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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE CATHY ANN BENCIVENGO, JUDGE PRESIDING

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B&L PRODUCTIONS, INC., d/b/)	
CROSSROADS OF THE WEST, et al.,)	
)	
	Plaintiffs)	CASE NO. 19CV0134-CAB
)	
vs.)	
)	SAN DIEGO, CALIFORNIA
22nd DISTRICT AGRICULTURAL)	
ASSOCIATION, et al.,)	MONDAY, JUNE 17, 2019
)	
	Defendants.)	
-----)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MOTION HEARING
PAGES 1-42

transcript reported by stenography, produced by CAT software

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1 San Diego, California; Monday, June 17, 2019; 2:30 p.m. a you
2 (Case called)

3 MR. BRADY: Good afternoon, your Honor. Sean Brady on
4 behalf of plaintiffs.

5 THE COURT: Thank you.

6 MR. BRADY: Tiffany Chevront on behalf of the
7 plaintiffs.

8 THE COURT: Thank you.

9 MS. LI: Patty Li for defendants.

10 MR. CAPLAN: Joshua Caplan for defendants.

11 MR. STEIN: And Paul Stein for defendants.

12 THE COURT: Thank you. We're here on what was
13 initially filed as a motion to dismiss the plaintiffs'
14 complaint. In response to the motions to dismiss, the
15 plaintiffs invited the Court to address this as a motion for
16 summary judgment. Having reviewed the papers with that round,
17 the Court considered that this could be ripe for summery
18 judgment determination and, therefore, afforded the defendants
19 additional time to file additional briefing, and plaintiffs as
20 well. I have reviewed all the materials that have been filed,
21 and in conjunction with their opposition to the motion, the
22 defendants have requested under Rule 56 that they need
23 additional time to do discovery.

24 The Court's initial inclination and tentative was to
25 deny the motion to dismiss. The plaintiffs have set up grounds

1 for the complaint and it's plausible.

2 With regard to the summary judgment, I am still not
3 convinced there is discovery needed in this case to justify the
4 moratorium in light of the First Amendment issues raised by the
5 plaintiffs, so I'm going to give the floor to the defendants to
6 convince me what specific discovery it is that your clients
7 didn't have at the time they entered the moratorium to ban
8 these gun shows.

9 MS. LI: Thank you, your Honor. In terms of specific
10 evidence that defendants would not have had in their possession
11 that is relevant to considering these issues on summary
12 judgment, if the Court determines that intermediate scrutiny is
13 the appropriate level of scrutiny to apply to the First
14 Amendment claims, part of that scrutiny is examining not only
15 the record that was before the legislative body at the time
16 that the challenge enactment was passed but any other relevant
17 evidence to that legislative body's determination. And so
18 defendants are not limited to everything that was before them
19 at the time they passed the policy. They are entitled, under
20 the Federal Rules, to discovery about matters that are
21 essential to the opposition. Here what would be essential is,
22 for example, descriptions or reports of past security incidents
23 or public safety incidents at the gun shows.

24 THE COURT: When the decision was made in September, I
25 believe, of 2018 to say that as of December of 2018, there

1 would be a moratorium for at least a year on allowing these gun
2 shows that, as I understand it, have been going on for some 30
3 years, to ban them, to not let them into contracts to continue,
4 there had to be a reason for doing that, and the only reason
5 that I have consistently seen articulated in the papers was a
6 desire to do a study to determine if these shows posed a public
7 safety hazard. And that to me is so -- it was just well, we
8 want to look into it. Well, why ban something when there was
9 no evidence that there was actually a public safety hazard that
10 was obvious and immediate and needed a complete ban of the
11 shows while this inquiry took place?

12 MS. LI: So, your Honor, I guess I would not agree
13 with the assessment that there was only a desire to study
14 public safety issues that was before the board. The board had
15 engaged in a month-long process of evaluating the gun shows
16 which were an enormous matter of public interest.

17 THE COURT: Okay. But who is the public that they're
18 trying to make safe?

19 MS. LI: It's the community at large.

20 THE COURT: How is that relevant to the -- isn't the
21 public of interest here the people attending the shows?

22 MS. LI: No. Because the gun shows can have effects
23 beyond, you know, simply the people attending.

24 THE COURT: What effect?

25 MS. LI: So the effect of weapons that are purchased

1 or obtained at gun shows, whether lawfully or not.

2 THE COURT: But there is no evidence that there were
3 guns that were obtained unlawfully at these shows. As I
4 understand it, there's no ability to transfer weapons or
5 ammunition at the show. People can fill out the paperwork and
6 get a weapon at a registered agent later, but there isn't any
7 evidence in the record before the Court that people are
8 actually transferring weapons at these shows, and there are
9 significant regulations prohibiting that already.

10 MS. LI: Yes, your Honor. There are definitely
11 significant regulations prohibiting that, but those regulations
12 are not always complied with, and there is evidence in the
13 papers that plaintiffs have submitted.

14 So if your Honor is not inclined to grant the motion
15 to dismiss, you think the claims survive as a matter of law,
16 then we do need to look at the evidence, even the evidence that
17 plaintiffs have submitted. Looking at their Exhibit 5, pages
18 95 to 96, these are sheriff office's after-action Reports that
19 describe the standard security precautions that the sheriff's
20 office takes at every gun show given the quote: Normal reports
21 of illegal weapon sales, unrecorded sales, and sales of
22 firearms in the parking lots at previous gun shows. In light
23 of these concerns, the sheriff's office conceived an operation
24 for each and every gun show. They have a plan to police it.
25 And this document also states that there were about 10 DOJ

1 agents attending the show in an undercover capacity.

2 THE COURT: Isn't that a narrowly tailored response to
3 a problem as opposed to just banning the shows entirely?

4 MS. LI: That may be one narrowly tailored response,
5 but is it not required that the District use the least
6 restrictive means. Intermediate scrutiny does not require
7 least restrictive means.

8 THE COURT: What if it's heightened scrutiny? What
9 about the fact that at these shows it's not simply a commercial
10 activity but there's other expression going on that's protected
11 by the First Amendment, including the rights of people to
12 associate at these shows who have a similar interest.

13 MS. LI: It may be that they have a similar interest,
14 but they are attending a commercial event where there's paid
15 admission, where they don't necessarily know each other, and
16 there is Supreme Court precedent stating in that instance, the
17 association there is not protected under the First Amendment.
18 Not every form of social association is protected. And so
19 the -- you know, any effects that this policy has in terms of
20 the conditions under which someone might associate with another
21 person, that does not necessarily mean it's a direct regulation
22 of someone's right to associate.

23 Same thing with speech. Just because it might
24 possibly affect the speech that someone wants to carry out does
25 not mean it's a regulation of speech. And there's a long line

1 of authority about the government's power to regulate
2 commercial enterprises without infringing on First Amendment
3 rights.

4 THE COURT: So if they wanted to hold this gun show
5 and not have guns and just wanted to call it a Second Amendment
6 forum, could they do that?

7 MS. LI: Yes, your Honor. And another Second
8 Amendment --

9 THE COURT: But won't let them even reserve a space.
10 You have prohibited them from even reserving a space.

11 MS. LI: The policy says that the District will hold
12 off on entering into contracts with producers of gun shows, and
13 it specifies that it's the possession of guns and ammunition
14 that is raising the concern. And so if plaintiffs wanted to
15 hold an event where they were discussing the right to bear
16 arms, discussing Second Amendment advocacy, engaging in public
17 education on those efforts, there is no reason that this policy
18 would prohibit that. This policy does not cover that.

19 This policy does not cover speech in terms of, you
20 know, discussing the Second Amendment because plaintiffs are
21 perfectly free to continue to engage in that speech. If they
22 want to lease property from the Fairgrounds in order to do
23 that, they can. The policy does not prohibit them from doing
24 that. What it does prohibit is the -- it states that the
25 District will not enter into a contract for a gun show for a

1 limited period of time.

2 And in terms of -- to go back to something your
3 Honor --

4 THE COURT: Let me ask you just on that issue --

5 MS. LI: Yes.

6 THE COURT: -- how limited a period time is this? Is
7 this thing going to be moot on December 31st, 2019? Will they
8 be able to reserve a date in 2020?

9 MS. LI: I can't say whether it's going to be moot. I
10 can tell you, looking at the face of the policy which is the
11 standard practice for evaluating whether -- you know,
12 evaluating a law under our First Amendment challenges, to look
13 at the face of the policy. It says that the more thorough
14 policy that they're hoping to develop shall be presented to the
15 board no later than December 2019 board meeting. And so that
16 is what the policy sets forth. That is what the District is
17 working towards.

18 There is -- you know, I think it would be speculation
19 to say now that oh, they're not really going to do it or that
20 we just have to wait it out until December and then the whole
21 thing will be moot. You know, we just need to look at what the
22 policy says and take it for what it says.

23 THE COURT: So it says that for the indefinite period
24 of time they can't reserve a date. It's not really going to
25 end this year. If they said fine, we'll pass 2019, we'll fight

1 this out here whether or not this was a valid moratorium and
2 whether we're entitled to damages, but we want a date now for
3 2020, they still couldn't get that?

4 MS. LI: I don't believe they have asked for a date in
5 2020.

6 THE COURT: I'm asking you. If they walked out of
7 here today and said fine, you know what? We'll just go forward
8 with this case. It's for 2019, we lost three or four or five
9 dates this year, but we want a date now for 2020, the first
10 available date we can get. Would the answer be no, the
11 moratorium would still be in place?

12 MS. LI: I, quite frankly, don't know. I don't know
13 how the board of the District would react to that. I just
14 don't know, and it's not something that the policy tells me
15 just by looking at it. So I'm afraid I don't know how to
16 answer your question.

17 THE COURT: So your position is if they came to see
18 you and said well, as long as we don't bring any guns on the
19 premises but we just want to rent the Fairgrounds to hold a
20 Second Amendment forum to talk about guns and gun rights and
21 whatever, that would be okay?

22 MS. LI: Yes. And, in fact, another group, the let's
23 say the Second Amendment -- the San Diego gun owners --
24 San Diego County Gun Owners Political Action Committee held
25 what was called a California Gun Laws Convention at the

1 Fairgrounds last year, and there's no reason that that event,
2 which was simply a paneled discussion that did not feature the
3 presence of firearms -- there is no reason that an event like
4 that would be covered by the contracting policy at issue here.

5 THE COURT: And it's the District's position that it's
6 the presence of firearms at this show that causes a safety
7 concern to the general public, not necessarily the people at
8 the show, but just the public in general because? Because why?

9 MS. LI: You're asking why does the presence of
10 firearms--

11 THE COURT: Yes.

12 MS. LI: -- pose the concern?

13 So it's the fact that these firearms are entering into
14 the stream of commerce here maybe not in compliance with all of
15 the required regulations. There are lots of studies showing
16 that gun shows are quite significant in terms of the number and
17 percentage of guns that they contribute to the illegal commerce
18 and firearms to firearms that are used in committing crimes.
19 There are studies showing that when a gun show is held slightly
20 across the border of California, in a much less regulated
21 fashion to be sure -- but when a gun show is held across the
22 border in California, those border areas in California see an
23 uptake of firearm violence immediately after that.

24 THE COURT: Wait. So just so I've got this. So the
25 fact that someone might go to a gun show and then somewhere at

1 some time later do an act of violence is a justification for
2 banning the gun shows in their entirety because somebody else
3 may do something bad?

4 MS. LI: Well, to be clear, this is not a ban on the
5 use of all county property, all city-owned property, anything
6 like that. It is a decision made by the board for this
7 particular venue, which is the Fairgrounds. It's simply not
8 the same as an across-the-board ban. And California law is
9 clear that local jurisdictions do have the authority to ban the
10 possession of firearms on their property and to ban gun shows.
11 So it is not inconsistent with California law.

12 And in terms of the public safety concerns to go back
13 to the application of intermediate scrutiny, the Ninth Circuit
14 found in the *Nordyke* case from 2011 -- I know there were
15 several *Nordyke* cases cited in the papers. I'm thinking of the
16 one from 2011. The Ninth Circuit found in that case that it
17 didn't matter -- it was okay that the County had not been able
18 to point to a specific, you know, incident, like a violent
19 incident or a public safety incident that had happened at the
20 gun show that the Nordykes had run. That, in that case, it was
21 simply a ban on the possession of weapons, that that satisfied
22 immediate scrutiny because --

23 THE COURT: I'm sorry. If I've got the right one,
24 because there's a series of those cases, that ban was facially
25 neutral. It banned anyone at any time from bringing weapons on

1 onto that public venue. It was not specifically limited to
2 just their shows. And the Court found that that was okay.

3 MS. LI: Yes. But in this case, there actually is
4 already a ban on possession of firearms on this property. It's
5 illegal under state law, and the exception -- there are a few
6 exceptions, and one of those exceptions is for gun shows. So
7 there is already a baseline ban, if that makes sense.

8 In terms of the ban as it operated in that *Nordyke*
9 case, the Ninth Circuit found that it was justified, that it
10 survived intermediate scrutiny even though the County was not
11 able to point to a specific incident that precipitated their
12 desire to ban the guns, because it was enough -- because
13 intermediate scrutiny is satisfied simply by the legislature
14 taking note of a matter of public concern and coming up with a
15 method for addressing that. And they can use their predictive
16 judgment. The Court is supposed to give deference to the
17 policy judgments made by the legislature.

18 THE COURT: It still has to be narrowly tailored to
19 achieve a significant government interest. I'm not sure this
20 ends up being narrowly tailored.

21 MS. LI: Well, I think the time frame that is set
22 forth here is a matter of -- when this was passed, the pause of
23 entering into contracts would be a matter of 12 months.

24 THE COURT: Well, you just told me you can't guarantee
25 it's 12 months.

1 MS. LI: Well, I can guarantee nothing. Let me put it
2 that way.

3 THE COURT: Well you're going to rely on that to tell
4 me it's temporary, it's only 12 months. Well, 12 months ends
5 in December, but they can't get a date in January.

6 MS. LI: Well, the policy on its face says that this
7 is how long it lasts for, and I'm saying this is how we need to
8 take the policy, as it comes. There is no indication that it
9 won't be finished or that they won't have considered and
10 adopted a different policy by that date.

11 THE COURT: Well, I understand there's already one
12 pending in the legislature that may make this whole policy
13 irrelevant.

14 MS. LI: Yes. AB-893 is pending, let's see, with the
15 Senate Appropriations Committee now, and it's passed the
16 assembly. And so I believe that legislation has until the end
17 of the summer to be passed and then signed.

18 THE COURT: Okay.

19 MS. LI: Or signed 30 days after that. So it may be
20 that events will overtake us as we are litigating that matter.
21 But today, right here, right now, I don't think that there is
22 any reason to question the District's assessment that there
23 were significant public safety issues that were certainly worth
24 considering, certainly worth studying while they determine the
25 best way to proceed.

1 And it really is -- as it says on the policy, it is
2 the possession of guns and ammunition on state property in this
3 context that concerned the board. And so the policy was really
4 limited to figuring out the best way to deal with that.

5 Again, if plaintiffs had requested to hold an event
6 about Second Amendment topics that did not feature the presence
7 of guns and ammunition, then there is no reason this policy
8 would have prevented them from doing that.

9 THE COURT: So it's your position that this policy is
10 only barring commercial speech which is subject to intermediate
11 scrutiny and that the governmental interest here is
12 sufficiently represented by the fact that there's at least some
13 history of concern about illegal transfer of guns, or that when
14 guns are transferred at these events or even just talked about
15 and displayed that that causes violence in other situations?

16 MS. LI: No. It's certainly not -- the talking about
17 and displaying of weapons is not something that the District
18 had concerns with. As we set forth in the -- or as you can see
19 by reading the transcript from the September 2018 meeting, you
20 know, the concerns raised there were the advertisements for
21 do-it-yourself AR-15 kits, which are not legal, and other
22 weapons, firearms that are not legal or other, you know, kits
23 to modify firearms in illegal ways.

24 There was, you know, a concern raised by board members
25 who had visited the gun shows in person and observed these

1 things that were not being reported by the sheriff's office
2 because, quite frankly, they don't look for that kind of thing.
3 They're not being reported by the Department of Justice because
4 the Department of Justice agents are mostly in the parking lot
5 policing against the illegal purchase or, you know, straw
6 purchases or illegal -- excuse me, illegal transfers of
7 firearms in the parking lot.

8 And so there's enough concern there that was
9 articulated, for example, at the September 2018 meeting about
10 the availability of things that should not have been available,
11 about the background of the promoter of the gun show who -- or
12 I guess, rather, even just the identity of the promoter,
13 because the person that the District's board had been dealing
14 with is someone who turned out to have a felony conviction that
15 prohibited him from being the official promotor of the gun show
16 and, yet, he was the one that the District was dealing with
17 when they had concerns about safety issues at the gun shows.

18 So there are a variety of things that, at least,
19 raised concern for the District, for the members of the board
20 that prompted this policy, which this is not an outright
21 moratorium, this is not a policy that says we shall from this
22 day forth not enter into any contracts for gun shows. That's
23 not what this is. This is a considered and reasonable measured
24 approach to try to listen to all of the input that the
25 community had, you know, strongly held opinions on both sides.

1 After months and months of public comment, this was the policy
2 that the District adopted. And so this is not an outright ban,
3 and it does, I think, you know, leave room for the District to
4 develop a policy that will more specifically address the
5 concerns as they are identified.

6 THE COURT: Was there anything that specifically
7 happened in 2017 or '18 at one of these gun shows that resulted
8 in this decision to stop letting the gun shows go forward on
9 the Del Mar Fairgrounds property in response to this
10 countervailing voice that said we don't like gun shows, they
11 put guns out in the community and they're dangerous? Was there
12 something about these shows that happened in that time period
13 after all these years of the shows taking place there that
14 flipped the switch, if you will?

15 MS. LI: If you're asking about public sentiment?

16 THE COURT: I'm asking about why all of a sudden they
17 just decided to do this. You've been hosting -- letting them
18 have this gun show for 30 years.

19 MS. LI: Yes.

20 THE COURT: More than once a year. And all of a
21 sudden in 2018, there became this concern that there was a need
22 to do a more long-term reasoned and intensive study about the
23 safety of these shows. And I'm asking, was there a particular
24 event, something that happened that said we need to stop this
25 while we do that? Not while it's going on, we do this

1 investigation, but we need to stop it in the interim while we
2 look into this. What was the turning point?

3 MS. LI: In terms of why this came to the board's
4 attention as a decision that the board wanted to make, my
5 understanding was there was increased public comment and
6 concern from -- from -- I guess I'm not sure what to call them,
7 public safety advocates, people who were kind of more concerned
8 about gun control issues.

9 THE COURT: Oh, yes. But see, were they people who
10 went to the show and had firsthand knowledge of what was going
11 on at the show, or were they just expressing a general concern
12 that they don't like a culture that supports weapons and the
13 purchase and the ownership of firearms?

14 MS. LI: Well, it may be that some of those people
15 held those views, but this policy is not -- you know, there's
16 not a direct line from people in the public expressing that
17 concern to the contents of this policy. This policy --

18 THE COURT: Well, I want to know what it was that made
19 the people who wrote this policy decide that after all these
20 years of allowing this show to go forward, all the regulations
21 that the plaintiffs have laid out on how these shows are
22 regulated and all the security measures they have to do, and
23 all of the things they have to fill out before they can bring
24 vendors onto the site, why -- what happened in 2018 that made
25 the defendants say we have to pull the plug on this, at least

1 for a year, while we look at do we really want to host these
2 shows?

3 MS. LI: Well, it's set forth in the transcript of the
4 September 2018 meeting. Some of the individual board members,
5 because this became a matter of public concern, decided to
6 attend the gun shows and see for themselves. And it is their
7 individual observations that are recounted in that transcript,
8 and some of those observations have to do with the -- for
9 example, the sale of the illegal do-it-yourself AR-15 kits.

10 THE COURT: Wouldn't it have been easier to get that
11 person off the premises, rather than shut the whole show down
12 because one person was violating the rules?

13 MS. LI: Well, the fact that it was a board member
14 visiting, you know, just as an individual just to check it out
15 who discovered this, you know, it indicate that there may be a
16 lack of proper security controls, proper review processes by
17 the promoter of the gun show, who, as I had mentioned, there
18 were concerns about exactly who the promoter was, exactly who
19 was responsible, whether the promoter was someone who had a
20 violent felony conviction that should have prohibited him from
21 being a promotor of a gun show.

22 THE COURT: So did you restrict that one promoter? I
23 thought this applied to anybody who wanted to do a gun show
24 that would bring weapon -- would bring firearms onto the
25 fairground premises, not just any particular promoter.

1 MS. LI: The policy applies to any gun show promoter,
2 so your Honor is correct, it is not specific to B&L
3 Productions. Are you asking why not only restrict it to B&L
4 Productions?

5 THE COURT: Yes. One person breaks a rule, so
6 everybody is kicked out?

7 MS. LI: Well, because the District is entitled to
8 assess whether there are sufficient safety precautions for this
9 event. So temporarily pausing the new contracts for this type
10 of event while assessing those security procedures, while
11 assessing current procedures and developing more robust
12 procedures is not an unreasonable to do. And, again, we think
13 it complies with the intermediate scrutiny because it is a
14 reasonable policy judgment that this legislative body is
15 entitled to make. It is entitled to find that there is a
16 concern about public safety and to respond to it. That is a
17 standard part of what the government can do.

18 And so -- and there's numerous -- there are numerous,
19 numerous cases in the Ninth Circuit about the proper
20 application of intermediate scrutiny. And the Ninth Circuit is
21 very clear that when the legislature is making predictive
22 judgments, it doesn't have perfect evidence because oftentimes,
23 the problems that need to be addressed are not necessarily
24 fully studied at that time. Maybe more evidence needs to be
25 taken. But that's okay. A policy can survive intermediate

1 scrutiny even if the legislative body doesn't have perfect
2 knowledge, even if there is not a specific violent incident
3 that precipitates this particular policy. Just having enough
4 to detect that there is a public safety concern is enough to
5 satisfy intermediate scrutiny.

6 THE COURT: And is this set to satisfy strict
7 scrutiny?

8 MS. LI: So strict scrutiny requires that the policy
9 be the least restrictive means of satisfying a compelling
10 governmental interest. We do think that protecting public
11 safety is still a compelling government interest. And in terms
12 of whether it's the least restrictive means --

13 THE COURT: See, your public safety definition strikes
14 the Court as rather amorphous. There are acts of violence that
15 involve guns all around the country or outside the state line,
16 you even gave as an example after a gun show is held here. It
17 seems to be a rather broad definition of public safety that
18 doesn't limit it to what's going on at this show. Shouldn't
19 the concern here be for the safety of the people attending the
20 show? There's no evidence that people attending the show are
21 at any risk.

22 MS. LI: I don't think there is any requirement that
23 local or state legislative body --

24 THE COURT: Who is the public? Your public is just
25 everybody who might being affected by gun violence, but that

1 doesn't tie it to the show. That's just then every store that
2 sells a gun might have to be prohibited from selling guns
3 because someone might buy a gun at Walmart and go out and do
4 something -- someone else may because Walmart offers guns for
5 sale go out and shoot somebody, and how does that just -- I
6 can't quite get my arms around the idea that because there's a
7 problem with gun violence in this country, and regardless of
8 how the Court or anybody else in the room feels about it, that
9 that generates enough of a concern to say this particular venue
10 should not be allowed to have shows where guns are displayed
11 and purchases can be made, although under the rules, can't
12 actually be transferred at the show, which is a Second
13 Amendment right for people to do.

14 MS. LI: Well, that -- that's not what we have in this
15 case. What we have in this case is a record of public safety
16 concern specific to this venue, specific to this gun show
17 promoter, to the particular gun show that has been held here.
18 And if your Honor does believe that -- you know, whether or not
19 there were specific security incidents or other public safety
20 issues, if your Honor does believe that that does have legal
21 significance, then defendants do need discovery on exactly to
22 what extent those incidents did or did not happen.

23 THE COURT: All right.

24 MS. LI: The review that we have here --

25 THE COURT: That's fine. I'm going to let them get a

1 chance to respond. I'll give you time to respond to the
2 plaintiffs.

3 So you have heard their argument that, first of all,
4 they're not banning any idea of a show. If you want to get
5 together and talk about guns and the Second Amendment and
6 political activism and all that, you're more than welcome to,
7 but you can't bring any guns on the premises. That's all
8 they're barring.

9 MR. BRADY: I don't think that's right, your Honor.
10 As a matter of factual record, the policy laid out on page 5 of
11 the District's motion to dismiss lays out the reasons why they
12 want the study, one of which is to consider the feasibility of
13 conducting gun shows for only educational and safety training
14 purposes and bans the possession of guns and ammunition on
15 state property. In other words, they wanted to study whether
16 that was even an option to do that. If it's an option now,
17 then they wouldn't need to study whether it was an option.

18 But I think that this is sort of beside the point.
19 And I think your Honor's intuition is right here on every
20 aspect. And in your questioning, it sort of become apparent
21 why -- you know, while at first glance, this moratorium may not
22 seem like that big of a deal, a temporary inconvenience, but
23 upon further scrutiny and digging down, not only do you see how
24 hollow its base is as far as its foundation on what it's built,
25 but it ends being quite a serious threat to our constitutional

1 system.

2 I don't mean to engage in hyperbole. I don't think it
3 is. What the District is saying here essentially is that the
4 government can take the most extreme regulatory step available:
5 Prohibition, complete prohibition, just to give it time to
6 decide whether it needs to regulate at all. They're putting
7 the analytical cart before the horse in a way that under what I
8 just heard is the standard for intermediate scrutiny, that the
9 government gets to just say things they may or may not have a
10 basis for. That sounds more like rational basis than
11 intermediate scrutiny.

12 THE COURT: Well, she's suggested that the record, at
13 least, shows material facts in dispute at this point, and they
14 need more discovery; that there have, in fact, been numerous
15 violations of these very strenuous regulations that the show
16 promoters are subjected to at the Del Mar Fairgrounds, and that
17 in and of itself justifies a temporary -- we'll put aside for
18 the moment what temporary means -- a temporary moratorium on
19 the shows until there can be an adequate study to address
20 whether or not these regulations are sufficient to make sure
21 they're aren't illegal transfers of weapons, illegal promotion
22 of whatever else that they've laid out that they say is
23 actually going on because there aren't enough sheriffs or DOJ
24 guys there to patrol, or they're not even looking in the right
25 places.

1 MR. BRADY: Even if that were the case -- and I'll
2 explain why it's not in a minute -- I don't think that would be
3 sufficient to prohibit, completely prohibit. We're talking
4 about a tailoring issue now, right? Even if they had the
5 evidence, which they have admitted that they don't. They need
6 to conduct a study to determine whether there's even evidence
7 or whether there's an interest to be furthered, which, again, I
8 think is an inventive form of constitutional analysis. It puts
9 constitutional analysis on its head.

10 But even assuming that, there's -- the facts that they
11 put forth, the record shows that their own -- the District's
12 own security guard says that the show has a sterling record.
13 The San Diego County Sheriff's office says there are no
14 problems whatsoever with the show, other than, you know, your
15 standard things that happen whenever human beings congregate.
16 I imagine that when there's the fair or when there's horse
17 racing, people drinking and betting, I imagine not everybody is
18 acting as they would if they were in church, if you will.

19 So as to the specific claim that there were these
20 AR-15 kits being sold, that is simply not the case. That's
21 based on one District board member's account, who, by my
22 knowledge or by -- there's nothing in the record indicating
23 that that individual has any knowledge about California's
24 firearm laws. I can assure you what was being sold are these
25 things called 80-percent lowers. I don't want to bore the

1 Court. But they are perfectly legal. They can be and their
2 purpose is, they are the base of an AR-15 rifle. You can make
3 it into an AR-15 rifle. You can make it into not an AR-15
4 rifle. In other words, you can make it into a legal rifle or
5 you could make it into an illegal rifle. But that is the
6 crime, okay, after the fact. The product itself is not.

7 And upon learning that this individual was selling
8 those perfectly legal products in a way that was a little bit
9 disingenuous, suggesting avoid registration -- I believe he had
10 a sign up saying that. The promoter learned about that and
11 shut down that sign. You don't shut down the entire -- as your
12 Honor indicated, the entire thing because of one individual's,
13 you know, mishap. That would be like shutting down all parades
14 or a parade of a certain genre because one individual in that
15 parade engaged in a lewd act or something.

16 THE COURT: Their argument -- she'll correct me if I'm
17 wrong -- is that they're regulating conduct, not content. That
18 you could still have your show, you could still talk about gun
19 rights and gun possession and gun history and all the other
20 things that you say go on at the show, gun safety, gun
21 training. But the conduct that they are intending to regulate
22 with this moratorium is the actual possession and display and
23 potential sale of firearms, and that conduct of that nature is
24 not protected under the First Amendment, or at the very least,
25 it's commercial speech and would be subject to intermediate

1 scrutiny. So what's your response to that?

2 MR. BRADY: Sure, your Honor. So I think you have to
3 step back and look whether or not they are intentionally
4 looking at just the conduct and then the secondary effects of
5 regulating that conduct, or if they're targeting the speech.
6 And here, best case scenario for them, as your Honor has
7 indicated, the *Nordyke* case says the offering for sale of
8 firearms is commercial speech. It is protected. They have
9 banned it. Right there, they have to justify that under, at
10 least, intermediate scrutiny.

11 THE COURT: Couldn't you do it like the pictures? Do
12 you have to have the actual weapons?

13 MR. BRADY: You do, your Honor.

14 THE COURT: They can't take them away. They can't
15 transfer them at the site.

16 MR. BRADY: Sure. And I think we could engage in what
17 would be a more limited, you know, regulation that might pass
18 intermediate scrutiny, but we're not even there yet because
19 that would be hypothetical. We are talking about a ban. And
20 as your Honor found out in inquiring about the temporary nature
21 of it, it shows the insidious nature of these types of
22 moratoriums. It gives government a weapon. They basically
23 want to have it where they -- the government cannot be called
24 out for a potential constitutional violation because they're
25 saying oh, it's only temporary. Don't worry. We're just going

1 to figure this out.

2 But even assuming a government that has genuine public
3 safety concerns and is not trying to attack speech it disagrees
4 with, it just wants to implement good public policy, such
5 moratoriums would still be problematic. They could
6 incidentally result in people who want to engage and speak not
7 being able to survive the moratorium because these do depend on
8 financial, you know, profits to bring in to allow all these
9 people to come together. So that's assuming that you're
10 talking about a sincere genuine government that is not
11 attacking the speech.

12 That's not what's going on in this case. In this
13 case, you have something that is not just problematic, it's
14 frightening. You have the government targeting, using the
15 moratorium power to target speech it does not agree with for
16 the purpose of shutting it down. And there's nothing that the
17 plaintiffs -- that anybody subject to the moratorium could do
18 other than wait it out, maybe, and see if they survive. And we
19 don't know when the end of that will be.

20 And I just -- that -- when you look at it this type of
21 device in the hands of government, like I said, even in a
22 government that has genuine, you know, good faith, it's still
23 problematic. But, you know, when you're talking about a
24 situation where it's obvious from the record, your Honor -- the
25 reason Counsel for the District could not answer your questions

1 as to what act -- what actions precipitated this moratorium is
2 because there isn't one, other than political people on the
3 opposite side of the plaintiffs politically who don't like gun
4 shows in their backyard, and they raise, you know, political
5 arguments.

6 They did not raise any public safety arguments. It's
7 a general dislike. And they're perfectly able to have that
8 view. That is their right under the First Amendment. They can
9 protest these shows outside the gun show and tell people, Are
10 you sure you want to do this? Here's how many people guns
11 kill. They're entitled to do that. What they're not entitled
12 to do is end plaintiffs' speech just because they think that
13 it's dangerous.

14 THE COURT: What do you say in response to her
15 argument that because consumer A and consumer B didn't know
16 each other and had to buy a ticket to come into the gun show
17 are not associating under their First Amendment rights?

18 MR. BRADY: I think she's conflating the test for
19 associational -- for when you have associational protection
20 under the First Amendment. There's two different tests. And
21 you can see in plaintiffs' reply brief, I'll try to recall,
22 that it's basically that test goes more towards an intimate
23 association, you know, boyfriend/girlfriend, if you will.
24 Whereas there's -- that's one test. And that's what that goes
25 to.

1 The second test is people just coming together to
2 engage in First Amendment protected conduct. And the notion
3 that these gun shows don't have First Amendment protected
4 conduct going on at them, aside from the mere commercial sale
5 of firearms, is simply just -- it defies reality. There's
6 evidence in the record from CRPA, the California Rifle and
7 Pistol Association, and all sorts of political associations,
8 that is where people know they can come to meet to talk about
9 these things, to learn about these things.

10 And the reality is, I think, your Honor, firearms are
11 a unique right or a unique instrument in that they're tied to a
12 right. They're a thing, but in order to engage in the right, a
13 Second Amendment, you have to have this thing. And there
14 really is no other right where that's the case. So it's sort
15 of unique. You do need to have this firearm present. I think
16 it's inextricable to the speech.

17 And, your Honor -- I would direct your Honor to the
18 case of *Hunt v City of Los Angeles*, 638 F.3d, 703. And it
19 cites various cases about -- you know, the *Goguen* case which I
20 think also speaks to this, that, you know, when products --
21 when commercial speech is inextricably intertwined with other
22 First Amendment commercial speech, it gets the full First
23 Amendment protection, not just the commercial speech. And that
24 is certainly the case here. This is not merely about going and
25 saying oh, I like this vehicle, you know, or I like those

1 curtains, this spa. This is, I'm going to purchase a firearm,
2 which is my right under the Constitution, under another
3 provision of the Constitution, and which comes with it
4 political issues, safety issues.

5 One of the big things is when you're purchasing a
6 firearm, you need to learn whether that is a good fit for you,
7 whether it's a long gun or a handgun, and you want to have
8 somebody with knowledge passing that on to you, to explain to
9 you oh, yeah -- some guy comes in and says I want this big .44
10 magnum revolver because I want to be Dirty Harry, and a gun
11 show is a place where they can say hold, your horses there,
12 cowboy, let's explain what that gun is really all about and
13 let's put you into something more reasonable. And that's the
14 sort of thing that goes on at gun shows. It is a place where
15 people can come together for this type of knowledge, this type
16 of activism. And by eliminating a firearm from an equation,
17 it's basically taking out a big component of why people go
18 there. And that is just reality. It will inhibit the ability
19 of gun shows to attract people engaged in this speech.

20 THE COURT: Well, the fact that the show may be less
21 commercially successful for the promotor -- well, they wouldn't
22 put them on; isn't what you're saying? If they couldn't
23 display firearms and offer them for people to handle, look at,
24 consider, and then fill out applications for registration and
25 the waiting period and all that, they really wouldn't put these

1 shows on because they're not going to get together just to talk
2 about their political rights?

3 MR. BRADY: Precisely. And I want to make clear
4 another factual error.

5 THE COURT: Well, I don't know if "precisely" is
6 helping it, because then, really what you're concerned about is
7 the commercial ban, not the political ban. Because if you
8 wanted to do the political speech, you could still do that.

9 MR. BRADY: You could. But I think, your Honor, the
10 reason I said precisely, I think that lends to our --
11 plaintiffs' position in that by eliminating the commercial
12 aspect of it, it takes away a large component that people want
13 to see while -- in other words, it's difficult to get people
14 together to just talk about stuff, but when they have this
15 integral part, this one thing that brings them all together to
16 then talk about all that stuff, and that's why I said I believe
17 firearms are unique in that respect.

18 THE COURT: In the context of the commercial aspect of
19 this, it's certainly the Court's understanding that there's
20 nothing fraudulent or deceptive about the commercial
21 interaction that is happening for the people attending the show
22 who are buying tickets and going in and they want to look at
23 guns and are seeing guns and are not being misled or in any way
24 deceived by the speech or commercial activity that's going on
25 at the show. The concern here is when those people leave the

1 Fairgrounds that they may get involved in illegal activity. I
2 mean, that's my sense of this is that there's bad things that
3 happen out in our society that involve guns and because someone
4 could come to this gun show and decide to buy a gun, that might
5 lead to bad behavior.

6 MR. BRADY: Frankly, your Honor, I think that you got
7 it right when you said that what they're trying to target here
8 is amorphous. I think that is exactly right. Could it be that
9 somebody acquires a firearm from a gun show? Remember, your
10 Honor, you cannot leave a gun show with a gun that you acquired
11 there.

12 THE COURT: Unless you're violating the rules, like
13 they say there is evidence of.

14 MR. BRADY: No legitimate vendor at one of those shows
15 is doing that. There are California Department of Justice
16 agents everywhere. Their own security guy says that's not
17 happening. There has been zero evidence. And if they need
18 discovery on whether those sort of things are going on at their
19 own venue, then that begs some other questions about, you know,
20 whether they should be running this venue.

21 But, in other words, I think getting back to the main
22 point here is that this is a political decision, and it's a
23 political -- the board has a political goal of ending gun shows
24 in search of some practical policy that gives it cover to show
25 that -- to say it's not doing that. But that's exactly what

1 it's doing. But even if it's not doing that, a complete ban on
2 even commercial speech is simply not sufficiently tailored when
3 you have no justification to begin with other than we need to
4 look into it to meet even intermediate scrutiny, the lowest
5 form of intermediate scrutiny. Of course, plaintiffs believe
6 that strict scrutiny clearly applies here because you're
7 talking about a public forum and you're talking about viewpoint
8 discrimination. Gun shows are singled out. Gun shows, not
9 antigun shows, not any other thing. Gun shows are singled out
10 at a public venue, and that requires strict scrutiny, I
11 believe. But it doesn't really matter because a ban is not
12 going to meet even any form of heightened scrutiny that applies
13 here because as *Nordyke* tells us, we have at bare minimum
14 commercial speech going on here. And they're banning it for an
15 indefinite amount of time.

16 THE COURT: All right. Thank you.

17 MR. BRADY: Thank you, your Honor.

18 MS. LI: Since we didn't talk about this earlier, I
19 just want to make sure to touch on the immunity arguments. I
20 don't know if your Honor has specific questions on those, but
21 it is the positions of the defendants that the individual
22 defendants are entitled to absolute immunity for this
23 legislative action. There is Supreme Court precedence, the
24 *Bogan* case, that says even a decision that -- you know, a
25 decision to cut the funding for one department that consisted

1 of one employee, that was a legislative action. So just
2 because a legislative action might only have a practical effect
3 on a limited number of entities or persons that doesn't mean
4 that the individuals are not entitled to absolute immunity for
5 their role as legislative policymakers.

6 In terms of sovereign immunity, we think it's fairly
7 straightforward that the secretary of the CDFA has no
8 connection whatsoever with the policy at issue here and should
9 be dismissed from this action.

10 And if your Honor doesn't have any questions on
11 legislative immunity...

12 THE COURT: I do not on the immunity issues, so you
13 can go on.

14 MS. LI: Okay. And then just in response to opposing
15 counsel's comments, you know, in terms of whether there are --
16 well, I guess to set the framework for intermediate scrutiny,
17 which it appears is the threshold that we're dealing with here,
18 it is not a least restrictive means test. The courts are very
19 clear on that. It is not the same as the least restrictive
20 means test. And so it is -- it is allowed that the legislature
21 can decide to proactively take steps to address what they feel
22 are, you know, important issues of public concern.

23 And in terms of whether there are bad effects from gun
24 shows more broadly and is that driving the policy here, I
25 think, you know, the record -- what limited record we have here

1 because it is --

2 THE COURT: You just told me it was. You just got up
3 here and told me it was the effects that these gun shows have
4 outside in the community that was a concern as to whether or
5 not they should be allowed.

6 MS. LI: That is one concern, but it's certainly not
7 the only one. And I think more specifically here, the board
8 members were very clear that they themselves had observed
9 violations at these gun shows, which it may be -- as I said,
10 the one violation might have been corrected. But why was it
11 allowed to persist in the first place? Why was it that the
12 District -- you know, that the board members had to be the ones
13 to bring it to the gun show promoter's attention? Why wasn't
14 there more sufficient policy or procedure in place for policing
15 these things? Because apparently no one else is checking to
16 see that the vendors are in compliance with state or federal
17 law.

18 The comments of the District's security director
19 stating that broadly, generally he's not aware of any problems.
20 You know, he's not mentioning the illegal sales in the parking
21 lot which, I mean, granted, they're illegal but they're
22 happening in conjunction with the gun shows. So I think it is
23 within -- it is reasonable for the District to have concerns
24 with illegal events occurring at gun shows. We all know that
25 those are not supposed to be occurring, but they are. So the

1 District wanted to take a pause and decide whether to do
2 something about it.

3 And all of these facts that we have been discussing, I
4 think if the Court believes that they are legally significant,
5 if the Court believes that the claims survive as a matter of
6 law, then I think they are all -- they should all be subject to
7 discovery. You know, whether -- whether there were other
8 things -- whether the other things -- excuse me -- observed by
9 the board members, you know, were they or were they not really
10 a matter to be legitimately concerned about. As plaintiffs
11 suggested, there is nothing to see here. They're complaining
12 about nothing. But we don't know that, and, quite frankly --

13 THE COURT: Quite frankly, I think you should have
14 known that before you did this, but, you can -- is there
15 anything else you wanted to add?

16 MS. LI: Yes. In terms of whether we should have
17 known, I think the cases are clear from in the Ninth Circuit
18 and the Supreme Court and in the Fourth Circuit case we cited.

19 THE COURT: That Fourth Circuit case is so not
20 relevant to this analysis in my opinion, and it's also not
21 precedent here so I don't to want talk about it. Something
22 else?

23 MS. LI: Well, I think it is consistent with Ninth
24 Circuit and Supreme Court precedent in terms of showing that to
25 meet intermediate scrutiny, government defendants are allowed

1 to point to things that were not solely before that legislative
2 body when passing the policy. The case law is very clear on
3 that. We are not limited to what was in the record at the
4 time.

5 And then in terms of separating out speech and
6 conduct, which counsel discussed a little bit of, they have
7 said in their reply papers they concede that the speech about
8 Second Amendment rights, Second Amendment advocacy of firearms,
9 that kind of thing, they concede that it's not inextricably
10 intertwined with the sale of -- with the sale of firearms. And
11 I think that shows that this policy is not targeted at any kind
12 of protected speech on those topics. It's perfectly possible
13 for anyone to lease the Fairgrounds and engage in speech on
14 those topics. And so if the question is, you know, whether a
15 ban on possession would be okay, well, first, that's not
16 precisely the issue that's before the Court, but second, a ban
17 on possession has already been found to be --

18 THE COURT: But if you wanted to have an educational
19 seminar on firearm safety, it would be kind of hard to do that
20 without having some firearms there to demonstrate proper
21 trigger locks and this and that and the other things that would
22 be helpful and I think essential to all public safety to make
23 sure people who want to own firearms do get proper training and
24 education and have that available to them so that they store
25 their guns safely and they use them safely and they're trained.

1 And how do you do that without having a gun present?

2 MS. LI: Well, it might not be ideal, but that doesn't
3 mean it doesn't satisfy intermediate scrutiny.

4 THE COURT: Well, maybe. I'm good. The Court is
5 going to rule here. Thank you.

6 First of all, with regard to the immunity issues
7 raised for Shewmaker, Valdez and Ross, the Court does rule in
8 the defendants' favor on those matters. Shewmaker and Valdez
9 are subject to qualified immunity in this case and will be
10 dismissed from the case. And Ross, Ms. Ross also has sovereign
11 immunity as to this case and will be dismissed as an individual
12 defendant.

13 The case will proceed as to the other defendants. The
14 motion to dismiss is denied.

15 The motion for summary judgment is denied without
16 prejudice.

17 I am going to allow for some discovery and rehear this
18 motion, and I will give you a scheduling order for the
19 discovery. I think that although I am not personally very
20 persuaded by what I've heard, which sounds like a lot of
21 speculation, there have been a enough issues thrown out there
22 as to whether or not things were happening at this show that
23 justify the moratorium and what was going on there. There are
24 at least disputed facts. I think defendants' position is a
25 little thin, but I'll give them the opportunity to develop it.

1 However, with that in mind, the ultimate relief that
2 the plaintiffs are seeking in this case beyond their damages is
3 a permanent injunction. Since I'm denying the motion for
4 summary judgment at this time without prejudice, I will not
5 grant a permanent injunction. I am, however, granting you a
6 preliminary injunction that during the pendency of this case,
7 the moratorium is barred from being enforced against you and
8 you can request contractual time to set up a show. Because if
9 I wait until the end of the case, you will have missed out, I
10 assume, on getting any opportunity in this calendar year or
11 possibly even next calendar year.

12 Now all of this may become moot based on the
13 legislation that's in the house right now in the state, but I
14 think for purposes of this case, the plaintiffs at this point
15 have shown that they have a likelihood of success on the
16 merits, maybe not enough to get summary judgment, but certainly
17 to be entitled to a preliminary injunction.

18 So as of today, the Court is preliminarily enjoining
19 the moratorium going forward against the plaintiffs and they
20 can make requests in the ordinary course of business to reserve
21 a date any time the next date is available for you to do the
22 show.

23 Discovery will commence starting tomorrow, June 18th.
24 Discovery will close on August 16th, at which point the
25 plaintiffs can move again for summary judgment. File your

1 papers by August 29th. There will be an order with all these
2 dates. Opposition due September 12th, replies September 19th,
3 and the Court will rehear the motion for summary judgment on
4 September 26th at 2:00. So you have two months to get your
5 interrogatories and any depositions you want to get scheduled.
6 I expect you to be cooperative and move forthwith on that and
7 get those things set up.

8 But given the focus here of what the justification was
9 for entering the moratorium so show that there was a
10 significant public safety concern revolving out of these shows
11 for this community and not some nationwide concern about gun
12 control and gun management but rather that these shows posed a
13 public safety threat, I think you should be able to get that
14 discovery given that you run these Fairgrounds and have been
15 contracting for this show for 30 years and you should know
16 what's going on there. Certainly all the players have been
17 identified in these motions, so I don't think 60 days is not
18 enough time for that discovery to be done.

19 A written order will be issued, and that is all for
20 today. Thank you.

21 (Court in recess at 3:25 p.m.)

22 *** End of requested transcript ***

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CERTIFICATE OF OFFICIAL REPORTER

I, Mauralee Ramirez, Federal official Court Reporter,
in and for the United States District Court for the Southern
District of California, do hereby certify that pursuant to
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Dated this 24th day of June 2019.

/S/ Mauralee Ramirez
Mauralee Ramirez, CSR No. 11674, RPR
Federal Official Court Reporter