

No. 19-55376

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**In the United States Court of Appeals  
for the Ninth Circuit**

**VIRGINIA DUNCAN, *et al.*,  
Plaintiffs-Appellees,**

**v.**

**XAVIER BECERRA, in his official capacity as  
Attorney General of the State of California,  
Defendant-Appellant.**

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**On Appeal from the United States District Court  
for the Southern District of California  
Hon. Roger T. Benitez  
No. 3:17-cv-01017-BEN-JLB**

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**MOTION OF *AMICUS CURIAE* THE NATIONAL SHOOTING SPORTS  
FOUNDATION, INC. FOR LEAVE TO FILE OVERSIZED *AMICUS  
CURIAE* BRIEF ON REHEARING *EN BANC* IN SUPPORT OF  
PLAINTIFFS-APPELLEES AND DECLARATION OF CRYSTAL L. VAN  
DER PUTTEN IN SUPPORT THEREOF**

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*Amicus curiae* The National Shooting Sports Foundation, Inc. (“NSSF”) files the instant Motion for Leave to File an Oversized Amicus Curiae Brief pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 32-2. According to Ninth Circuit Rule 29-2(c)(3), an amicus brief submitted after the Court votes to rehear a case *en banc* may not exceed 7,000 words. NSSF’s brief is 8,576 words.

The reason NSSF’s brief exceeds the word limit is that its brief in support of Plaintiffs-Appellees includes multiple issues (appropriate standard of review and the issues which fall within the scope of that determination, analysis under heightened scrutiny or intermediate scrutiny and discussion of the few states which impose magazine restrictions) and speaks in part to the arguments advanced by Defendant-Appellant in its petition for rehearing (following the Ninth Circuit affirming summary judgment in Plaintiffs-Appellants’ favor and finding California Penal Code section 32310 unconstitutional) and arguments advanced by amicus curiae in support of Defendant-Appellant. This case involves important Second Amendment rights, rights which protect NSSF members and others from statutes and regulations seeking to ban, restrict or limit the exercise of Second Amendment rights.

Determination of whether California Penal Code section 32310 improperly infringes upon the exercise of Second Amendment rights by way of a complete ban

on commonly owned magazines capable of holding more than 10 rounds is of great importance to NSSF, its members and others. NSSF believes the proposed brief is needed in its current form to adequately set forth the facts and law in support of Plaintiffs-Appellants' and NSSF's (and its members') important legal and constitutional interests.

This motion is based upon a showing of diligence and substantial need as set forth in the attached declaration of Crystal L. Van Der Putten. This motion is also based upon all of the records and papers on file in this Court.

Dated: April 2, 2021

LIVINGSTON LAW FIRM

By /s/ Craig A. Livingston  
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Attorneys for Amicus Curiae  
THE NATIONAL SHOOTING  
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INC.

THE NATIONAL SHOOTING  
SPORTS FOUNDATION, INC.

By /s/ Lawrence G. Keane  
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Benjamin F. Erwin  
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**DECLARATION OF CRYSTAL L. VAN DER PUTTEN IN SUPPORT OF  
MOTION OF *AMICUS CURIAE* THE NATIONAL SHOOTING SPORTS  
FOUNDATION, INC. FOR LEAVE TO FILE OVERSIZED *AMICUS  
CURIAE* BRIEF ON REHEARING *EN BANC* IN SUPPORT OF  
PLAINTIFFS-APPELLEES**

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I, Crystal L. Van Der Putten, declare:

1. I am an attorney duly licensed to practice law before all courts in the State of California, including the Ninth Circuit Court of Appeal and am a shareholder of Livingston Law Firm, counsel of record herein for amicus curiae, The National Shooting Sports Foundation, Inc. I have personal knowledge of all matters stated herein except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

2. NSSF is the national trade association for the firearm, ammunition, hunting and shooting sports industry. Its mission is to promote, protect and preserve hunting and the shooting sports by providing trusted leadership in addressing industry challenges; advancing participation in and understanding of hunting and shooting sports; reaffirming and strengthening its members' commitment to the safe and responsible sale and use of their products; and promoting a political environment that is supportive of America's traditional hunting and shooting heritage and Second Amendment freedoms.

3. NSSF's interest in this case derives principally from the fact its federally licensed firearms manufacturer, distributor and retail dealer members engage in lawful commerce in firearms and ammunition in California and throughout the United States, which makes the exercise of an individual's constitutional right to keep and bear arms under the Second Amendment possible.

The determination of whether a statute such as Section 32310 improperly infringes upon the exercise of Second Amendment rights by way of a complete ban on commonly owned magazines capable of holding more than 10 rounds is of great importance to NSSF and its members.

4. On February 25, 2021, this Court granted the petition for rehearing *en banc* of Defendant-Appellant State of California. Defendant-Appellant hopes to reverse the August 14, 2020 panel opinion in which the Ninth Circuit affirmed the summary judgment in favor of Plaintiffs-Appellants and finding California Penal Code section 32310 unconstitutional.

5. NSSF's amicus brief provides facts and law which respond to the issues and arguments advanced by Defendant-Appellant and amicus curiae in support of Defendant-Appellant (in the lower court, on appeal and on petition for rehearing). NSSF's brief addresses the appropriate standard of review and the multi-leveled steps/factors to be analyzed in deciding if a statute attempting to limit, restrict or ban a particular arm (firearm or ammunition) is unconstitutional and analyzes several of those steps in detail. NSSF also provides statistical and historical support regarding why a 10-round magazine is the norm (not unusual).

6. NSSF believes the brief submitted on April 1, 2021, will assist this Court in analyzing the constitutionality of Section 32310. NSSF further believes the additional words in the brief (1,576) will be of assistance.

7. Despite diligent efforts, we were unable to reduce the brief to 7,000 words and maintain the integrity of the issues discussed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 2<sup>nd</sup> day of April, at Concord, California.

/s/ Crystal L. Van Der Putten