if the law *did* compel dispossession, it would be incorrect for all the reasons set forth in the dissent, which cogently explains why that proposition could not be reconciled with *Horne v. Department of Agriculture*, 135 S. Ct. 2419 (2015), and other Supreme Court precedent. Becerra Letter Ex.2 at 25-41. For all the same reasons, California's decision to dispossess citizens who lawfully acquired magazines before its ban took effect is a *per se* physical taking.

Respectfully submitted,

s/Erin E. Murphy
ERIN E. MURPHY

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2020, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Erin E. Murphy
Erin E. Murphy