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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**IVAN PEÑA, ROY VARGAS, DOÑA
CROSTON, BRETT THOMAS, SECOND
AMENDMENT FOUNDATION, INC. and
THE CALGUNS FOUNDATION, INC.,**

Plaintiffs,

v.

STEPHEN LINDLEY,

Defendant.

Case No. 2:09-CV-01185-KJM-CMK

**OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
BY DEFENDANT STEPHEN LINDLEY**

Date: December 16, 2013
Time: 10:00 a.m.
Dept.: Courtroom 3, 15th floor
Judge: The Honorable Kimberly J.
Mueller
Trial Date: None at this time
Action Filed: May 1, 2009

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INTRODUCTION

In their motion for summary judgment, plaintiffs argue that California’s Unsafe Handgun Act (UHA, or the Act) is unlawful under *District of Columbia v. Heller*, 554 U.S. 570 (2008) because, as plaintiffs put it, the Act is “a massive ban on handguns whose possession and use is secured by the Second Amendment.” (Pls.’ Mem. of P. & A. in Supp. of Pls.’ Mot. for Summ. J. (Pls.’ Mem.) at p. 9.)¹ But the UHA, unlike the law at issue in *Heller*, is hardly a “ban” on handguns, much less a massive one. Also unlike *Heller*, the UHA does not concern the “possession and use” of handguns. Rather, it regulates the commercial sale of handguns. And while *Heller* does contain language indicating that the Second Amendment extends to handguns in general because they are “in common use” for “lawful purposes,” 554 U.S. at 624-27, unlike the law in *Heller* the UHA is not a blanket restriction on handguns as an entire class. The Act requires only that certain handguns have certain safety features.

Beyond these deficiencies, plaintiffs’ entire argument is premised on the notion that there is *no* standard of review, or “means-end balancing test,” that the Court should apply in this case. (Pls.’ Mem. at p. 11.) As plaintiffs put it, “it is enough” that the Second Amendment protects handguns; thus, the UHA violates the Second Amendment. *Id.* We now have certainty that this analytical approach is wrong. After the parties filed their opening briefs in this case, the Ninth Circuit published its opinion in *United States v. Chovan*, No. 11-50107, --- F.3d ---, 2013 WL 6050914 (9th Cir. Nov. 18, 2013). In *Chovan*, the Ninth Circuit joined a number of other circuits in holding that a specific two-step analytical framework applies to Second Amendment challenges. As explained in detail below, and as argued by defendant Stephen Lindley in his opening brief, *Chovan* directs that this Court’s analysis of the UHA first involve an assessment of any burden the Act imposes on the Second Amendment right. Only if there is a sufficient burden does the Court then apply an appropriate standard of constitutional scrutiny. The UHA easily withstands review under this framework. Similarly, plaintiffs’ equal protection claims lack merit. Accordingly, plaintiffs’ motion for summary judgment should be denied.

¹ The citations herein to plaintiffs’ opening brief are to plaintiffs’ *corrected* memorandum of points and authorities filed on November 2, 2013, unless otherwise specified. (Doc. no. 67-1.)

ARGUMENT

I. THE UNSAFE HANDGUN ACT PASSES CONSTITUTIONAL REVIEW UNDER THE TEST FOR SECOND AMENDMENT CHALLENGES ANNOUNCED BY THE NINTH CIRCUIT IN *UNITED STATES V. CHOVAN*.

A. The Two-Step Second Amendment Inquiry Announced in *Chovan*²

Chovan involved a constitutional challenge to 18 U.S.C. § 922(g)(9), the federal statute prohibiting persons convicted of domestic violence misdemeanors from possessing firearms for life. *Chovan*, 2013 WL 6050914 at *1. Relying on *Heller*, Mr. Chovan contended that section 922(g)(9) violates the Second Amendment because it impermissibly restricts the individual and fundamental right to bear arms. *Id.* at *4.

Before it could consider the merits of Mr. Chovan's claims, the court had to decide the applicable standard of review for Second Amendment challenges, an issue previously undecided in the Ninth Circuit. After considering the approach of other circuits, the court decided to "adopt the two-step Second Amendment inquiry undertaken by the Third Circuit in [*United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010)], and the Fourth Circuit in [*United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010)], among other circuits." *Chovan*, 2013 WL 6050914 at *8. More specifically, the two-step Second Amendment inquiry adopted by the Ninth Circuit "(1) asks whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny. *Chester*, 628 F.3d at 680; *see also Marzzarella*, 614 F.3d at 89." *Id.* The court explained that "this two-step inquiry reflects the Supreme Court's holding in *Heller* that, while the Second Amendment protects an individual right to keep and bear arms, *the scope of that right is not unlimited*." *Id.* (citing *Heller*, 554 U.S. at 626–27) (*italics added*). The court also explained that the two-step inquiry is "consistent with

² The Ninth Circuit has held that even where a mandate has not yet issued, the judgment filed by the panel "is nevertheless final for such purposes as stare decisis, and full faith and credit, unless it is withdrawn by the court." *Wedbush, Noble, Cooke, Inc. v. S.E.C.*, 714 F.2d 923, 924 (9th Cir. 1983). *See Yong v. Immigration and Naturalization Service*, 208 F.3d 1116, 1119 n.2 (9th Cir. 2000) ("once a federal circuit court issues a decision, the district courts within that circuit are bound to follow it"). The Ninth Circuit filed its published opinion and entered judgment in *Chovan* on November 18, 2013. 2013 WL 6050914 at *1. Accordingly, it is controlling here.

1 the approach taken by other circuits considering various firearms restrictions post-*Heller*.” *Id.*
 2 (citing cases).

3 **1. Step One in *Chovan***

4 Applying the two-step inquiry in *Chovan*, the Ninth Circuit found at the first step that
 5 section 922(g)(9) burdened Mr. Chovan’s Second Amendment right. *Chovan*, 2013 WL 6050914
 6 at *8. The Ninth Circuit rejected the government’s attempt to include section 922(g)(9) within
 7 the category of “longstanding prohibitions on the possession of firearms by felons and the
 8 mentally ill,” which *Heller* characterized as “presumptively lawful.” 554 U.S. at 626-27. There
 9 was a lack of evidence in the record showing that firearm restrictions regarding “violent
 10 offenders” were “longstanding,” and more importantly the court found, a lack of evidence
 11 showing longstanding restrictions on “domestic violence misdemeanants.” 2013 WL 6050914 at
 12 *8. Significantly, the court distinguished felony convictions for crimes like murder,
 13 manslaughter, rape, mayhem, kidnapping, and burglary (i.e., the kinds of convictions the
 14 language in *Heller* does encompass) from misdemeanor convictions for domestic violence. *Id.*
 15 Due to this lack of evidence, the court was left to assume ““that [Chovan]’s Second Amendment
 16 rights are intact and that he is entitled to some measure of Second Amendment protection to keep
 17 and possess firearms in his home for self-defense.”” *Id.* at *9 (quoting *Chester*, 628 F.3d at 681-
 18 82) (alterations in original).

19 **2. Step Two in *Chovan***

20 At the second step of the inquiry, the panel in *Chovan* had to decide precisely what level of
 21 scrutiny applied. The court stated that “the level of scrutiny should depend on “(1) ‘how close the
 22 law comes to the core of the Second Amendment right,’ and (2) ‘the severity of the law’s burden
 23 on the right.’” 2013 WL 6050914 at *9 (citation omitted).

24 With respect to the core of the Second Amendment right, *Chovan* explained that the core is
 25 ““the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”” 2013
 26 WL 6050914 at *9 (quoting *Heller*, 554 U.S. at 635). The court found that “Section 922(g)(9)
 27 does not implicate this core Second Amendment right because it regulates firearm possession for
 28

1 individuals with criminal convictions,” as opposed to law-abiding, responsible citizens who wish
2 to possess and carry a weapon for self-defense. 2013 WL 6050914 at *9

3 On the other hand, the court found that “[t]he burden the statute places on domestic
4 violence misdemeanants’ rights . . . is quite substantial.” 2013 WL 6050914 at *10. The court
5 explained that section 922(g)(9) “amounts to a ‘total prohibition’ on firearm possession for a class
6 of individuals — in fact, a ‘lifetime ban.’” *Id.* Significantly, the court contrasted this total
7 prohibition with less severe regulations that “merely regulate the *manner* in which persons may
8 exercise their Second Amendment rights.” *Id.* (italics in original). Specifically, *Chovan* cited to
9 the regulations at issue in *Marzzarella*, 614 F.3d at 97, which concluded that a regulation
10 prohibiting obliterated serial numbers “does not severely limit the possession of firearms”
11 because “[i]t leaves a person free to possess any otherwise lawful firearm he chooses,” and *Heller*
12 *v. District of Columbia*, 670 F.3d 1244, 1251-58 (D.C. Cir. 2011) (“*Heller II*”), which reasoned
13 that the District of Columbia’s gun registration requirements were not a severe burden because
14 they do not “prevent[] an individual from possessing a firearm in his home or elsewhere.” *Id.*

15 *Chovan* therefore concluded that intermediate scrutiny was the appropriate level of review
16 in that case, and proceeded to consider the parameters of that standard. 2013 WL 6050914 at
17 *10. In formulating the intermediate scrutiny standard, *Chovan* acknowledged that courts have
18 used various terminology to describe the standard, but “all forms of the standard require (1) the
19 government’s stated objective to be significant, substantial, or important; and (2) a reasonable fit
20 between the challenged regulation and the asserted objective.” *Id.*; see *Chester*, 628 F.3d at 683
21 (intermediate scrutiny standard requires “reasonable fit” between challenged regulation and
22 “substantial” government objective); *Marzzarella*, 614 F.3d at 98 (fit between challenged
23 regulation and asserted objective must be “reasonable, not perfect.”).

24 Finally, applying intermediate scrutiny the Ninth Circuit found that section 922(g)(9)
25 survived both on its face and as applied to Mr. Chovan. 2013 WL 6050914 at *10. More
26 specifically, *Chovan* found that the provision advances “the important government objective” of
27 “preventing domestic gun violence.” *Id.* at *10-12. Considering the text of the statute, the
28 legislative history and various studies of the relationship between domestic violence and firearms

– and relying on other courts’ citations to those materials – *Chovan* further found that the provision’s “prohibition on gun possession by domestic violence misdemeanants is substantially related to the important government interest of preventing domestic gun violence.” *Id.*

B. Application of the *Chovan* Test to the Law At Issue in This Case

Under the test recently announced in *Chovan*, this Court should first consider whether the UHA “burdens conduct protected by the Second Amendment.” 2013 WL 6050914 at *8. If so, this Court should then apply “an appropriate level of scrutiny.” *Id.* As explained below, the UHA does not burden any conduct protected by the Second Amendment. Thus, this Court’s analysis should end at step one of the *Chovan* inquiry. But even if this Court were to engage in step two of the inquiry, the UHA would survive constitutional scrutiny.

1. Step One: The UHA does not burden conduct protected by the Second Amendment.

The UHA does not burden the Second Amendment rights of plaintiffs or anyone else in California. Handguns are widely available in this state. There have been well over one million handgun transactions in California since plaintiffs filed this lawsuit, and that number continues to grow at a rate of hundreds of thousands of handgun transactions annually. (*See* Decl. of Stephen Lindley In Supp. of Def.’s Mot. for Summ. J. ¶ 4.) The handgun roster itself lists more than one thousand different makes and models of handguns available for purchase. (*Id.* ¶ 3.) The individual plaintiffs in this case admit to already owning handguns suitable for self-defense. And they admit to being able to acquire still more handguns suitable for self-defense. (*See* Pl. Ivan Peña’s Resp. to Def. Stephen Lindley’s First Set of Reqs. for Admis. at 2; Pl. Roy Vargas’s Resp. to Def. Stephen Lindley’s First Set of Reqs. for Admis. at 2; Pl. Doña Croston’s Resp. to Def. Stephen Lindley’s First Set of Reqs. for Admis. at 2; Pl. Brett Thomas’s Resp. to Def. Stephen Lindley’s First Set of Reqs. for Admis. at 2.) These facts show that the UHA does not burden “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Chovan*, 2013 WL 6050914 at *9 (quoting *Heller*, 554 U.S. at 635).

Moreover, the UHA is nothing like the total firearm prohibition struck down in *Heller*. Rather, it is like those firearms regulations that *Heller* endorsed because they do not burden the

1 Second Amendment right. More specifically, on its face the UHA is a “law[] imposing
2 conditions and qualifications on the commercial sale of arms,” and therefore “presumptively
3 lawful.” *Heller*, 554 U.S. at 626-27; *see also United States v. Vongxay*, 594 F.3d 1111, 1115 (9th
4 Cir. 2010) (upholding federal felon-in-possession statute because it is “presumptively lawful”).
5 The safety feature requirements of the UHA are also like the safety laws that *Heller* permits –
6 laws like gunpowder-storage laws, which “do not remotely burden the right of self-defense,” and
7 “laws regulating the storage of firearms to prevent accidents.” *Heller*, 554 U.S. at 632. The
8 UHA simply does not prohibit the possession or use of firearms in any fashion.

9 The UHA is also similar to other firearms regulations that courts have upheld because they
10 do not burden the Second Amendment right and leave individuals with alternatives for acquiring
11 firearms for self-defense. *See, e.g., Marzzarella*, 614 F.3d at 97 (regulation prohibiting
12 obliterated serial numbers “does not severely limit the possession of firearms” because “[i]t
13 leaves a person free to possess any otherwise lawful firearm”); *Heller II*, 670 F.3d at 1251-58
14 (upholding gun registration, assault weapon and large capacity magazine regulations where
15 individuals could still possess other firearms for self defense); *Scocca v. Smith*, No. C-11-1318
16 EMC, 2012 WL 2375203 at *7 (N.D. Cal. Jun. 22, 2012) (“[a] firearm law or regulation imposes
17 a substantial burden on Second Amendment rights if the law or regulation bans law-abiding
18 people from owning firearms or leaves them without adequate alternatives for acquiring firearms
19 for self-defense”). Again, the evidence before this Court demonstrates that plaintiffs already
20 possess handguns and have alternatives for acquiring additional handguns.

21 Plaintiffs’ entire argument in support of their Second Amendment claim is that the UHA is
22 unlawful because the Second Amendment categorically protects handguns, a kind of weapon that
23 is “in common use” for “lawful purposes.” *Heller*, 554 U.S. at 624. But that argument depends
24 on a reading of the UHA that is too broad. The UHA’s focus is narrower than handguns as an
25 entire class of firearms; its focus is certain handgun *safety features*. To be even more precise, the
26 UHA encompasses handgun safety devices, firing requirements, drop safety requirements,
27 chamber load indicators, magazine disconnect mechanisms and microstamping. Thus, plaintiffs
28 are arguing that they have a constitutional right to purchase a handgun without these safety

1 features. But no court has recognized a constitutional right to purchase any handgun of one's
2 choice regardless of its features.³

3 Finally, plaintiffs' "common use" argument is similar to the argument rejected by the Third
4 Circuit in *Marzzarella*, which upheld the federal law requiring firearms to have serial numbers.
5 In that case, *Marzzarella* argued that the Second Amendment protects weapons without serial
6 numbers because they were "in common use" at the time of ratification. 614 F.3d at 93. But the
7 court explained: "[That] argument rests on the conception of unmarked firearms as a
8 constitutionally recognized class of firearms, in much the same way handguns constitute a class
9 of firearms. That premise is unavailing." *Id.* The same can be said here. While handguns in
10 general may be a constitutionally recognized class of firearms under *Heller*, handguns without
11 chamber load indicators have not been so recognized. Nor have handguns without safety devices.
12 Nor have handguns without magazine disconnect mechanisms, and so on.

13 For these reasons, the UHA and its safety feature requirements do not burden the Second
14 Amendment right. Therefore, this Court's analysis should end at step one of the *Chovan* inquiry.
15 The Court should deny plaintiffs' motion for summary judgment.

16 **2. Step Two: The UHA Survives Constitutional Scrutiny**

17 If for some reason the Court finds that the UHA burdens Second Amendment rights and
18 proceeds to step two, the UHA withstands constitutional scrutiny. In this regard, it is worth
19 recalling that *Chovan* applied intermediate scrutiny to section 922(g)(9) because, while it did not
20 implicate the "core" of the Second Amendment right, it nevertheless "substantially burdened" the
21 right because it totally prohibited a class of people from possessing and using firearms for life.
22 *Chovan*, 2013 WL 6050914 at *10. Like the law at issue in *Chovan*, the UHA does not implicate
23 the core of the Second Amendment. It does not concern possession and use of firearms generally,

24
25 ³ Indeed, taken to its logical conclusion, plaintiffs' position would require constitutional
26 protection for *any* firearm that might be called a "handgun," even if it had features allowing for a
27 large-capacity magazine or sound suppressor (i.e., a silencer), or features disguising it as
28 something other than a handgun, for example. These features are generally unlawful in
California. *See* Cal. Penal Code § 32310 (prohibition on large-capacity magazines); § 33410
(prohibition on silencers); § 24510 (unlawful to possess firearm not immediately recognizable as
firearm).

1 much less possession and use *in the home*. See *Heller*, 554 U.S. at 635 (core of Second
 2 Amendment is “the right of law-abiding, responsible citizens to use arms in defense of hearth and
 3 home”). On the other hand, unlike the law in *Chovan*, the UHA does *not* substantially burden the
 4 Second Amendment right. It does not prohibit a class of people from using or possessing
 5 firearms for life. On the contrary, under the UHA plaintiffs already lawfully possess and use
 6 handguns and, like all law-abiding Californians, plaintiffs remain free to purchase and use
 7 additional handguns for self defense. Thus, while Lindley demonstrates below that the UHA
 8 survives the level of scrutiny articulated in *Chovan*, the differences between section 922(g)(9) and
 9 the UHA justify the application of a level of scrutiny *less* rigorous than the one applied in
 10 *Chovan*. See *Chovan*, 2013 WL 6050914 at *8 (directing courts to apply “an *appropriate* level of
 11 scrutiny” if challenged law burdens Second Amendment)(italics added).

12 In any event, even under the intermediate scrutiny as articulated in *Chovan*, the UHA’s
 13 handgun safety feature requirements advance the interests of improving public safety by reducing
 14 firearm violence and reducing crime. Courts have consistently recognized these to be significant,
 15 substantial and important government interests. And they have done so in the context of
 16 considering challenges to gun laws. See, e.g., *Kwong v. Bloomberg*, 723 F.3d 160, 168 (2d Cir.
 17 2013) (“governmental interests in public safety and crime prevention” are “substantial, indeed
 18 compelling”); *Marzzarella*, 614 F.3d at 98 (“preserving the ability of law enforcement to conduct
 19 serial number tracing—effectuated by limiting the availability of untraceable firearms—
 20 constitutes a substantial or important interest”); *United States v. Skoien*, 614 F.3d 638, 642 (7th
 21 Cir. 2010) (“preventing armed mayhem” is “an important governmental objective”); see also
 22 *Peruta v. County of San Diego*, 758 F. Supp. 2d 1106, 1117 (S.D. Cal. 2010) (“Defendant has an
 23 important and substantial interest in public safety and in reducing the rate of gun use in crime.”);
 24 *Richards v. Cnty. of Yolo*, No. 09-1235, 821 F. Supp. 2d 1169, 1175, 2011 WL 1885641, at *4
 25 (E.D. Cal. May 16, 2011) (maintaining public safety and preventing gun-related crime and death
 26 of citizens are important interests).

27 The face of the UHA, its legislative history and common sense also show that there is a
 28 “reasonable fit” between these interests and the Act’s handgun safety feature requirements.

1 *Chovan*, 2013 WL 6050914 at *10. In enacting the provisions regarding safety devices, firing
 2 requirements, and drop safety requirements, the California Legislature was targeting the
 3 connection between cheaply made, unsafe handguns and injuries to firearms operators and crime.
 4 The legislative history shows that reducing the number of cheaply made guns protects firearm
 5 owners and innocent bystanders from a product that may inadvertently injure them and reduces
 6 gun availability to criminals, thereby reducing crime. See Assem. Com. on Public Safety,
 7 Analysis of Senate Bill No. 15 (1999-2000 Reg. Sess.) June 8, 1999; Senate Com. on Public
 8 Safety, Analysis of Senate Bill No. 15 (1999-2000 Reg. Sess.) April 6, 1999.⁴ California courts
 9 have relied on this legislative history. See *Fiscal v. City and County of San Francisco*, 158 Cal.
 10 App. 4th 895, 913 (Ct. App. 2008) (“one of the goals of the UHA included curbing handgun
 11 crime, as well as promoting gun safety.”).

12 The legislative history, and the academic studies mentioned therein, also show that chamber
 13 load indicators and magazine disconnect mechanisms are important safety features that help
 14 prevent accidental discharges and injuries. See Assem. Com. on Appropriations, Analysis of
 15 Senate Bill No. 489 (2002-2003 Reg. Sess.) August 20, 2003; Assem. Com. on Public Safety,
 16 Analysis of Senate Bill No. 489 (2002-2003 Reg. Sess.) July 1, 2003.⁵

17 It has also been recognized that microstamping is an important crime-fighting tool because
 18 it allows law enforcement officials to trace spent cartridges found at crime scenes, thereby
 19 reducing crime and increasing public safety. In passing the microstamping law, the Legislature
 20 recognized that “California has an enormous and diverse problem of unsolved homicides
 21 committed with handguns.” Senate Com. on Public Safety, Analysis of Assembly Bill No. 1471
 22 (2007-2008 Reg. Sess.) June 26, 2007 at page H. Microstamping technology “give[s] law

23
 24 ⁴ These two pieces of legislative history are attached as Exhibits A and B to the
 25 declaration of the undersigned filed in support of this opposition. Under Rule 201 of the Federal
 26 Rules of Evidence, the Court may take judicial notice of the legislative history of state statutes.
Anderson v. Holder, 673 F.3d 1089, 1094, n.1 (9th Cir. 2012); *Louis v. McCormick & Schmick*
Restaurant Corp., 460 F. Supp. 2d 1153, 1155, n.4 (C.D. Cal. 2006). Lindley respectfully
 requests that this Court take judicial notice of the legislative history cited here.

27 ⁵ This legislative history is attached the declaration of Joel Tochtermann filed in support of
 28 Lindley’s motion for summary judgment.

enforcement a tool that will provide evidence to help investigate, arrest and convict more people who use semiautomatic handguns in crimes. It will provide rapid leads in the first crucial hours after a homicide.” *Id.* at page I. *See also* Assem. Com. on Appropriations, Analysis of Assembly Bill No. 1471 (2007-2008 Reg. Sess.) May 16, 2007; Assem. Com. on Public Safety, Analysis of Assembly Bill No. 1471 (2007-2008 Reg. Sess.) April 17, 2007.⁶ California courts have also recognized the importance of microstamping. *See Fiscal*, 158 Cal. App. 4th at 914 (microstamping “will provide important investigative leads in solving gun-related crimes by allowing law enforcement personnel to quickly identify information about the handgun from spent cartridge casings found at the crime scene”). The Third Circuit similarly has acknowledged the importance of firearm serial numbers. *Marzzarella*, 614 F.3d at 98 (prohibiting obliterated serial number is substantially related to “preserving the ability of law enforcement to conduct serial number tracing—effectuated by limiting the availability of untraceable firearms”).

For these reasons, even if the Court reaches step two in the *Chovan* analysis, the UHA would survive intermediate scrutiny: there is a reasonable fit between the UHA’s handgun safety feature requirements and the important government interests of improving public safety by reducing firearm violence and reducing crime. Accordingly, plaintiffs’ motion for summary judgment should be denied for failure to demonstrate a Second Amendment violation.

II. THE UNSAFE HANDGUN ACT DOES NOT VIOLATE EQUAL PROTECTION

Plaintiffs’ equal protection claim also lacks merit. For “state action to trigger equal protection review at all, that action must treat similarly situated persons disparately.” *Silveira v. Lockyer*, 312 F.3d 1052, 1088 (9th Cir. 2002), *abrogated on other grounds by Heller*, 554 U.S. 570. Yet plaintiffs have offered no evidence that the Act treats similarly situated individuals differently. It is plaintiffs’ burden to make that prima facie showing. *See International Bhd. of Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977).

⁶ The committee analyses of the A.B. 1471, the microstamping law, are attached as Exhibits C, D and E to the declaration of the undersigned filed in support of this opposition.

1 Plaintiffs seem to suggest that for purposes of the equal protection analysis they are
2 similarly situated to law enforcement officials, who are authorized to buy “off-roster” handguns
3 under one of the exceptions of the UHA. *See* Cal. Penal Code § 32000(b)(3). This suggestion is
4 unavailing. In light of their experience, training and special needs for firearms, law enforcement
5 officers are not similarly situated to plaintiffs. *Silveira*, 312 F.3d at 1089 (“It is manifestly
6 rational for at least most categories of peace officers to possess and use firearms more potent than
7 those available to the rest of the populace in order to maintain public safety.”); *see also Coal. of*
8 *New Jersey Sportsmen, Inc. v. Whitman*, 44 F. Supp. 2d 666, 686-87 (D. N.J. 1999) (upholding
9 assault weapons ban exception for law enforcement officers).

10 Plaintiffs also suggest that they are being treated differently from out-of-state individuals.
11 This comparison is also unavailing. First, the UHA treats residents and non-residents alike. Like
12 nonresidents, who retain their right to own off-roster handguns even after moving into the state,
13 *see* Cal. Penal Code § 32000(a), nothing in the Act requires plaintiffs to relinquish any off-roster
14 handgun they own. As discussed above, the Act’s focus is the commercial sale of firearms, not
15 possession or use. Second, plaintiffs have not shown how they are similarly situated to
16 nonresidents, which they are not. *See Peterson v. LaCabe*, 783 F. Supp. 2d 1167, 1178 (D. Colo.
17 2011) (rejecting equal protection challenge to concealed handgun licensing requirements because
18 residents and non-residents not similarly situated); *Peruta v. County of San Diego*, 758
19 F. Supp. 2d 1106, 1119 (S.D. Cal. 2010) (“Because residents and non-residents are situated
20 differently, the residency requirement of Defendant’s policy does not violate equal protection.”);
21 *see also Dearth v. Holder*, 893 F. Supp. 2d 59, 74 (D. D.C. 2012) (“Dearth has provided no
22 support for his contention that expatriate U.S. citizens and U.S. citizens residing in the United
23 States are similarly situated aside from the fact of common citizenship.”).

24 Finally, even if equal protection review were triggered, as a law that neither impacts a
25 fundamental right nor classifies persons based on protected characteristics, *see Schweiker v.*
26 *Wilson*, 450 U.S. 221, 230 (1981), the UHA would withstand rational basis review. (*See* Def.
27 Stephen Lindley’s Memo. of P. & A. in Supp. of Mot. for Summ. J. at 18-20.)
28

1 Accordingly, this Court should deny plaintiffs' motion for summary judgment on their
2 equal protection claim.

3 **CONCLUSION**

4 For the reasons set forth above, the Court should deny plaintiffs' motion for summary
5 judgment in its entirety.

6 Dated: December 2, 2013

Respectfully Submitted,

7 KAMALA D. HARRIS
8 Attorney General of California
9 TAMAR PACHTER
Supervising Deputy Attorney General

10 /s/ ANTHONY R. HAKL

11 ANTHONY R. HAKL
12 Deputy Attorney General
13 *Attorneys for Defendant Stephen Lindley*

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7 *Attorneys for Defendant Stephen Lindley*

8
9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 EASTERN DISTRICT OF CALIFORNIA
12

13 **IVAN PEÑA, ROY VARGAS, DOÑA**
14 **CROSTON, BRETT THOMAS, SECOND**
15 **AMENDMENT FOUNDATION, INC. and**
16 **THE CALGUNS FOUNDATION, INC.,**

17 Plaintiffs,

18 v.

19 **STEPHEN LINDLEY,**

20 Defendant.
21
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23
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25
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27
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Case No. 2:09-CV-01185-KJM-CKD

**DECLARATION OF LESLIE
MCGOVERN IN SUPPORT OF
DEFENDANT STEPHEN LINDLEY'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

Date: December 16, 2013
Time: 10:00 a.m.
Dept.: Courtroom 3, 15th floor
Judge: The Honorable Kimberly J.
Mueller
Trial Date: None at this time
Action Filed: May 1, 2009

DECLARATION OF LESLIE MCGOVERN

I, Leslie McGovern, declare as follows:

1. I am an Associate Governmental Program Analyst employed by the California Department of Justice, Bureau of Firearms, in Sacramento, California. I make this declaration in support of the Opposition to Plaintiffs' Motion for Summary Judgment by Defendant Stephen Lindley. I have personal knowledge of the facts stated in this declaration, and if called as a witness, I could and would competently testify to them.

2. I have been working in the Bureau of Firearms since 2001. Since approximately September of 2008, one of my employment responsibilities has been the day-to-day maintenance of the Roster of Handguns Certified for Sale ("Roster").

3. My employment duties include processing requests to add firearms to the Roster. If the Department approves a firearm, it is my job to add the name of the firearm to the Roster. I am also responsible for processing the renewal of names of firearms on the Roster, and for removing the names of firearms from the Roster. I also maintain the files and paperwork related to these activities.

4. In connection with these duties, I regularly communicate with firearms manufacturers. It is a manufacturer's decision whether to submit a given handgun model for inclusion on the Roster. I also regularly communicate with the laboratories that conduct the required testing of firearms being considered for listing on the Roster, and other Bureau of Firearms employees.

5. Regarding the Springfield Armory XD-45 Tactical 5" Bi-Tone Stainless steel/black handgun referenced in plaintiffs' complaint, the Department's files show that the model of that handgun originally tested and listed was the XD9621 – Black. After that initial listing, the manufacturer submitted two variations of the handgun (XD9622 – OD Green and XD9162 – Dark Earth) to be included on the Roster as "similar." The Department approved those handguns and listed them on the Roster. According to our records, the manufacturer has never submitted the XD9623 – Bi-Tone to the Department for inclusion on the Roster, either to be included as a "similar" or to be tested in its own right.

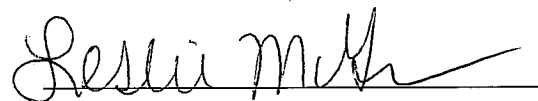
1 6. My use of the word "similar" in this declaration is a reference to California Penal Code
2 section 32030, which allows a firearm to be deemed to satisfy the Roster's testing requirements
3 due to its similarity to an already tested model.

4 7. Plaintiffs' complaint also references a High Standard Buntline style revolver. According
5 to the Department's records, no manufacturer has ever submitted a High Standard Buntline style
6 revolver for inclusion on the Roster.

7 8. Plaintiffs' complaint also references a Para USA (Para Ordnance) P1345SR/Stainless
8 Steel .45 ACP 4.25". According to the Department's records, the Para USA model P1345SR was
9 originally listed on the Roster on January 1, 2001. It was removed on December 31, 2005. I was
10 not in my current position in 2005 and have not been able to locate any documentation as to why
11 the Para USA model P1345SR was not renewed. Although I cannot be one hundred percent
12 certain, this lack of documentation suggests to me that the handgun fell off the Roster due to the
13 manufacturer's failure to pay the required fee to renew the listing.

14 9. Plaintiffs' complaint also references a Glock 21 SF with an ambidextrous magazine
15 release. According to our files, in November of 2006 Glock sent an e-mail to the Department
16 requesting approval to add an ambidextrous magazine release to a number of Glock models
17 already on the Roster. In January of 2007, the Department sent a letter to Glock advising that it
18 did not have the authority to exempt the handguns from the testing requirements because the
19 proposed physical changes to the working parts of the firearm did not appear to fit within the
20 definition of what is an acceptable "similar." Therefore, any re-designed handgun would have to
21 be laboratory tested. According to our records, the manufacturer has never submitted a Glock 21
22 SF with ambidextrous release for inclusion on the Roster.

23 I declare under penalty of perjury under the laws of the State of California and the United
24 States of America that the foregoing is true and correct of my own personal knowledge, and that
25 this declaration is executed in Sacramento, California, this 2nd day of December __, 2013.

26
27 

28 LESLIE MCGOVERN

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Attorneys for Defendant Stephen Lindley

SUPERIOR COURT OF THE STATE OF CALIFORNIA
EASTERN DISTRICT OF CALIFORNIA

**IVAN PEÑA, ROY VARGAS, DOÑA
CROSTON, BRETT THOMAS, SECOND
AMENDMENT FOUNDATION, INC. and
THE CALGUNS FOUNDATION, INC.,**

Plaintiffs,

v.

STEPHEN LINDLEY,

Defendant.

Case No. 2:09-CV-01185-KJM-CKD

**DECLARATION OF ANTHONY R.
HAKL IN SUPPORT OF DEFENDANT
STEPHEN LINDLEY'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Date: December 16, 2013
Time: 10:00 a.m.
Dept.: Courtroom 3, 15th floor
Judge: The Honorable Kimberly J.
Mueller
Trial Date: None at this time
Action Filed: May 1, 2009

DECLARATION OF ANTHONY R. HAKL

1
2 1. I am a Deputy Attorney General for the Office of the Attorney General in the
3 California Department of Justice located in Sacramento, California. I am the attorney of record
4 for Stephen Lindley ("Defendant"). I make this declaration in support of Lindley's Opposition to
5 Plaintiffs' Motion for Summary Judgment. I have personal knowledge of the facts stated in this
6 declaration, and if called as a witness, I could and would competently testify to them.

7 2. Attached as Exhibit A is a true and correct copy of Assem. Com. on Public Safety,
8 Analysis of Senate Bill No. 15 (1999-2000 Reg. Sess.) June 8, 1999.

9 3. Attached as Exhibit B is a true and correct copy of Senate Com. on Public Safety,
10 Analysis of Senate Bill No. 15 (1999-2000 Reg. Sess.) April 6, 1999.

11 4. Attached as Exhibit C is a true and correct copy of Senate Com. on Public Safety,
12 Analysis of Assembly Bill No. 1471 (2007-2008 Reg. Sess.) June 26, 2007.

13 5. Attached as Exhibit D is a true and correct copy of Assem. Com. on
14 Appropriations, Analysis of Assembly Bill No. 1471 (2007-2008 Reg. Sess.) May 16, 2007.

15 6. Attached as Exhibit E is a true and correct copy of Assem. Com. on Public Safety,
16 Analysis of Assembly Bill No. 1471 (2007-2008 Reg. Sess.) April 17, 2007.

17 7. I retrieved these legislative history documents from the publicly-accessible web
18 site <http://www.leginfo.ca.gov/>.

19 I declare under penalty of perjury under the laws of the State of California and the United
20 States of America that the foregoing is true and correct of my own personal knowledge, and that
21 this declaration is executed in Sacramento, California, this 2nd day of December, 2013.

22
23 /s/ ANTHONY R. HAKL

EXHIBIT A

A000001

SB 15
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Date of Hearing: June 8, 1999
Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Mike Honda, Chair

SB 15 (Polanco) - As Amended: June 2, 1999

SUMMARY : Makes it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any "unsafe handgun", as defined, with certain specific exceptions. Specifically, this bill :

- 1) Makes it a misdemeanor, punishable by up to one year in the county jail, beginning January 1, 2001 for any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, offers or exposes for sale, gives or lends any unsafe handgun, except as specified.
- 2) Defines "unsafe handgun" to mean any pistol, revolver or firearm capable of being concealed upon a person that does not have a specified safety device, does not meet specified firing requirements, or does not meet specified drop safety requirements.
- 3) Requires any pistol, revolver, or other firearm capable of being concealed upon a person manufactured in California, imported into California for sale, kept for sale, or offered or exposed for sale to be tested by an independent laboratory certified by the Department of Justice (DOJ) meets or exceeds specified standards defining unsafe handguns.
- 4) Requires the DOJ to certify laboratories to verify compliance with the specified standards defining unsafe handguns on or before July 1, 2000.
- 5) Requires every person licensed to manufacture firearms who manufactures firearms in California, and every person who imports firearms into California for sale, keeps for sale, or offers or exposes for sale any firearm to certify under penalty of perjury that every model, kind, class, style, type of pistol, revolver, or other firearm capable of being

SB 15
Page 2

concealed upon a person that he or she manufactures or imports, keeps or exposes for sale is not a prohibited unsafe handgun.

- 6) Requires the DOJ on and after January 1, 2001 to compile publish, and thereafter maintain, a roster listing all pistols, revolvers, and other firearms capable of being concealed upon a person that are not unsafe handguns by the manufacturer, model number and model name.
- 7) Authorizes the DOJ to charge every person who manufactures, imports into California for sale, offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon a person an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster.
- 8) Exempts from limitations: (a) prototypes which are to be tested by an independent laboratory to determine if the handgun is prohibited by this bill; (b) the handling of a handgun by persons authorized to determine if the weapon is prohibited; (c) firearms listed as curios or relics by federal law; and, (d) the sale, purchase, or possession of any handgun by specified law enforcement agencies or sworn members of these agencies when the sworn member has written authorization from the employing agency.
- 9) Exempts the sale loan or transfer of any firearm between private parties through dealers or law enforcement agencies, between private parties exempt from the requirement that the transfer be through a dealer or law enforcement agency, firearms listed as curios or relics, the delivery or return of a firearm for the purposes of repair, and the return of a firearm by a licensed dealer when the firearm was delivered for the purposes of a consignment sale or as collateral for a pawnbroker loan.
- 10) States that it is the Legislature's intent that the DOJ

pursue an internal loan from special fund revenues available to the DOJ to cover start-up costs for the program established pursuant to this bill, and any loan shall be repaid with the proceeds of fees collected under that program within six months.

- 11) States that nothing in this bill shall require or prohibit any local ordinance that places a more stringent requirement

SB 15
Page 3

upon the manufacture, importation, transfer, sale, or possession of handguns.

EXISTING LAW:

- 1) Provides for licensing and regulation of all firearm dealers and manufacturers in California. (Penal Code Sections 12071 and 12085.)
- 2) States that it is an alternate felony/misdemeanor punishable by 16 months, 2 or 3 years in the state prison or by up to one year in the county jail to manufacture, cause to be manufactured, import into California, keep for sale, offer or expose for sale, give, lend or possess specified prohibited firearms. (Penal Code Section 12020 (a).)
- 3) Provides that perjury is willfully stating under oath a material fact that one knows to be false, either orally or in writing, and is punishable by two, three, or four years in the state prison. (Penal Code Sections 118 and 126.)

FISCAL EFFECT : Unknown

COMMENTS :

1) Author's Statement . According to the author, "SB 15 is a common sense responsible gun law. It requires that weapons fire when they are supposed to and that they not fire when they're dropped. The drop test is based on the United States DOJ quality standards for law enforcement weapons and the misfire test is a slightly more lenient standard than currently used by law enforcement agencies. The tests are fair and reasonable for weapons sold to members of the public for self-protection. If a weapon is not reliable for self-defense, it has no business being sold in California.

"SB 15 would require any handgun manufactured in California, imported into the State of California for sale, kept for sale or exposed for sale, given or lent, meet these basic standards. The Attorney General's Office would be required to certify independent labs that would test weapons that manufacturers wished to sell in California. If they failed to pass the test it would be a misdemeanor to manufacture or sell the weapon in our state."

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Page 4

2) Definition of "Unsafe Handgun" . This bill defines an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

a) Required Safety Device . This bill requires that a revolver have a safety device that, either automatically in the case of a double-action firing mechanism, or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.

b) Firing Test . In order to meet the "firing requirements" under this bill, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than 6 malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user.

"Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.

c) Drop Test . This bill provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer.

3) Exemptions . The misdemeanor penalties specified in this bill do not apply to a handgun imported as a prototype for the purpose of laboratory testing; where it is imported or loaned to determine whether the weapon is prohibited; if it is listed

SB 15

Page 5

as a curio or relic under federal law; or where the sale to, purchase by, or possession of any handgun by specified law enforcement agencies, or sworn members of these agencies when the sworn member is has written authorization from the employing agency. Also, this bill does not apply to the private sale, loan, or transfer between private parties through a licensed dealer, or law enforcement agency; an infrequent transfer, as defined; the delivery or return of a handgun for the purpose of service or repair; the return of a handgun that was delivered to a licensed dealer or pawnbroker for the purposes of consignment sale or as collateral for a loan; or for "old west" single-action revolvers and replicas of those revolvers.

4) Laboratory Certification . This bill provides that on or before July 1, 2000, the DOJ shall certify laboratories to verify compliance with the standards established by this bill, and the DOJ may charge a fee for certification not exceeding the costs of certification.

This bill allows the DOJ to charge every person who is a manufacturer of firearms in California, imports firearms into California for the purpose of sale, or offers for sale a pistol, revolver, or handgun capable of being concealed upon a person in California, an annual fee not exceeding the costs of preparing and maintaining the roster of firearms deemed not to be unsafe.

This bill also provides that the certified testing laboratory shall, at the expense of the manufacturer or importer, test the submitted firearm.

5) Prior Legislation . SB 1500 (Polanco), of the 1997-98 Legislative Session, was almost identical to this bill. SB 1500 was vetoed by the Governor. The Governor stated in part:

"The bill gives the DOJ six months to find and certify laboratories to perform safety tests. Once laboratories are identified, handgun manufacturers wishing to sell their products in California would be required to submit three prototypes of each model for testing. Only handguns passing the test during the following six months would be certified and placed on the initial DOJ roster. All other handguns would be presumed to be unsafe subject to penalty under this bill and remain so unless and until they were certified to

SB 15

Page 6

have passed the test.

"The author was advised that this Administration could accept both the premise of safety testing and the specific safety tests proposed, provided that the bill be made prospective, impacting handguns manufactured or sold new, after January 1, 2000. The author declined to amend the bill, insisting that used handguns could be sold through private transactions, but not by licensed dealers. Other than improving business for gun manufacturers by increasing demand for new guns, it is unclear how anyone would benefit from this new standard.

"SB 1500 would deny owners of used handguns access to a

dependable marketplace of licensed firearms dealers and pawnbrokers for safe and legal sales and loans, while threatening to delay market access to manufacturers and purchasers of new guns.

"But an even more fundamental question is whether consumer safety is better achieved by a program that offers manufacturers market incentives to have their products tested, or a program that penalizes not only makers of products that fail the test, but also those who through no fault of theirs have been unable to get their guns tested.

"There are few laboratories that perform this kind of testing now. With the manufacturers providing the cost of testing, the number of laboratories and testing capacity may increase. But in the meantime, there are hundreds, if not thousands, of makes and models of handguns. There is a very real possibility that delay - for any number of reasons beyond the control of gunmakers - will lead to a large number of guns being banned without any showing that they are unsafe.

"While there have been isolated reports of firearms that jam excessively and even a few reports of guns which discharge accidentally, when dropped, or explode in the shooter's hand, the number of makes of suspect guns does not seem to justify a regulatory scheme that is likely to have the unintended consequence of prohibiting, or at least unreasonably holding up, sales of what appears to be the vast majority of perfectly reliable weapons.

"And there is no objection to weapons testing. But the procedure which SB 1500 would impose threatens to unreasonably

SB 15

Page 7

limit the right of law abiding citizens to obtain previously lawful firearms. It makes little sense for the law to deny weapons to people who need them, on the pretext that they are unsafe to the user until testing proves them safe, when they are arguably in far greater danger from certifiably unsafe thugs than from uncertified handguns."

6) Pending Legislation . AB 505 (Wright), pending assignment by the Senate Rules Committee, provides that every pistol, revolver, or firearm capable of being concealed upon a person, effective July 1, 2000, manufactured in California or imported into California for sale meet specified minimum safety standards. AB 505 has a prospective application and only applies to firearms manufactured or imported into California after the effective date of the bill.

7) Arguments in Support . Handgun Control states, "There are no federal quality or safety standards for domestically manufactured handguns. Guns are the only product in America exempt from regulation by the Consumer Product Safety Commission or by any other agency. The gun lobby has repeatedly pressured Congress to continue to exempt domestically made handguns from the safety standards that have applied to imported handguns for more than 30 years."

8) Arguments in Opposition . The California Sporting Goods Association states, "Requiring out-of-production firearms to meet abstract performance tests will place an onerous burden on anyone trying to buy or sell one. If the product is no longer made, how can samples be provided for testing? Further, if owners of discontinued models can no longer sell them lawfully, there will be a great temptation to dispose of them on the illicit market."

REGISTERED SUPPORT / OPPOSITION :

Support

American Academy of Pediatrics
Association of Bay Area Governments
Board of Supervisors of Alameda County
Board of Supervisors of Marin County
Board of Supervisors of San Mateo County
Board of Supervisors of Santa Clara County
Board of Supervisors of Santa Cruz County

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Board of Supervisors of Siskiyou County

A000005

Board of Supervisors of Sonoma County
Butte County Sheriff
California Academy of Family Physicians
California Child Youth and Family Coalition
California Church Impact
California Congress of Parents, Teachers, and Students, Inc.
California Nurses Association
California Organization of Police and Sheriffs
Cathedral City
Children's Advocacy Institute
City of Alameda
City of Albany
City of Alhambra
City of Arvin
City of Belmont
City of Benicia
City of Berkeley
City of Bishop
City of Buena Park
City of Burbank
City of Camarillo
City of City of Cudahy
City of Commerce
City of Cypress
City of Daly City
City of El Cerrito
City of Fontana
City of Fortuna
City of Foster City
City of Fullerton
City of Guadalupe
City of Huntington Park
City of Indio
City of Inglewood
City of Irvine
City of Kerman
City of La Habra
City of La Puente
City of Lake Elsinore
City of Los Angeles
City of Malibu
City of Millbrae
City of Monte Sereno
City of Montebello

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City of Monterey
City of Monterey Park
City of Morgan Hill
City of Oakland
City of Oceanside
City of Ojai
City of Oxnard
City of Pacific Grove
City of Palm Springs
City of Palmdale
City of Palo Alto
City of Richmond
City of Riverside
City of Rohnert Park
City of San Bernadino
City of San Clemente
City of San Fernando
City of San Jose
City of San Luis Obispo
City of San Marino
City of San Mateo
City of Santa Ana
City of Santa Barbara
City of Santa Clara
City of Santa Monica
City of Santa Rosa
City of Signal Hills
City of South Pasadena
City of Stockton
City of Temecula
City of Thousand Oaks
City of Upland
City of Walnut Creek
City of West Hollywood
City of Williams
City of Winters
Colusa County District Attorney
Episcopal Church Diocese of Los Angeles
Escalon Police Department
Handgun Control
Jack Berman Advocacy Center
Lafayette City Council
League of California Cities
League of Women Voters of California
Legal Community Against Violence

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Livingston California
Los Angeles County Bar Association
Los Angeles County District Attorney's Office
Los Angeles Unified School District
Lutheran Office of Public Policy
Michael J. Long, Attorney at Law
Office of Criminal Justice Planning
Older Women's League of California
Orange County Citizens for Prevention of Gun Violence
Physicians For a Violence-Free Society
San Mateo Police Department
Scotts Valley Police Department
Signal Hill Police Department
Sonoma Police Department
Town of Los Gatos
Trauma Foundation
Violence Prevention Coalition of Los Angeles

Opposition

California Rifle and Pistol Association, Inc.
California Sporting Goods Association
3 Private Citizens

Analysis Prepared by : Gregory Pagan / PUB. S. / (916) 319-3744

EXHIBIT B

BILL ANALYSIS

SENATE COMMITTEE ON Public Safety
 Senator John Vasconcellos, Chair S
 1999-2000 Regular Session B

1
 5

SB 15 (Polanco)
 As Amended April 5, 1999
 Hearing date: April 6, 1999
 Penal Code
 SH:br

FIREARMS -RESTRICTIONS ON "UNSAFE HANDGUNS"

HISTORY

Source: Author

Prior Legislation: SB 1500 (1998) - vetoed
 SB 500 (1997) - vetoed
 SB 933 (1996) - failed passage Assembly Public

Safety

SB 1118 (1995) - never heard in Senate

Criminal Procedure

AB 1848 (1992) - heard, no vote taken, Senate

Judiciary

Support: Handgun Control; Cities of Los Angeles, San Jose,
 Thousand Oaks, San Clemente, Lake
 Elsinore, San Luis Obispo, Buena Park, Palo Alto,
 Santa Rosa, Oceanside, Lompoc, Merced; Alameda County
 Board of Supervisors; City Council's of Berkeley; West
 Hollywood, Walnut Creek, Rohnert Park, Pismo
 Beach, Lafayette, Los Gatos Town Council;
 Lutheran Office of Public Policy; League of

(More)

SB 15 (Polanco)
 Page 2

California Cities; California Academy of Family
 Physicians; Los Angeles County Bar Association;
 California Organization of Police and Sheriffs;
 Trauma Foundation; California Police and
 Sheriffs Association; Mayor, City of Burbank;
 California Child, Youth and Family Coalition; Los
 Angeles Unified School District; Chief of
 Police of the Town of Los Gatos and the City of
 Monte Sereno; California Church IMPACT; Children's
 Advocacy Institute; Los Angeles District Attorney's
 Office; Older Women's League; Chief of
 Police of the City of Signal Hill; California Nurses
 Association; Legal Community Against Violence;
 Episcopal Diocese of Los Angeles; Orange
 County Citizens for the Prevention of Gun Violence

Opposition: California
 Rifle and Pistol Association; National Rifle Association;
 California Shooting Sports Association; California
 Attorneys for Criminal Justice; Peace
 Officer Research Association of California; Outdoor
 Sportsmen's Coalition; Safari Club International;
 California Sportsman's Lobby;
 individual letters

KEY ISSUES

SHOULD THE MANUFACTURE, IMPORTATION, KEEPING FOR SALE,
 OFFERING OR EXPOSING FOR SALE, OR GIVING OR LENDING OF ANY
 "UNSAFE HANDGUN" - AS DEFINED - BE PROHIBITED IN
 CALIFORNIA, COMMENCING JULY 1, 2000?

SHOULD THE PENALTY FOR VIOLATING THAT PROHIBITION BE A
 MISDEMEANOR PUNISHABLE BY UP TO ONE YEAR IN A COUNTY JAIL?

B000002

SHOULD THOSE UNSAFE HANDGUNS BE DEFINED BY REFERENCE TO SPECIFIED CRITERIA INCLUDING A SAFETY DEVICE AND OTHER

(More)

SB 15 (Polanco)
Page 3

FACTORS INCLUDING A FIRING TEST (FOR SAFETY) AND A "DROP SAFETY" TEST, AS SPECIFIED?

SHOULD EVERY MANUFACTURER OR IMPORTER OF HANDGUNS IN THIS STATE BE REQUIRED TO CERTIFY, UNDER PENALTY OF PERJURY AND ANY OTHER REMEDY PROVIDED AT LAW, THAT ANY HANDGUN MANUFACTURED OR IMPORTED IS NOT A PROHIBITED UNSAFE HANDGUN PURSUANT TO THIS BILL

SHOULD THE DEPARTMENT OF JUSTICE (DOJ) BE REQUIRED TO CERTIFY, ON OR BEFORE JULY 1, 2000, LABORATORIES TO VERIFY COMPLIANCE WITH THIS BILL?

SHOULD THE DEPARTMENT OF JUSTICE BE REQUIRED TO PREPARE A ROSTER, ON AND AFTER JULY 1, 2000, OF ALL HANDGUNS WHICH ARE DETERMINED NOT TO BE UNSAFE HANDGUNS PURSUANT TO THIS BILL?

SHOULD TRANSFERS BETWEEN PRIVATE PARTIES - AND OTHER SPECIFIED TRANSFERS AND SPECIFIED FIREARMS - BE EXEMPTED FROM THE PROPOSED RESTRICTIONS ON "UNSAFE HANDGUNS"?

(CONTINUED)

SHOULD LEGISLATIVE INTENT BE ENACTED THAT THE DEPARTMENT OF JUSTICE PURSUE AN INTERNAL LOAN FROM SPECIAL FUND REVENUES AVAILABLE TO THE DEPARTMENT TO COVER STARTUP COSTS FOR THE NEW UNSAFE HANDGUN PROGRAM AND REPAY ANY LOAN WITH THE PROCEEDS OF FEES COLLECTED UNDER THAT PROGRAM WITHIN 6 MONTHS?

SHOULD RELATED CHANGES BE MADE?

PURPOSE

The purpose of this bill is to enact restrictions on the manufacture, importation, or sale of "unsafe handguns" - as defined in this bill - in California commencing July 1, 2000, as specified.

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Under existing law it is an alternate misdemeanor/felony ("wobbler") to manufacture, import, sell, loan or possess specified disguised firearms and other deadly weapons, including plastic firearms, cane or wallet guns, flechette darts, multiburst trigger activators, nunchakus, short-barreled shotguns and rifles, leaded canes, zip guns, unconventional pistols, cane blackjacks and metal knuckles. A violation is punishable by sixteen months, two or three years in prison, or up to one year in county jail. (Penal Code section 12020)

Existing law generally requires that any sale, loan, or transfer of a firearm shall be made through a licensed firearms dealer or, in counties of fewer than 200,000 persons, a sheriff's department that elects to provide such services. (Penal Code sections 12071, 12072, 12082, 12084)

Existing law states it is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision, as defined. (Government Code section 53071)

This bill would do the following:

commencing July 1, 2000, make it a misdemeanor - punishable by up to one year in a county jail - for any person to manufacture or cause to be manufactured, import into the state for sale, keep for sale, offer or expose for sale, give, or lend any unsafe handgun, except as specified.

defines "unsafe handgun" to mean any pistol, revolver, or other firearm capable of being concealed upon the person which either (1) for revolvers: does not have a safety

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device to cause the hammer to retract from contact with the primer, as specified; (2) for pistols (whether semi-automatic or not): does not have a positive manually operated safety device; (3) does not meet a specified firing requirement; (4) does not meet a specified drop safety requirement.

requires every person licensed to manufacture firearms pursuant to federal law who manufactures firearms in this state and every person who imports into the state for sale, keeps for sale, or offers or exposes for sale any firearm to certify under penalty of perjury that every model, kind, class, style, or type of pistol, revolver, or other firearm capable of being concealed upon the person that he or she manufactures or imports, keeps, or exposes for sale is not a prohibited unsafe handgun.

requires any pistol, revolver, or other firearm capable of being concealed upon the person manufactured in this state, imported into the state for sale, kept for sale, or offered or exposed for sale, to be tested by an independent laboratory certified by the Department of Justice to determine whether that firearm meets or exceeds specified standards defining unsafe handguns.

requires the Department of Justice to certify laboratories for this purpose on or before July 1, 2000.

requires the Department of Justice, on and after July 1, 2000, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that are not unsafe handguns by the manufacturer, model number, and model name; authorizes the department to charge every person in this state who is licensed as a manufacturer of firearms pursuant to federal law, and any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the

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person in this state, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster.

exempts from the limitations on such handguns (1) prototypes which are to be tested by a laboratory to determine whether the handgun is prohibited by this bill; (2) law enforcement and others handling the weapon to determine whether or not it is prohibited by this bill; (3) firearms which are curios or relics pursuant to federal regulations.

exempts from the transfer limitations in this bill transfers between private parties through dealers/law enforcement agencies; transfers between parties otherwise exempt from the requirement that transfer be made through a dealer or law enforcement agency (limited duration

loans between known parties, loans for hunting season, etc); and transfers pertaining to those handguns exempted in new provisions added by this bill (such as delivery to DOJ of weapons being tested).

states the intent of the Legislature that the Department of Justice pursue an internal loan from special fund revenues available to the department to cover startup costs for the unsafe handgun program established pursuant to the bill and that the department is to repay any loan with the proceeds of fees collected under that program within six months.

makes numerous related additions to law.

COMMENTS

1. Need for This Bill

The author submits that:

Senate Bill 15 is a common sense, responsible gun law.

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It requires that weapons fire when they are supposed to and that they not fire when dropped. The drop test is based on U.S. Department of Justice quality standards for law enforcement weapons and the misfire test is a slightly more lenient standard than currently used by law enforcement agencies. The tests are fair and reasonable for weapons sold to members of the public for self-protection. If a weapon is not reliable for self-defense, it has no business being sold in California.

SB 15 would require any handgun manufactured in California, imported into the State of California for sale, kept for sale or exposed for sale, given or lent, meet these basic standards. The Attorney General's office would be required to certify independent labs that would test weapons that manufacturers wished to sell in California. If they failed to pass the test it would be a misdemeanor to manufacture or sell the weapons in our state.

2. Governor's Veto of SB 500 and SB 1500

The Governor's veto message of SB 500 (9/26/97) included, in part, the following:

SB 500 is a bill that purports to protect gun users against shoddy guns. It is essentially offered as consumer protection. But the vast majority of the proponents of SB 500 who have urged me to sign it have done so because of their passionate hope and belief that it will instead protect potential victims against whom the proscribed guns might otherwise be used.

Common sense dictates that the best way to prevent gun crimes is by first removing from society the criminals who use guns in the commission of a crime. . .

. . . not only does SB 500 fail to keep guns out of

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the hands of criminals, it will deprive law-abiding, legitimate gun users of the needed protection of handguns--the same handguns used by thousands of peace officers as regular service and back-up guns. These weapons would--in a private citizen's hands--be caught in a net cast much too wide by SB 500.

. . . I will not support a measure that fails the basic test of protecting the innocent. Ultimately, the real test applied by the bill is whether or not the weapon is readily concealable. If so, it is adjudged by SB 500 to be "non-sporting" and is therefore prohibited. By this definition and test, all handguns--except, ironically, the largest and deadliest--are included in the ban. The clear if unstated premise of this test is that handguns that are concealable can have no sporting purpose and therefore no valid purpose. This flawed logic ignores reality: it ignores the obvious fact that millions of law-abiding Californians--including a growing number of women--have felt the need to own concealable weapons not for sport but to protect themselves, their families, and their property.

As much as I deplore the necessity, I cannot in good conscience deny them that protection if they choose it.

NOTE: The author indicated concerning SB 1500 from 1998 that: "In response to the Governor's concerns [with SB 500], . . . I have introduced Senate Bill 1500. It casts a smaller net, it addresses the Governor's concerns and it seeks to ensure that those who choose to own a handgun for self protection have a handgun that is safe and reliable."

The Governor's veto message of SB 1500 (9/27/98) includes the following:

. . . This bill is the successor to SB 500, which I vetoed last year. SB 500 was seriously flawed.

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Commendably, the author has removed some of its more egregious provisions. . . .

. . . The bill gives the Department of Justice six months to find and certify laboratories to perform safety tests. Once laboratories are identified, handgun manufacturers wishing to sell their products in California would be required to submit three prototypes of each model for testing. Only handguns passing the test during the following six months would be certified and placed on the initial Department of Justice roster. All other handguns would be presumed unsafe subject to penalty under this bill and remain so unless and until they were certified to have passed the test.

The author was advised that this Administration could accept both the premise of safety testing and the specific safety tests proposed, provided that the bill be made prospective, impacting handguns manufactured, or sold new, after January 1, 2000. The author declined to amend his bill, insisting that used handguns could be sold through private transactions, but not by licensed dealers. Other than improving business for gun manufacturers by increasing demand for new guns, it is unclear how anyone would benefit by this arbitrary standard. . . .

SB 1500 would deny owners of used handguns access to a dependable marketplace of licensed firearms dealers and pawnbrokers for safe and legal sales and loans, while threatening to delay market access to manufacturers and purchasers of new guns. . . .

But an even more fundamental question is whether consumer safety is better achieved by a program that offers manufacturers market incentives to have their products tested, or a program that penalizes not only makers of products that fail the test, but also those who through no fault of theirs have been unable to get their guns tested. . . .

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...There are few laboratories that perform this kind of testing now. With the manufacturers providing the cost of testing, the number of laboratories and testing capacity may increase. But in the meantime, there are hundreds, if not thousands, of makes and models of handguns. There is a very real possibility that delay--for any number of reasons beyond the control of gun maker--will lead to a large number of guns being banned without any showing that they are unsafe.

...While there have been isolated reports of firearms which jam excessively and even a few reports of guns which discharge accidentally, when dropped, or explode in the shooter's hand, the number of makes of suspect guns does not seem to justify a regulatory scheme that is likely to have the unintended consequence of prohibiting, or at least unreasonably holding up, sales of what clearly appears to be the vast majority of perfectly reliable weapons.

...And there is no objection to weapons testing. But the procedure which SB 1500 would impose threatens to unreasonably limit the right of law abiding citizens to obtain previously lawful firearms. It makes little sense for the law to deny weapons to people who need them, on the pretext that they are unsafe to the user until testing proves them safe, when they are arguably in far greater danger from certifiably unsafe thugs than from uncertified handguns.

3. Federal Regulation of "Saturday Night Specials"

At the federal level, the importation of "Saturday Night Specials" into the United States has been banned through the enactment of the Gun Control Act of 1968. Section 925 (d)(3) of the Act provides that a firearm shall be imported if it is of a type "...generally recognized as particularly suitable for, or readily adaptable to, sporting purposes." The phrase "sporting purposes" has

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been defined to eliminate small, cheap, poorly constructed handguns.

A set of factoring criteria was designed to prevent the import of these handguns, considered a substantial crime problem in the 1960s. The factoring criteria are based on a relatively simple point system. First, the firearm must meet all of the prerequisites. If it is a pistol, it must have a manually operated safety device. The combined length and height must be not less than ten inches with the height being at least four inches and the length at least six inches. If the firearm is a revolver, it must pass the safety test and have an overall frame length of at least four and one half inches and a barrel length of at least three inches.

In addition, a point value is assigned to the handgun's individual characteristics such as length of barrel, overall length, frame construction, weight, caliber, safety features, type of sight, trigger, hammer and grip.

Generally, the handguns passing the criteria are bigger, heavier and of a better quality than "Saturday Night Specials." The Bureau of Alcohol, Tobacco, and Firearms (Secretary of the Treasurer or his/her delegate) also may grant exemptions to these requirements, as specified.

Under the proposed federal Handgun Violence Prevention Act of 1989, the above criteria would have applied to handguns produced in the United States. However, this federal legislation was defeated.

4. Exemption for Old West Revolvers

_ This bill contains an exemption for "old west" single-action revolvers and replicas of those revolvers. SB 15 contains the following language:

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Penal Code section 12131. The provisions of this chapter shall not apply to a single-action revolver that has at least a five-cartridge capacity with a barrel length of not less than three inches, and meets any of the following specifications:

- (a) Was originally manufactured prior to 1900 and is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.
- (b) Has an overall length measured parallel to the barrel of at least seven and one-half inches when the handle, frame or receiver, and barrel are assembled.
- (c) Has an overall length measured parallel to the barrel of at least seven and one-half inches when the handle, frame or receiver, and barrel are assembled and that is currently approved for importation into the United States pursuant to the provisions of paragraph (3) of subsection (d) of Section 925 of Title 18 of the United States Code.

5. Implementation Dates in This Bill

If enacted, this bill would take effect on January 1, 2000. This bill contains several "operative" dates within its text:

July 1, 2000 - restrictions/penalties for selling, manufacturing, etc., of unsafe handguns take effect.

July 1, 2000 - DOJ shall certify laboratories to verify compliance with standards.

July 1, 2000 - on/after this date, DOJ shall publish a roster of firearms, which are "not unsafe firearms".

WOULD THE DATES SET IN THIS BILL ALLOW FOR THE APPROPRIATE IMPLEMENTATION OF THE NEW PROGRAM, E.G., WOULD FIREARMS BE TESTED BY JULY 1, 2000, WHEN THE LABORATORIES DO NOT HAVE

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TO BE CERTIFIED FOR TESTING UNTIL THAT DATE?

6. Definition of "Any Person Who Imports" in This Bill

This bill exempts sales of "unsafe handguns" between private parties. Most of those weapons may be anticipated to be handguns manufactured before January 1, 2000. This bill would prohibit all "unsafe handgun" manufacturing, importing, or selling by licensed manufacturers and licensed dealers after January 1, 2000, no matter when the handgun is manufactured.

However, there is now a new Penal Code section reference to "importer". Private parties moving to California after January 1, 1998, who possess a handgun must now report that firearm to the Department of Justice within 60 days of bringing the handgun into the state. Those persons are now defined in statute as a "personal handgun importer." Whether or not those persons would be considered an "importer" pursuant to this bill is unclear, although this bill does appear to be aimed at commercial persons.

7. Other Issues Raised by This Bill

Under existing Government Code section 53071, some local entities have adopted restrictions on the local sale by licensed dealers of so-called "Saturday Night Specials" (see reference to San Jose ordinance in the second paragraph, below). This bill would appear to preempt any such local ordinance, both those already in existence and any proposed locally in the future.

SB 500, as introduced on February 20, 1997, would have restricted sales in California of handguns which would have otherwise failed to meet the federal test for importation into the United States. Previous efforts to restrict so-called "Saturday Night Specials" took a similar approach or used such tests as the tensile strength of metals. As SB 500 and SB 1500 evolved in the process, the approach taken became

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one of size restrictions and "safety" tests, which were developed using tests used for law enforcement weapons. Subsequently, the size criteria were deleted from SB 1500 and are not part of SB 15 as currently amended.

Some local jurisdictions in California have existing restrictions on specified weapons. For example, the City of San Jose has a local ordinance entitled "Saturday Night Special/Junk Gun Sale Ban" (SJ Code, Chapter 10.33) which uses several characteristics, including metal strength and composition and for semi-automatic pistols a requirement for a "locked breech action" with the chief of police maintaining a roster of prohibited weapons and an appeals process to the chief.

The San Jose ordinance is relatively simple in that it states in colloquial terms the types of weapons it is intended to restrict and then uses a relatively simple set of criteria. It may be unclear whether or not that kind of approach would or would not be as effective as the "safety test" procedures proposed in this bill or whether or not this bill would be over or under inclusive of the types of handguns which the sponsors and supporters would seek to

prohibit in California.

As indicated in last year's SB 1500 veto message, there has been some discussion of whether or not the application of the restrictions in SB 1500 and this year's SB 15 would effectively eliminate the used handgun market for all those handguns - lawfully sold/possessed prior to the testing requirements of this bill - which could be sold between private parties through dealers/law enforcement agencies but which could not be purchased by licensed dealers for resale in California. It may be assumed that there is little likelihood that anyone would pay for certification of weapons which are "used" and not substantially the same as new weapons offered for sale and manufactured after July 1, 2000, if this bill is enacted.

At the present time, firearms may be pawned and

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subsequently returned to the person who pawned them. This bill would arguably restrict such "returns" for handguns lawfully possessed prior to the restrictions imposed by this bill.

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8. Opposition to This Bill

The National Rifle Association (NRA) letter in opposition includes:

As currently constructed, SB 15 would provide a strong stimulus for illegal "street" gun sales. Most used handguns made since 1946 would not be submitted for certification as required by SB 15 and thus could not be legally sold by retail firearm dealers. Pawnshops would not give loans on handguns that they couldn't sell if not picked up by the owner. Without access to retail firearms dealers (including pawnshops) the obvious alternative is "street sales".

The California Rifle and Pistol Association letter in opposition to SB 15 includes:

. . . Its prohibition on dealer sales of used handguns not meeting the bills extremely broad provisions would make handguns economically unavailable to many persons who do not have large incomes. . . Whether a handgun meets the proposed SB 15 standards in most cases would have no relevance to its suitability for its intended purpose. . . SB 15 requires that both civilian and law enforcement handguns have the same standards. . . SB 15 would not significantly improve any product line nor would it prevent the occasional occurrence of a defective part. But, it would unjustly have an adverse impact on lawful residents of California who need a handgun for lawful purposes but cannot afford the expensive models. . .

The California Shooting Sports Association letter in opposition indicates that SB 15 would not reduce crime nor improve public safety.

9. Related Legislation

AB 505 (Wright) is currently in the Assembly Committee on

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Public Safety. It would require every model of pistol, revolver, or other firearm capable of being concealed upon the person that is manufactured for sale in California on or after July 1, 2000, to satisfy specified safety tests and standards, with a system of self-certification by the manufacturer or importer and specified penalties.

10. Need to Revise the Legislative Counsel's Digest

The Legislative Counsel's digest of this bill as amended on April 5, 1999, on line six of the first page indicates that "commencing January 1, 2000" the limitations on "unsafe

handguns" takes effect; the text in fact sets that date at July 1, 2000 (page 3, line 8). Thus the Digest should be corrected as this bill is amended or moves through the process.

11. Other Firearms Bills Imposing Duties on the Attorney General/Department of Justice

Other firearms bills this session which would require the Attorney General/Department of Justice to take on tasks, in addition to SB 15, include SB 23 (registration and other elements of the assault weapons program), SB 130 and AB 106 (certification of laboratories to test firearms safety devices; other duties), and AB 505 (California Sporting and Self Defense Handgun Safety Standards Act).

EXHIBIT C

BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY
 Senator Gloria Romero, Chair
 2007-2008 Regular Session

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AB 1471 (Feuer)
 As Amended April 10, 2007
 Hearing date: June 26, 2007
 Penal Code
 SM:mc

FIREARMS - MICROSTAMPING

HISTORY

Source: Brady Campaign to Prevent Gun Violence

Prior Legislation: AB 352 (Koretz) - 2006, died in conference
 SB 357 (Dunn) - amended to remove relevant provisions

Support: Alameda County Board of Supervisors; Alameda County Sheriff's Office; American College of Emergency Physicians; California Alliance for Consumer Protection; California District of the American Academy of Pediatrics; California Chapters of the Brady Campaign to Prevent Gun Violence; City and County of San Francisco; City of Sacramento; Coalition Against Gun Violence; Friends Committee on Legislation; Grover Beach Police Department; Legal Community Against Gun Violence; Los Angeles County District Attorney's Office; Los Angeles Sheriff's Department; Mayor of San Diego; Mayor of San Francisco; Orange County Chiefs of Police and Sheriff's Association; Orange County Citizens for the Prevention of Gun Violence; San Francisco District Attorney's Office; Stockton Police Department; Superintendent, Alameda County Office of Education; Violence Prevention Coalition of Orange

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County; Women Against Gun Violence; Youth Alive; Chiefs of Police of the following cities: Anaheim; Antioch; Bell; Beverly Hills; Brentwood; Burlingame; Capitola; Chino; Clayton; Clearlake; Concord; Costa Mesa; Emeryville; Fresno; Glendale; Glendora; Grover Beach; Hawthorne; Healdsburg; Huntington Beach; Huntington Park; Irvine; Los Alamitos; Monrovia; National City; Nevada City; Newport Beach; Oakland; Piedmont; Pinole; Pittsburg; Pleasant Hill; Pomona; Sacramento; Salinas; San Diego; San Francisco; San Ramon; San Mateo; Santa Barbara; Seal Beach; Seaside; Stockton; Tustin; Twin Cities Police Authority (Corte Madera/Larkspur); Ventura; Vernon; Walnut Creek; West Covina; Westminster

Opposition: Amador County Sheriff; Berrita U.S.A., Corp.; California Association of Firearms Retailers; California Outdoor Heritage Alliance; California Rifle and Pistol Association; California Sportsman's Lobby, Inc.; Crossroads of the West Gun Shows; Gun Owners of California, Inc.; Mendocino County Sheriff; National Rifle Association; North State Sheriffs; Orange County Sheriff; Outdoor Sportsman's Coalition of California; Riverside County Sheriff; Safari Club International; San Bernardino County Sheriff; Sporting Arms and Ammunition Manufacturers' Institute (SAAMI); Tehama County Sheriff; Kahr Arms

Assembly Floor Vote: Ayes 44 - Noes 31

NOTE: AS PROPOSED TO BE AMENDED (See Comment 6.)

KEY ISSUE

SHOULD THE EXISTING "UNSAFE HANDGUN" LAW, AS OF JANUARY 1, 2010, INCLUDE REQUIREMENTS FOR NEW MODELS OF SEMIAUTOMATIC PISTOLS THAT THEY BE EQUIPPED WITH A MICROSCOPIC ARRAY OF CHARACTERS THAT

IDENTIFY THE MAKE, MODEL, AND SERIAL NUMBER OF THE PISTOL, ETCHED INTO THE INTERIOR SURFACE OR INTERNAL WORKING PARTS OF THE PISTOL, AND WHICH ARE TRANSFERRED BY IMPRINTING ON EACH CARTRIDGE CASE WHEN

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THE FIREARM IS FIRED, AS SPECIFIED?

PURPOSE

The purpose of this bill is to add to the existing "unsafe handgun" law, as of January 1, 2010, requirements for new models of semiautomatic pistols that they be equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched into the interior surface or internal working parts of the pistol, and which are transferred by imprinting on each cartridge case when the firearm is fired, as specified.

Existing law provides that commencing January 1, 2001, no "unsafe handgun" may be manufactured or sold in California by a licensed dealer, as specified, and requires that the Department of Justice prepare and maintain a roster of handguns which are determined not to be unsafe handguns. Private party sales (used or previously owned) and transfers of handguns through a licensed dealer or sheriff in smaller counties are exempted from those restrictions. (Penal Code 12125-12133.)

Existing law does the following:

Defines "unsafe handgun" as any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms and does not pass listed tests, as specified. (Penal Code 12126.)

Requires any concealable firearm manufactured in California, or intended to be imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Penal Code 12130.)

Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being

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concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Penal Code 12131(a).)

Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not to be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Penal Code 12131(b)(1).)

Existing law provides that the sale, loan or transfer of firearms in almost all cases must be processed by, or through, a state licensed dealer or a local law enforcement agency with appropriate transfer forms being used. (Penal Code 12072(c) and (d) and 12084.) In those cases where dealer or law enforcement processing is not required, a handgun change of title report must still be sent to the Department of Justice (DOJ). (Penal Code 12078.)

Existing law provides that, on request, DOJ will register transactions relating to handguns in the Automated Firearm System Unit for persons who are exempt from dealer processing or are otherwise exempt by statute from reporting processes. (Penal Code 12078(1).)

Existing law requires handguns to be centrally registered at time of transfer or sale due to various transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to DOJ indicating who owns what handgun by make, model, and serial number and the date thereof. (Penal Code 11106(a) and (c).) Law enforcement agencies must promptly

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report to DOJ all reports they receive of lost, stolen, and found property. (Penal Code 11107 and 11108.) DOJ must keep a centralized and computerized list of all lost, stolen, and found serialized property reported to it. (Penal Code 11106(a).)

Existing law makes it a crime for any person with knowledge of any change, alteration, removal, or obliteration described herein, who buys, receives, disposes of, sells, offers for sale, or has in his or her possession any pistol, revolver, or other firearm which has had the name of the maker, model, or the manufacturer's number or other mark of identification including any distinguishing number or mark assigned by the Department of Justice changed, altered, removed, or obliterated, punishable as a misdemeanor. (Penal Code 12094.)

Existing federal law provides that it shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered, or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce. (Title 18 USCS 922(k).)

This bill requires that commencing January 1, 2010, all semiautomatic pistols that are not already listed on the "not unsafe handgun" roster shall be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched into the interior surface or internal working parts of the pistol, and which are transferred by imprinting on each cartridge case when the firearm is fired.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION ("ROCA") IMPLICATIONS

California currently faces an extraordinary and severe prison and jail overcrowding crisis. California's prison capacity is

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nearly exhausted as prisons today are being operated with a significant level of overcrowding.<1> In addition, California's jails likewise are significantly overcrowded. Twenty California counties are operating under jail population caps. According to the State Sheriffs' Association, "counties are currently releasing 18,000 pre and post-sentenced inmates every month and many counties are so overcrowded they do not accept misdemeanor bookings in any form,"<2> In January of this year the Legislative Analyst's office summarized the trajectory of California's inmate population over the last two decades:

During the past 20 years, jail and prison populations have increased significantly. County jail populations have increased by about 66 percent over that period, an amount that has been limited by court-ordered population caps. The prison population has grown even more dramatically

during that period, tripling since the mid-1980s.<3>

The level of overcrowding, and the impact of the population crisis on the day-to-day prison operations, is staggering:

As of December 31, 2006, the California Department of Corrections and Rehabilitation (CDCR) was estimated to have 173,100 inmates in the state prison system, based on CDCR's fall 2006 population projections. However, . . . the department only operates or contracts for a total of 156,500 permanent bed capacity (not including out-of-state beds, . . .), resulting in a shortfall of about 16,600 prison beds relative to the inmate population. The most significant bed shortfalls are for Level I, II, and IV inmates, as

- <1> Analysis of the 2007-08 Budget Bill: Judicial and Criminal Justice, Legislative Analyst's Office (February 21, 2007).
 <2> Memorandum from CSSA President Gary Penrod to Governor, February 14, 2007.
 <3> California's Criminal Justice System: A Primer. Legislative Analyst's Office (January 2007).

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well as at reception centers. As a result of the bed deficits, CDCR houses about 10 percent of the inmate population in temporary beds, such as in dayrooms and gyms. In addition, many inmates are housed in facilities designed for different security levels. For example, there are currently about 6,000 high security (Level IV) inmates housed in beds designed for Level III inmates.

. . . (S)ignificant overcrowding has both operational and fiscal consequences. Overcrowding and the use of temporary beds create security concerns, particularly for medium- and high-security inmates. Gyms and dayrooms are not designed to provide security coverage as well as in permanent housing units, and overcrowding can contribute to inmate unrest, disturbances, and assaults. This can result in additional state costs for medical treatment, workers' compensation, and staff overtime. In addition, overcrowding can limit the ability of prisons to provide rehabilitative, health care, and other types of programs because prisons were not designed with sufficient space to provide these services to the increased population. The difficulty in providing inmate programs and services is exacerbated by the use of program space to house inmates. Also, to the extent that inmate unrest is caused by overcrowding, rehabilitation programs and other services can be disrupted by the resulting lockdowns.<4>

As a result of numerous lawsuits, the state has entered into several consent decrees agreeing to improve conditions in the state's prisons. As these cases have continued over the past several years, prison conditions nonetheless have failed to improve and, over the last year, the scrutiny of the federal courts over California's prisons has intensified.

- <4> Analysis 2007-08 Budget Bill, supra, fn. 1.

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In February of 2006, the federal court appointed a receiver to take over the direct management and operation of the prison medical health care delivery system from the state. Motions filed in December of 2006 are now pending before three federal court judges in which plaintiffs are seeking a court-ordered

limit on the prison population pursuant to the federal Prison Litigation Reform Act. Medical, mental health and dental care programs at CDCR each are "currently under varying levels of federal court supervision based on court rulings that the state has failed to provide inmates with adequate care as required under the Eighth Amendment to the U.S. Constitution. The courts found key deficiencies in the state's correctional programs, including: (1) an inadequate number of staff to deliver health care services, (2) an inadequate amount of clinical space within prisons, (3) failures to follow nationally recognized health care guidelines for treating inmate-patients, and (4) poor coordination between health care staff and custody staff."<5>

This bill does not appear to aggravate the prison and jail overcrowding crisis outlined above.

COMMENTS

1. Need for This Bill

According to the author:

California has an enormous and diverse problem of unsolved homicides committed with handguns. No arrest is made in approximately 45% of all homicides in California because police lack the evidence they need. Of the approximately 2400 homicides in California per year over 60% are committed with handguns (2004 DOJ data). Approximately 70% of new handguns sold in California are semiautomatics ("Handgun Commerce in California 1999," Sacramento: Violence Prevention Research Program, 2002)

<5> Primer, supra, fn. 4.

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Microstamping technology would give law enforcement a tool that will provide evidence to help investigate, arrest and convict more people who use semiautomatic handguns in crimes. It will provide rapid leads in the first crucial hours after a homicide.

AB 1471 will help law enforcement identify and apprehend armed gang members before they inflict more harm on others, including innocent bystanders. In instances of drive-by shootings, where the only evidence at the crime scene may be a spent cartridge case, law enforcement could quickly obtain a critical lead.

2. What is Microstamping?

The following information from NanoMark Technologies (Hitachi Via Mechanics USA, Inc. in Londonderry, New Hampshire) is taken from their website
(<http://www.nanomark.com/Ballistic-id-tagging/ballistic-id.htm>.)

NanoMark Technologies has developed a PATENTED BALLISTIC TAGGING TECHNOLOGY. The technology places an identification mark on each cartridge casing ejected from a properly outfitted firearm at the moment of firing each bullet. The idea is to have this technology integrated in firearms as an alternative to the ballistic "fingerprinting" methods currently under such hot debate.

Today's common "ballistic fingerprinting" technology is the computer automation of the science practiced by Forensic Firearms Examiners. These specialists have honed the science of comparing the signature of two bullets and/or cartridges, and have shown an extremely high degree of success as long as two physical specimens are available for the match. In ballistic fingerprinting, it is hoped that a computer can

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compare one physical piece of evidence to a virtual picture of the first ammunition fired by a firearm. Relying on a vast database containing tediously large image files, the computer systems have fallen short in delivering accuracy and repeatability. This has called into question the concept of ballistic fingerprint database technology's readiness by some of the most respected Forensic Firearms Examiners in the world.

Our technology eliminates the need for national gun registration or a national database for new guns sold. The ID marks delivered by Ballistic ID Tagging can be simply viewed by utilizing imaging equipment commonly found at local, state and federal forensics laboratories. Because of its uniqueness, it does not require extensive cross-jurisdictional ballistic image databases or a national ballistic image database containing the files of new guns sold every year.

Our technology imparts a unique, indelible, and microscopic code onto the cartridge casings when a bullet is fired and the cartridge case is ejected from a properly outfitted firearm. This code takes the form of encrypted symbols, bar codes or simple alpha-numeric characters (such as a serial number or some type of tracking number) that can be accessed at the individual manufacturers' level. This type of identifier would immediately and unquestionably lead investigators to a specific gun without requiring the manpower and expense associated with the creation and maintenance of a ballistic image database containing millions of images. Furthermore, it has been shown that as a gun wears over time, its fingerprint changes enough to confuse the current generation of database search routines.

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(All emphasis in original.)

3. What This Bill Would Do

AB 1471 provides that, after January 1, 2010, semiautomatic pistols that are not already listed on the "safe handgun list" maintained by the Department of Justice would be required to be designed and equipped with "a microscopic array of characters that identify the make, model, and serial number of the pistol, etched into the interior surface or internal working parts of the pistol, and which are transferred by imprinting on each cartridge case when the firearm is fired." This would apply only to new models of semiautomatic pistols that a manufacturer offered for sale in California after January 1, 2010. Handgun owners would not be required to turn in their previously purchased handguns and gun dealers would still be permitted to sell all the existing models that could be legally sold in California (i.e., were on the "safe handgun list") prior to January 1, 2010, that do not have this microstamping technology.

4. Questions of Efficacy

Opponents of this bill raise a number of issues regarding the efficacy of the microstamping technology. Many of these arguments address the possibility that the microstamp could be defaced or otherwise defeated by a determined criminal. While these claims are open to debate, they are somewhat beside the point because most people who use firearms in a crime would, in all likelihood, not exhibit enough determination or skill to either file down the firing pin or plant pre-fired cartridges at a crime scene or engage in any similar form of subterfuge. The real question is, would this technology help law enforcement in a significant number of cases to trace a crime bullet to the gun that fired it? If so, while there might still be questions relating to the ability to positively establish a chain-of-custody in relation to the gun or other limitations of

the evidence, it seems clear that this information would provide an extremely useful lead for investigators to follow in their

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attempts to solve gun-related crimes.

The most significant question regarding the efficacy of the technology is whether the stamp would actually work the way the manufacturer claims; that is, would the stamp be legible under most real-life circumstances? In the Winter 2006 issue of the peer-reviewed journal of Association of Firearm and Toolmark Examiners (AFTE Journal), <6> George Krivosta, Suffolk County Crime Laboratory, Hauppauge, New York, published the finding of his tests of the NanoMark microstamping technology. Krivosta tested two different firing pins engraved with NanoMark microstamps placed in, "one of the most popular pistols made":

Each of the two firing pins was placed in a Colt .45 auto caliber semiautomatic pistol, customized Government Model. Each firing pin was test fired using Winchester and Federal brands of ammunition, to generate a total of ten cartridge cases for microscopic examination and comparison. Initial testing with one of the pins required an examination of all ten test fired casings to determine that the NanoTag" serial number of this pin was "OH5K B4M3". The other pin was NanoTag" engraved with many, much

<6> The publishers state: "All papers published in The AFTE Journal are reviewed for scientific validity, logical reasoning, and sound methodology, where applicable. The editor, assistant editors, and the editorial review panel conduct a detailed review of all papers prior to publication. Papers in which the author engages in experimentation or testing from which conclusions are drawn, or those that present an opinion, technique, or method having scientific significance are all subject to post-publication review by the members of the Association of Firearm & Toolmark Examiners. The "AFTE Peer Review and Letters to the Editor" section of the Journal provides a forum for post-publication review."

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smaller, fonts. It was found to have "NanoTag", the numerals 0 to 9, and the entire alphabet engraved into the pin's tip. The vast majority of this pin's characters were never visualized in the firing pin mark of any of the expended cartridge cases generated and examined.

Krivosta concludes, "[c]ertainly this research has shown that implementing this technology will be much more complicated than burning a serial number on a few parts and dropping them into firearms being manufactured."

Todd Lizotte, co-inventor and Board Member of NanoMark Technologies, when contacted by Committee staff, correctly pointed out that Krivosta had set out to test whether microstamped images left on cartridge casings in normal conditions using the NanoMark microstamping technology, would be legible without resorting to the "use of highly trained and skilled individuals." To test this, Lizotte states, Krivosta attempted to read the markings using a method known as "Optical Microscopy Stereo with Polarization." Lizotte explained that the results Krivosta observed would have been different, and the markings would have been "fully legible," if a more sophisticated method had been used to read the markings known as, "Scanning Electron Microscopy (SEM) (Standard and Backscatter Methods)."

IS THIS TECHNOLOGY SUFFICIENTLY EFFECTIVE TO REQUIRE THAT IT BE

UTILIZED IN ALL NEW MODEL SEMIAUTOMATIC HANDGUNS SOLD IN CALIFORNIA AFTER JANUARY 1, 2010?

5. Can Broken Parts Be Replaced ?

Penal Code section 12090 states that it is a felony to change, alter, remove or obliterate the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by DOJ to any firearm, without the written permission of DOJ. Additionally, Penal Code section 12091 states that possession of a handgun upon which the name of the maker, model,

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manufacturer's number or other mark of identification has been changed, altered, removed or obliterated is presumptive evidence that the person in possession is responsible for the alteration, removal, etc. However, the California Court of Appeal found Penal Code section 12091 unconstitutional in 2001. (In re Christopher K. 91 Cal. App.4th 853 (2001).) Nonetheless, section 12090 would appear to prohibit, as to any gun sold with microstamping technology, any replacement of the firing pin or any other part of the pistol that stamps the cartridge casing with the identifying information, unless that replacement part has the same microstamping characteristics as the broken part. For the replacement part to bear the pistol's unique identifying information, it would have to be specially made by the gun's manufacturer.

6. Is This a Sole Source Technology ?

Microstamping technology is a patented technology belonging to one company, NanoMark Technologies. Does it present public policy concerns to mandate a manufacturing industry's use of a product when that product is only provided by a single source? In response to these concerns, Todd Lizotte, Board Member of NanoMark Technologies, issued a press release on June 15, 2007, stating the following:

NanoMark a wholly owned division of ID, LLC is issuing this press release to clarify that a royalty free license will be provided and cover its patented microstamping technology as applied to semi-automatic handguns sold for civilian use within the United States and its territories, as stipulated and in support of AB1471.

Highlights:

Royalty free license for semi-automatic firearms (as stipulated in AB1471) for civilian use over the entire United States and its territories. The license will provide options for process outsourcing or job-shop. Microstamping job-shops across the United States currently outfitted with the equipment will provide

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processing services to the industry as an alternative to purchasing the capital equipment. (No capital investment required by large and small manufacturers as an option.) No sole source, the License will provide the firearm industry a variety of options for selecting pre-qualified equipment suppliers and job-shop services or they will have the option of building their own equipment or use existing equipment to perform the microstamping process.

AB 352 (Koretz) of the 2005-2006 legislative session was substantially similar to this bill and the same concerns regarding the sole source issue were raised in both the Assembly Public Safety and Senate Public Safety Committee analyses. To address those concerns AB 352 was amended on the Senate floor to include the following language (new amended language is highlighted):

(7) Commencing January 1, 2009, for all semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it is not designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched ~~into~~ or otherwise imprinted onto the interior surface or internal working parts of the pistol, and which are transferred by imprinting on each cartridge case when the firearm is fired, and further provided that a technology to create the imprint, if reliant upon a patent, is available to more than one manufacturer. A method of equal or greater reliability and effectiveness in identifying ammunition fired from a firearm than that which is set forth in this paragraph, via an imprint on a cartridge may also be approved by the Attorney General and thereafter required as otherwise set forth by this paragraph. Approval by the Attorney General shall include notice of that fact via regulations adopted by the Attorney General for purposes of implementing that method for purposes of this section.

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NOTE: The author will propose the following amendment in Committee:

after the word "fired" on page 3, line 14, insert:

provided that the Department of Justice certify that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions. The Attorney General may also approve a method of equal or greater reliability and effectiveness in identifying the specific serial number of a firearm from spent cartridge casings discharged by that firearm than that which is set forth in this paragraph, to be thereafter required as otherwise set forth by this paragraph where the Attorney General certifies that this new method is also unencumbered by any patent restrictions. Approval by the Attorney General shall include notice of that fact via regulations adopted by the Attorney General for purposes of implementing that method for purposes of this paragraph.

DOES THIS BILL REQUIRE A MANUFACTURING INDUSTRY TO BUY A PRODUCT THAT IS PATENTED AND ONLY MADE BY ONE COMPANY?

IF SO, DOES THE AUTHOR'S AMENDMENT ADEQUATELY ADDRESS THE SOLE SOURCE ISSUE?

7. UC Davis Press Release

On May 3, 2007, UC Davis issued a press release under the title, "Microstamping Guns Feasible but Flawed, Study Finds." As it turns out, the press release was both inaccurate and misleading. In a letter to the author of AB 1471 dated May 15, 2007, UC Davis Chancellor stated:

First, this is an "Author's Report" and was posted by California Policy Research Center (CPRC), which funded the study, before CPRC's usual academic peer review and state legislative briefings, which violates CPRC's

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own policy. As well, public release of the report and issuance of a press release by UC Davis was premature.

Second, contrary to the press release, the Legislature did not commission the study. The study was faculty-initiated with the CPRC.

Finally, I understand that you have concerns about the

relevance of the specific contents of this study to your pending legislation, especially with respect to (1) the age and kinds of guns used in the study as compared to those that are covered in your legislation, (2) the technology tested in the study as compared to the technology called for in the legislation, and (3) differences in the amount of microstamping examined in the study compared to the amount of microstamping required in your legislation. While the accuracy of the findings can and must be assessed by the upcoming peer review, the press release should have not connected the study results with the legislation.

I regret the issuance of this press release, premature posting of the report, the implication that the study pertains to your legislation, and the inaccurate statement about the legislative origins of the report. Please accept my apologies for complicating, rather than elucidating, a sensitive public policy issue on which you have taken statewide leadership.

8. Arguments in Support

The California Chapters of the Brady Campaign to Prevent Gun Violence state:

Assembly Bill 1471 would require that newly designated semi-automatic handguns sold after January 1, 2010, be equipped with "micro-stamping" technology. This technology consists of engraving microscopic characters onto the firing pin and other interior

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surfaces, which would be transferred onto the cartridge casing when the handgun is fired. Micro-stamping technology would substantially enhance law enforcement's ability to rapidly identify and link shell casings found at a crime scene to the individual semi-automatic handgun from which it was fired and to the gun's last lawful possessor.

Nearly half of the homicides in California are unsolved and the majority of homicides are committed with handguns. In this time of escalating gang violence in our state, new tools for finding and apprehending armed criminals are needed. AB 1471 would help law enforcement solve murders and other handgun crimes as the information provided by a microstamped cartridge casing gives police important leads in the first crucial hours after a crime.

In addition, AB 1471 would help reduce trafficking of new semi-automatic handguns by creating accountability. Legal purchasers who buy guns for traffickers ('straw' buyers), will be deterred when they realize that microstamped casings can be traced directly back to them. Consequently, this big source of crime guns, which rapidly fall into the hands of criminals and gang members, would be disrupted. Curbing the flow of illegal guns to prohibited purchasers, including felons and violent teens, would reduce gun violence in our streets and protect the innocent bystanders.

Microstamping will not impose a new cost on the state of California as no new database or procedures are required. California already has a system for tracking guns and their owners and after a crime, law enforcement will simply check the existing database. Buyers of micro-stamping handguns will notice no change in the purchasing process as no new permitting or information is needed. Existing handguns and existing handgun owners will not be impacted by this

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bill since the law only applies to new handguns.

The microstamping technology is highly tamper resistant. The redundant markings are durable and routine maintenance and servicing of the firearm will not affect the technology. Criminals will find it extremely difficult to defeat the technology. AB 1471 has broad support from police chiefs around the state, who want this new tool for solving handgun crime and curbing the flow of illegal weapons to prohibited purchasers.

The Stockton Police Department states:

The Stockton Police Department believes that AB 1471 would allow law enforcement to positively link used cartridge casings recovered at crime scenes to the crime gun. Further, AB 1471 would help law enforcement solve handgun crimes, reduce gang violence, and reduce gun trafficking of new semiautomatic handguns.

* * * * *

One of the benefits of microstamping technology is that it does not require any new database or additional information from gun purchasers and will be virtually cost free for law enforcement. The cartridge casings expelled from the firearm will indicate the serial number of the firearm, which is already available through the dealer record of sale. Using California's current handgun database, the owner of the gun can then be identified. Finding the guns and identifying its owners are critical pieces of information for violent gun crime investigation.

9. Arguments in Opposition

The North State Sheriffs' state:

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As we see it, the technology to implement the micro-stamping is flawed, there would be an increase in the potential for civil liability for law enforcement agencies that continue to use handguns which will be placed on the "unsafe" handgun list, there would be an increase in law enforcement training costs due to not being able to reuse spent cartridge casings, the technology could be easily defeated since the stamping is only 25 microns deep and the cost of the technology would be passed on to law enforcement agencies and citizens alike.

The California Association of Firearm Retailers state:

The technology which this proposed bill seeks to promote has not been shown to work under actual field conditions. Mandating its implementation by law at this time would be excessively premature as it cannot be scientifically justified, and it has not been proven to be practical in application. Impartial testing to date has raised very serious questions relative to whether this technology could actually work in the field given all the variables and other factors that are present outside of the laboratory.

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For example, criminals can easily defeat it in a number of different ways, and it is well known that the overwhelming majority of handguns used in crime are stolen. Fired casings from them found at crime scenes in most cases would not lead law enforcement to the actual perpetrator. Placing micro-stamping on semi-automatic handguns, even if the technology was reliable, would be ineffective as a law enforcement tool.

Furthermore, micro-stamping is a "sole source" technology at the present time. It is owned by a single company. If micro-stamping did work, a matter that the results of recent independent scientific research casts in doubt and highly questions, it would probably continue to be "sole source" as other forms of cartridge case marking have reportedly been proven to be more difficult and costly to engineer.

This increases the likelihood that the sole source problem would in fact continue and that the costs of using it would not be contained by realistic competition. The result would be higher costs for retailers and their customers for a system that is not reliable and would not be of much assistance to law enforcement.

The California Rifle and Pistol Association, Inc., states:

Though the mechanical technology this proposed legislation seeks to promote has been shown to sometimes work under tightly controlled and limited laboratory conditions, it has not been adequately tested for the actual conditions under which it would be utilized. In fact, testing to date shows that [it] would not work well in real life application.

Whether the technology actually and consistently works (a matter that has not been proven) is just one factor

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to consider. Regardless of the technology, legislation should not be enacted that would be ineffective in achieving its purported purpose.

For example, how many rounds of fire ammunition can the proposed markings endure before being worn off? [] [W]hat about lacquered primers or dirt and debris filling or fouling the characters making them unreadable? [] [W]hat happens when a firing pin breaks and the local gunsmith does not have the expensive micro-engraving equipment necessary to mark the replacement (in such a case would the customer and gunsmith be subject to felony prosecution for violations of Penal Code sections 12090 and 12091)? [] [W]hat about the fact that this technology can be readily defeated by a criminal using a file, sand paper, hone, or other implement? The list of applicable unanswered questions is a long one.

EXHIBIT D

D000001

BILL ANALYSIS

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Date of Hearing: May 16, 2007

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Mark Leno, Chair

AB 1471 (Feuer) - As Amended: April 10, 2007

Policy Committee: Public
SafetyVote: 5-2Urgency: No State Mandated Local Program:
Yes Reimbursable: No

SUMMARY

This bill requires, effective January 1, 2010, all semiautomatic pistols not already designated as safe handguns, pursuant to the Department of Justice's (DOJ) registry, to be equipped with microscopic characters, identifying the make, model, and serial number of the pistol, imprinted in two or more places, onto the interior surface or internal working parts of the pistol, which are transferred by imprinting on each cartridge case when the gun is fired.

FISCAL EFFECT

Unknown, likely minor, nonreimbursable local law enforcement costs for increased county jail commitments for misdemeanor possession or sale of unsafe handguns, the category of which would expand pursuant to this bill.

COMMENTS

1) Rationale . Microstamping uses lasers to make precise microscopic engravings on the firing pin and the interior surfaces of the firing chamber of a gun. Those markings, which include the make, model and serial number of the gun, are imprinted on the cartridge case when the gun is fired. Examining a spent cartridge case can identify the microstampings of the gun that fired the round.

According to the author, "This bill is about catching criminals. This bill will allow law enforcement to positively link used cartridge casings recovered at crime scenes to the crime gun. This bill will: (a) help law enforcement solve

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handgun crimes; (b) help reduce gang violence; and, (c) help reduce gun trafficking of new semi-automatic handguns."

2) Proponents , including the Brady Campaign to Stop Gun Violence and a number of police chiefs contend microstamping provides an opportunity for assisting law enforcement in solving gun crimes. With microstamping, state and local law enforcement agencies need not maintain computer equipment or databases. Cartridge cases recovered at crime scenes can lead investigators to the guns that fired them via existing systems.

According to the Brady Campaign, "Micro-stamping will not impose a new cost on the state of California as no new database or procedures are required. California already has a system for tracking guns and their owners. At the scene of a crime, law enforcement will simply check the existing database. Buyers of micro-stamping handguns will notice no change in the purchasing process as no new permitting or information is needed. Existing handguns and existing handgun owners will not be impacted by this bill since the law only applies to new handguns.

3) Opponents , generally gun-related groups, contend criminals could circumvent microstamping by defacing the microstamp, tossing dummy shell casings at a crime scene, or simply by using a revolver that does not eject a shell casing.

4) Current law requires that manufacturing, selling, furnishing or possessing an unsafe handgun is a misdemeanor, punishable by up to one year in the county jail. An unsafe handgun is defined as any handgun that lacks specified safety mechanisms.

DOJ maintains a registry of all safe handguns sold by a licensed dealer in California including, but not limited to, the buyer's name, address and other identifying information,

including serial number.

5) Prior Legislation . AB 352 (Koretz), 2005-06, was similar to AB 1471. AB 352 passed the Assembly and the Senate, with 41 and 22 votes respectively, and failed on concurrence in the Assembly.

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Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081

EXHIBIT E

E000001

BILL ANALYSIS

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Date of Hearing: April 17, 2007
Counsel: Kimberly A. Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Jose Solorio, Chair

AB 1471 (Feuer) - As Amended: April 10, 2007

SUMMARY : Requires specified semiautomatic pistols to be equipped with microscopic identifying markings which are transferred to each cartridge case when the firearm is fired. Specifically, this bill :

1) States, beginning January 1, 2010, all semiautomatic pistols not already designated as safe handguns, as specified, to be equipped with microscopic characters that identify the make, model, and serial number of the pistol etched in two or more places on the interior surface or internal working parts of the pistol which are transferred by imprinting on each cartridge case when the firearm is fired.

2) Makes other technical, non-substantive changes.

EXISTING LAW :

1) Requires, commencing January 1, 2001, that manufacturing, importing into California for sale, keeping for sale, offering or exposing for sale, giving, or lending any unsafe handgun is a misdemeanor, punishable by up to one year in the county jail. [Penal Code Section 12125.]

2) Defines "unsafe handgun" as any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified. [Penal Code 12126.]

3) Requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. [Penal Code Section 12130.]

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4) Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in California, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. [Penal Code Section 12131(a).]

5) Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. [Penal Code Section 12131(b)(1).]

6) Requires the DOJ to maintain a registry of all handguns sold by a licensed dealer in California including, but not limited to, the buyer's name, address and other identifying information, as well as the serial number of the weapon sold. [Penal Code Section 11106.]

FISCAL EFFECT : Unknown

COMMENTS :

1) Author's Statement : According to the author, "This bill is about catching criminals. This bill will allow law enforcement to positively link used cartridge casings recovered at crime scenes to the crime gun. This bill will:
(a) help law enforcement solve handgun crimes; (b) help reduce

gang violence; and, (c) help reduce gun trafficking of new semi-automatic handguns.

"One of the most important pieces of this legislation is that it places no additional burden to gun owners. The additional cost will be \$0.50 to \$2 a gun and no new licenses or permits are required.

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"California has an enormous and diverse problem of unsolved homicides committed with handguns. No arrest is made in approximately 45% of all homicides in California because police lack the evidence they need. Of the approximately 2,400 homicides in California per year over 60% are committed with handguns (2004 DOJ data). Approximately 70% of new handguns sold in California are semiautomatics ('Handgun Commerce in California 1999,' Sacramento: Violence Prevention Research Program, 2002).

"Microstamping technology would give law enforcement a tool that will provide evidence to help investigate, arrest and convict more people who use semiautomatic handguns in crimes and will provide rapid leads in the first crucial hours after a homicide.

"This bill will help law enforcement identify and apprehend armed gang members before they inflict more harm on others, including innocent bystanders. In instances of drive-by shootings where the only evidence at the crime scene may be a spent cartridge case, law enforcement could quickly obtain a critical lead."

2) Feasibility Study : The Legislature recently ordered a feasibility study by DOJ to consider a similar technology, ballistic fingerprinting, which had been proposed to accomplish the same purpose, i.e., to trace evidence left at a crime scene to a particular gun and that gun's owner. The result of AB 1717(Hertzberg), Chapter 271, Statutes of 2000, was that the proposal was determined not to be feasible

3) Arguments in Support :

a) The California Chapters of the Brady Campaign to Prevent Gun Violence state, "This bill would require that newly designated semi-automatic handguns sold after January 1, 2010, be equipped with 'micro-stamping' technology. This technology consists of engraving microscopic characters onto the firing pin and other interior surfaces, which would be transferred onto the cartridge casing when the handgun is fired. Micro-stamping technology would substantially enhance law enforcement's ability to quickly identify and link shell casings found at a crime scene to the individual semi-automatic handgun from which it was fired and to the gun's law lawful possessor.

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"Nearly one-half of the homicides in California are unsolved and the majority of homicides are committed with handguns. In this time of escalating gang violence in our state, new tools for finding and apprehending armed criminals are needed. This bill would help law enforcement solve murders and other handgun crimes as the information provided by a micro-stamped cartridge casing gives police important leads in the first crucial hours after a crime.

"In addition, this bill would help reduce trafficking of new semi-automatic handguns by creating accountability. Legal purchasers who buy guns for traffickers ('straw' buyers), will be deterred when they realize that micro-stamped casings can be traced directly back to them. Consequently, this big source of crime guns, which rapidly fall into the hands of criminals and gang members, would be disrupted. Curbing the flow of illegal guns to prohibited purchasers, including felons and violent teens, would reduce gun violence in our streets and protect the innocent bystanders.

"Micro-stamping will not impose a new cost on the state of California as no new database or procedures are required. California already has a system for tracking guns and their

owners. At the scene of a crime, law enforcement will simply check the existing database. Buyers of micro-stamping handguns will notice no change in the purchasing process as no new permitting or information is needed. Existing handguns and existing handgun owners will not be impacted by this bill since the law only applies to new handguns.

"The micro-stamping technology is highly tamper resistant. The redundant markings are durable and routine maintenance and servicing of the firearm will not affect the technology. Criminals will find it extremely difficult to defeat the technology. This bill is supported by law enforcement as it will assist in solving handgun crime and curbing the flow of illegal weapons to prohibited purchasers."

- b) The Fresno Police Department states, "As a law enforcement executive, I want my department to have the best tools available to decrease the level of violent gun

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crime in our state and increase public safety. Firearm identification from physical evidence left behind at the crime scene is essential to the investigation and prosecution of gun crime. In this bill, the California Legislature is considering requiring 'microstamping' technology on all newly designed semi-automatic handguns.

" 'Microstamping' technology consists of engraving microscopic characters on the firing pin and other interior gun parts, which would be transferred onto the cartridge casing when the handgun is fired. The markings would identify the make, model and serial number of the gun and enable law enforcement to rapidly link shell casings found at the crime scene to the individual semi-automatic handgun from which they were fired, and then to the last lawful possessor. This technology will provide law enforcement with a critical lead in finding armed criminals or 'straw buyers' who illegally traffic weapons to prohibited purchasers. The technology will also add additional information into the crime gun trace database, which will help law enforcement identify gun trafficking channels.

"One of the benefits of microstamping technology is that it does not require any new database or additional information from gun purchasers and will be virtually cost free for law enforcement. The cartridge casings expelled from the firearm will indicate the serial number of the firearm, which is already available through the dealer record of sale. Using California's current handgun database, the owner of the gun can then be identified. Finding the guns and identifying its owners are critical pieces of information for violent gun crime investigation."

4) Arguments in Opposition :

- a) The Crossroads of the West Gun Shows states, "At the shows, licensed firearms dealers buy and sell handguns in strict adherence to all applicable laws. When buying or selling a previously owned handgun, how will the dealer and the customer know of the microstamping has been removed or worn away in violation of Penal Code Sections 12090 and 12091? In those cases where the microstamping is known to be missing, such as a broken firing pin; how can it legally be restored? Most dealers, gunsmiths, or members of the public will not have the equipment necessary to do so.

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Could a gun show operator incur liability if a dealer at a gun show or a gun show attendee, either knowingly or unwittingly, possessed a handgun in violation of the prohibition against obliterating a manufacturer's identifying marks on a firearm? In the case of this bill, such a violation could easily occur either as a result of firing pin breakage or normal wear. There are many practical problems that would make this bill undesirable, even if the technology was generally workable. Whether it would actually work in real life application is seriously in question."

- b) The California Association of Firearm Retailers state,

"The technology which this proposed bill seeks to promote has not been shown to work under actual field conditions. Mandating its implementation by law at this time would be excessively premature as it cannot be scientifically justified, and it has not been proven to be practical in application. Impartial testing to date has raised very serious questions relative to whether this technology could actually work in the field given all the variables and other factors that are present outside of the laboratory.

"For example, criminals can easily defeat it in a number of different ways, and it is well known that the overwhelming majority of handguns used in crime are stolen. Fired casings from them found at crime scenes in most cases would not lead law enforcement to the actual perpetrator. Placing micro-stamping on semi-automatic handguns, even if the technology was reliable, would be ineffective as a law enforcement tool.

"Furthermore, micro-stamping is a 'sole source' technology at the present time. It is owned by a single company. If micro-stamping did work, a matter that the results of recent independent scientific research casts in doubt and highly questions, it would probably continue to be 'sole source' as other forms of cartridge case marking have reportedly been proven to be more difficult and costly to engineer.

"This increases the likelihood that the sole source problem would in fact continue and that the costs of using it would not be contained by realistic competition. The result would be higher costs for retailers and their customers for

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a system that is not reliable and would not be of much assistance to law enforcement."

5) Prior Legislation :

a) AB 352 (Koretz), of the 2005-06 Legislative Session, would have required specified semiautomatic pistols to be equipped with microscopic identifying markings which are transferred to each cartridge case when the firearm is fired. The Assembly refused to concur with the Senate amendments.

b) SB 357 (Dunn), of the 2005-06 Legislative Session, would have established a program requiring the serialization of handgun ammunition. SB 357 was substantially amended.

REGISTERED SUPPORT / OPPOSITION :

Support

American College of Emergency Physicians, California Chapter
Antioch Police Department
Brentwood Police Department
Burlingame Police Department
California Chapters, Brady Campaign to Prevent Gun Violence
Capitola Police Department
City of Los Angeles
Clayton Police Department
Clearlake Police Department
Concord Police Department
Costa Mesa Police Department
Emeryville Police Department
Fresno Police Department
Friends Committee on Legislation
Gray Panthers California
Grover Beach Police Department
Healdsburg Police Department
Huntington Police Department
Jerry Sanders, Mayor of San Diego
Legal Community Against Gun Violence
Los Alamitos Police Department
National City Police Department
Newport Beach Police Department
Oakland Police Department
Pinole Police Department

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Salinas Police Department

San Diego Police Department
Santa Barbara County Coalition Against Gun Violence
Seaside Police Department
Stockton Police Department
Stop Gun Violence Orange County Citizens for the Prevention of
Gun Violence
Tustin Police Department
Vernon City Police Department
Violence Prevention Coalition of Orange County
Violence Prevention Coalition of Orange County
Walnut Creek Police Department
Westminster Police Department

Opposition

California Association of Firearm Retailers
California Outdoor Heritage Alliance
California Rifle and Pistol Association
California Sportsman's Lobby
Crossroads of the West Gun Shows
Gun Owners of California
National Rifle Association of America
Outdoor Sportsmen's Coalition of California
Safari Club International
Sporting Arms and Ammunition Manufacturers' Institute (SAAMI)
8 private citizens

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8
9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12

13 **IVAN PEÑA, ROY VARGAS, DOÑA**
14 **CROSTON, BRETT THOMAS, SECOND**
15 **AMENDMENT FOUNDATION, INC. and**
THE CALGUNS FOUNDATION, INC.,

16 Plaintiffs,

17 v.

18 **STEPHEN LINDLEY,**

19 Defendant.
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Case No. 2:09-CV-01185-KJM-CMK

**DEFENDANT STEPHEN LINDLEY'S
RESPONSE TO PLAINTIFFS'
STATEMENT OF UNDISPUTED FACTS**

1	1. Handguns are arms of the kind in common use for traditional lawful purposes.	Disputed. This is a legal contention, not a statement of fact. <i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) speaks for itself. This contention is also irrelevant.
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4	2. Semi-automatic firearms with detachable magazines are arms of the kind in common use for traditional lawful purposes.	Disputed. This is a legal contention, not a statement of fact. Additionally, the “ATF Report” relied upon by plaintiffs does not show this. Nor does paragraph 15 of the declaration of Mr. Hoffman, which defendant objects to as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. This contention is also irrelevant.
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8	3. Semi-automatic firearms with detachable magazines utilizing center-fire ammunition are arms of the kind in common use for traditional lawful purposes.	Disputed. This is a legal contention, not a statement of fact. Additionally, the “ATF Report” relied upon by plaintiffs does not show this. Nor does paragraph 15 of the declaration of Mr. Hoffman, which defendant objects to as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. This contention is also irrelevant.
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13	4. California Law provides that “any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
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18	5. California law presumes that <i>all</i> handguns are “unsafe” and therefore, generally barred from importation and sale, unless those handguns have been placed on the state’s special roster of handguns “determined not to be unsafe.”	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
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1	6. Since 2007, a center-fire ¹ semiautomatic ² handgun cannot make the roster if it does not have both a chamber load indicator and, if it has a detachable magazine, a magazine disconnect mechanism.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. Also, plaintiffs cite no evidence or other authority for the propositions set forth in footnotes 1 or 2.
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5	7. Since 2006, a rimfire ³ semi-automatic handgun must have a magazine disconnect mechanism if it has a detachable magazine.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. Also, plaintiffs cite no evidence or other authority for the proposition set forth in footnote 3.
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9	8. Handguns rostered prior to the effective dates of these requirements can remain rostered despite lacking these features.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
10		
11	9. A magazine disconnect mechanism is “a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.”	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
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16	10. A chamber load indicator (“CLI”) is “a device that plainly indicates that a cartridge is in the firing chamber.”	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
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¹ Most handguns use center-fire ammunition, which fires a bullet when the center of the cartridge is struck by the gun’s firing pin, igniting the primer.

² A semi-automatic handgun is handgun that fires one bullet each time the trigger is pulled, with the firing of each bullet causing the next round to be loaded into the chamber from a magazine. Most handguns in the United States are semi-automatic. Almost all the rest are revolvers, which hold several rounds in a rotating cylinder and also fire one bullet with each pull of the trigger. Nothing in the challenged laws, or this litigation, relates to fully-automatic weapons (machine guns), which are the subject of other specific legislative enactments.

³ Rimfire ammunition, which is fired when struck on its rim by the gun’s firing pin, is primarily used in the smallest calibers. For technical reasons, chamber load indicators are not feasible for rimfire ammunition.

1	11. Not all CLIs satisfy the California requirement. Under California law: [A]	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
2	device satisfies this definition if it is	
3	readily visible, has incorporated or	
4	adjacent explanatory text or graphics, or	
5	both, and is designed and intended to	
6	indicate to a reasonably foreseeable	
7	adult user of the pistol, without	
8	requiring the user to refer to a user's	
9	manual or any other resource other than	
10	the pistol itself, whether a cartridge is in	
11	the firing chamber.	
12	12. Defendant tests the sufficiency of CLIs	Disputed. This is not an accurate description of the documents cited by plaintiffs and is not an accurate description of the Department of Justice's evaluation of chamber load indicators. Additionally, the contents of the cited letters speak for themselves.
13	by asking his employees if they	
14	understand the CLI – and when the	
15	regulatory authority's employees	
16	allegedly fail to understand the CLI,	
17	regardless of what the CLI is "designed	
18	and intended to indicate to a reasonable	
19	adult," the CLI is ruled inadequate.	
20	13. Given the rarity of CLIs and magazine	Disputed. The cited documents do not support the use of the word "rarity" or phrase "overwhelming majority. The "common use" aspect of this statement is also a legal contention, not a statement of fact. This statement mischaracterizes the cited legislative history. This contention is also irrelevant.
21	disconnect devices, handguns lacking	
22	these features are in common use today,	
23	comprising the overwhelming majority	
24	of handguns.	
25	14. California legislators specifically	Disputed. The cited documents do not support this statement. The statement mischaracterizes the cited legislative history.
26	considered that CLIs and magazine	
27	disconnects are available on only	
28	perhaps 11% and 14% of handguns,	
	respectively, as proposed by the author	
	of the bill mandating these features.	
	15. Because CLIs and magazine disconnect	Disputed. The cited document does not support this statement. The statement mischaracterizes the cited legislative history.
	mechanisms were viewed as beneficial,	
	the California Legislature hoped that	
	mandating these features would alter the	
	firearms market.	
	16. A handgun safety mechanism may fail	Undisputed. As a general matter, any mechanical device can fail or be misused. But this contention is irrelevant.
	or be misused by the user of a handgun.	

17. A chamber loaded indicator is a mechanical device that may fail or be misinterpreted by the user of a handgun.	Undisputed. As a general matter, any mechanical device can fail or be misused. But this contention is irrelevant.
18. A magazine disconnect mechanism is a mechanical device that may fail.	Undisputed. As a general matter, any mechanical device can fail or be misused. But this contention is irrelevant.
19. As the state advises handgun purchasers, "Any machine can malfunction. A firearm is no different."	Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.
20. To acquire any handgun in California, an individual must pass a written handgun safety test.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. This contention is also irrelevant.
21. The test requires knowledge of the basic rules of handgun safety, the first of which is: "Treat all guns as if they are loaded."	Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.
22. The state's study guide for the handgun safety test further provides: Always assume that a gun is loaded even if you think it is unloaded. Every time a gun is handled for any reason, check to see that it is unloaded [by following specific instructions for unloading the gun]. If you are unable to check a gun to see if it is unloaded, leave it alone and seek help from someone more knowledgeable about guns.	Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.
23. The state's specific instructions for unloading a semi-automatic handgun contained in its gun safety study guide provides that a mechanical safety [It] is not foolproof so do not rely on the safety to prevent an accidental discharge. A safety should only be used as an additional safety measure. Never pull the trigger on any firearm with the safety in the "safe" position because thereafter the firearm could fire at any time without the trigger ever being touched.	Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.

1 2 3 4 5 6 7	24. Although the state's gun safety study guide does not discuss chamber loaded indicators or magazine disconnect devices, it teaches, in order to pass the mandatory safety test, rules that would have gun owners ignore such devices. The study guide specifically instructs that in order to verify a semi-automatic handgun is unloaded, one must remove the magazine and visually inspect the chamber to verify that it is empty.	Disputed. The cited publication does not stand for the proposition set forth in the first sentence of this statement. This contention is also irrelevant.
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	25. In a large red box marked "CAUTION," the state's gun safety study guide provides: You should NOT assume a semiautomatic pistol is unloaded just because the magazine is removed from the handgun. Do not allow the slide to go forward UNLESS you have: 1. Checked again to be sure the chamber is empty, and 2. Checked again to be sure the magazine has been REMOVED. If you pull the slide back ejecting the cartridge, check the chamber, let the slide go forward, and THEN remove the magazine, you have a loaded, dangerous firearm (a cartridge is in the chamber) even though you have removed the magazine. It is common and sometimes fatal to make this error. ALWAYS REMOVE THE MAGAZINE FIRST!	Undisputed. This is an accurate quotation of a portion of the publication cited. But this contention is irrelevant.
25 26 27 28	26. In order to purchase a handgun, the buyer must demonstrate that he or she knows how to safely operate the handgun, including following the instructions set forth in ¶ 22 above.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. This contention is also irrelevant.

1	27. California law requires that all newly purchased firearms either be accompanied by an approved gun lock or the purchaser's affidavit that she owns an adequate lock box or gun safe.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. This contention is also irrelevant.
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4	28. All semi-automatic handguns not on the approved roster prior to 2013 are barred from the approved handgun roster unless they employ so-called "microstamping technology."	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
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8	29. "The Attorney General may also approve a method of equal or greater reliability and effectiveness in identifying the specific serial number of a firearm from spent cartridge casings discharged by that firearm than that which is set forth in this paragraph . . ."	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
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13	30. The microstamping requirement of Cal. Penal Code § 31910(b)(7) became effective on May 17, 2013 because on that date, the California Department of Justice issued Information Bulletin No.: 2013-BOF-03, wherein Defendant Lindley announced that the Department had determined that the technology described in Penal Code § 31910(b)(7) is now available to more than one manufacturer unencumbered by any patent restrictions.	Undisputed.
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20	31. There are no manufacturers of new model semiautomatic firearms that offer products with microstamping technology for sale in the United States, nor have any applied to have such a handgun placed on the California approved roster.	Disputed as to the first clause in this sentence. To be precise, in the cited discovery responses Lindley admits that "[n]o handguns currently available for sale in the United States have microstamping technology that satisfies the requirements of California's Handgun Roster Law." As to the second clause, it is undisputed that to date no manufacturer has applied to have such a handgun placed on the roster.
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25	32. Listings on the California handgun roster are valid for one year, and must be renewed annually, including payment of an annual fee, prior to expiration to remain valid.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.
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1	33. Defendant charges firearms manufacturers, importers, and dealers annual fees, ostensibly to operate the handgun roster program. Any handgun whose manufacturer fails to pay the required fees may be excluded from the roster for that reason alone.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
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5	34. The initial and renewal annual listing fees for inclusion on the handgun roster are \$200.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.
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8	35. Other than the California DOJ, only the manufacturer/importer of a handgun model is authorized to submit that handgun model to a DOJ-Certified Laboratory for testing.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.
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11	36. A handgun can remain on the roster if its manufacturer/importer goes out of business or discontinues the model, provided that the model is not being offered for sale to licensed dealers, and “a fully licensed wholesaler, distributor, or dealer submits a written request to continue the listing and agrees to pay the annual maintenance fee.”	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.
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17	37. So long as a handgun is sold to dealers outside of California, the handgun’s manufacturer can cause the sale of that handgun to be forbidden inside California by failing to submit the gun for testing in that state or refusing to pay the annual \$200 fee.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code and Code of Regulations speak for themselves.
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22	38. A manufacturer/importer or other responsible party may submit a written request to list a handgun model that was voluntarily discontinued or was removed for lack of payment of the annual maintenance fee. The request may be approved, and the handgun restored to the “safe gun” roster, provided the fee is paid.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Code of Regulations speak for themselves.
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1 2 3 4 5 6 7 8 9 10 11 12	39. The following firearms and transactions are exempted from the handgun rostering requirement: (1) Firearms defined as curios or relics under federal law; (2) The purchase of any firearm by any law enforcement officer – State or Federal; (3) Pistols that are designed expressly for use in Olympic target shooting events, as defined by rule; (4) Certain single-action revolvers, as defined by rule; and (5) The sale, loan, or transfer of any firearm that is to be used solely as a prop during the course of a motion picture, television, or video production by authorized people related to the production.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
13 14 15 16 17	40. It is not illegal in California to import an unrostered handgun when moving into the state without the intention of selling it, nor is it illegal in California to possess or use an unrostered handgun that is otherwise lawful to possess or use.	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves.
18 19 20	41. California also exempts private party transfers, intra-familial transfers including gifts and bequests, various loans, and various single-action revolvers. ⁴	Disputed. This is a legal contention, not a statement of fact. The relevant provisions of the California Penal Code speak for themselves. Also, plaintiffs cite no evidence or other authority for the proposition set forth in footnote 4.
21 22 23 24	42. Plaintiff Ivan Peña has sought to purchase a Para USA (Para Ordnance) P1345SR / Stainless Steel .45 ACP 4.25”, and has identified a willing seller who stands ready to deliver said handgun to him.	Undisputed.

⁴ “Single” or “double” action refers to the gun’s trigger function, one “action” being the effect of drawing back the hammer, another “action” being the effect of dropping the hammer. Guns can be designed to operate in single-action, double-action, or effectively both (if a gun has a hammer that might be retracted either manually or by pulling the trigger).

1	43. Peña's Para USA P1345SR was listed on California's Handgun Roster until December 31, 2005, when it was discontinued and its listing not renewed.	Undisputed. Additional explanation of why this firearm is no longer on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant's opposition to plaintiffs' motion for summary judgment.
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4	44. Peña cannot lawfully purchase and take possession of the handgun as that handgun is not on the California Handgun Roster.	Undisputed to the extent "the handgun" refers to the exact firearm currently held by the seller identified in ¶ 42 above. But disputed to the extent that plaintiff could lawfully purchase a different Para USA (Para Ordnance) P1345SR / Stainless Steel .45 ACP 4.25" via a private-party transfer or other lawful means.
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8	45. Peña fears arrest, prosecution, fine and incarceration if he completes this handgun purchase.	Undisputed.
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10	46. Plaintiff Roy Vargas has sought to purchase a Glock 21 SF with an ambidextrous magazine release, and has identified a willing seller who stands ready to deliver said handgun to Plaintiff.	Undisputed.
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14	47. Vargas cannot lawfully purchase and take possession of the handgun as that handgun is not listed on the California Handgun Roster.	Undisputed to the extent "the handgun" refers to the exact firearm currently held by the seller identified in ¶ 46 above. But disputed to the extent that plaintiff could lawfully purchase a different Glock 21 SF with an ambidextrous magazine release via a private-party transfer or other lawful means.
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18	48. Vargas fears arrest, prosecution, fine and incarceration if he completes this handgun purchase.	Undisputed.
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21	49. Vargas was born without an arm below the right elbow.	Undisputed.
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23	50. The Glock 21 SF-STD with a standard magazine release is listed on the California Handgun Roster.	Undisputed.
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1	51. The Glock-21 SF with ambidextrous magazine release is superior for	Disputed. Paragraph 9 of the declaration of
2	lefthanded shooters such as Mr. Vargas,	Mr. Vargas does not demonstrate this.
3	as opposed to the approved version of	Defendant objects to the statement as lacking
4	the Glock 21.	sufficient foundation, lacking personal
5		knowledge and being inadmissible opinion of a
6		lay witness. This contention is also irrelevant.
7		Mr. Vargas admits that he already owns
8		handguns suitable for self defense and is able to
9		purchase additional handguns for self defense.
10		(See Exh. E to Decl. of Anthony R. Hakl in
11		Supp. of Def. Stephen Lindley's Mot. for
12		Summ. J.)
13	52. Glock's efforts to add the Glock 21 SF	Disputed. This statement mischaracterizes
14	with ambidextrous magazine release to	Glock's "efforts" and the cited document. The
15	the California Roster have failed.	explanation of why this firearm is not on the
16		roster is set forth in the Declaration of Leslie
17		McGovern filed in support of defendant's
18		opposition to plaintiffs' motion for summary
19		judgment.
20	53. Defendant permits Glock customers to	Undisputed.
21	have their Glock 21 SF-STD handguns	
22	fitted with an ambidextrous release at	
23	the Glock factory.	
24	54. Plaintiff Doña Croston has sought to	Undisputed.
25	purchase a Springfield Armory XD-45	
26	Tactical 5" Bi-Tone stainless steel/black	
27	handgun in .45 ACP, model number	
28	XD9623, and has identified a willing	
	seller who stands ready to	
	deliver said handgun to her.	
	55. Croston cannot lawfully purchase and	Undisputed to the extent "the handgun" refers
	take possession of the handgun as that	to the exact firearm currently held by the seller
	handgun is not on the California	identified in ¶ 54 above. But disputed to the
	Handgun Roster.	extent that plaintiff could lawfully purchase a
		different Springfield Armory XD-45 Tactical
		5" Bi-Tone stainless steel/black handgun in .45
		ACP, model number XD9623 via a private-
		party transfer or other lawful means. Also, the
		explanation of why the firearm Ms. Croston
		desires is not on the roster is set forth in the
		Declaration of Leslie McGovern filed in
		support of defendant's opposition to plaintiffs'
		motion for summary judgment.
	56. Croston fears arrest, prosecution, fine	Undisputed.
	and incarceration if she completes this	
	handgun purchase.	

1	57. Other models of this identical gun – but in different colors – are listed on the handgun roster and are thus available to Ms. Croston: the XD-45 Tactical 5” .45 ACP in black (model XD9621), the XD-45 Tactical 5” .45 ACP in OD Green (model XD9622), and the XD-45 Tactical 5” .45 ACP in Dark Earth (XD9162).	Disputed. There is no evidence that the cited firearms are “identical.” In any event, the explanation of why the firearm Ms. Croston desires is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant’s opposition to plaintiffs’ motion for summary judgment.
2	58. The particular Bi-Tone XD-45 that Ms. Croston would possess was not released until after California required newly listed guns to have a chamber load indicator and magazine disconnect device.	Disputed. The cited documents do not show this. The documents reference various models, but not the model XD9623 desired by Croston.
3	59. Springfield Armory could not get the XD-45 in .45 ACP and Bi-Tone finish registered given the new listing requirements.	Disputed. The explanation of why this firearm is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant’s opposition to plaintiffs’ motion for summary judgment.
4	60. The XD-45 Bi-Tone in .45 has a loaded chamber indicator, but the California Department of Justice has decided it does not qualify under Penal Code § 16380(c).	Disputed. The explanation of why this firearm is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant’s opposition to plaintiffs’ motion for summary judgment. Also, the cited “Technical Data” does not show this.
5	61. The XD-45 also lacks a magazine disconnect device.	Undisputed, but the cited “Technical Data” does not show this.
6	62. The handgun at issue in <i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008), was a High Standard 9-shot revolver in .22 with a 9.5” Buntline-style ⁵ barrel.	Disputed. The handgun mentioned was not “at issue” in <i>Heller</i> . This is also irrelevant.
7	63. Plaintiff Brett Thomas has sought to purchase an identical High Standard 9-shot revolver in .22 with a 9.5” Buntline-style barrel, and has identified a willing seller who stands ready to deliver said handgun to Thomas.	Undisputed.

⁵ A “Buntline” is a Western-style extra-long barrel revolver, named for 19th-century novelist Ned Buntline who was said to commission such guns for famous personalities of the day.

1 2 3 4 5 6	64. Thomas cannot lawfully purchase and take possession of the handgun as that handgun is not on the California Handgun Roster.	Undisputed to the extent “the handgun” refers to the exact firearm currently held by the seller identified in ¶ 63 above. But disputed to the extent that plaintiff could lawfully purchase a different High Standard 9- shot revolver in .22 with a 9.5” Buntline-style barrel via a private-party transfer or other lawful means. Also, the explanation of why the firearm Mr. Thomas desires is not on the roster is set forth in the Declaration of Leslie McGovern filed in support of defendant’s opposition to plaintiffs’ motion for summary judgment.
7 8 9	65. Thomas fears arrest, prosecution, fine and incarceration if he completes this handgun purchase.	Undisputed.
10 11 12 13 14 15 16 17 18	66. Plaintiffs Ivan Peña and Brett Thomas are law-abiding citizens, shooting enthusiasts and gun collectors, as are other members and supporters of Plaintiffs Second Amendment Foundation, Inc. (“SAF”) and Calguns Foundation, Inc. (“CGF”). Peña, Thomas, and other SAF and CGF members and supporters would acquire new semiautomatic handguns of the kind in common use throughout the United States, for traditional lawful purposes including self-defense, but cannot do so owing to California’s microstamping scheme.	Disputed. While the microstamping law may be prohibiting plaintiffs from acquiring certain new handguns that they desire, the law is not prohibiting them from acquiring any or all new handguns.
19 20 21 22 23	67. California’s handgun rostering scheme substantially limits commerce in (and therefore Plaintiffs’ access to) unrostered handguns, since no dealer can stock these firearms. This results in a significant loss of choice and price competition.	Disputed. The cited declarations do not show this. And defendant objects to those declarations as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness.
24 25 26 27 28	68. Plaintiffs would suffer increased costs in transporting and transferring their firearms from out-of-state dealers that they would not suffer if the firearms were available for sale in California.	Disputed. The cited declarations do not show this. And defendant objects to those declarations as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness.

1	69. Plaintiff Second Amendment Foundation, Inc. ("SAF") is a nonprofit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington.	Undisputed.
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5	70. SAF has over 650,000 members and supporters nationwide, including many in California.	Undisputed.
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7	71. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.	Undisputed.
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11	72. Plaintiff The Calguns Foundation, Inc. is a non-profit organization incorporated under the laws of California with its principal place of business in San Carlos, California.	Undisputed.
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14	73. Calguns supports the California firearms community by promoting education for all stakeholders about firearm laws, rights and privileges, and securing the civil rights of California gun owners, who are among its members and supporters.	Undisputed.
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19	74. SAF and Calguns expend their resources encouraging exercise of the right to bear arms, and advising and educating their members, supporters, and the general public about the legality of particular firearms. The issues raised by, and consequences of, Defendant's policies, are of great interest to SAF and Calguns' constituencies.	Undisputed.
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25	75. Defendant's policies regularly cause the expenditure of resources by SAF and Calguns as people turn to these organizations for advice and information.	Disputed. The cited declarations do not show this. Defendant's policies do not cause these organizations to spend resources. The manner in which the organizations choose to spend their resources is decided by the organizations.
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1 2 3 4 5	76. Defendant's policies bar the members and supporters of SAF and Calguns from obtaining numerous, if not most, handguns.	Disputed. The cited declarations do not show this. And defendant objects to those declarations as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. The evidence actually shows that numerous handguns are available to plaintiffs. (See Decl. of Stephen Lindley in Supp. of Def. Stephen Lindley's Mot. for Summ. J.)
6 7 8 9 10	77. Defendants' policies make firearms less accessible to the public, reduce the opportunity for selection and purchase, lessen price competition, and impose additional expenses on the purchase of firearms.	Disputed. The cited declarations do not show this. And defendant objects to those declarations as lacking sufficient foundation, lacking personal knowledge and being inadmissible opinion of a lay witness. The evidence actually shows that numerous handguns are available to plaintiffs. (See Decl. of Stephen Lindley in Supp. of Def. Stephen Lindley's Mot. for Summ. J.)

Dated: December 2, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
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/s/ ANTHONY R. HAKL

ANTHONY R. HAKL
Deputy Attorney General
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SA2009310413

CERTIFICATE OF SERVICE

Case Name: Ivan Pena, et al. v. Wilfredo Cid No. 2:09-CV-01185-KJM-CKD

I hereby certify that on December 2, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT STEPHEN LINDLEY**

**DEFENDANT STEPHEN LINDLEY'S RESPONSE TO PLAINTIFFS' UNDISPUTED
FACTS**

**DECLARATION OF ANTHONY R. HAKL IN SUPPORT OF DEFENDANT STEPHEN
LINDLEY'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

**DECLARATION OF LESLIE MCGOVERN IN SUPPORT OF DEFENDANT
STEPHEN LINDLEY'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 2, 2013, at Sacramento, California.

Brenda Apodaca
Declarant

/s/ Brenda Apodaca
Signature