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21
22 IN THE UNITED STATES DISTRICT COURT

23
24 CENTRAL DISTRICT OF CALIFORNIA

25 JUNIOR SPORTS MAGAZINES
26 INC., RAYMOND BROWN,
27 CALIFORNIA YOUTH SHOOTING
28 SPORTS ASSOCIATION, INC.,
JUNIOR SPORTS MAGAZINES
INC., RAYMOND BROWN,
CALIFORNIA YOUTH SHOOTING
SPORTS ASSOCIATION, INC.,
REDLANDS CALIFORNIA
YOUTH CLAY SHOOTING
SPORTS, INC., CALIFORNIA
RIFLE & PISTOL ASSOCIATION,
INCORPORATED, THE CRPA
FOUNDATION, AND GUN
OWNERS OF CALIFORNIA, INC.;
and SECOND AMENDMENT
FOUNDATION,

Plaintiffs,

v.

ROB BONTA, in his official capacity
as Attorney General of the State of
California; and DOES 1-10,

Defendant.

CASE NO: 2:22-cv-04663-CAS (JCx)

**PLAINTIFFS' SUR-REPLY IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

PLAINTIFFS' SUR-REPLY BRIEF

Whether the State's gambit to amend AB 2571 was instigated after this lawsuit was filed on July 8, 2022, or prior to that filing, these inchoate amendments to this law seem to address some aspects of the law's overbroad, vague, and ambiguous language; deficiencies that plaintiffs noted in their pleadings and moving papers. This suggests that the State's proposal to amend AB 2571 is being made in response to this lawsuit. After exchanging emails with opposing counsel and having had a discussion among the Plaintiffs regarding this new development, Plaintiffs could not (and did not) stipulate to any continuance of the August 22, 2022, hearing for at least four reasons.

First, this Court could just treat this email from the defendants' counsel and its attachment (sent to plaintiffs after we filed our reply brief) as an admission by a party opponent under Fed. R. Evid. 801(d)(2) and draw the logical inference that the defendants acknowledge that AB 2571, in its current form, is fatally overbroad and thus is likely unconstitutional.

The spin of opposing counsel's email—that (somehow) AB 2571 is just fine as it is and that these amendments make no substantive changes—should be seen for what it is: The government trying to have its cake and eat it too. AB 2571 must be analyzed by this Court as it was written and signed into law, at the time this lawsuit was filed, and as the text has been in effect until the time this Court has set for hearing. These “changes” to the law are not effective now, may never be effective, and should not impact the Court's analysis, except to the extent they evidence the State's recognition that the law is unconstitutional. If the potential amendments are truly non-substantive and have nothing to do with this lawsuit, then why the request for a postponement of the hearing on the injunction request? Contra wise, if AB 2571 is flawed and requires amendment, then plaintiffs' motion for a preliminary injunction should be granted—in part—based on the implied recognition by the defendants that the current law is overbroad.

1 Second, this rumor of a potential but by no means certain “fix-it” bill, whether
2 it is expressly intended to address the constitutional deficiencies of AB 2571, or as
3 opposing counsel offers, is only intended to create additional exceptions to the
4 legislative policy—the plain facts are that the proposed amendments will make this
5 a more narrowly tailored law. That itself is a concession that the law as it exists
6 today is overbroad.

7 This does not warrant any delay in addressing the ongoing irreparable harms
8 that Plaintiffs (and countless others similarly situated) have been suffering under this
9 ill-conceived law for the greater part of a month. This Court may recall that it denied
10 Plaintiffs’ request for an expedited hearing, and that the current hearing set for
11 August 22, 2022, is already a postponement of adjudicating the fundamental rights
12 at stake in this matter. The Court may also recall, these harms were invited upon
13 Plaintiffs because the State chose to pass AB 2571 as an urgency measure, taking
14 effect immediately upon adoption. Mem. Supp. Ex Parte Mot. for Order Shortening
15 Time (ECF No. 13-1). As Plaintiffs have explained, this kept Plaintiffs from
16 availing themselves of the normal procedures for seeking preliminary relief before
17 the law would take effect. *Id.* at 6. And it prevented the State itself from introducing
18 its proposed amendments to address the concerns Plaintiffs’ lawsuit raised before
19 the law would have taken effect on January 1, 2023, *if it had not been passed as an*
20 *urgency measure*, thus stripping tens or hundreds of thousands of people of their free
21 speech rights immediately upon the law taking effect on June 30, 2022.

22 Third, even if the proposed amendments are introduced, the defendants’
23 lawyers did not (because they cannot) give any assurance that the Legislature will
24 actually pass the proposed bill, what the final language of the bill will be, or whether
25 the Governor will even sign the bill into law once it gets to his desk. Plaintiffs
26 should not be expected to spend time and their limited resources to address any legal
27 issues raised by a phantom bill, nor should plaintiffs be forced to live with their
28 rights restricted while the State goes through its legislative process. Unless and until

1 this language is introduced as a bill, let alone signed into law, and takes effect, it is
2 inappropriate to rely on pie-in-the-sky possibilities to continue to delay the
3 preliminary relief that Plaintiffs are patently entitled to.

4 Fourth, and perhaps most importantly, even the rumored amendments do not
5 cure the constitutional deficiencies of this law. The new law, if ever passed, and
6 depending on its actual language, still unconstitutionally censors both pure speech
7 and commercial speech because¹: (1) it is still both a content based and viewpoint
8 based regulation of speech, (2) it is still overbroad, vague, and ambiguous, (3) the
9 law is not narrowly tailored or substantially related² to the public safety policy it
10 purports to address, and (4) it is still an animus based law discriminating against
11 people exercising a fundamental right that violates the 14th Amendment's Equal
12 Protection Clause. Those issues are best addressed by this Court when and if that
13 time ever comes.

14 Finally, this development undermines the State's opposition brief and
15 supporting material. If the current language of AB 2571 requires amendment to
16 appease certain interest groups or to cure (some of) its constitutional defects, then
17 the State should have filed a non-opposition to Plaintiffs' request for a preliminary
18 injunction (or stipulated to its entry) and then filed notice of the (rumored)
19 impending change to the law in their answer. But the defendants didn't do that. If
20 they had, the lawsuit could then have been stayed after entry of the injunction,
21 pending any changes in the law that actually comply with the Constitution. That way
22 the status quo could be maintained as to the Plaintiffs' rights while the California
23

24 ¹ See Pls.' Mem. Supp. Mot. Prelim. Inj. (ECF No. 12-1) and Pls.' Reply to
25 Opp'n to Pls' Mot. Prelim. Inj. (ECF No. 21).

26 ² E.g., If this bill merely defined firearm marketing to minors, and rather than
27 banned that speech outright, required a warning label directing viewers and readers
28 of any marketing material to California's law restricting firearms sales to adults, and
penalizing possession and sales to minors without parental consent, the law might be
less offensive to the First Amendment.

1 Legislature and Governor take their time to try and salvage its intrinsically
 2 unconstitutional policy of censoring free speech.

3 Plaintiffs have preemptively filed this supplemental brief based on this
 4 development: (1) because it is new information unavailable to the plaintiffs when
 5 they filed their reply brief that materially advances Plaintiffs' existing arguments in
 6 favor of granting the preliminary injunction, and (2) to give the Court as much
 7 notice as possible that this new development will be dropped in its lap on or before
 8 next Monday.

9 Plaintiffs respectfully ask the Court to:

- 10 1. Enter an Order preliminarily enjoining the enforcement of AB 2571
- 11 effective immediately upon filing of the Order;
- 12 2. Stay further litigation in this matter until the State files a notice with the
- 13 Court that AB 2571 has in fact been amended and those amendments
- 14 have taken effect or, alternatively, that the proposed amendments have
- 15 been rejected by either the Legislature or the Governor, at which point
- 16 the burden would shift to the State to file a motion to modify or vacate
- 17 the injunction under Rule 65 of the Federal Rules of Civil Procedure.
- 18

19 Dated: August 19, 2022

MICHEL & ASSOCIATES, P.C.

s/ Anna M. Barvir

Anna M. Barvir
 Counsel for Plaintiffs Junior Sports Magazines,
 Inc., Raymond Brown, California Youth
 Shooting Sports Association, Inc., Redlands
 California Youth Clay Shooting Sports, Inc.,
 California Rifle & Pistol Association,
 Incorporated, The CRPA Foundation, and Gun
 Owners of California, Inc.

25 Dated: August 19, 2022

LAW OFFICES OF DONALD KILMER, APC

s/ Donald Kilmer

Donald Kilmer
 Counsel for Plaintiff Second Amendment
 Foundation

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Junior Sports Magazines, Inc., et al. v. Bonta*
Case No.: 2:22-cv-04663-CAS (JCx)

IT IS HEREBY CERTIFIED THAT:

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

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

**PLAINTIFFS' SUR-REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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

Kevin J. Kelly, Deputy Attorney General
kevin.kelly@doj.ca.gov
300 South Spring Street, Suite 9012
Los Angeles, CA 90013
Attorney for Defendant

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

Executed August 19, 2022.



Laura Palmerin