

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

1301 Pennsylvania Avenue NW
Washington, D.C. 20004
United States

+1 202 389 5000

www.kirkland.com

Erin E. Murphy
To Call Writer Directly:
+1 202 389 5036
erin.murphy@kirkland.com

Facsimile:
+1 202 389 5200

July 12, 2021

VIA ECF

Molly C. Dwyer
Clerk of Court
United States Court of Appeals for the Ninth Circuit
James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

Re: *Virginia Duncan et al. v. Rob Bonta*, No. 19-55376 (en banc)

Dear Ms. Dwyer:

Appellees respectfully submit this Rule 28(j) letter concerning the Supreme Court's recent decision in *Cedar Point Nursery v. Hassid*, 20-107 (U.S. June 23, 2021). There, the Court reversed a decision of this Court undervaluing property rights and held that a California regulation requiring agricultural employers to open their property to union organizers for up to three hours per day violates the Takings Clause. *Cedar Point*, slip op. at 1. The Court held that the regulation was a *per se* physical taking because it effected a government-authorized "invasion[]" of the property owners' right to exclude. *Id.* at 10. The Court also reiterated that "the size of an appropriation ... bears only on the amount of compensation." *Id.* at 11. And it emphasized that the intrusion need not be permanent, *id.* at 12, or by the government itself, *id.* at 5-6. Any actual invasion of property—as opposed to restriction on use—is a *per se* physical taking. *Id.* at 10.

Cedar Point reinforces the conclusion that California's retrospective and confiscatory magazine ban violates the Takings Clause. By requiring citizens to destroy, surrender, sell, or permanently modify their lawfully acquired property, the law interferes with the right to possess, which is even more fundamental than the right to exclude. That is so even though the state allows citizens to comply by permanently altering their magazines to hold 10 rounds of ammunition, as that *permanent* physical occupation—indeed, destruction—of property is far more of an "invasion" than a temporary visit by union organizers a few hours a day.

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Cedar Point also reaffirmed that nuisance law may be invoked to take property without paying compensation only when something was declared a nuisance *before* the property was acquired, *id.* at 18, and that the “complexities of modern society” “only reinforce the importance of safeguarding [] basic property rights,” *id.* at 16. Those principles apply with equal force here. Accordingly, while Appellees continue to maintain that California cannot justify a flat ban on arms protected by the Second Amendment, *Cedar Point* makes clear that the confiscatory aspects of the law independently effect an uncompensated taking.

Sincerely,

s/Erin E. Murphy
ERIN E. MURPHY
Counsel of Record
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 389-5000
erin.murphy@kirkland.com
Counsel for Plaintiffs-Appellees