

Clement & Murphy

PLLC

March 11, 2025

VIA ACMS

Molly Dwyer
Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Rhode v. Bonta*, No. 24-542

Dear Ms. Dwyer:

Day v. Henry, No. 23-16148 (9th Cir. Mar. 4, 2025), is no help to California. To the contrary, it confirms that California’s one-of-a-kind ammunition-background-check regime violates the Commerce Clause (in addition to the Second Amendment and FOPA).

Day involved a Commerce Clause challenge to Arizona laws under which “retailers who do not maintain premises in Arizona cannot ship [wine] directly to consumers within the state, but licensed retailers with in-state premises may do so.” Op.6. The Court held that, in the context of laws enacted under §2 of the Twenty-first Amendment, reserving direct-shipping privileges to entities with “a physical premise in [the state]” is not facially discriminatory. Op.16-17. That holding by its terms does not apply outside the unique Twenty-first-Amendment context (or even to “*exception[s]* to the three-tier scheme”).

Facial discrimination aside, the plaintiffs in *Day* lost their discriminatory-effects claim at summary judgment because they failed to put on evidence showing that the challenged Arizona laws “have a discriminatory effect in practice,” and instead relied on “conclusory allegation[s]” that were contradicted by “the record.” Op.18-19. This case could not be more different: Appellees introduced considerable (and un rebutted) evidence showing that the challenged California laws have had the (unsurprising) effect of driving business away from dealers in other states. That evidence shows that, “[f]ollowing the implementation of California’s” new regime, “most California vendors” with whom the out-of-state-dealer Appellees previously “d[id] business” will no longer accept ammunition shipments from them “for purposes of processing private party” transactions in California. ER64-65 ¶¶3, 9; *see also* ER73 ¶14. The result has been predictable: “California consumers who” previously “purchased ammunition from” the out-of-state-dealer Appellees have ceased doing so. ER68 ¶9; *see also* ER72 ¶13 (CRPA members now must pay extra to obtain “ammunition that the[y] [can]not locate in-state”). In short, unlike in *Day*, the record evidence confirms that Appellees’ allegations have proven true: The actual effect of California’s laws has been not only to discriminatorily impede the free flow of commerce, but to “hoard a local” market “for the benefit of local businesses.” *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 392 (1994).

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Respectfully submitted,

s/Matthew D. Rowen
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Counsel for Appellees

Cc: All Counsel of Record