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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

STEVEN RUPP, et al.,

Plaintiffs,

v.

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

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

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## INTRODUCTION

Law-abiding Americans, by the millions, choose to own semiautomatic, centerfire rifles that have ergonomic, function-improving features like detachable magazines, pistol grips, and adjustable stocks. Even so, California has taken the extraordinary step of banning the acquisition, transfer, and, except for those fortunate enough to have been allowed to timely register one before the deadline, possession of rifles with those features. This functional ban on what are almost certainly the most commonly owned rifles in the country, those “typically possessed for lawful purposes” of all sorts, including self-defense in the home, violates the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008).

*Heller* is clear that bans on entire classes of common arms are unconstitutional per se—regardless of criminal misuse of the particular arm or whether alternative types of arms remain available. California thus cannot identify any justification sufficient to survive heightened scrutiny for banning rifles lawfully and safely owned by millions of Americans to defend themselves. This Court should enter summary judgment in Plaintiffs’ favor and vindicate the rights of law-abiding adult Californians to bear these banned arms.

## FACTUAL BACKGROUND

### I. CALIFORNIA’S ASSAULT WEAPON CONTROL ACT

#### A. General Restrictions

California’s Roberti-Roos Assault Weapons Control Act of 1989 (“AWCA”) generally makes it a felony to manufacture or cause to be manufactured, distribute, transport, or import into the state for sale, keep for sale, offer or expose for sale, or give, or lend an “assault weapon.” Cal. Penal Code § 30600(a). It also generally makes illegal possession of any firearm declared an “assault weapon” punishable up to a felony. Cal. Penal Code § 30605(a).

The AWCA contains a Byzantine grandfathering provision under which individuals who lawfully possessed a firearm before it was considered an “assault

1 weapon” may continue to possess it, if timely registered with DOJ on or before the  
2 respective statutory deadline. The deadline varies depending on when the firearm was  
3 brought within the “assault weapons” definition.<sup>1</sup> Now, other than authorized peace  
4 officers, it is no longer legally possible to acquire or register firearms identified as  
5 “assault weapons” under any of the AWCA’s various definitions of that term.<sup>2</sup>

## 6 **B. Applicable Definitions for the Banned Rifles**

### 7 **1. Make and Model List**

8 California has created various definitions of “assault weapon” over the years.  
9 As originally enacted in 1989, the AWCA made a list of specific firearms that it  
10 declared as “assault weapons” based on their make and model. *See* Cal. Penal Code §  
11 30510 (former Penal Code §12276).<sup>3</sup> The Legislature amended the AWCA in 1991 to  
12 expand the list, with DOJ expanding it again by regulation in 2000. *See* Sen. Bill No.  
13 263 (1991-1992 Reg. Sess.); *see also* 11 C.C.R. §§ 5495, 5499.

### 14 **2. Features-based Definition**

15 In 1999, the legislature again amended the AWCA’s definition of an “assault  
16 weapon.” Rather than identify firearms as “assault weapons” by their make and  
17 model the amended law identified them based on their physical features. In relevant  
18 part, it defined as an “assault weapon” any:

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22 <sup>1</sup> *See* Cal. Penal Code § 30960(a) (former Cal. Penal Code § 12285(f)); Cal.  
23 Penal Code § 30520 (former Cal. Penal Code § 12276.5) (added by Assemb. B. 2718,  
24 2005-2006 Reg. Sess. (Cal. 2006), 2006 Cal. Stat. 6342-43); Cal. Penal Code § 30515  
25 (former Cal. Penal Code § 12276.1) (added by Sen. B. 123, 1999-2000 Reg. Sess.  
26 (Cal. 1999), 1999 Cal. Stat. 1805-06); Cal. Penal Code § 30900(b) (former Cal. Penal  
27 Code § 30900(c) (2012-2016); former Cal. Penal Code § 12285(a)); *see also* Compl.  
28 ¶¶ 25-47.

26 <sup>2</sup> *See* Cal. Penal Code § 30900(b)(1) (requiring registration for the most recent  
27 classification of firearms to be submitted before July 1, 2018).

27 <sup>3</sup> In 2010, the legislature reorganized, without substantive change, all Penal  
28 Code sections relating to “deadly weapons,” including those relating to “assault  
weapons.” *See* Sen. B. 1080, 2009-2010 Reg. Sess. (Cal. 2010).

Semiautomatic,<sup>4</sup> centerfire<sup>5</sup> rifle that has the capacity to accept a detachable magazine and any one of the following:

A pistol grip that protrudes conspicuously beneath the action of the weapon;  
A thumbhole stock;  
A folding or telescoping stock;  
A grenade launcher or flare launcher;  
A flash suppressor; or,  
A forward pistol grip;

Semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds; or

Semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

Cal. Penal Code § 30515(a)(1-3) (former Penal Code section 12276.1(a)(1-3)).<sup>6</sup>

In 2016, the legislature again amended the definition of “assault weapon” to include any semiautomatic, centerfire rifle that does *not* have a “fixed magazine,” if it has at least one of the features enumerated in California Penal Code section 30515(a). It defined “fixed magazine” to mean “an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.” Cal. Penal Code § 30515(b).<sup>7</sup>

The purpose of this change was to prohibit explicitly the use of magazine locking devices<sup>8</sup> to alter a rifle so it no longer has a “detachable magazine” and thus no longer meets the definition of an “assault weapon” when it has the features

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<sup>4</sup> DOJ defines “semiautomatic, in relevant part, as “a firearm functionally able to fire a single cartridge, eject the empty case, and reload the chamber each time the trigger is pulled and released.” 11 C.C.R. § 5471(hh).

<sup>5</sup> DOJ defines “centerfire” as “a cartridge with its primer located in the center of the base of the case,” 11 C.C.R. § 5471(j), as opposed to a “rimfire,” which has “a rimmed or flanged cartridge with the priming mixture located in the rim of the case.” 11 C.C.R. § 5471(ff).

<sup>6</sup> Some pistols and shotguns were also classified as “assault weapons” under subdivisions (a)(4)-(8) of Penal Code section 30515 but are not relevant here.

<sup>7</sup> “Disassembly of the firearm action” means the fire control assembly is detached from the action so that the action has been interrupted and will not function. For example, disassembling the action on a two-part receiver, like that on an AR-15 style firearm, would require the rear take down pin to be removed, the upper receiver lifted upwards and away from the lower receiver using the front pivot pin as the fulcrum, before the magazine may be removed. 11 C.C.R. § 5471(n).

<sup>8</sup> They are commonly known as “bullet buttons.”

1 enumerated in California Penal Code section 30515(a). Typical “detachable  
2 magazines” are released with the push of a finger on a button. A magazine lock  
3 replaces the release button with a device that cannot be operated without a tool.  
4 Because a tool was needed to release the magazine, and because California did not  
5 consider a magazine to be “detachable” if a tool was required, a firearm with a  
6 magazine lock did not qualify as having “the capacity to accept a detachable  
7 magazine” and thus did not fall under Penal Code section 30515(a)’s definition for an  
8 “assault weapon.” Following the most recent amendment, that is no longer the case.  
9 Now a semiautomatic, centerfire rifle having the mentioned features must have a  
10 fixed magazine or it is an illegal “assault weapon.”

11 In addition to the statutory change, DOJ adopted new definitions for the terms  
12 used in Penal Code section 30515, including for “semiautomatic,” “centerfire,”  
13 “detachable magazine,” “pistol grip,” “flash suppressor,” and various types of  
14 “stocks” used on firearms. *See* 11 C.C.R. § 5471(j),(m),(r),(z),(nn),(oo),(qq).

15 Plaintiffs’ challenge is to the AWCA’s restrictions on all rifles, whether listed  
16 as “assault weapons” by their make and model or defined as “assault weapons” by  
17 their features (collectively referred to here as the “Banned Rifles”).

### 18 **C. Nature of the Restricted Features**

19 It is not entirely clear from the legislative history why the State prohibits some  
20 rifles from having a “pistol grip” (or “forward pistol grip”), a “thumbhole stock,” a  
21 “flash suppressor,” or an adjustable (“telescoping”) stock, unless it has a “fixed  
22 magazine.” Cal. Penal Code § 30515. Many rifles come standard with—or can be  
23 modified with common aftermarket products to have—those features.<sup>9</sup> None  
24

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25 <sup>9</sup> *See, e.g., Build Your DDM4*, Daniel Defense [https://danieldefense.com/build-](https://danieldefense.com/build-your-ddm4)  
26 [your-ddm4](https://danieldefense.com/build-your-ddm4) (last visited March 24, 2019); Gunstruction, AR15.com,  
27 <https://www.ar15.com/gunstruction/> (last visited March 24, 2019). Websites and  
28 manufacturers such as this allow individuals to customize fully and configure a rifle  
with different gas systems, barrels, muzzle devices, sights, grips, and other upgrades  
and accessories.

1 increases a rifle's "rate of fire and capacity for firepower," which is what the AWCA  
2 claims it seeks to address. *Id.* § 30505(a). That is, none of the features that convert an  
3 otherwise lawful semiautomatic, centerfire rifle with a detachable magazine into a  
4 Banned Rifle has any effect on the rifle's rate of fire, its capacity to accept  
5 ammunition, or the power of the projectile it discharges and thus the trauma that  
6 projectile causes on impact. Brady Decl., Ex. 1 at 5-7; Ex. 3 at 6. None "of them [are]  
7 dangerous per se or when used in conjunction with any of the other features." *Id.*, Ex.  
8 3 at 6. Instead, the features are "designed to both independently, and in conjunction  
9 with other features, make a rifle more user friendly and thus safer to operate—  
10 whether for target practice or in the critically important moments where self-defense  
11 is necessary." Brady Decl., Ex. 3 at 6.

12 A "pistol grip" (including a "thumbhole stock") is a part that, if well designed,  
13 merely "allows for safe and comfortable operation of a firearm." *Id.*, Ex. 1 at 9. It  
14 positions the "trigger finger" for optimum trigger control and helps absorb recoil. *Id.*,  
15 Ex. 3 at 7. Because it allows the operator to use the rifle with one hand, the pistol grip  
16 not only allows the user options like holding a flashlight or calling police, *Id.*, Ex. 1  
17 at 12, but can also be an accommodation for a disabled person, *id.*, Ex. 3 at 9.

18 A so-called "telescoping stock" merely allows the user of the rifle to adjust the  
19 length a few inches to a comfortable size, as conditions dictate, and has no material  
20 effect on the concealability of the rifle. SUF Nos. 49-50. People of different statures  
21 need different length stocks, and a single person's needs could change based on little  
22 more than what clothing they are wearing. SUF Nos. 51-52.

23 A "flash suppressor" as DOJ has defined it is a device that reduces the visible  
24 signature ("flash") when a bullet exits the barrel's muzzle "from the shooter's field of  
25 vision." *See* 11 C.C.R. § 5471(r). Thus, by definition and in practice, it does not hide  
26 the flash from those in the direct line of fire. SUF No. 55. It only has an effect in low-  
27 light conditions by reducing the impact on a shooter's "night vision." SUF No. 56.

28 None of these features serves any role in a rifle's mechanical function. Instead,

1 each is designed to make a rifle more comfortable or easier for a user to operate  
2 accurately, facilitating the rifle's safe and effective operation. SUF Nos. 59-62. Both  
3 individuals the State designated as expert witnesses on the subject of the Banned  
4 Rifles have opined that these features increase accuracy and the user's control of the  
5 rifle. SUF Nos. 61-62

6 **D. Prevalence of the Banned Rifles in America**

7 Millions of rifles banned by the AWCA are in the hands of the American  
8 people. SUF No. 29. While the precise number cannot be known—as regulators do  
9 not track the types of firearms sold—it can be estimated with some degree of  
10 confidence “by drawing on publicly available government records, industry reports,  
11 and survey responses.” Brady Decl., Ex. 2 at 4. Having performed that very analysis,  
12 Plaintiffs' expert witness, Professor William English, estimates that Americans  
13 possess a minimum of 9 million such firearms—and possibly around 15 million or  
14 more. *Id.*, Ex. 2 at 2-6. According to a survey conducted in 2015, around 47.1% of  
15 active hunters and shooters in the country owns a Banned Rifle. *Id.*, Ex. 2 at 3-4; Ex.  
16 19. And a 2017 survey of 226 firearm retailers, revealed that 92.9% of them sell  
17 Banned Rifles and that they are the most popular selling long-guns. *Id.*, Ex. 2 at 4;  
18 Ex. 21.

19 Even a superficial glance at firearm industry materials corroborates Professor  
20 English's findings that the Banned Rifles are extremely popular. Countless catalogs  
21 and websites advertise the Banned Rifles or their various parts or accessories, made  
22 by countless manufactures. *See, e.g.*, Gunstruction, AR15.com,  
23 <https://www.ar15.com/gunstruction/> (last visited March 24, 2019). And books,  
24 articles, and internet forums dedicated to these rifles from firearm enthusiast circles  
25 likewise show the Banned Rifles' undeniable popularity. *See, e.g.*, [www.AR15.com](http://www.AR15.com);  
26 Patrick Sweeney, *The Gun Digest Book of the AR-15*, F+W Media, Inc. (2005);  
27 Duncan Long, *The AR-15/M16: A Practical Guide*, Paladin Press (1985).

28 The Banned Rifles' popularity is no fad. The American public has, for more



1 than a century, had access to semiautomatic, centerfire rifles with detachable (not  
2 “fixed”) magazines. SUF No. 34. Indeed, the federal government, through the  
3 Director of Civilian Marksmanship—which was later replaced by the quasi-  
4 privatized Civilian Marksmanship Program in 1996 and is still in operation today—  
5 would sell these rifles directly to the public. SUF No. 69. The only difference  
6 between those rifles and the Banned Rifles are the former mostly lacked the features  
7 described in the preceding section—although, some of those rifles would be banned  
8 under the AWCA. Brady Decl., Ex. 3 at 5; Ex. 43. What’s more, similar technology  
9 has been understood—albeit not implemented—for a very long time. *Id.*, Ex. 3 at 3-6.  
10 Even the Founding Fathers were aware of—and coveted—multi-shot rifles with  
11 detachable magazines. *Id.*, Ex. 3 at 3-4. More specifically, the AR-15 rifle was  
12 introduced to America nearly 60 years ago, and its popularity has steadily increased  
13 ever since. SUF No. 35. It was reviewed in a 1959 issue of *The American Rifleman*,  
14 one of the most widely circulated firearm magazines. *Id.*, Ex. 3 at 6, Ex. 2 at 3. And,  
15 by 2017, Banned Rifles were reportedly the most popular selling long-guns in the  
16 country, outperforming all other rifles and shotguns. *Id.*, Ex. 2 at 3.

17 The State does not know how many Banned Rifles are possessed in the United  
18 States. *Id.*, Ex. 8 at 4. And it “does not have sufficient information to estimate the  
19 approximate number” of them. *Id.*, Ex. 10 at 8. State-designated expert Blake  
20 Graham, however, based on his extensive experience as a peace officer enforcing  
21 firearm laws, acknowledged that the Banned Rifles are common. *Id.*, Ex. 7 at 20:8.

#### 22 **E. Typical, Lawful Uses of the Banned Rifles**

23 Purchasers of the Banned Rifles consistently report that one of the main  
24 reasons for their purchase of this class of rifle is self-defense. SUF No. 30. And for  
25 good reason. A former FBI agent, turned FBI firearm instructor, who became the  
26 primary special agent overseeing the FBI’s Ballistic Research Facility, has opined  
27 that when “using appropriate ammunition,” AR-15 platform rifles, likely the most  
28 popular type of the Banned Rifles, “are well suited for use in home defense.” Brady

1 Decl., Ex. 1 at 5. In fact, he opines that, based on his extensive experience training, in  
2 the field, and conducting tests, such rifles are easier to operate, more effective at  
3 stopping threats, and, when using the correct ammunition, pose a lower risk of danger  
4 to innocent bystanders, than are other firearms like handguns and shotguns. *Id.*, Ex. 1  
5 at 5-11, Ex. 27. He is not alone; several self-defense experts agree. *Id.*, Exs. 28-29.

6 Other lawful purposes for which people commonly acquire the Banned Rifles  
7 include hunting, competitive shooting, and target shooting. SUF Nos. 31-33. Indeed,  
8 there are many publications dedicated to hunting with the Banned Rifles. Brady  
9 Decl., Exs. 30-33. And they are used in some of the most popular competitive  
10 shooting sports in America, including shooting's "World Series." Brady Decl., Ex. 2  
11 at 6, Ex. 3 at 4; *see also* International Practical Shooting Confederation,  
12 <http://www.ipsc.org>; Chad Adams, *Complete Guide to 3-Gun Competition* 89 (2012).

13 The State cannot dispute that Americans typically possess the Banned Rifles  
14 for these lawful purposes. It "lacks sufficient information or belief" about whether  
15 law-abiding Americans typically use the Banned Rifles for lawful self-defense,  
16 hunting, or competition, Brady Decl., Ex. 8 at 15-16, 18-19, 22-23, and expressly  
17 does not dispute they are used for lawful target practice. *Id.*, Ex. 8 at 20-21.

#### 18 **F. History of Restrictions on the Banned Rifles**

19 As a historical matter, no evidence suggests a tradition of government  
20 regulation targeting rifles for having features like those restricted by the AWCA. The  
21 original iteration of California's AWCA, adopted in 1989, was the first law in the  
22 country's history specifically targeting semiautomatic rifles of any sort, let alone  
23 those with detachable magazines having certain features. SUF No. 63. Today, nearly  
24 all states place *no* restrictions on such rifles, let alone one like the AWCA that  
25 subjects violators to a felony conviction punishable by a prison sentence. The handful  
26 of restrictions that *are* in place are of recent vintage, and they vary as to what  
27 constitutes a restricted "assault weapon." SUF No. 68.

28 The federal government takes the same approach as most states. That is, it has



1 not regulated rifles just because they are semiautomatic or have a detachable  
2 magazine or a pistol grip, flash suppressor, or adjustable stock—with one recent and  
3 short-lived exception. In 1994, Congress adopted a nationwide prospective ban on  
4 semiautomatic, centerfire rifles having a detachable magazine and any two of a list of  
5 certain features resembling California’s Penal Code § 30515(a). *SUF No. 64; Req.*  
6 *Jud. Ntc., ¶ 8, Ex. 8.* Ten years later, Congress allowed that ban to expire after a study  
7 commissioned by the Department of Justice revealed that the law had failed to effect  
8 any “discernible reduction in the lethality and injuriousness of gun violence.” *SUF*  
9 *No. 65; Brady Decl., Ex. 25 at 96; What Should America Do About Gun Violence?:*  
10 *Hearing Before U.S. S. Comm. on Judiciary, 113th Cong. 11 (2013).* Today, both the  
11 possession and acquisition of the Banned Rifles remains legal under federal law.

#### 12 **G. Plaintiffs’ Injury**

13 The individual Plaintiffs are responsible, law-abiding adult California residents  
14 who are legally eligible to possess firearms. *SUF Nos. 1-3.* Some do not currently  
15 own any Banned Rifles but wish to, and would immediately acquire one for lawful  
16 purposes, including self-defense, but refrain from doing so for fear of prosecution  
17 under the AWCA. *SUF No. 13.* Others have parts that they wish to, and immediately  
18 would, assemble into a Banned Rifle to use for lawful purposes, including self-  
19 defense, but refrain from doing so for fear of prosecution under the AWCA. *SUF*  
20 *Nos. 7, 9-10.* Some already own at least one Banned Rifle and wish to be free from  
21 the transfer and use restrictions that the AWCA places on those rifles, under threat of  
22 criminal penalty. *SUF Nos. 5-6, 8.* Plaintiff California Rifle & Pistol Association,  
23 Incorporated (CRPA), represents its countless thousands of law-abiding members,  
24 who are similarly situated to the individual plaintiffs. *SUF Nos. 17-28.*

#### 25 **LEGAL STANDARD**

26 Summary judgment is proper when the record shows there is “no genuine  
27 dispute as to any material fact . . . and the moving party is entitled to judgment as a  
28 matter of law.” *Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317,*

1 323-24 (1986). Material facts are those which may affect the outcome of the case.  
2 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if  
3 there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving  
4 party. *Id.* First, the moving party must show the lack of a genuine issue of material  
5 fact. *Celotex*, 477 U.S. at 323. If the movant meets its burden, the nonmoving party  
6 must produce sufficient evidence to rebut the movant’s claim and create a genuine  
7 issue of material fact. *Id.* at 322-23.

## 8 ARGUMENT

9 The Second Amendment provides that “the right of the people to keep and bear  
10 Arms . . . shall not be infringed.” After an exhaustive textual and historical analysis,  
11 the Supreme Court made clear in *District of Columbia v. Heller*, 554 U.S. 570  
12 (2008), that the Second Amendment protects an “individual right to possess and carry  
13 weapons” for self-defense. *Id.* at 592. The Court thus invalidated a District of  
14 Columbia ordinance banning the possession of operable handguns in the home,  
15 holding that the possession ban violated the Second Amendment under “any of the  
16 standards of scrutiny that we have applied to enumerated constitutional rights”—that  
17 is, any standard stricter than rational basis review. *Id.* at 628 & n.27.

18 In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court held that the  
19 “right to keep and bear arms for the purpose of self-defense” recognized in *Heller* is  
20 “fully applicable to the States,” *id.* at 750, because it is “among those fundamental  
21 rights necessary to our system of ordered liberty,” *id.* at 778. State and municipal  
22 actors must thus respect the individual right the Second Amendment protects and  
23 may not “enact any gun control law that they deem to be reasonable.” *Id.* at 783  
24 (plurality opinion); *see also Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016).

### 25 I. THE AWCA VIOLATES THE SECOND AMENDMENT UNDER THE SCOPE-BASED 26 ANALYSIS ENDORSED BY *HELLER* AND *MCDONALD*

#### 27 A. *Heller* and *McDonald* Endorse a Scope-based Analysis, not a 28 Means-End Test that Requires a Balancing of Interests

The Supreme Court, while not settling on an analytical framework for all

1 Second Amendment challenges, has left little doubt that courts are to assess gun laws  
2 based on history and tradition, and *not* by resorting to interest-balancing tests. *Heller*,  
3 554 U.S. at 628 n.27, 634-35; *see also Heller v. District of Columbia (Heller II)*, 670  
4 F.3d 1244, 1271-74 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). Indeed, *Heller*  
5 advances an approach that first focuses on “examination of a variety of legal and  
6 other sources to determine *the public understanding* of [the] legal text,” 554 U.S. at  
7 605, with particular focus on “the founding period,” *id.* at 604, to determine whether  
8 a restricted activity falls within the scope of the Second Amendment. *Heller II*, 670  
9 F.3d at 1275 (Kavanaugh, J., dissenting). If it does, the court turns again to “text and  
10 history” to determine whether the restriction is analogous to laws historically  
11 understood as permissible limits on the right to bear arms. *Heller*, 554 U.S. at 595. In  
12 short, if sufficient “historical justification” exists for a restriction on activity falling  
13 within the scope of the right, the restriction is valid; if not, it is invalid. *See id.* at 634-  
14 35. The presumption is that activity within the scope of the Second Amendment  
15 “shall not be infringed,” with the burden on the government to justify its restrictions,  
16 based on text, history, and tradition. *See id.* at 634-36.

17 The government, arguing *Heller* before the Supreme Court, urged the Court to  
18 employ “intermediate scrutiny” in reviewing the District’s handgun ban and locked-  
19 storage law, believing if that standard were employed, the laws would be upheld.  
20 Brady Decl., Ex. 47 at 44-45. Chief Justice Roberts appeared suspicious of such “an  
21 all-encompassing standard,” asking why it would not be “enough to determine the  
22 scope of the existing right . . . , look at the various regulations that were available at  
23 the time [of the founding] . . . , and determine how . . . this restriction and the scope  
24 of this right looks in relation to those.” *Id.* The Chief Justice was suggesting that  
25 courts simply ask whether the law restricts activity falling within the scope of the  
26 right as originally understood. If it does, the law is *presumed* invalid unless the  
27 government can show its restriction is so commonplace in our history and traditions  
28 that the right be understood in light of it. But there would be no “balancing test” or

1 weighing of burdens and benefits.

2       This scope-based approach was, in large part, the approach the Supreme Court  
3 adopted—after expressly rejecting Justice Breyer’s interest-balancing test. 554 U.S.  
4 at 634-35. Notably absent from *Heller*’s analysis was any discussion of “compelling  
5 interests,” “narrowly tailored” laws, or any other standard of review jargon. Nor were  
6 there discussions of the District’s “legislative findings” purporting to justify the  
7 restrictions. Instead, *Heller* focused on whether the laws restricted the right to keep  
8 and bear arms as that right was understood by those who drafted and enacted both the  
9 Second and Fourteenth Amendments. *Id.* at 626-34. The Court gleaned that  
10 understanding from its examination of the textual and historical narrative surrounding  
11 the pre-existing right to arms, to define, at least in broad terms, the scope of the  
12 Second Amendment. *Id.* at 605-19.

13       The Court’s later decision in *McDonald v. City of Chicago*, 561 U.S. 742,  
14 (2010), further underscored the notion that history and tradition, rather than burdens  
15 and benefits, should guide analyses of Second Amendment challenges. Like *Heller*,  
16 *McDonald* did not use balancing tests, and it expressly rejected judicial assessment of  
17 “the costs and benefits of firearms restrictions.” *Id.* at 790-91. This language is  
18 compelling. Means-end tests necessarily require the assessment of the “costs and  
19 benefits” of government regulations, as well as “difficult empirical judgments” about  
20 their effectiveness. The Court’s clear rejection of such inquiries is incompatible with  
21 a means-end approach to Second Amendment challenges.

22       **B. The AWCA Cannot Survive the Historical, Scope-based Analysis**

23       Under *Heller*’s historical, scope-based analysis, the Second Amendment  
24 protects those firearms that are “typically possessed by law-abiding citizens for  
25 lawful purposes,” *Heller*, 554 U.S. at 624-25, and which have not been traditionally  
26 banned. A straight-forward application of this test compels the conclusion that the  
27 AWCA is unconstitutional because “semi-automatic rifles have not traditionally been  
28 banned and are in common use [for lawful purposes] today.” *Heller II*, 670 F.3d at

1 1287 (Kavanaugh, J., dissenting). Indeed, the Supreme Court has explained that rifles  
2 prohibited by the AWCA, “traditionally have been widely accepted as lawful  
3 possessions.” *Staples v. United States*, 511 U.S. 600, 612 (1994) (referring to AR-15  
4 platform rifles, which meet California’s “assault weapon” definition).

5  
6 **1. The Banned Firearms Are in “Common Use” for Lawful Purposes**

7 The American public has had access to semiautomatic rifles with detachable  
8 magazines for more than a century. SUF No. 34. The first commercially available  
9 semiautomatic rifles, the Winchester Models 1903 and 1905 and the Remington  
10 Model 8, hit the market between 1903 and 1906. John Henwood, *The 8 and the 81: A*  
11 *History of Remington’s Pioneer Autoloading Rifles* 5 (1993); John Henwood, *The*  
12 *Forgotten Winchesters: A History of the Models 1905, 1907, and 1910 Self-Loading*  
13 *Rifles* 2-6 (1995). Winchester’s first commercially successful semiautomatic shotgun  
14 entered the market in 1905. *See The 8 and the 81, supra*, at 4. And other gun makers  
15 soon introduced their own semiautomatic rifles. *See id.* at 64-69. As early as 1907,  
16 Americans began using ten-round magazines with their semiautomatic rifles. *The*  
17 *Forgotten Winchesters, supra*, 22-23. And they even had access to early  
18 semiautomatic rifles with pistol grips. *See id.* at 117-24. At the time, these firearms  
19 were primarily designed and marketed for use as hunting rifles. *See The 8 and the 81,*  
20 *supra*, at 115-21.

21 “Semi-automatic rifles remain in common use today, as even” courts that have  
22 upheld “assault weapons” bans have conceded. *Heller II*, 670 F.3d at 1287  
23 (Kavanaugh, J., dissenting) (quoting 670 F.3d at 1261 (maj. opinion) (“We think it  
24 clear enough in the record that semiautomatic rifles . . . are indeed in ‘common use,’  
25 as the plaintiffs contend.”)). Even conservative estimates place ownership of such  
26 firearms in the several million range. SUF No. 29. The extremely large number of  
27 firearm manufacturers making the Banned Rifles and retailers selling them or related  
28 accessories confirm the rifles’ popularity. Brady Decl., Ex. 2 at 4, Exs. 18-21. Such a

1 market simply would not exist without a corresponding demand. The existence and  
2 large scope of that market is undeniable given the ubiquitous firearm catalogs and  
3 other industry materials that have been filled with the Banned Rifles for decades. *See*  
4 *Heller II*, 670 F.3d at 1287 (Kavanaugh J., dissenting) (A “brief perusal of the website  
5 of a popular American gun seller underscores the point that semi-automatic rifles are  
6 quite common in the United States.”).

7 High ownership rates of the Banned Rifles exist despite being banned in  
8 California, the most populous state, and a handful of other populous states and  
9 municipalities, like New York and Cook County, Illinois. But for the restrictions in  
10 those outlier jurisdictions, millions more Americans would almost certainly own  
11 these rifles. In any event, they are already owned by the millions and are lawful to  
12 acquire and possess under federal law and in most states, making them “common”  
13 under any reasonable standard. *SUF* Nos. 29, 63-68; *cf. Hollis v. Lynch*, 827 F.3d  
14 436, 449 (5th Cir. 2016) (defining the term “common” by applying the Supreme  
15 Court test in *Caetano* of 200,000 stun guns owned and legal in 45 states being  
16 “common”); *Heller II*, 670 F.3d at 1287; *N.Y. State Rifle & Pistol Ass’n*, 804 F.3d  
17 242, 255-57 (2d. Cir. 2015) (“Even accepting the most conservative . . . , the assault  
18 weapons . . . at issue are ‘in common use’ as that term was used in *Heller*.”)

19 The State cannot dispute this. For it has already admitted that it does not know  
20 how many Banned Rifles are possessed in the United States, *Brady Decl.*, Ex. 8 at 4,  
21 and revealed that it “does not have sufficient information to estimate the approximate  
22 number” of them, *id.*, Ex. 10 at 8. Nor has the State produced an expert to estimate  
23 how many Banned Rifles there are in circulation. To the contrary, its own expert  
24 corroborates the popularity of the Banned Rifles. *Id.*, Ex. 7 at 20:8.

25 That popularity is unsurprising. For the Banned Rifles undisputedly provide  
26 better ergonomics, more control, high reliability, lower recoil, ease of use, and  
27 lightness in weight. *See* Factual Background, Part I, *supra*; *see also Murphy v.*  
28 *Guerrero*, No. 14-00026, 2016 WL 5508998, at \*18 (D. N. Mar. I. Sept. 28, 2016)



1 (the features “actually tend to make rifles easier to control and more accurate—  
2 making them safer to use”). Those qualities also make it easier for by persons of  
3 varying skill, age, and physical ability to use the firearms. SUF Nos. 44-46, 49-52,  
4 55-56, 59-62. It is thus no wonder that their popularity has only grown over the last  
5 several decades. SUF No. 36.

6 What’s more, the Banned Rifles are overwhelmingly chosen by Americans for  
7 lawful purposes. One of the main reasons people choose to acquire these rifles is for  
8 self-defense. SUF No. 30. Many firearm experts not only choose the Banned Rifles  
9 for self-defense but find that they can be profoundly better suited for self-defense  
10 purposes, including within the home, than handguns or shotguns. Brady Decl., Ex. 1  
11 at 5-11; Exs. 27-29. Among those experts is an individual who was entrusted for  
12 years to not only train FBI agents on firearms, but to run the FBI’s ballistics-testing  
13 facility. *Id.*, Ex. 1. The banned rifles are also commonly chosen by Americans for use  
14 in hunting, competitive shooting, and target shooting. SUF Nos. 30-33. All these  
15 typical lawful uses are reflected in manufacturers’ marketing of the Banned Rifles.

16 The State cannot and does not dispute that the Banned Rifles are typically  
17 possessed for lawful purposes. All it can do is point to the statistically rare criminal  
18 misuse of the rifles. But that does not change that they are overwhelmingly used for  
19 lawful purposes. Nor, as explained below, is it relevant to the constitutional question  
20 presented here.

21 In sum, rifles possessing the features that trigger the AWCA’s “assault  
22 weapon” definition are among the most popular firearms chosen by law-abiding  
23 Americans for lawful purposes, including for the core lawful purpose of self-defense.

24  
25 **2. There Is No “Historical Justification” for Laws Banning  
Semiautomatic Rifles**

26 California’s broad restriction does not “resemble prohibitions historically  
27 exempted from the Second Amendment.” *Fyock v. Sunnyvale*, 779 F.3d 991, 997 (9th  
28 Cir. 2015). The Banned Rifles have not been “the subject of longstanding, accepted

1 regulation.” *Id.* To the contrary, the Supreme Court has specifically explained that  
2 rifles prohibited by the AWCA, “traditionally have been widely accepted as lawful  
3 possessions.” *Staples v. United States*, 511 U.S. 600, 612 (1994) (referring to AR-15  
4 platform rifles, which generally meet California’s “assault weapon” definition). The  
5 few restrictions on such rifles in the country are of extremely recent vintage. In  
6 addition to California, only six other states and the District of Columbia have adopted  
7 “assault weapon” laws targeting these rifles, all of which were adopted in the 1990s  
8 or later. *SUF* Nos. 67-68. And the federal law adopted barely twenty-five years ago,  
9 was allowed to expire just ten years later. *See* Pub. L. No. 103-322, Title XI, §  
10 110105(2). Each less than 30 years old, it is indisputable that the now-lapsed federal  
11 ban and these modern state restrictions are not “longstanding.” *See Heller*, 554 U.S.  
12 at 635 (overturning 33-year-old handgun ban). *See Heller II*, 670 F.3d at 1260 (“We  
13 are not aware of evidence that prohibitions on either semi-automatic rifles or large-  
14 capacity rifles are longstanding and thereby deserving of a presumption of validity.”)

15 The rarity of laws regulating the Banned Rifles or their similarly functioning  
16 predecessors historically cannot be attributed to the lack of such rifles in the  
17 American marketplace. For the AR-15 platform rifle has been available to the  
18 American public for over 60 years. *SUF* No. 35. And semiautomatic, centerfire rifles  
19 with detachable magazines have been mass produced and widely available to the  
20 public for another about 60 years before that. *Brady Decl.*, Ex. 3 at 4-6. What’s more,  
21 even the Founding Fathers were aware of—and coveted—multi-shot rifles with  
22 detachable magazines. *Id.*, Ex. 3 at 3-4. The Banned Rifles would not be that foreign  
23 to them—certainly less so than a smart phone, which enjoys Fourth Amendment  
24 protections. *Carpenter v. United States*, \_\_ U.S. \_\_, 138 S. Ct. 2206, 2217 (2018).  
25 The utter rarity of laws specifically targeting semiautomatic rifles to ban, throughout  
26 history and today, therefore, not only establishes that the conduct restricted by the  
27 AWCA is protected, but also casts even more doubt on the constitutionality of such  
28 bans. *See Kerr v. Hickenlooper*, 744 F.3d 1156, 1178 (10th Cir. 2014).



**II. ALTERNATIVELY, THE AWCA VIOLATES THE SECOND AMENDMENT UNDER THE NINTH CIRCUIT’S TWO-TIERED, MEANS-END ANALYSIS**

In the years since *Heller* and *McDonald*, the Ninth Circuit has developed a multi-step framework for adjudicating Second Amendment claims. First, a court “asks if the challenged law burdens conduct protected by the Second Amendment, based on a historical understanding of the scope of the right.” *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016) (citing *Heller*, 554 U.S. at 625). If it does, a court must analyze the law under heightened scrutiny, with the degree of scrutiny varying depending on “how close the challenged law comes to the core of the Second Amendment right, and . . . the severity of the law’s burden on that right.” *Id.* (citing *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 960-61 (9th Cir. 2014)). Unlike the scope-based analysis described above, the two-tiered, means-end analysis “employs history and tradition only as a threshold screen to determine whether the law in question implicates the individual right.” *Heller II*, 670 F.3d at 1276 (Kavanaugh, J., dissenting).

When the Second Amendment “right applies to” certain types of firearms, “citizens *must* be permitted to use [them] for the core lawful purpose of self-defense.” *McDonald*, 561 U.S. at 767-68 (emphases added) (quotation marks omitted). Because California’s ban on “assault weapons” prohibits law-abiding citizens from acquiring and keeping commonly possessed arms within the sanctity of their homes for the core purpose of self-defense, it wholly forecloses Second Amendment protected conduct and is unconstitutional under any level of scrutiny. Regardless, the AWCA cannot withstand any level of means-end review.<sup>10</sup>

**A. The AWCA Plainly Implicates Second Amendment Conduct**

Again, the Second Amendment protects the possession and acquisition of those

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<sup>10</sup> While this Court may find it is bound to apply the two-tiered, means-end analysis, there is no need to decide what level of scrutiny applies here because the AWCA imposes a complete ban on arms commonly used for lawful purposes and is therefore categorically invalid. *See Friedman v. City of Highland Park*, 136 S. Ct. 447, 449 (2015) (Thomas & Scalia, Js., dissenting from denial of certiorari).

1 “arms” that are “typically possessed by law-abiding citizens for lawful purposes.”  
2 *Heller*, 554 U.S. at 624-25; *see also Caetano*, 136 S. Ct. at 1027-28. Applying that  
3 test here is straightforward. As described above, the AWCA bans semiautomatic  
4 firearms that are, and throughout history have been, commonly used by law-abiding  
5 citizens for lawful purposes, including self-defense in the home. *See* Argument, Part  
6 I.B.1, *supra*. And, as also described above, there is no longstanding history in this  
7 country of laws banning their acquisition, possession, and use. *See id.*, Part I.B.2,  
8 *supra*. For these reasons, the Banned Firearms are within the scope of the Second  
9 Amendment and restrictions on them are subject to means-end review.

10 **B. The AWCA Cannot Survive *Any* Level of Means-end Review**

11 Because the AWCA’s ban on a class of popular rifles burdens conduct  
12 protected by the Second Amendment, it must satisfy some form of heightened  
13 scrutiny. *See Heller*, 554 U.S. at 628. And under either form of heightened scrutiny, a  
14 challenged law is *presumed* unconstitutional, and the government bears the burden of  
15 justifying it. *See, e.g., R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992) (content-  
16 based speech regulations are presumptively invalid); *United States v. Chester*, 628  
17 F.3d 673, 680 (4th Cir. 2010) (“unless the conduct at issue is not protected by the  
18 Second Amendment at all, the government bears the burden of justifying the  
19 constitutional validity of the law”).

20 Here, there is no need to decide what level of scrutiny applies, however,  
21 because a law, like the AWCA, flatly banning arms that the Second Amendment  
22 protects must “fail constitutional muster” under “any of the standards of scrutiny.”  
23 *Heller*, 554 U.S. at 628-29. That said, the State could not meet its burden even if a  
24 traditional scrutiny analysis were necessary. To justify a burden on a constitutionally  
25 protected right, the government must prove that it is sufficiently tailored to advance a  
26  
27  
28

1 sufficiently important end.<sup>11</sup> Under intermediate scrutiny, the government must  
2 prove, first, that the law is “substantially related” to an important government  
3 interest. *See Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993); *see United States v.*  
4 *Chovan*, 735 F.3d 1127, 1139-40 (9th Cir. 2013). It must then prove that its chosen  
5 means are “closely drawn” to achieve that end without “unnecessary abridgment” of  
6 constitutionally protected conduct. *McCutcheon v. FEC*, 134 S. Ct. 1434, 1456-57  
7 (2014) (quoting *Buckley v. Valeo*, 424 U.S. 1, 25 (1976)); *see Jackson*, 746 F.3d at  
8 961 (noting that Second Amendment heightened scrutiny is “guided by First  
9 Amendment principles”). While the government has an admittedly important interest  
10 in promoting public safety and preventing crime, it cannot begin to prove that the ban  
11 is substantially related and closely drawn to advancing that interest.

12  
13 **1. The AWCA Is Not “Substantially Related” to the State’s  
Public Safety Interests**

14 For a law to be substantially related to the government’s interests, the  
15 government must prove that its “restriction will in fact alleviate” its concerns.  
16 *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001). It is not enough for the  
17 government to rely on “mere speculation or conjecture.” *Id.* But here, the state cannot  
18 identify a causal link between the ills California seeks to remedy and the Banned  
19 Rifles. Instead, the State offers only “mere speculation” that its ban will reduce  
20 criminal violence with firearms. But it is worse than that because the State is  
21 admittedly depriving the public of more accurate, easier to control rifles. Its own  
22 experts have opined on the superior performance of these rifles for legitimate  
23 purposes. SUF No. 61. They just apparently believe that normal people should have  
24

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25 <sup>11</sup> If the Court selects a level of means-end review, strict scrutiny must be the  
26 test. *See, e.g., Heller II*, 670 F.3d at 1284-85 (Kavanaugh, J., dissenting); *Tucson*  
27 *Woman’s Clinic v. Eden*, 379 F.3d 531, 544 (9th Cir. 2004) (“[A] law is subject to  
28 strict scrutiny . . . when that law impacts a fundamental right, not when it infringes  
it.”); *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 54 (1983)  
(similar).

1 lower performing and less user-friendly rifles in the hopes evil doers will likewise be  
2 deprived of them and that such deprivations will translate into fewer victims of  
3 violence. Not only is that the epitome of speculation but diminishing law-abiding  
4 peoples' accuracy or physical control of a firearm cannot be said to further any  
5 legitimate state interest—if anything, it harms public safety.

6  
7 **2. The AWCA Lacks a Reasonable “Fit” with the State’s  
Interest in Preventing Criminal Misuse**

8 Even if the law does advance the state’s public safety interests, “intermediate  
9 scrutiny requires a ‘reasonable fit’ between the law’s ends and means.” *Silvester v.*  
10 *Becerra*, No. 17-342, 2018 WL 943032 \*4 (U.S. Sup. Ct. Feb. 20, 2018) (Thomas, J.,  
11 dissenting from denial of certiorari) (quoting *Cincinnati v. Discovery Network, Inc.*,  
12 507 U.S. 410, 416 (1993)); *see also Chovan*, 735 F.3d at 1136, 1139. This means that  
13 the law must be “narrowly tailored” to serve the government’s interest. *See McCullen*  
14 *v. Coakley*, 134 S. Ct. 2518, 2534 (2014).

15 The rationale behind this requirement is to ensure that the encroachment on  
16 liberty is “not more extensive than necessary” to serve the government’s interest.  
17 *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 816 (9th Cir. 2013). The government  
18 thus bears the burden of establishing that the law is “closely drawn to avoid  
19 unnecessary abridgment” of constitutional rights, *McCutcheon*, 134 S. Ct. at 1456;  
20 *see Ward v. Rock Against Racism*, 491 U.S. 781, 782-83 (1989). The government is  
21 entitled to *no deference* when assessing the fit between its purported interests and the  
22 means selected to advance them. *See Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180,  
23 214 (1997). Instead, the government must *prove* that those means do not burden the  
24 right “substantially more” than “necessary to further [its important] interest.” *Id.*

25 Here, the state has chosen the opposite of tailoring. The AWCA bans  
26 Californians—except those who were fortunate enough to be able to timely register  
27 their rifles—from possessing the Banned Rifles, and bars everyone, even those  
28 already entrusted with lawfully owning one, from acquiring them. *See Jackson*, 746

1 F.3d at 964 (contrasting “complete ban” with regulations). Such a law “serves as the  
2 bluntest of instruments, banning a class of weapons outright, and restricting the rights  
3 of its citizens to select the means by which they defend their homes and families.”  
4 *Friedman v. City of Highland Park*, 784 F.3d 406, 419 (7th Cir. 2015) (Manion, J.,  
5 dissenting). Simply obliterating the right to acquire, keep, and use these common  
6 rifles for any lawful purpose, including self-defense is *not* the sort of “fit” that  
7 survives even intermediate scrutiny.

8 First, as a legal matter, the Second Amendment does not tolerate banning  
9 constitutionally protected arms simply because they are often involved in some  
10 crimes, even serious ones like mass shootings. In *Heller*, the District of Columbia  
11 tried to justify its handgun ban because handguns are involved in the clear majority of  
12 firearm-related homicides in the United States. 554 U.S. at 696 (Breyer, J.,  
13 dissenting) (collecting statistics). Despite the government’s clear and compelling  
14 interest in preventing homicides, the Supreme Court held that a ban on possession of  
15 those common arms by law-abiding citizens lacks the required fit to further that goal  
16 “[u]nder any of the standards of scrutiny.” *Id.* at 628-29 (maj. op.).

17 *Heller* similarly rejected the argument that protected arms may be prohibited  
18 because criminals might misuse them. Again, there, the government argued that  
19 handguns made up a significant majority of all stolen guns and that they were  
20 overwhelmingly used in violent crimes. *Id.* at 698 (Breyer, J., dissenting). But despite  
21 the government’s clear interest in keeping handguns out of the hands of criminals and  
22 unauthorized users, the Supreme Court rejected that argument, too, concluding that a  
23 ban on possession by law-abiding citizens is not a permissible means of preventing  
24 misuse by criminals. *Id.* at 628-29 (maj. op.). In any event, even if criminal misuse  
25 were relevant, unlike handguns, FBI data show that rifles are rarely used in violent  
26 crime. *See, e.g., 2017 Crime in the United States: Expanded Homicide Data Table 8*,  
27 Federal Bureau of Investigation, [https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-](https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/expanded-homicide-data-table-8.xls)  
28 [the-u.s.-2017/topic-pages/tables/expanded-homicide-data-table-8.xls](https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/expanded-homicide-data-table-8.xls) (last visited

1 Mar. 24, 2019) (noting that in 2017 “handguns” accounted for 7,032 murders  
2 nationwide, while “rifles” of any type accounted for 403 murders nationwide that  
3 same year).

4 *Heller* follows a long history of cases rejecting the notion that the government  
5 may ban constitutionally protected activity because the activity could lead to abuses.  
6 *See, e.g., Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245 (2002) (government  
7 cannot ban virtual child pornography because it might lead to child abuse because  
8 “[t]he prospect of crime” “does not justify laws suppressing protected speech”);  
9 *Edenfield*, 507 U.S. at 770-71 (state cannot impose a “flat ban” on solicitations by  
10 public accountants because solicitations “create[] the dangers of fraud, overreaching,  
11 or compromised independence”); *Stanley v. Georgia*, 394 U.S. 557, 567 (1969) (“the  
12 State may no more prohibit mere possession of obscene matter on the ground that it  
13 may lead to antisocial conduct than it may prohibit possession of chemistry books on  
14 the ground that they may lead to the manufacture of homemade spirits”). That  
15 extreme degree of prophylaxis is incompatible with the decision to give the activity  
16 constitutional protection. California’s over inclusive approach violates the basic  
17 principle that “a free society prefers to punish the few who abuse [their] rights  
18 . . . after they break the law than to throttle them and all others beforehand.” *Se.*  
19 *Promotions Ltd. v. Conrad*, 420 U.S. 546, 559 (1975); *accord Vincenty v. Bloomberg*,  
20 476 F.3d 74, 84-85 (2d Cir. 2007); *Robb v. Hungerbeeler*, 370 F.3d 735, 743 (8th  
21 Cir. 2004).

22 Ultimately, the state can only justify its extraordinary ban on the ground that it  
23 reflects the *non plus ultra* of its policy choice about the types of arms it desires its  
24 residents to use. But that argument simply ignores the Framers’ judgments reflected  
25 in the Bill of Rights. Surely the most effective way to eliminate defamation is to  
26 prohibit printing presses, the most effective way to eliminate crime is to empower  
27 police officers with unlimited search authority, and so on. But the Constitution  
28 prohibits such extreme measures by giving protection to free speech and the privacy



1 of the home. The right to arms is no different. *Heller* made clear that the Second  
2 Amendment “necessarily takes certain policy choices off the table.” 554 U.S. at 636.  
3 California’s ban on these rifles is one of them, both because it is far too sweeping to  
4 reflect any sort of reasonable fit to the state’s interest, and because the state’s  
5 rationale, “taken to its logical conclusion,” would “justify a total ban on firearms kept  
6 in the home.” *Heller v. District of Columbia (Heller III)*, 801 F.3d 264, 280 (D.C.  
7 Cir. 2015).

### 8 CONCLUSION

9 For these reasons, Plaintiffs request that this Court grant summary judgment as  
10 to their Second Amendment claim against the AWCA.

11  
12 Dated: March 25, 2019

**MICHEL & ASSOCIATES, P.C.**

13  
14 /s/ Sean A. Brady

15 Sean A. Brady  
16 Attorneys for Plaintiffs  
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**CERTIFICATE OF SERVICE**  
**IN THE UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

Case Name: *Rupp, et al. v. Becerra*  
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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

Xavier Becerra  
Attorney General of California  
Peter H. Chang  
Deputy Attorney General  
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455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed March 25, 2019.

/s/Laura Palmerin  
Laura Palmerin