

1 C.D. Michel – SBN 144258
Sean A. Brady – SBN 262007
2 Anna M. Barvir – SBN 268728
Matthew D. Cubeiro – SBN 291519
3 MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
4 Long Beach, CA 90802
5 Telephone: (562) 216-4444
Facsimile: (562) 216-4445
6 Email: abarvir@michellawyers.com

7 Attorneys for Plaintiffs

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 VIRGINIA DUNCAN, et al.,

12 Plaintiffs,

13 v.

14 XAVIER BECERRA, in his official
15 capacity as Attorney General of the
16 State of California,

17 Defendant.

Case No: 17-cv-1017-BEN-JLB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION TO STRIKE
DEFENDANTS' OVERSIZED
SUPPLEMENTAL BRIEF**

Hearing Date: January 9, 2023
Hearing Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez

1 I. INTRODUCTION

2 The State’s supplemental brief (ECF No. 118) is 63 pages long. Southern
3 District Local Civil Rule 7.1(h) provides that briefs “must not exceed a total of
4 twenty-five (25) pages in length” unless leave is granted. Plaintiffs therefore move
5 to strike pages 26 through 63 of the State’s supplemental brief because the State did
6 not obtain leave to file its grossly excessive and burdensome brief.

7 II. LEGAL STANDARD

8 A district court has the “inherent authority” to strike an improper filing to
9 “promulgate and enforce rules of the management of litigation” and the
10 “administration of its business.” *Spurlock v. F.B.I.*, 69 F.3d 1010, 1016 (9th Cir.
11 1995) (citations omitted). Where parties violate the page limit established in a
12 district court’s local rules, striking all pages that exceed the page limit is within the
13 Court’s sound discretion and appropriate. *King County v. Rasmussen*, 299 F.3d
14 1077, 1083 (9th Cir. 2002) (striking pages 25 through 34 due to 24-page local rule
15 limitation). Indeed, “page limits are important to maintain judicial efficiency and
16 ensure fairness to opposing parties....” *MacIntyre v. Butler*, 181 B.R. 420, 422
17 (B.A.P. 9th Cir. 1995).

18 III. ARGUMENT

19 The State’s 63-page supplemental brief violates Local Rule 7.1(h) because it
20 exceeds the allowable page limit by a whopping 38 pages. There is no justification
21 for the State’s violation of the local rules. The briefing in this matter is not exempt
22 from this Court’s page limitations and the State does not get to help itself to a
23 grossly excessive brief merely because this matter has a significant public policy
24 profile. The State had plenty of time to solicit the Court for leave to file a longer
25 brief, as Plaintiffs have, but it did not.

26 Moreover, the State’s excessive briefing is not warranted. The State knows
27 that its magazine laws cannot survive the *Bruen* standard, and its brief is essentially
28 a herculean but unavailing argument for a warped interpretation of *Bruen* that allows

1 it to do what the Supreme Court emphatically said it cannot do – interest balance
 2 Second Amendment rights into oblivion. If the State had evidence of a well-
 3 subscribed historical tradition of regulations analogous to the magazine laws at issue
 4 here, the State would not even need 25 pages, let alone 63, to discuss them.

5 Moreover, the supplemental briefing at issue here is supplemental to the
 6 state’s motion for summary judgment briefing. While Local Civil Rule 7.1(h)’s
 7 language could plausibly not apply to unusual briefs not classifiable as a “brief in
 8 support of or in opposition to motions,” the supplemental brief here is within
 9 7.1(h)’s reach because it is filed in support of the Court’s *Bruen* focused
 10 reevaluation of Plaintiffs’ motion for summary judgment.

11 **IV. CONCLUSION**

12 The State’s attempt to burden Plaintiffs and the Court with dozens of
 13 excessive pages containing unjustifiable arguments erected upon implausible
 14 interpretations of *Bruen* is unwelcome. This Court should exercise its discretion to
 15 strike pages 26 through 63 of the State’s supplemental brief.

16
 17 Dated: December 1, 2022

MICHEL & ASSOCIATES, P.C.

18
 19 s/ Anna M. Barvir

Anna M. Barvir

Email: abarvir@michellawyers.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Duncan, et al. v. Becerra*
Case No.: 17-cv-1017-BEN-JLB

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' OVERSIZED
SUPPLEMENTAL BRIEF**

on the following parties by electronically filing the foregoing on December 1, 2022, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Rob Bonta
Attorney General of California
Mark R. Beckington
Supervising Deputy Attorney General
Kevin J. Kelly
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
kevin.kelly@doj.ca.gov

I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 1, 2022, at Long Beach, CA.


Laura Palmerin