

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 1:23-cv-02563-JLK**

ROCKY MOUNTAIN GUN OWNERS, and  
ALICIA GARCIA,

Plaintiff,

v.

JARED S. POLIS, in his official capacity as Governor of the State of Colorado,

Defendant.

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**NOTICE OF SUPPLEMENTAL AUTHORITIES**

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Plaintiffs respectfully notify the Court that the Ninth Circuit Court of Appeals has vacated the panel opinion in *Yukutake v. Lopez*, 130 F.4th 1077 (9th Cir. 2025), and will rehear the case en banc. *See* Exhibit A – Order.

*Yukutake* is cited by Plaintiffs on page 18 of the Reply in Support of Plaintiffs’ Motion for Summary Judgment. Plaintiffs stand on the remainder of their arguments in their briefing.

Separately, Plaintiffs notify the Court of the Ninth Circuit’s recent decision in *Rhode v. Bonta*, No. 24-542 (July 24, 2025), where the court struck down California’s mandatory background check law related to ammunition. The *Rhode* decision further underscores that Colo. Rev. Stat. § 18-12-115 (the “Waiting Period Law”) violates the Second Amendment.

First, *Rhode* confirms that, “[f]or purposes of the first step of the *Bruen* analysis,” courts should not “defin[e] the proposed course of conduct by reference to the challenged regulatory requirements,” but rather should look to “the conduct the regulation prevents [the individual] from engaging in.” Slip.op.25.n.15 (third alteration original). By that metric, the Waiting Period Law

unquestionably implicates the Second Amendment: The conduct the Waiting Period Law prevents is possessing a firearm. *See* Dkt. 62 at 19-26.

Second, *Rhode* confirms that historical laws “restrict[ing] the right to keep and bear arms of individuals ... determined to be dangerous” cannot justify modern laws “impos[ing] restrictions on all” residents “without any ... process establishing that any such resident is likely” dangerous. Slip.op.40-41, and *see* Dkt. 73 at 24.

Finally, as *Rhode* puts it, “*Heller*’s statement that longstanding conditions and qualifications on the commercial sale of arms were ‘presumptively lawful[]’ was clarified in *Bruen*,” which “made clear [*Heller*] was not endorsing a per se rule or a presumption of unconstitutionality,” but rather just recognizing the commonsense point that a well pedigreed law is likely consistent with historical tradition. Slip.op.46-47.n.29. For that reason, the question of whether a challenged law is a longstanding condition or qualification on commercial sale does not “precede the application of *Bruen*’s two-step framework,” but rather takes place within it. Slip.op.48-49. The Ninth Circuit was clear: *Heller* creates no blanket presumption of constitutionality or “safe-harbor” for restrictions on the possession of firearms by prohibited persons, the carrying of firearms in sensitive places, or laws imposing conditions or qualifications on the commercial sale of arms.

Respectfully submitted,

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**FOR PUBLICATION**

**FILED**

**UNITED STATES COURT OF APPEALS**

JUL 28 2025

**FOR THE NINTH CIRCUIT**

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

TODD YUKUTAKE; DAVID  
KIKUKAWA,

Plaintiffs-Appellees,

v.

ANNE E. LOPEZ, In her Official Capacity  
as the Attorney General of the State of  
Hawaii,

Defendant-Appellant,

and

CITY AND COUNTY OF HONOLULU,

Defendant.

No. 21-16756

D.C. No.

1:19-cv-00578-JMS-RT

District of Hawaii,

Honolulu

**ORDER**

**MURGUIA**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 40(c) and Circuit Rule 40-3. The three-judge panel opinion is vacated.

Judge Bennett did not participate in the deliberations or vote in this case.