

No. 19-55376

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

VIRGINIA DUNCAN, ET AL.,
Plaintiffs-Appellees,

v.

XAVIER BECERRA,
Defendant-Appellant.

**On Appeal from the United States District Court
for the Southern District of California**
No. 17-cv-1017-BEN-JLB
The Honorable Roger T. Benitez, Judge

UNOPPOSED MOTION FOR SUPPLEMENTAL BRIEFING

XAVIER BECERRA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
THOMAS S. PATTERSON
Senior Assistant Attorney General
SAMUEL P. SIEGEL
HELEN H. HONG
Deputy Solicitors General
HEATHER HOESTEREY
Supervising Deputy Attorney General
JOHN D. ECHEVERRIA
Deputy Attorney General

CALIFORNIA DEPARTMENT OF JUSTICE
1300 I Street
Sacramento, CA 95814
(916) 210-6260
Sam.Siegel@doj.ca.gov

March 18, 2021

Pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 27-1, California respectfully moves for authorization to file supplemental briefing before the en banc Court.

1. On February 25, 2021 this Court ordered that this case be reheard en banc, and has scheduled an en banc oral argument for June 22, 2021.

2. The en banc Court's review would be assisted by supplemental briefs from the parties. This case raises a Second Amendment challenge to California's law restricting large-capacity magazines that can hold more than 10 rounds of ammunition (LCMs). Supplemental briefing will permit the parties to update arguments made in the panel briefs, and to allow both sides to respond to issues raised by the panel majority opinion, including about the correct standard of constitutional scrutiny that should be applied when reviewing the constitutionality of LCM restrictions, and the how intermediate scrutiny operates in the Second Amendment context. *See* Opn. 31-56, 58-66. The en banc Court would benefit from further analysis of these and other issues.

3. This Court regularly authorizes supplemental briefing after ordering that a case be reheard en banc. In *Torres v. Barr*, No. 13-70653, this Court granted the parties' joint motion to file supplemental briefs, and ordered the parties to file opening and answering briefs not to exceed 7,000 words, and the petitioner to file a reply brief of not more than 3,500 words. *See* Order (Jan. 23, 2020). In *Lorenzo-*

Lopez v. Wilkinson, No. 15-72406, this Court granted the petitioner's unopposed motion to file supplemental briefs, and ordered the parties to file simultaneous supplemental briefs not to exceed 7,000 words. *See* Order (Feb. 7, 2020). And in *Young v. Hawaii*, No. 12-17808, this Court ordered the parties to file simultaneous supplemental briefs of no more than 10,000 words and optional supplemental reply briefs of no more than 5,000 words. *See* Order (Apr. 30, 2020); *see also* Order, *C.J.L.G. v. Sessions*, No. 16-73801 (Oct. 1, 2018) (granting government's motion in part, ordering parties to file supplemental brief of no more than 7,000 words, followed by optional replies of no more than 3,500 words); Order, *Marinelarena v. Whitaker*, No. 14-72003 (Apr. 26, 2018) (granting joint motion to file simultaneous supplemental briefs of no more than 7,000 words).

5. California respectfully suggests that the Court order supplemental briefings, and allow the parties to file simultaneous opening briefs not to exceed 7,000 words by May 14, 2021, and simultaneous reply briefs not to exceed 3,500 words by June 1, 2021. California believes that this schedule would afford the Court adequate time to take into account these briefs in advance of oral argument.

6. Counsel for plaintiffs-appellees has informed counsel for the State that they consent to this motion.

Accordingly, California respectfully requests that this motion be granted, and that the parties be permitted to file simultaneous opening briefs not to exceed 7,000 words by May 14, 2021, and simultaneous reply briefs not to exceed 3,500 words by June 1, 2021.

Dated: March 18, 2021

Respectfully submitted,

s/Samuel P. Siegel

XAVIER BECERRA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
THOMAS S. PATTERSON
Senior Assistant Attorney General
SAMUEL P. SIEGEL
HELEN H. HONG
Deputy Solicitors General
HEATHER HOESTEREY
Supervising Deputy Attorney General
JOHN D. ECHEVERRIA
Deputy Attorney General

CALIFORNIA DEPARTMENT OF JUSTICE
1300 I Street
Sacramento, CA 95814
(916) 210-6260
Sam.Siegel@doj.ca.gov

CERTIFICATE OF COMPLIANCE

I certify that the forgoing Motion complies with the type-volume limitation of Fed. R. App. 27 because it contains 493 words. This Motion complies with the typeface and type style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally space typeface using Word 14-point Times New Roman typeface.

s/Samuel P. Siegel

Samuel P. Siegel