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September 8, 2022

VIA E-FILING

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103

**Re: *Flanagan, et al. v. Becerra*, Case No. 18-55717
Notice of Supplemental Authority Pursuant to Rule 28(j)**

Dear Ms. Dwyer:

After six years of vigorously defending California's "good-cause" regime, including as amicus before the Supreme Court in *Bruen*, Defendants-Appellees now concede that the regime is unconstitutional. ECF No. 64, 65. Plaintiffs-Appellees are therefore entitled to have it declared unconstitutional and enjoined. In a vain effort to snatch victory from their conceded defeat, Defendants-Appellees insist that Plaintiffs-Appellants' vindication is so obvious after *Bruen* that they are entitled to no relief at all, and that this case should be dismissed as moot. That "sounds absurd, because it is." *Sekhar v. United States*, 570 U.S. 729, 738 (2013).

A "party asserting mootness has the heavy burden of establishing that there is no effective relief remaining for a court to provide." *GATX/Airlog Co. v. U.S. Dist. Court*, 192 F.3d 1304 (9th Cir. 1999). Defendants-Appellees cannot meet that burden. While it is undeniable after *Bruen* that California's "good-cause" regime is unconstitutional, *Bruen* did not enjoin California's law. Thus, while *Bruen* compels judgment in Plaintiffs-Appellants' favor, it does not moot the case.

To be sure, Defendants-Appellees maintain that they will not enforce the "good-cause" requirement. But "[i]t is well settled that a defendant's voluntary

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cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982). And those assurances ring particularly hollow here, as the legislature has not repealed the “good cause” requirement despite passing other firearms legislation. *See* S.B. 918, 2021-2022 Reg. Sess. (Cal. 2022), https://leginfo.ca.gov/faces/billVotesClient.xhtml?bill_id=202120220SB918. With the law still on the books, Defendants-Appellants or their successors could resume enforcement at any time, as has happened with abortion restrictions long thought moribund. Moreover, the state has repeatedly stressed that enforcement is left exclusively to local authorities. *See, e.g., Nichols v. Cty. of Santa Clara*, 223 Cal.App.3d 1236, 1241 (1990). Attorney General Bonta therefore has no control over Sheriff Villanueva, and neither can control the Sheriff’s successors. This Court thus can and should declare the “good-cause” requirement unconstitutional and remand for entry of a permanent injunction against its enforcement.

Sincerely,

Michel & Associates, P.C.

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

Sean A. Brady