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September 10, 2020

**VIA E-FILING**

Molly Dwyer, Clerk of Court  
Office of the Clerk  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

**Re: *Rupp, et al. v. Becerra*, Case No. 19-56004  
Notice of Supplemental Authority Pursuant to Rule 28(j)**

Dear Ms. Dwyer:

This Court's recent decision in *Duncan, et al. v. Becerra*, Case No. 19-55376, 2020 U.S. App. LEXIS 25836 (9th Cir. Aug. 14, 2020) (attached), significantly impacts the analysis of this matter in Appellants' favor.

In holding California's "large capacity magazine" ("LCM") ban violates the Second Amendment, *Duncan* rejected California's claim that arms "fall outside the scope of the Second Amendment because they are 'most useful in military service,'" describing that Fourth Circuit test as "an outlier." Slip op. 26. Instead, *Duncan* "reaffirm[ed] the test announced by the Supreme Court in *Heller* and *Caetano*: Arms are not unusual if commonly owned and typically used by law-abiding citizens for lawful purposes." *Id.*

*Duncan* clarified that courts must "look to national statistics to determine common ownership." Slip op. 65, n. 9. Upon finding that millions of LCMs are owned for lawful purposes nationwide, and a lack of historical LCM restrictions, *Duncan* held that the Second Amendment necessarily protects LCMs because "the relative dangerousness of a weapon is irrelevant" where it "belongs to a class of arms commonly used for lawful purposes." Slip op. 12; 20-31.

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*Duncan* applied strict scrutiny because arms bans affect possession “within the home where protections are ‘at their zenith,’” and “any law that comes close to categorically banning the possession of arms that are commonly used for self-defense imposes a substantial burden on the Second Amendment.” Slip op. 31-56. Regardless, noting that it “is a demanding test” that “requires a reviewing court to scrutinize a challenged law with a healthy dose of skepticism,” *Duncan* held that California’s LCM ban fails even intermediate scrutiny because its “fit is excessive and sloppy.” Slip op. 63.

While this Court expressly “[did] not opine on bans on so-called ‘assault weapons,’” in *Duncan*, its analysis for why the Second Amendment protects LCMs and why California’s banning LCMs triggers strict scrutiny but fails even intermediate scrutiny for insufficient tailoring, naturally apply to California’s restrictions on the Banned Rifles; especially in light of its finding that “[t]he AR-15 . . . remains today the ‘most popular rifle in American history.’” Slip op. 25.

Sincerely,  
**Michel & Associates, P.C.**

A handwritten signature in black ink, appearing to read "S. Brady", with a long horizontal flourish extending to the right.

Sean A. Brady