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March 19, 2024

Via CM/ECF:

Nwamaka Anowi
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219

RE: *Dominic Bianchi v. Anthony Brown*, No. 21-1255 (4th Cir.)

Dear Ms. Anowi,

Plaintiffs write in response to Maryland’s submission of *Rupp v. Bonta*, No. 17-cv-746 (C.D. Cal. Mar. 15, 2023), as supplemental authority. *Rupp* should not inform this Court’s decision in this case.

First, as Maryland points out, *Rupp* considered whether the banned firearms were “dangerous and unusual” as part of the textual inquiry under *Bruen*, see slip op. 15, but as Plaintiffs have explained, that is an *historical* question, on which Maryland bears the burden, see generally Pls.’ Suppl. Br., Doc. 105 (Mar. 12, 2024).

Second, regardless of who bears the burden, the argument that the arms banned by Maryland are somehow “unusual” is untenable. See *id.* at 8–10; see also Pls.’ Post-*Bruen* Br. 27–28, Doc. 42 (Aug. 22, 2022). The only way *Rupp* reaches a contrary conclusion is by purporting to compare the number of banned firearms possessed for self-defense compared to handguns. Slip op. 29–31. But regardless of how the numbers are dissected, there simply is no plausible case that the most popular rifles in the Nation are “unusual” firearms. See Pls.’ Suppl. Br. 9.

Third, *Rupp* was wrong to find the banned firearms “dangerous.” Indeed, *Rupp* found some of the features banned by California to be “dangerous” because

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they permitted an individual to better control his firearm. *See slip op.* 21. Under Supreme Court precedent, the question is whether the arms in question are more dangerous (in the hands of a law-abiding citizen) than others in common use, Pls.’ *Post-Bruen* Br. 25–26, and here Maryland’s own sources prove they are not. Maryland cites the work of Koper, who acknowledges the banned firearms are no more lethal than other semiautomatic rifles, *id.* at 25, and to Rhee, who in the paper cited by Maryland explains that AR-15s typically fire intermediate ammunition that leaves the firearm with less than half the energy of many other common rifles, including the M1 Garand, which is expressly exempted from Maryland’s ban. *See* Peter M. Rhee, et al., *Gunshot Wounds: A Review of Ballistics, Bullets, Weapons, and Myths*, 80 TRAUMA & ACUTE CARE SURGERY 853, 856 (2016).

Sincerely,

/s/David H. Thompson
David H. Thompson

Counsel for Plaintiffs-Appellants