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July 27, 2021

VIA ECF

Molly C. Dwyer
Clerk of the 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*, Case No. 19-55376 (en banc)

Dear Ms. Dwyer:

The Attorney General respectfully submits this response to plaintiffs' Rule 28(j) letter concerning the Supreme Court's recent decision in *Americans for Prosperity Foundation v. Bonta*, No. 19-251 (U.S. July 1, 2021).

Americans for Prosperity does not support plaintiffs' position here. The Supreme Court addressed the requirements of the "exacting scrutiny" standard, which "applies to First Amendment challenges to compelled disclosure of information." Slip op. 7 (opinion of Roberts, C.J.). This case, of course, involves the Second Amendment, and plaintiffs are challenging a regulation of large-capacity magazines (LCMs)—not a law requiring them to provide information to the government. Plaintiffs have not previously argued that the "exacting scrutiny" standard applies when analyzing Second Amendment claims. And this Court has not applied that standard in this context. Instead, it has applied intermediate scrutiny, under which the government must show that its law promotes a "significant, substantial, or important government objective," and that there is a "'reasonable fit' between the challenged law and the asserted objective." *Pena v. Lindley*, 898 F.3d 969, 979 (9th Cir. 2018). *Americans for Prosperity* provides no basis for adopting a different Second Amendment test.

Nor does *Americans for Prosperity* "confirm[]" that California's LCM restrictions would fail "any form of heightened scrutiny the Supreme Court recognizes." Letter 1. For reasons the Attorney General has explained, Section 32310 is reasonably fit to California's compelling interest in reducing the frequency and lethality of mass shootings. See Att'y Gen. Opening Br. (Dkt. 7) 35-46; Att'y Gen. Opening Supp. Br. (Dkt. 162) 24-26. The record in this case demonstrates that mass shooters who use LCMs inflict nearly three-and-a-half times the number of casualties as those who do not. See 3-ER-756-57. And California's LCM restrictions impose a very minor burden on any individual's ability to defend themselves: Plaintiffs have (still) not identified any incident in which any Californian has actually fired more than 10 shots in self-

July 27, 2021

Page 2

defense. And should that circumstance ever arise, law-abiding adults may continue defending themselves by using additional firearms or swapping in a new 10-round magazine.

Sincerely,

s/ Samuel P. Siegel

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For ROB BONTA
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