

Case No. 19-56004

---

In the United States Court of Appeals  
for the Ninth Circuit

---

STEVEN RUPP, et al.,  
*Plaintiffs-Appellants,*

v.

XAVIER BECERRA,  
in his official capacity as Attorney General of the State of California,  
*Defendant-Appellee.*

---

On Appeal from the United States District Court  
for the Central District of California  
Case No. 8:17-cv-00746-JLS-JDE

---

**APPELLANTS' EXCERPTS OF RECORD  
VOLUME I OF XXII**

---

C.D. Michel  
Sean A. Brady  
Anna M. Barvir  
MICHEL & ASSOCIATES, P.C.  
180 East Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
(562) 216-4444  
cmichel@michellawyers.com

*Attorneys for Plaintiffs-Appellants*

---

January 27, 2020

Under Federal Rules of Appellate Procedure for the Ninth Circuit, rule 30-1, Plaintiffs-Appellants Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis, Dennis Martin, and California Rifle & Pistol Association, Incorporated, by and through their attorney of record, confirm to the contents and form of Appellants' Excerpts of Record.

Date: January 27, 2020

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

s/ Sean A. Brady

Sean A. Brady

*Attorneys for Plaintiffs/ Appellants*

*Steven Rupp, et al.*

**INDEX TO APPELLANTS' EXCERPTS OF RECORD****VOLUME I**

<b>Dkt</b>	<b>Date</b>	<b>Document Description</b>	<b>Page</b>
111	07.31.19	Judgment	1
108	07.22.19	Order Granting Attorney General's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment	3

**VOLUME II**

114	08.27.19	Plaintiffs' Notice of Appeal and Representation Statement	26
***	05.31.19	Reporter's Revised Transcript of Proceedings Re: Plaintiffs' and Defendants' Motions for Summary Judgment	30
106	05.28.19	Plaintiffs' Notice of Motion and Motion to Exclude the Testimony of Defendants' Expert Witness Michael Mersereau	56
105	05.28.19	Plaintiffs' Notice of Motion and Motion to Exclude the Testimony of Defendants' Expert Witness John J. Donohue	59
104	05.28.19	Plaintiffs' Notice of Motion and Motion to Exclude the Testimony of Defendants' Expert Witness Christopher B. Colwell, M.D.	62
103	05.28.19	Plaintiffs' Notice of Motion and Motion to Exclude the Testimony of Defendants' Expert Witness Lucy P. Allen	65
101	05.17.19	Defendants' Reply Statement of Genuine Disputes of Material Fact	68
96-1	05.03.19	Exhibit 49 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	71
96-2	05.03.19	Exhibit 50 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	108

96-3	05.03.19	Exhibits 51-52 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	145
------	----------	--	-----

**VOLUME III**

96-4	05.03.19	Exhibit 53, Part 1 of 2 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	212
------	----------	---	-----

**VOLUME IV**

96-5	05.03.19	Exhibit 53, Part 2 of 2 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	362
------	----------	---	-----

**VOLUME V**

96-6	05.03.19	Exhibit 54 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	511
------	----------	--	-----

**VOLUME VI**

96-7	05.03.19	Exhibit 55 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	733
------	----------	--	-----

**VOLUME VII**

96-8	05.03.19	Exhibit 56 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	833
------	----------	--	-----

**VOLUME VIII**

96-9	05.03.19	Exhibit 57 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	1111
96-10	05.03.19	Exhibits 58-62 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	1288

96-11	05.03.19	Exhibit 63 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	1312
-------	----------	--	------

**VOLUME IX**

96-12	05.03.19	Exhibits 64-69 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	1362
95	05.02.19	Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment	1480
94	05.02.19	Plaintiffs' Request for Judicial Notice in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment	1486
93	05.02.19	Plaintiffs' Objections to Evidence Filed in Support of Defendants' Motion for Summary Judgment	1495
92-1	05.02.19	Plaintiffs' Statement of Genuine Disputes of Material Fact and Additional Uncontroverted Facts	1534
90	05.02.19	Supplemental Declaration of Peter H. Chang in Support of Defendants' Opposition to Plaintiffs' Motion for Summary Judgment	1552
90-1	05.02.19	Exhibit 46 of Supplemental Declaration of Peter H. Chang in Support of Defendants' Opposition to Plaintiffs' Motion for Summary Judgment	1555
89	05.02.19	Defendants' Statement of Genuine Disputes of Material Fact	1569
87	04.26.19	Plaintiffs' Statement of Uncontroverted Facts and Conclusions of Law in Support Motion for Summary Judgment	1593

**VOLUME X**

79	03.25.19	Request for Judicial Notice in Support of Plaintiffs' Motion for Summary Judgment	1607
78	03.25.19	Declaration of Sean A. Brady in Support of Plaintiffs' Motion for Summary Judgment; Exhibits 1-8	1727

**VOLUME XI**

78-1	03.25.19	Exhibits 9-11 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	1891
78-2	03.25.19	Exhibits 12-19 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	1947
78-3	03.25.19	Exhibit 20-21 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	1998
78-4	03.25.19	Exhibit 22, Part 1 of 4 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2061
78-5	03.25.19	Exhibit 22, Part 2 of 4 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2106

**VOLUME XII**

78-6	03.25.19	Exhibit 22, Part 3 of 4 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2150
78-7	03.25.19	Exhibit 22, Part 4 of 4 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2197
78-8	03.25.19	Exhibit 23 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2244
78-9	03.25.19	Exhibit 24, Part 1 of 3 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2332

**VOLUME XIII**

78-10	03.25.19	Exhibit 24, Part 2 of 3 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2433
-------	----------	---	------

78-11	03.25.19	Exhibits 24, Part 3 of 3 - Exhibit 26 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2525
78-12	03.25.19	Exhibit 27 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2659

**VOLUME XIV**

78-13	03.25.19	Exhibits 28-44 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2689
-------	----------	--	------

**VOLUME XV**

78-14	03.25.19	Exhibits 45-48 of Declaration of Sean A. Brady in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	2884
77-2	03.25.19	Plaintiffs' Statement of Uncontroverted Facts & Conclusions of Law in Support of Motion for Summary Judgment	2987
77-3	03.25.19	Declaration of Steven Rupp in Support of Plaintiffs' Motion for Summary Judgment	3001
77-4	03.25.19	Declaration of Steven Dember in Support of Plaintiffs' Motion for Summary Judgment	3005
77-5	03.25.19	Declaration of Cheryl Johnson in Support of Plaintiffs' Motion for Summary Judgment	3008
77-6	03.25.19	Declaration of Christopher Seifert in Support of Plaintiffs' Motion for Summary Judgment	3011
77-7	03.25.19	Declaration of Alfonso Valencia in Support of Plaintiffs' Motion for Summary Judgment	3015
77-8	03.25.19	Declaration of Troy Willis in Support of Plaintiffs' Motion for Summary Judgment	3018
77-9	03.25.19	Declaration of Michael Jones in Support of Plaintiffs' Motion for Summary Judgment	3022
77-10	03.25.19	Declaration of Dennis Martin in Support of Plaintiffs' Motion for Summary Judgment	3026

77-11	03.25.19	Declaration of Richard Travis in Support of Plaintiffs' Motion for Summary Judgment	3030
76	03.25.19	Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3034
76-1	03.25.19	Exhibit 1 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3039

### VOLUME XVI

76-2	03.25.19	Exhibit 2 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3157
76-3	03.25.19	Exhibit 3 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3173
76-4	03.25.19	Exhibit 4 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3185
76-5	03.25.19	Exhibit 5 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3235
76-6	03.25.19	Exhibit 6 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3275
76-7	03.25.19	Exhibit 7 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3289
76-8	03.25.19	Exhibit 8 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3300
76-9	03.25.19	Exhibit 9 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3309
76-10	03.25.19	Exhibit 10 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3337
76-11	03.25.19	Exhibit 11 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3390

### VOLUME XVII

76-12	03.25.19	Exhibit 12 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3443
76-13	03.25.19	Exhibit 13 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3486



76-14	03.25.19	Exhibit 14 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3523
-------	----------	--	------

**VOLUME XVIII**

76-15	03.25.19	Exhibit 15 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3636
-------	----------	--	------

**VOLUME XIX**

76-16	03.25.19	Exhibit 16 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3784
76-17	03.25.19	Exhibit 17 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3932
76-18	03.25.19	Exhibit 18 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3944
76-19	03.25.19	Exhibit 19 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3962
76-20	03.25.19	Exhibit 20 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	3984

**VOLUME XX**

76-21	03.25.19	Exhibit 21 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4048
76-22	03.25.19	Exhibit 22 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4102
76-23	03.25.19	Exhibit 23 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4122
76-24	03.25.19	Exhibit 24 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4132
76-25	03.25.19	Exhibit 25 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4134
76-26	03.25.19	Exhibit 26 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4137
76-27	03.25.19	Exhibit 27 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4142

76-28	03.25.19	Exhibit 28 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4189
76-29	03.25.19	Exhibit 29 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4194
76-30	03.25.19	Exhibit 30 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4206

### VOLUME XXI

76-31	03.25.19	Exhibit 31 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4311
76-32	03.25.19	Exhibit 32 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4341
76-33	03.25.19	Exhibit 33 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4395
76-34	03.25.19	Exhibit 34 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4414
76-35	03.25.19	Exhibit 35 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4452
76-36	03.25.19	Exhibit 36 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4466
76-37	03.25.19	Exhibit 37 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4474
76-38	03.25.19	Exhibit 38 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4479
76-39	03.25.19	Exhibit 39 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4488
76-40	03.25.19	Exhibit 40 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4493
76-41	03.25.19	Exhibit 41 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4502
76-42	03.25.19	Exhibit 42 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4506
76-43	03.25.19	Exhibit 43 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4516

76-44	03.25.19	Exhibit 44 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4519
76-45	03.25.19	Exhibit 45 of Declaration of Peter Chang in Support of Defendants' Motion for Summary Judgment	4526
74	03.25.19	Defendants' Statement of Uncontroverted Facts in Support of Defendants' Motion for Summary Judgment	4528
60	07.06.18	Third Amended Complaint	4536
58	07.05.18	Answer to Third Amended Complaint	4572

### VOLUME XXII

1	04.24.17	Complaint for Declaratory and Injunctive Relief	4588
***	01.27.20	District Court Docket	4620

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2020, an electronic PDF of APPELLANTS' EXCERPTS OF RECORD, VOLUME I OF XXII was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: January 27, 2020

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

s/ Sean A. Brady

Sean A. Brady

*Attorneys for Plaintiffs-Appellants*

*Steven Rupp, et al.*

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
10

11 **STEVEN RUPP, et al.,**

12 Plaintiffs,

13  
14 **v.**

15 **XAVIER BECERRA, in his official**  
16 **capacity as Attorney General of the**  
17 **State of California, and DOES 1-10,**

18 Defendants.

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

**JUDGMENT**

19 After considering the moving and opposing papers and evidence, and the  
20 arguments of counsel at the hearing, on July 22, 2019, the Court issued an order  
21 granting Defendant Attorney General's motion for summary judgment and denying  
22 Plaintiffs' motion for summary judgment. (Doc. 108.)

23 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
24 that Judgment is entered in favor of Defendant Xavier Becerra, as Attorney General  
25 of the State of California, and against Plaintiffs Steven Rupp, Steven Dember,  
26 Charyl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis,  
27 Dennis Martin, and the California Rifle & Pistol Association, Inc. Plaintiffs shall  
28 take nothing by way of their Third Amended Complaint from Defendant Xavier

1 Becerra, as Attorney General of the State of California. Each and every claim and  
2 prayer for relief asserted in Plaintiffs' Third Amended Complaint is denied.  
3 Defendant is the prevailing party and shall be entitled to recover reasonable costs of  
4 suit. In accordance with Local Rule 54-3, Defendant may submit a "Bill of Costs"  
5 and an "Application to the Clerk to Tax Costs" to recover any eligible litigation  
6 costs in this action. *See* C.D. Cal. R. 54-2, 54-2.1.

7 **IT IS SO ORDERED.**

8  
9 Dated: July 31, 2019



Hon. Josephine L. Staton  
United States District Judge

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official  
capacity as Attorney General of the State of  
California, and DOES 1-10,

Defendants.

CASE NO. 8:17-cv-00746-JLS-JDE

**ORDER GRANTING ATTORNEY  
GENERAL'S MOTION FOR  
SUMMARY JUDGMENT (Doc. 73)  
AND DENYING PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT (Doc. 77)**

On May 9, 2018, the Court granted the Attorney General's motion to dismiss Plaintiffs' due process and takings claims and denied Plaintiffs' motion for a preliminary injunction. (May 2018 Order, Doc. 49.) The issue now before the Court is whether California's Assault Weapons Control Act ("AWCA") violates the Second Amendment.<sup>1</sup>

---

<sup>1</sup> As discussed below, the Court's May 2018 Order gave Plaintiffs limited leave to amend their due process and takings claims. Plaintiffs' Third Amended Complaint fails to plead any new facts to support the due process and takings claims, and Plaintiffs' Motion for Summary Judgment ignores the due process and takings claims altogether.

1 After considering the papers, holding oral argument, and taking the matter under  
 2 submission, the Court DENIES Plaintiffs' Motion for Summary Judgment and GRANTS  
 3 the Attorney General's Motion for Summary Judgment.

#### 4 **I. BACKGROUND<sup>2</sup>**

##### 5 **A. The AWCA**

6 The AWCA, originally passed in 1989, makes it a felony to manufacture assault  
 7 weapons within the State of California, or to possess, sell, transfer, or import such weapons  
 8 into the state without a permit. (May 2018 Order at 2; Cal. Penal Code §§ 30600, 30605.)  
 9 At the time of its passage, the AWCA included a list of specific assault weapons identified  
 10 by their make and model. Cal. Penal Code § 30510. The legislature found that each of  
 11 these firearms "has such a high rate of fire and capacity for firepower that its function as a  
 12 legitimate sports or recreational firearm is substantially outweighed by the danger that it  
 13 can be used to kill and injure human beings." Cal. Penal Code § 30505(a).

14 After the AWCA was enacted, gun manufacturers began to produce weapons that  
 15 were "substantially similar to weapons on the prohibited list but different in some  
 16 insignificant way, perhaps only the name of the weapon, defeating the intent of the ban."  
 17 (See S.B. 880 Report, 2015–2016 Reg. Sess., Assembly Committee on Public Safety (June  
 18 14, 2016) at 4, attached as Ex. 29 to Chang Decl., Doc. 76-29.) Thus, in 1999, the AWCA  
 19 was amended to allow legislators to define a new class of restricted weapons according to  
 20 their features rather than by model. Under the 1999 amendments, a weapon was an  
 21 "assault rifle" if it had "the capacity to accept a detachable magazine," *and* any of the  
 22 following features: a pistol grip that protrudes conspicuously beneath the action of the  
 23

---

24 <sup>2</sup> The parties each filed numerous, largely boilerplate evidentiary objections. (See Docs. 91, 93,  
 25 & 100.) In such instances, it is "unnecessary and impractical for a court to methodically scrutinize  
 26 each objection and give a full analysis of each argument raised." *Doe v. Starbucks, Inc.*, 2009 WL  
 27 5183773, at \*1 (C.D. Cal. Dec. 18, 2009). To the extent that the Court relies on objected-to  
 28 evidence, the relevant objections are overruled. *Capitol Records, LLC v. BlueBeat, Inc.*, 765 F.  
 Supp. 2d 1198, n.1 (C.D. Cal. 2010).



1 weapon; a thumbhole stock; a folding or telescoping stock; a grenade launcher or flare  
2 launcher; a flash suppressor; or a forward pistol grip. (*See* S.B. 23, § 7, attached as Ex. 34  
3 to Chang Decl., Doc. 76-34.) If a magazine required a “tool” to detach a magazine, the  
4 magazine was not considered detachable, and thus gun manufacturers developed  
5 technology, referred to as “bullet buttons,” that enabled a magazine to be “removed and  
6 replaced in seconds” while not being technically “detachable.” (S.B. 880 Report at 5.)

7 In 2016, the California legislature again amended the AWCA to close the bullet  
8 button “loophole” in response to a December 2015 mass shooting in San Bernardino where  
9 two assailants used weapons equipped with bullet buttons to shoot 36 people in less than  
10 four minutes. (S.B. 880 Report at 8.) S.B. 880 amends the definition of assault weapons  
11 so that, rather than referring to a weapon “with the capacity to accept a detachable  
12 magazine,” it refers to a weapon “that does not have a fixed magazine” in combination  
13 with other features. Cal. Penal Code § 30515. A fixed magazine is defined as “an  
14 ammunition feeding device contained in, or permanently attached to, a firearm in such a  
15 manner that the device cannot be removed without disassembly of the firearm action.”  
16 Cal. Penal Code § 30515(b).

17 To summarize, there are two avenues by which a semiautomatic rifle can be defined  
18 as an “assault weapon” and thus banned pursuant to the AWCA: first, if it is listed by  
19 make and model in California Penal Code § 30510; and second, if it has certain features  
20 described in § 30515. As is relevant to this action, § 30515 classifies a semiautomatic,  
21 centerfire rifle as an “assault weapon” if it does not have a fixed magazine and has one of  
22 the following features: a pistol grip that protrudes conspicuously beneath the action of the  
23 weapon; a forward pistol grip; a thumbhole stock; a folding or telescoping stock; or a flash  
24 suppressor. Cal. Penal Code § 30515(a)(1)(A)-(F). These features are defined by  
25 regulation as follows:

- 26 • A pistol grip that protrudes conspicuously beneath the action of the weapon  
27 “allows for a pistol style grasp in which the web of the trigger hand (between  
28

the thumb and index finger) can be placed beneath or below the top of the exposed portion of the trigger while firing.” Cal. Code Regs. tit. 11, § 5471(z).

- A forward pistol grip is “a grip that allows for a pistol style grasp forward of the trigger.” Cal. Code Regs. tit. 11, § 5471(t).
- A thumbhole stock is “a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.” Cal. Code Regs. tit. 11, § 5471 (qq).
- A flash suppressor is “any device attached to the end of the barrel, that is designed, intended, or functions to perceptibly reduce or redirect muzzle flash from the shooter’s field of vision.” Cal. Code Regs. tit. 11, § 5471(r).
- A telescoping stock is one that “is shortened or lengthened by allowing one section to telescope into another portion.” Cal. Code Regs. tit. 11, § 5471(oo).
- A folding stock is one that “is hinged in some fashion to the receiver to allow the stock to be folded next to the receiver to reduce the overall length of the firearm.” Cal. Code Regs. tit. 11, § 5471(nn).

Further, per § 30515(3), a semiautomatic, centerfire rifle that is less than 30 inches in overall length is an “assault weapon,” and “[f]olding and telescoping stocks shall be collapsed prior to measurement.” *See* Cal. Code Regs. tit. 11, § 5471(x).

### **B. The Litigation**

The Individual Plaintiffs—Rupp, Dember, Johnson, Jones, Seifert, Valencia, Willis, and Martin—all reside in California and are legally eligible to possess firearms. (Plaintiffs’ Statement of Undisputed Facts (“SUF”) ¶¶ 1–3, Doc. 77-2.) Plaintiffs Valencia, Dember, and Johnson do not currently own rifles within the AWCA’s scope but would immediately acquire one if not for their fear of prosecution under the AWCA. (*Id.* ¶ 13.) Plaintiffs Rupp, Jones, Seifert, and Martin have parts that they would immediately

1 assemble into a rifle within the AWCA's scope if not for their fear of prosecution under  
2 the AWCA. (*Id.* ¶¶ 7, 9–10.) Plaintiffs Willis, Siefert, and Martin all own weapons within  
3 the AWCA's scope and wish to be free from the AWCA's transfer and use penalties. (*Id.*  
4 ¶¶ 5–6, 8.) Plaintiff Rifle & Pistol Association, Inc., represents its members who are  
5 similarly situated to the individual Plaintiffs. (*Id.* ¶¶ 18–28.)

6 Plaintiffs bring a facial Second Amendment challenge to the “AWCA's restrictions  
7 on all rifles, whether listed as ‘assault weapons’ by their make and model or defined as  
8 ‘assault weapons’ by their features.” (Plaintiffs’ Mem. at 4, Doc. 86.) Specifically,  
9 Plaintiffs challenge the following California Penal Code sections: 30510(a) (list of assault  
10 weapons by make and model);<sup>3</sup> 30515(a)(1)(A-C) and (E-F) (defining the additional  
11 features which, in combination with a non-fixed magazine, render a weapon an “assault  
12 weapon”); 30515(a)(3) (defining as an assault rifle any semiautomatic, centerfire rifle that  
13 has an overall length of less than 30 inches); 30520 (“duties of Attorney General,”  
14 allowing the California Attorney General to designate and/or describe weapons); 30600  
15 (prohibiting the manufacture, distribution, transportation, importation, sale, gift, or loan of  
16 assault weapons); 30605 (penalties for possession); section 30925 (required actions for  
17 those bringing an assault weapon into the state); and section 30945 (conditions for  
18 possessing a registered assault weapon). (Third Amended Complaint, Prayer for Relief ¶¶  
19 1–2, Doc. 60.) The prayer for relief asks the Court to declare the code sections  
20 “unconstitutional facially and to the extent they apply to ‘assault weapons’ or,  
21 alternatively, to the extent they prohibit any semi-automatic, centerfire rifle with a  
22 detachable magazine having a ‘pistol grip,’ ‘flash suppressor,’ ‘thumbhole stock,’ or  
23 ‘telescoping’ stock, or any semi-automatic, centerfire rifle that is over 26 inches in overall  
24 length.” (*See* Third Amended Complaint, Prayer for Relief ¶ 1.)

---

25  
26  
27 <sup>3</sup> Plaintiffs also challenge California Code of Regulations, title 11, section 5499, which,  
28 pursuant to California Penal Code section 30510(f), prohibits more assault weapons by model.

## II. LEGAL STANDARD

In deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party and draw all justifiable inferences in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Summary judgment is proper "if the [moving party] shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is "genuine" when there is sufficient evidence such that a reasonable trier of fact could resolve the issue in the non-movant's favor, and a fact is "material" when it might affect the outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248. But "credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Acosta v. City of Costa Mesa*, 718 F.3d 800, 828 (9th Cir. 2013) (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) (internal quotation marks omitted)).

The role of the Court is not to resolve disputes of fact but to assess whether there are any factual disputes to be tried. The moving party bears the initial burden of demonstrating the absence of a genuine dispute of fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "Once the moving party carries its initial burden, the adverse party 'may not rest upon the mere allegations or denials of the adverse party's pleading,' but must provide affidavits or other sources of evidence that 'set forth specific facts showing that there is a genuine issue for trial.'" *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (quoting Fed. R. Civ. P. 56(e)).

"When, as in this case, both parties file cross-motions for summary judgment, each must carry its own burden under the applicable legal standard." *Ehrman v. U.S.*, 429 F. Supp. 2d 61, 67 (D.D.C. 2006) (citing *Rains v. Cascade Indus., Inc.*, 402 F.2d 241, 245 (3d Cir. 1968) ("Cross-motions are no more than a claim by each side that it alone is entitled to summary judgment, and the making of such inherently contradictory claims does not

1 constitute an agreement that if one is rejected the other is necessarily justified.”). Further,  
2 the Court “must consider each party’s evidence, regardless under which motion the  
3 evidence is offered.” *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532 (9th Cir. 2011).

### 4 **III. DISCUSSION**

#### 5 **A. Due Process and Takings Claims**

6 The Court’s May 2018 Order dismissed Plaintiffs’ due process and taking claims  
7 and gave Plaintiffs leave to amend “only to the extent Plaintiffs can allege additional facts  
8 to show standing and ripeness of their as-applied challenges to the date-and-source  
9 requirement and conditions on devisees.” (May 2018 Order at 19.) Plaintiffs’ Third  
10 Amended Complaint reasserts these claims without *any* new facts. Indeed, rather than  
11 plead additional facts to support these claims, Plaintiffs have removed the allegations  
12 relating to the registration requirements. (*Compare* First Amended Complaint ¶¶ 107–112,  
13 Doc. 16 *with* Third Amended Complaint ¶¶ 105–109.) Further, Plaintiffs’ briefing ignores  
14 the existence of these claims in the Third Amended Complaint and focuses only on the  
15 Second Amendment claim. The Attorney General notes that Plaintiffs’ due process and  
16 takings claims should be dismissed for the same reasons expressed in the Court’s May  
17 2018 Order. (*See* AG Mem. at 6.)

18 Accordingly, in that Plaintiffs have failed to amend their due process and takings  
19 claims in conformity with the Court’s May 2018 Order and have not responded to the  
20 Attorney General’s argument for dismissal, the Court DISMISSES Plaintiffs’ due process  
21 and takings claims with prejudice.

#### 22 **B. Second Amendment Claim**

23 In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that  
24 the Second Amendment confers an individual right to keep and bear arms. *Id.* at 595. The  
25 Ninth Circuit applies a two-step inquiry to Second Amendment challenges: “(1) the court  
26 ‘asks whether the challenged law burdens conduct protected by the Second Amendment,’;  
27 and (2) if so, what level of scrutiny should be applied.” *Fyock v. Sunnyvale*, 779 F.3d 991,  
28

1 996 (9th Cir. 2015) (quoting *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir.  
2 2013)). If the challenged law falls outside the scope of the Second Amendment, then the  
3 law “may be upheld without further analysis.” *Silvester v. Harris*, 843 F.3d 816, 821 (9th  
4 Cir. 2016). “Intermediate scrutiny is appropriate if the regulation at issue does not  
5 implicate the core Second Amendment right *or* does not place a substantial burden on that  
6 right.” *Fyock*, 779 F.3d at 998–99 (citing *Jackson v. City and County of S.F.*, 746 F.3d,  
7 953, 964 (9th Cir. 2013)).

8 While they acknowledge that the Court is bound by the Ninth Circuit’s two-step  
9 inquiry (Plaintiffs’ Mem. at 17 n.10), Plaintiffs devote a significant portion of their  
10 briefing to arguing that the AWCA violates the Second Amendment under a “scope-based  
11 analysis” derived largely from then-Judge Kavanaugh’s dissent in *Heller v. District of*  
12 *Columbia (Heller II)*, 670 F.3d 1244, 1269–96 (D.C. Cir. 2011) (Kavanaugh, J.,  
13 dissenting). (See Plaintiffs’ Mem. at 11–17.) Essentially, Plaintiffs’ proposed test requires  
14 a “historical justification” for firearm regulations. (See *id.* at 11.) If there is no historical  
15 justification, the regulation is *per se* invalid. (*Id.*) The Court rejects Plaintiffs’ proposed  
16 test for two reasons. First, it does not find it persuasive for the reasons expressed by the  
17 majority opinion in *Heller II*. See 670 F.3d at 1265 (“If the Supreme Court truly intended  
18 to rule out any form of heightened scrutiny for all Second Amendment cases, then it surely  
19 would have said at least something to that effect.”); *id.* (“[T]he idea that *Heller* precludes  
20 heightened scrutiny has eluded every circuit to have addressed that question since *Heller*  
21 was issued.”); *id.* at 1267 (“Although *Heller* renders longstanding regulations  
22 presumptively constitutional, it nowhere suggests a law must be longstanding or rooted in  
23 text, history, and tradition to be constitutional.”). Second, and more simply, the Court is  
24 bound by the Ninth Circuit’s two-step inquiry.

25 Accordingly, the Court applies the Ninth Circuit’s two-step inquiry to determine the  
26 constitutionality of the AWCA under the Second Amendment.

1 **1. Whether the AWCA Burdens Conduct Protected by the Second**  
 2 **Amendment**

3 In its May 2018 Order, the Court noted that “[t]he Ninth Circuit has not specifically  
 4 addressed this issue post-*Heller*, but other circuits have questioned whether bans on certain  
 5 assault weapons implicate the Second Amendment. *See, e.g., Heller II*, 670 F.3d at 1262;  
 6 [*Kolbe v. Hogan*, 849 F.3d 114, 137 (4th Cir. 2017)].” (May 2018 Order at 22 & n.9.)  
 7 However, because *Kolbe* and *Heller II* were decided “at summary judgment when the  
 8 deciding district courts had a full factual record available for review,” the Court assumed  
 9 without deciding that the first step of the Ninth Circuit’s test was met. (*Id.*) However,  
 10 now that this action is at the summary judgment stage, the issue is appropriate for the  
 11 Court to examine.<sup>4</sup>

12 “The Supreme Court has emphasized that nothing in its recent opinions is intended  
 13 to cast doubt on the constitutionality of longstanding prohibitions traditionally understood  
 14 to be outside the scope of the Second Amendment.” *Fyock*, 779 F.3d at 996 (citing *Heller*,  
 15 554 U.S. at 626–27). “Importantly, the Second Amendment does not ‘protect those  
 16 weapons not typically possessed by law-abiding citizens for lawful purposes.’” *Id.* at 996–  
 17 97. “Thus, longstanding prohibitions on the possession of ‘dangerous and unusual  
 18 weapons’ have uniformly been recognized as falling outside the scope of the Second  
 19 Amendment.” *Id.* at 997 (citing *United States v. Henry*, 688 F.3d 637, 639–40 (9th Cir.  
 20 2012) (machineguns are “dangerous and unusual” weapons and outside scope of the  
 21 Second Amendment)). “In determining whether a given regulation falls within the scope  
 22 of the Second Amendment under the first step of this inquiry, ‘we ask whether the

---

24 <sup>4</sup> The Ninth Circuit has “discouraged bypassing the historical analysis step and assuming  
 25 without deciding that conduct burdens the Second Amendment” at the summary judgment stage.  
 26 *See Fyock*, 779 F.3d at 997 n.3. Thus, the Court examines whether the AWCA burdens conduct  
 27 protected by the Second Amendment even though the Court ultimately concludes that the AWCA  
 28 survives intermediate scrutiny.



1 regulation is one of the ‘presumptively lawful regulatory measures’ identified in *Heller*, or  
2 whether the record includes persuasive historical evidence establishing that the regulation  
3 at issue imposes prohibitions that fall outside the historical scope of the Second  
4 Amendment.” *Bauer v. Becerra*, 858 F.3d 1216, 1221 (9th Cir. 2017) (quoting *Jackson*,  
5 746 F.3d at 960).

6 Here, the Attorney General argues that (1) “[a]ssault rifles may be banned because  
7 they are, like the M-16, ‘weapons that are most useful in military service’”; and (2) “they  
8 are also not ‘in common use’ for lawful purposes like self-defense.” (AG Reply at 2, Doc.  
9 99 (quoting *Heller*, 554 U.S. at 624, 627).) Because the Court concludes that  
10 semiautomatic assault rifles are essentially indistinguishable from M-16s, which *Heller*  
11 noted could be banned pursuant to longstanding prohibitions on dangerous and usual  
12 weapons, the Court need not reach the question of whether semiautomatic rifles are  
13 excluded from the Second Amendment because they are not in common use for lawful  
14 purposes like self-defense.<sup>5</sup> Moreover, such an inquiry is better suited to determine the  
15 level of scrutiny to apply. *See Bauer*, 858 F.3d at 1222 (noting that how much a regulation  
16 burdens the “core” of the Second Amendment—self-defense in the home—determines the  
17 level of scrutiny to apply).

18 *Heller* noted that the “Second Amendment is not unlimited” and recognized the  
19 “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” 554  
20 U.S. at 627. *Heller* then addressed a counterargument: “It may be objected that if weapons  
21 that are most useful in military service—M-16 rifles and the like—may be banned, then  
22 the Second Amendment right is completely detached from the prefatory clause.” *See id.*

---

24 <sup>5</sup> The Court notes, however, that analyzing the constitutionality of the AWCA based “on how  
25 common a weapon is at the time of the litigation would be circular.” *Friedman v. City of*  
26 *Highland Park, Illinois*, 784 F.3d 406, 409 (7th Cir. 2015) (noting that “[m]achine guns aren’t  
27 commonly owned for lawful purposes today because they are illegal” and “semi-automatic  
28 weapons with large-capacity magazines are owned more commonly because, until recently (in  
some jurisdictions), they have been legal”).



1 The prefatory clause, of course, reads: “A well regulated Militia, being necessary to the  
2 security of a free State.” U.S. Const. amend. II. Ultimately, *Heller* concluded that “the fact  
3 that modern developments have limited the degree of fit between the prefatory clause and  
4 the protected right cannot change our interpretation of the right.” *Id.*

5 In *Kolbe*, the Fourth Circuit, reviewing a nearly identical ban on assault weapons,  
6 concluded that the above-quoted passage in *Heller* creates a “dispositive and relatively  
7 easy inquiry: Are the banned assault weapons and large-capacity magazines ‘like’ ‘M-16  
8 rifles,’ *i.e.*, ‘weapons that are most useful in military service,’ and thus outside the ambit of  
9 the Second Amendment?” 849 F.3d at 136; *see also Worman v. Healey*, 293 F. Supp. 3d  
10 251, 266 (D. Mass. 2018) (granting summary judgment because “the undisputed facts  
11 convincingly demonstrate that AR-15s and [large-capacity magazines] are most useful in  
12 military service, they are beyond the scope of the Second Amendment”). The Court,  
13 however, reads *Heller* more narrowly—it merely provides the M-16 as an example of a  
14 historically banned “dangerous and unusual weapon,” and does not endeavor to create a  
15 test whereby any weapon that is “most useful in military service” is outside the scope of  
16 the Second Amendment. *Heller* sought to justify the fact that some dangerous and unusual  
17 weapons that are most useful in military service—such as the M-16—can be banned  
18 despite the prefatory clause’s ostensible mandate that the right to bear arms be connected  
19 to a well-regulated militia. Given this context, the Court hesitates to read *Heller* to hold  
20 that *any* weapon that is most useful in the military is outside the scope of the Second  
21 Amendment.

22 *Heller*, however, does plainly provide that the M-16—and weapons “like” it—can  
23 be banned as dangerous and unusual weapons. Accordingly, the proper question is: are the  
24 semiautomatic rifles at issue here “like” the military’s M-16, a historically banned  
25 dangerous and unusual weapon? If so, the semiautomatic rifles are similarly outside the  
26 scope of the Second Amendment. This test makes practical sense. It is undisputed that the  
27 M-16 is outside the scope of the Second Amendment—thus, if a weapon is essentially the  
28

1 same as the M-16, it is not protected by the Second Amendment merely because gun  
2 manufacturers have given it a different model number and dubbed it a “civilian rifle.” Gun  
3 manufacturers cannot determine the scope of Second Amendment protection; they cannot,  
4 for example, develop a grenade launcher, dub it a “civilian” model, and thereby bring it  
5 within the scope of the Second Amendment.

6 As to whether the semiautomatic rifles at issue are “like” the M-16, the Court  
7 agrees with *Kolbe*’s conclusion that “AR-15-type rifles are ‘like’ M16 rifles under any  
8 standard definition of that term.” 849 F.3d at 136 (citing *Webster’s New International*  
9 *Dictionary* 1431 (2d ed. 1948) (defining “like” as “[h]aving the same, or nearly the same,  
10 appearance, qualities, or characteristics; similar”)). Indeed, the Court concludes that  
11 semiautomatic rifles are virtually indistinguishable from M-16s.

12 The difference between the M-16 and semiautomatic rifles like the AR-15 is that  
13 the M-16 allows the shooter to fire in either automatic or semiautomatic mode, while  
14 semiautomatic rifles fire only in semiautomatic mode. (Plaintiffs’ Response to AG’s SUF  
15 ¶¶ 7, 10, Doc. 92-1.) However, based on the evidence presented by the Attorney General,  
16 this is a distinction without a difference. In enacting the now-defunct federal ban on  
17 assault rifles, Congress found that their rate of fire—300 to 500 rounds per minute—makes  
18 semiautomatic rifles “virtually indistinguishable in practical effect from machineguns.”<sup>6</sup>  
19 (*Id.* ¶ 11.) See *Henry*, 688 F.3d at 639–40 (holding that machine guns are “dangerous and  
20 unusual” weapons and outside scope of the Second Amendment). Reviewing similar  
21 evidence, other courts have noted that semiautomatic rifles’ rate of fire is almost the same  
22 as the M-16’s. See *Kolbe*, 849 F.3d at 136 (“Although an M16 rifle is capable of fully  
23 automatic fire and the AR-15 is limited to semiautomatic fire, their rates of fire (two  
24 seconds and as little as five seconds, respectively, to empty a thirty-round magazine) are

---

25  
26 <sup>6</sup> M-16s are considered machineguns. See 26 U.S.C. § 5845(b) (defining machinegun as “any  
27 weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more  
28 than one shot, without manual reloading, by a single function of the trigger”).

1 nearly identical.”); *Heller II*, 670 F.3d at 1263 (“[S]emi-automatics still fire almost as  
2 rapidly as automatics.”).

3 Further, the Attorney General points to a United States Army manual instructing  
4 soldiers on the use of the M-16. The manual notes that, although the M-16 is capable of  
5 automatic fire, “[t]he most important firing technique during fast-moving, modern combat  
6 is rapid *semiautomatic fire*.” (Ex. 19 to Chang Decl. at 3, Doc. 76-19 (emphasis added).)  
7 This is because automatic fire “is inherently less accurate than semiautomatic fire.” (*Id.* at  
8 7.) Thus, the military is trained to use M-16s as if they were semiautomatic rifles because  
9 the semiautomatic mode is more effective. Reviewing similar evidence, *Kolbe* concluded  
10 that “in many situations, the semiautomatic fire of an AR-15 is more accurate and lethal  
11 than the automatic fire of an M16.” *Kolbe*, 849 F.3d at 136.

12 Moreover, even if the ability to fire in automatic mode were significant, Congress  
13 found that “it is a relatively simple task to convert a semiautomatic weapon to automatic  
14 fire.” (H.R. Rpt. No. 103-489 at 18, Ex. 27 to Chang Decl., Doc. 76-27.) The Attorney  
15 General’s evidence shows that a semiautomatic weapon can easily be converted to  
16 automatic fire by installing certain parts, such as bump stocks or multiburst trigger  
17 activators. (Plaintiffs’ Response to AG’s SUF ¶ 13.) The Supreme Court in *Staples v.*  
18 *United States*, 511 U.S. 600 (1994) is in accord with the Attorney General’s evidence, as it  
19 noted that “[m]any M-16 parts are interchangeable with those in the AR-15 and can be  
20 used to convert the AR-15 into an automatic weapon.” *Id.* at 603.<sup>7</sup>

---

21  
22  
23 <sup>7</sup> Plaintiffs argue that *Staples* supports the proposition that semiautomatic rifles are *not* like the  
24 M-16. (Plaintiffs’ Opp. at 11.) In *Staples*, an individual possessed an AR-15 that had been  
25 modified to fire automatically, like the M-16. 511 U.S. at 603. The Supreme Court’s holding was  
26 merely that, to charge him for illegal possession of an unregistered machinegun, the government  
27 had to prove that he *knew* that the weapon had the capability to fire automatically. *Id.* at 619  
28 (emphasizing narrowness of holding). That the Court found the similarities between the AR-15  
and M-16 insufficient to impute *mens rea* for criminal prohibition on the possession of  
machineguns is irrelevant to the question presented here: whether semiautomatic rifles are within  
the scope of the Second Amendment. Nothing in *Staples* suggests, for example, that Congress  
(footnote continued)

1 Finally, gun manufacturers carried over from the M-16 and other military assault  
2 rifles the enumerated features that bring a weapon within the AWCA's scope. The  
3 Attorney General points to a 1989 Report from the Bureau of Alcohol Tobacco & Firearms  
4 (ATF) which notes that "semiautomatic assault rifles" are a "distinctive type of rifle  
5 distinguished by certain general characteristics which are common to the modern military  
6 assault rifle . . . such as the *U.S. M16*, German G3, Belgian FN/FAL, and Soviet AK47 . .  
7 .." (ATF Report at 6, Doc. 76-22 (emphasis added).) The ATF Report identifies the  
8 ability to accept detachable magazines, folding and telescoping stocks, pistol grips, and  
9 flash suppressors, as "military features and characteristics . . . carried over to the  
10 semiautomatic versions of the original military rifle." (*Id.*; see also Plaintiffs' Response to  
11 AG's SUF ¶ 22 (admitting that flash suppressor is a standard feature of the M-16).)

12 Plaintiffs present no evidence to meaningfully distinguish the semiautomatic rifles  
13 at issue from the M-16. Accordingly, the Court concludes that semiautomatic rifles within  
14 the AWCA's scope are virtually indistinguishable from M-16s and thus are not protected  
15 by the Second Amendment. Thus, the AWCA does not burden conduct protected by the  
16 Second Amendment.

## 17 **2. Level of Scrutiny to Apply**

18 Alternatively, assuming that the AWCA *does* burden conduct protected by the  
19 Second Amendment, the Court must decide the appropriate level of scrutiny to apply.  
20 "[C]ourts determine the appropriate level by considering '(1) how close the challenged law  
21 comes to the core of the Second Amendment right, and (2) the severity of the law's burden  
22 on that right.'" *Bauer*, 858 F.3d at 1221–22 (quoting *Silvester*, 843 F.3d at 821). "*Heller*  
23 identified the core of the Second Amendment as 'the right of law-abiding, responsible  
24 citizens to use arms in defense of hearth and home.'" *Id.* at 1222 (quoting *Heller*, 554 U.S.  
25 at 635). "Guided by this understanding, our test for the appropriate level of scrutiny

---

26  
27 could not ban semiautomatic rifles just as it had banned M-16s—indeed, Congress did so four  
28 months later. (See AG Reply at 6.)

1 amounts to ‘a sliding scale.’” *Id.* “A law that imposes such a severe restriction on the  
2 fundamental right of self defense of the home that it amounts to a destruction of the  
3 Second Amendment right is unconstitutional under any level of scrutiny.” *Id.* (quoting  
4 *Silvester*, 843 F.3d at 821). “Further down the scale, a ‘law that implicates the core of the  
5 Second Amendment right and severely burdens that right warrants strict scrutiny.  
6 Otherwise, intermediate scrutiny is appropriate.” *Id.* (quoting *Silvester*, 843 F.3d at 821).

7 As the Court noted in its May 2018 Order, “[e]very circuit to have encountered  
8 statewide bans on semi-automatic weapons designated as assault weapons has applied  
9 intermediate scrutiny.” (May 2018 Order at 22.) *See Heller II*, 670 F.3d at 1262  
10 (prohibition on possession of certain semiautomatic weapons merited intermediate scrutiny  
11 as it “left a person ‘free to possess any otherwise lawful firearm’” (quoting *United States v.*  
12 *Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010))); *Kolbe*, 849 F.3d at 138 (4th Cir. 2017) (ban  
13 on certain assault weapons and detachable magazines left “citizens free to protect  
14 themselves with a plethora of other firearms and ammunition”); *N.Y.S. Rifle and Pistol*  
15 *Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 260 (2d Cir. 2015) (holding that a prohibition on some  
16 semiautomatic weapons identified by feature was not a ban on an entire class of arms  
17 therefore “[t]he burden imposed by the challenged legislation [was] real, but . . . not  
18 ‘severe’”); *Friedman*, 784 F.3d at 411 (applying intermediate scrutiny as the ban on assault  
19 weapons “leaves residents with many self-defense options”). Since the Court’s Order, the  
20 chorus of circuits applying intermediate scrutiny to assault weapon bans has only grown,  
21 as the First Circuit applied intermediate scrutiny to an assault weapon ban in April of this  
22 year. *See Worman v. Healey*, 922 F.3d 26, 38 (1st Cir. 2019).

23 Indeed, as the Court noted in its May 2018 Order, the AWCA does not severely  
24 burden the core of the Second Amendment right because individuals “remain free to  
25 choose any weapon that is *not* restricted by the AWCA or another state law.” (*See* May  
26 2018 Order at 23.) The AWCA leaves individuals “with myriad options for self-defense—  
27 including the handgun, the ‘quintessential’ self-defense weapon per *Heller*.” (*Id.*) Further,  
28

1 the Attorney General’s evidence reflects that the semiautomatic rifles within the AWCA’s  
2 scope are ill-suited for self-defense. (*See* Brady Center to Prevent Gun Violence, *Assault*  
3 *Weapons “Mass Produced Mayhem”* (2008) at 16, Ex. 20 to Chang Decl., Doc. 76-20 (“In  
4 addition to utilizing military features useful in combat, but which have no legitimate  
5 civilian purpose, assault weapons are exceedingly dangerous if used in self defense,  
6 because the bullets many of the weapons fire are designed to penetrate humans and will  
7 penetrate structures, and therefore pose a heightened risk of hitting innocent bystanders.”);  
8 Donohue Rpt. ¶ 107, Ex. 1 to Chang Decl., Doc. 76-1 (according to Maryland’s Police  
9 Superintendent, “in many home defense situations assault weapons are likely to be less  
10 effective than handguns because they are less maneuverable in confined areas”).)  
11 Moreover, Plaintiffs’ own evidence shows that while individuals may sometimes purchase  
12 assault rifles for self-defense, it is not the primary purpose for doing so. (*See, e.g.*, Ex. 21  
13 to Brady Decl. at 10, Doc. 78-3 (noting that 30% of AR-style rifles were sold in 2016 for  
14 “personal-protection purposes,” compared to 59.5% of handguns for that purpose); Ex. 2.  
15 Brady Decl. at 4, Doc. 78 (“Recreational target shooting was the most prevalent reason  
16 cited for owning a [modern sporting rifle], followed by home defense.”).)

17 Accordingly, because the Court’s prior reasoning is bolstered by the evidence  
18 presented at summary judgment, the Court applies intermediate scrutiny to the AWCA.

### 19 **3. Application of Intermediate Scrutiny**

20 The Ninth Circuit’s test for intermediate scrutiny instructs that “(1) the  
21 government’s stated objective must be significant, substantial, or important; and (2) there  
22 must be a ‘reasonable fit’ between the challenged regulation and the asserted objective.”  
23 *Silvester*, 843 F.3d at 821–22 (quoting *Chovan*, 735 F.3d at 1139). The state need not  
24 “show that [the regulation] is the least restrictive means of achieving its interest.” *Fyock*,  
25 779 F.3d at 1000 (citation omitted). Rather, the state is “required to show only that [the  
26 regulation] promotes a ‘substantial government interest that would be achieved less  
27  
28



1 effectively absent the regulation.” *Id.* (quoting *Colacurcio v. City of Kent*, 163 F.3d 545,  
2 553 (9th Cir. 1998)).

3 As the Court noted in its May 2018 Order, “it is beyond question that the  
4 government’s interest in promoting public safety and reducing gun violence is important or  
5 substantial.” (May 2018 Order at 24 (citing *Fyock*, 779 F.3d at 1000; *Silvester*, 843 F.3d at  
6 827; *Kolbe*, 849 F.3d at 139; *N.Y.S. Rifle and Pistol Ass’n, Inc.*, 804 F.3d at 261).) Indeed,  
7 Plaintiffs admit (as they must) that California has an important interest in promoting public  
8 safety and preventing crime. (Plaintiffs’ Mem. at 19.)

9 Thus, the issue is whether there is a “reasonable fit” between the AWCA and  
10 California’s public safety interests. *Fyock*, 779 F.3d at 1000. A reasonable fit is  
11 established if the government’s objective will be achieved “less effectively absent the  
12 regulation.” *Id.* (quoting *Colacurcio*, 163 F.3d at 553.). “In reviewing the  
13 constitutionality of a statute, ‘courts must accord substantial deference to the predictive  
14 judgments of Congress.’” *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997). “In  
15 the context of firearm regulation, the legislature is ‘far better equipped than the judiciary’  
16 to make sensitive public policy judgments (within constitutional limits) concerning the  
17 dangers in carrying firearms and the manner to combat those risks.” *Kachalsky v. County*  
18 *of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012). Thus, the Court’s role is only “to assure  
19 that, in formulating its judgments, [California] has drawn reasonable inferences based on  
20 substantial evidence.” *Id.* The Court “may consider ‘the legislative history of the  
21 enactment as well as studies in the record or cited in pertinent case law.’”<sup>8</sup> *Fyock*, 779  
22 F.3d at 1000. Indeed, California is “entitled to rely on any evidence ‘reasonably believed  
23 to be relevant’ to substantiate its important interests.” *Id.*

---

24  
25  
26 <sup>8</sup> *Fyock* squarely rejects Plaintiffs’ argument, on which they heavily relied at the hearing, that  
27 the Attorney General can rely only on evidence that the California legislature considered when it  
28 passed the AWCA.

1 Here, in conformity with the “unanimous weight of circuit authority analyzing  
2 Second Amendment challenges to similar laws,” the Court concludes that there is a  
3 reasonable fit between the AWCA and California’s public safety interests. *See Worman*,  
4 922 F.3d at 39. The Attorney General provides ample evidence to establish a reasonable  
5 fit between the AWCA and California’s public safety interest.

6 For example, in passing the federal assault weapons ban, Congress found that  
7 “semiautomatic assault weapons are the weapons of choice among drug dealers, criminal  
8 gangs, hate groups, and mentally deranged persons bent on mass murder.” (H.R. Rpt. No.  
9 103-489 at 13.) Indeed, as justification for the federal ban, the Director of the ATF noted  
10 that assault weapons are disproportionately used in crimes. (*Id.* at 13; *see also* Giffords  
11 Mem. at 6–7, Doc. 81-1.) In enacting the AWCA, California made similar findings, noting  
12 the alarming rate of drive-by shootings in Southern California, the number of police-  
13 officer victims of semi-automatic weapons, and the many occasions when semiautomatic  
14 weapons are confiscated during arrests. *See Kasler v. Lockyer*, 23 Cal. 4th 472, 482 (2000)  
15 (citing 1 Assem. J. (1989–1990 Reg. Sess.) at 437).

16 The California legislature was particularly concerned with semiautomatic rifles’ use  
17 in mass shootings. (*See* S.B. 880 Report at 3, 7–8.) The analysis by the Attorney  
18 General’s expert, Lucy Allen,<sup>9</sup> shows that, of 109 public mass shootings examined, an  
19 assault rifle was used in 26 of them. (*See* Ex. 6 to Chang Decl., Doc. 76-6.) Further, in the  
20 public mass shootings where an assault rifle was utilized, there were twice as many  
21 fatalities (12 with assault rifles, 6 without any assault weapon), and six times as many

---

22  
23 <sup>9</sup> Plaintiffs challenge the reliability of Allen’s analysis. (Plaintiffs’ Opp. at 20–21.) First,  
24 other courts have rejected similar challenges to Allen. *See, e.g., Kolbe v. O’Malley*, 42 F. Supp.  
25 3d 768, 781 & n.17 (D. Md. 2014) (“To the extent the plaintiffs challenge Allen’s reliance on the  
26 Mother Jones data, their challenge must fail. . . . [T]he data was subject to independent review by  
27 Koper and his graduate student.”), *aff’d by Kolbe*, 849 F.3d 114. Second, even if the Court were  
28 to disregard Allen’s analysis, the Attorney General, amici, and relevant caselaw provide more than  
enough other evidence to show that assault weapons are often used in mass shootings and, when  
they are used, there are more injuries and casualties.



1 injuries (30 with and 5 without). (*Id.*) Everytown for Gun Safety’s amicus brief notes  
2 similar findings: “[W]hen assault weapons are used, more than twice as many people are  
3 killed on average (10.1 per shooting versus 4.9) and more than ten times as many are shot  
4 and injured (11.4 per shooting versus 1.1).” (Everytown Mem. at 16, Doc. 82-1 (citing  
5 Everytown, *Mass Shootings in the United States: 2009-2016*, Appendix (Mar. 2017))).  
6 Moreover, Everytown points to a study finding that “between 1981 and 2017 . . . assault  
7 weapons accounted for 86% of the 501 fatalities reported in 44 mass-shooting incidents.”  
8 (*Id.* at 19 (citing Charles DiMaggio et al., *Changes in U.S. Mass Shooting Deaths*  
9 *Associated with the 1994-2004 Federal Assault Weapons Ban: Analysis of Open-Source*  
10 *Data*, 86 J. of Trauma and Acute Care Surgery 11, 13 (2018))).<sup>10</sup> Other courts have noted  
11 that semiautomatic weapons are often used in mass shootings and that, when they are, such  
12 shootings are deadlier. *See, e.g., Worman*, 922 F.3d at 39 (“ . . . AR-15s equipped with  
13 [large-capacity magazines] have been the weapons of choice in many of the deadliest mass  
14 shootings in recent history, including horrific events in Pittsburgh (2018), Parkland (2018),  
15 Las Vegas (2017), Sutherland Springs (2017), Orlando (2016), Newtown (2012), and  
16 Aurora (2012).”); *see also Gallinger v. Becerra*, 898 F.3d 1012, 1019 (9th Cir. 2018)  
17 (“[W]hen ‘assault weapons and large capacity magazines are used, more shots are fired  
18 and more fatalities and injuries result than when shooters use other firearms and  
19 magazines.’”)

20 The increased casualty rate is likely due, at least in part, to the fact that “[g]unshot  
21 wounds from assault rifles, such as AR-15s and AK-47s, tend to be higher in complexity  
22 with higher complication rates than such injuries from non-assault weapons, increasing the  
23 likelihood of morbidity in patients that present injuries from assault rifles.” (Ex. 4 to  
24 Chang Decl. at 3, Doc. 76-4; *see* Everytown Mem. at 18 (“[Assault weapons] are designed  
25

---

26 <sup>10</sup> The Brady Center also notes that mass shootings “carry tremendous social and economic  
27 costs, incurred by both individuals and taxpayers.” (Brady Mem. at 14–18, Doc. 97-1.)  
28

1 to fire far more bullets, at a far faster rate than other firearms, with each round from an  
2 assault weapon having up to four times the muzzle velocity of a handgun round—and thus  
3 able to inflict much greater damage.”<sup>11</sup> Indeed, assault rifle rounds can penetrate the soft  
4 body armor worn by police that is designed to stop common handgun rounds. (Plaintiffs’  
5 Response to AG’s SUF ¶ 33.)

6 Plaintiffs argue that none of the challenged features that bring a firearm within the  
7 AWCA’s scope—pistol grips, non-fixed magazines, thumbhole stocks, folding or  
8 telescoping stocks, and flash suppressors—have “any effect on the power of the projectile  
9 it discharges and thus the trauma that projectile causes on impact.” (Plaintiffs’ Opp. at 20.)  
10 Plaintiffs miss the point—the enumerated features increase the capabilities of  
11 semiautomatic rifles and thereby enhance their capacity for mass violence. A pistol grip  
12 increases a shooter’s ability to control the rifle and reload rapidly while firing multiple  
13 rounds. (Plaintiffs’ Response to AG’s SUF ¶¶ 16–18.) The ability to accept detachable  
14 magazines makes semiautomatic rifles “capable of killing or wounding more people in a  
15 shorter amount of time.” (S.B. 880 Report at 6.) Indeed, AR-platform rifles capable of  
16 accepting detachable magazines take 3 to 5 seconds less to reload than the same rifle with  
17 a fixed magazine. (Plaintiffs’ Response to AG’s SUF ¶ 15.) The Attorney General’s  
18 expert notes that “[a]djustable stocks also contribute to the control of the rifle in that they  
19 allow the shooter to optimize the rifle to their arm length.” (*See Mersereau Report* ¶ 10,  
20 Ex. 3 to Chang Decl., Doc. 76-3.) “This increases the shooter’s ability to rapidly send  
21 rounds down range with increased accuracy.” (*Id.*) Further, the shorter the rifle, the easier  
22 it is to conceal, as might be necessary to gain access to areas where a shooter wishes to  
23 inflict mass violence, such as a school or concert. Thus, the AWCA understandably bans  
24

---

25 <sup>11</sup> Plaintiffs argued at the hearing, with no evidentiary support, that shots fired from  
26 semiautomatic rifles are no more powerful than shots fired from standard rifles. However, even  
27 assuming Plaintiffs’ unsupported assertion is correct, as the above-quoted passage from  
28 Everytown’s brief notes, semiautomatic weapons fire more bullets at faster rates, and thus inflict  
greater and more complex damage than a standard rifle.

1 semiautomatic rifles under 30 inches in length, and folding stocks that allow individuals to  
2 collapse the weapon to a shorter length. Finally, flash suppressors reduce the flash emitted  
3 upon firing and aid a shooter in low-light conditions while also concealing his or her  
4 position, especially at night. (Plaintiffs’ Response to AG’s SUF ¶¶ 22–24.)

5 Further, bans on assault weapons appear to be effective means for reducing  
6 violence. For example, during the period in which the federal assault weapons ban was in  
7 effect, Plaintiffs’ own expert admits that the use of assault weapons in crimes was reduced.  
8 (*Id.* ¶ 38.) Plaintiffs dispute the efficacy of the federal assault weapons ban by pointing to  
9 a 2004 study commissioned by the U.S. Department of Justice which found that, ten years  
10 after the law was enacted, “there [had been] no discernible reduction in the lethality and  
11 injuriousness of gun violence.” (*See* Koper 2004 Study, Ex. 25 to Brady Decl. at 96, Doc.  
12 78-11.) However, as the Attorney General notes, Plaintiffs conveniently exclude the  
13 disclaimer at the beginning of the study: “it is premature to make definitive assessments of  
14 the ban’s impact on gun crime.” (*Id.* at 2 (capitalization removed).) Further, immediately  
15 following the sentence cited by Plaintiffs, the study notes that “the grandfathering  
16 provision of the [federal ban] guaranteed that the effect of this law would occur only  
17 gradually over time.” (*Id.* at 96.) Thus, the “effects are still unfolding and may not be  
18 fully felt for several years into the future.” (*Id.*) Indeed, the 2004 study’s principal author,  
19 Christopher Koper, published an updated study in 2017. (Koper 2017 Study, Ex. 23 to  
20 Chang Decl., Doc. 76-23.) The updated study confirmed that the criminal use of assault  
21 weapons and large-capacity magazines declined during the years of the federal ban and  
22 increased after its expiration in 2004. (*Id.* at 8–9.) Koper concluded that “the federal ban  
23 curbed the spread of high-capacity semiautomatic weapons when it was in place, and in so  
24 doing, may have had preventive effects on gunshot victimization.” (*Id.* at 9; *see also* Ex.  
25 26 to Chang Decl. at 1, Doc. 76-26 (“‘I was skeptical that the [federal] ban would be  
26 effective, and I was wrong,’ said Garen Wintemute, head of the Violence Prevention  
27 Research Program at the University of California at Davis School of Medicine. The  
28

1 database analysis offers ‘about as clear an example as we could ask for of evidence that the  
2 ban was working.’”).) Indeed, *Worman* noted studies finding that “the majority of  
3 individuals who have perpetrated mass shootings obtain their semiautomatic assault  
4 weapons legally,” suggesting that a “law proscribing semiautomatic assault weapons . . .  
5 will help curtail outbreaks of mass violence.” *Worman*, 922 F.3d at 40 (citing Larry  
6 Buchanan et al., *How They Got Their Guns*, N.Y. Times (updated Feb. 16, 2018),  
7 [https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-](https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html)  
8 [guns.html](https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html); Mayors Against Illegal Guns, Analysis of Recent Mass Shootings (2013)).

9 In short, the Attorney General has more than met his burden to show that there is a  
10 reasonable fit between the AWCA and protecting public safety. Plaintiffs do not truly  
11 dispute any of the Attorney General’s evidence, nor do they even attempt to distinguish the  
12 AWCA from the laws upheld by other circuits. Instead, they argue that California cannot  
13 “isolate” the rifles within the AWCA’s scope as the “culprit” for mass shootings and  
14 higher casualty counts. (Plaintiffs’ Opp. at 21.) However, the Court is “weighing a  
15 legislative judgment, not evidence in a criminal trial.” *See Pena v. Lindley*, 898 F.3d 969,  
16 979 (9th Cir. 2018). Even assuming there is not direct *causal* evidence between mass  
17 shootings and higher casualty rates and rifles within the scope of the AWCA, California is  
18 entitled to make “reasonable inferences” from the available data that shows a correlation.  
19 *See Worman*, 922 F.3d at 40. Indeed, Plaintiffs’ expert admits the obvious—that “a  
20 correlation between the use of assault weapons and the number of victims injured or  
21 killed” makes it “[m]ore likely” that there is a causal relationship. (*See* Kleck Deposition  
22 at 159:15–16, Ex. 15 to Chang Decl., Doc. 76-15.)

23 More fundamentally, Plaintiffs argue that California is “depriving the public of  
24 more accurate rifles that are easier to control.” (*See, e.g.*, Plaintiffs’ Opp. at 15.) Plaintiffs  
25 miss the point. As discussed throughout, that the rifles are more accurate and easier to  
26 control is precisely why California has chosen to ban them. Semiautomatic rifles with  
27 non-fixed magazines, along with the other enumerated features, are incredibly effective  
28

1 killing machines, and the Attorney General's evidence strongly suggests that such weapons  
2 are disproportionately used in mass shootings and that, when they are used, more people  
3 are injured and killed. To be sure, Plaintiffs may have legitimate interests in possessing  
4 semiautomatic rifles within the AWCA's scope. However, California has permissibly  
5 weighed those interests against the weapons' propensity for being used for mass violence  
6 and concluded that the weapons' lawful value is drastically outweighed by the danger they  
7 pose to California citizens.

8 Accordingly, the Court concludes that the AWCA withstands intermediate scrutiny.

9 **V. CONCLUSION**

10 For the foregoing reasons, the Court GRANTS the Attorney General's Motion for  
11 Summary Judgment and DENIES Plaintiffs' Motion for Summary Judgment. The  
12 Attorney General is ORDERED to submit a proposed judgment no later than five (5) days  
13 from the date of this Order.

14  
15 Dated: July 22, 2019



---

HON. JOSEPHINE L. STATON  
UNITED STATES DISTRICT JUDGE