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13 IN THE UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 JUNIOR SPORTS MAGAZINES
INC., RAYMOND BROWN,
16 CALIFORNIA YOUTH SHOOTING
SPORTS ASSOCIATION, INC.,
17 REDLANDS CALIFORNIA
YOUTH CLAY SHOOTING
18 SPORTS, INC., CALIFORNIA
RIFLE & PISTOL ASSOCIATION,
19 INCORPORATED, THE CRPA
FOUNDATION, AND GUN
20 OWNERS OF CALIFORNIA, INC.;
and SECOND AMENDMENT
21 FOUNDATION,

22 Plaintiffs,

23 v.

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

26 Defendant.
27
28

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

**PLAINTIFFS' SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: October 17, 2022
Hearing Time: 10:00 a.m.
Courtroom: 8D
Judge: Christina A. Snyder

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INTRODUCTION

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2 A supplemental round of briefing became necessary when the state of
3 California, rather than defend the law they urgently enacted, decided to not-so-
4 urgently¹ change the law. This is a tactic denied to run-of-the-mill defendants but is
5 an increasingly favored tactic by sovereign-defendants facing stiff odds defending
6 their unconstitutional policies. *See generally, N.Y. State Rifle & Pistol Ass’n v. City*
7 *of New York (NYSRPA)*, __U.S.__, 140 S. Ct. 1525 (2019). Unlike the defendants in
8 *NYSRPA*, the government here has not (yet) claimed that the change in law moots
9 the controversy. Their lawyers, in a valiant but futile effort, instead claim that the
10 amendments made to AB 2571, by AB 160, merely remove doubt and clarify the
11 law by making explicit some exemptions that they claim were already implicit in the
12 original text. Barvir Decl. Supp. Pls.’ Ex Parte App. (ECF No. 23), Ex. 1.

13 Even if creating a carve-out for censorship somehow “clarifies” an inherently
14 flawed policy, Plaintiffs contend that even this “new-and-improved” AB 2571² fails
15 to respect the First Amendment. This Court should be skeptical too. AB 160 made
16 only three edits to the State’s ban on firearm-related speech. Two were non-
17 substantive word swaps. The third was the addition of a new subsection that, far
18 from helping the State, supports Plaintiffs’ arguments that this law is fundamentally
19 flawed on First and Fourteenth Amendment grounds. AB 160 did not fix AB 2571.
20 It sealed its fate as an irrational and unconstitutional law.

21
22 ///

23 ///

24 ///

25
26 ¹ As of filing, Assembly Bill 160 has still not been signed by the governor. It was
27 presented to him on August 31, 2022. Subsection (1) of that legislation purports to
28 amend AB 2571. In contrast, Governor Newsom signed AB 2571 on June 30, 2022,
as “urgency” legislation hours after it was presented to him. It seems “urgency” has
a fluid definition at the state Capitol.

² For continuity, Plaintiffs refer to the challenged law—Business & Professions
Code section 22949.80—as AB 2571.

ARGUMENT

I. AB 2571 VIOLATES PLAINTIFFS’ RIGHTS UNDER THE FIRST AMENDMENT

A. Even If AB 160 Takes Effect, AB 2571 Is Still a Content- and Viewpoint-based Restriction on Plaintiffs’ Commercial and Non-commercial Speech

In the parties’ initial briefing, they argued at length over whether AB 2571 restricted only commercial speech or also banned ideological and educational speech about the use of firearms and related products. Opp’n 7-12; Reply 2-8. As Plaintiffs established, AB 2571 “bars ‘firearm industry members’ from making or distributing any ‘communication’ ‘in exchange for monetary compensation’ if the speech (1) ‘concerns’ a ‘firearm-related product,’ (2) is designed, intended, or could reasonably be considered [to be] ‘attractive to minors,’ and (3) seeks to encourage the audience ... to either purchase or use the product.” Reply 2-3 (quoting Cal. Bus. & Prof. Code § 22949.80(a)(1), (c)(6)). In short, the plain language of AB 2571 as adopted restricts not just speech that proposes the commercial sale of “firearm-related products,” but also a wide swath of pure speech promoting the use of such products. Reply 2-8; Brown Decl., ¶¶ 8-5; Coleman Decl., ¶¶ 4-10; Fink Decl., ¶¶ 9-20; Gomez Decl., ¶¶ 5-11; Gottlieb Decl., ¶¶ 7-13; Minnich Decl., ¶¶ 7-15; Rangel Decl., ¶¶ 3-11; see also Suppl. Brown Decl., ¶¶ 2-6; Suppl. Coleman Decl., ¶¶ 2-9; Suppl. Fink Decl., ¶¶ 2-5; Suppl. Gomez Decl., ¶¶ 2-9; Suppl. Gottlieb Decl., ¶¶ 2-5; Suppl. Minnich Decl., ¶¶ 2-7.

With the introduction and adoption of AB 160, which amended AB 2571 in an apparent attempt to narrow the scope of the law, the State is poised to remove its gag on certain enumerated types of firearm-related speech. For instance, it no longer prohibits Plaintiffs CRPA and SAF from engaging in communications promoting junior membership in their organizations. Cal. Bus & Prof. Code § 22949.80(a)(3). And it allows Plaintiffs Brown, CYSSA, RCYCSSL, and CRPA to resume advertisements to youth for their “firearm safety program[s], hunting safety or promotional program[s], firearm instructional course[s], sport shooting event[s] or

1 competition[s]” and other lawful “hunting activit[ies].” *Id.* But make no mistake.
2 The law remains a content- and viewpoint-based restriction on Plaintiffs’
3 commercial and non-commercial speech.

4 Indeed, aside from adding subsection (c)(3), which carved out a limited
5 exemption for some categories of pure speech,³ AB 160 made just two non-
6 substantive changes to the original text of AB 2571. The first edit merely swaps the
7 preposition “concerning” in subsection (a)(1) with the verb phrase “offering or
8 promoting.” Suppl. Req. Jud. Ntc., Ex. 33 at 11. So the law now reads: “A firearm
9 industry member shall not advertise, market, or arrange for placement of an
10 advertising or marketing communication *offering or promoting* any firearm-related
11 product in a manner that is designed, intended, or reasonably appears to be attractive
12 to minors.” *Id.* (emphasis added).

13 The second edit removes “service” from the phrase “product or service” in
14 subsection (c)(6) and deletes “purchase or use the product or service” in favor of
15 “engage in a commercial transaction.” The subsection now reads:

16 “Marketing or advertising” means, in exchange for monetary
17 compensation, to make a communication, to one or more
18 individuals, or to arrange for the dissemination to the public
19 of a communication, about a *product*, the primary purpose of
20 which is the encourage the recipients of the communication
21 to *engage in a commercial transaction*.

22 *Id.*, Ex. 33 at 13 (emphases added).

23 Read together, AB 2571 (as amended by AB 160) will prohibit “firearm
24 industry members” from making or distributing any “communication” “in exchange
25 for monetary compensation” if the speech (1) “offers” or “promotes” a “firearm-
26 related product,” (2) is designed, intended, or could reasonably be considered
27 “attractive to minors,” and (3) seeks to encourage the audience to “engage in a
28 commercial transaction.” Cal. Bus. & Prof. Code § 22949.80(a)(1), (c)(6)). For the
reasons already laid out in Plaintiffs’ moving papers (Mot. 11-12; Reply 10-13), the

³ The effect of this exemption on the First Amendment analysis is explained below. Part I.B.1, *infra*.

1 amended law is still a content- and viewpoint-based regulation of speech/press that
2 targets the messages of particular speakers based on the communication’s “subject
3 matter” and its “function or purpose.” Indeed, the State’s trivial word swaps do not
4 change what is really being prohibited—distributing to the public, including both
5 adults and children, information about firearm-related products that they might wish
6 to use for lawful hunting and shooting activities.

7 Plaintiffs’ supplemental declarations identify specific (non-exhaustive)
8 examples of the types of commercial and non-commercial speech that will remain
9 restricted should AB 160 take effect. Suppl. Brown Decl., ¶¶ 5; Suppl. Coleman
10 Decl., ¶¶ 6-10; Suppl. Fink Decl., ¶¶ 6-9; Suppl. Gomez Decl., ¶¶ 4, 10; Suppl.
11 Gottlieb Decl., ¶ 14; Suppl. Minnich Decl., ¶¶ 8, 12, 16, 20-22, 27. For instance,
12 Plaintiff Junior Sports Magazines will still be barred from publishing and circulating
13 *Junior Shooters* magazine in California. Suppl. Fink Decl., ¶¶ 6-9. That is because
14 the amended law expressly prohibits the sorts of advertisements promoting the sale
15 of lawful firearm-related products found in the pages of *Junior Shooters* magazine.
16 *Id.*, ¶ 7. To prevent substantial liability under AB 2571, Junior Sports Magazines
17 must thus remove all such advertisements from *Junior Shooters* magazine (even
18 though they are both truthful and lawful in the 49 other states where Junior Sports
19 maintains circulation) or continue to bar distribution of the magazine in California
20 entirely. *Id.* Of course, advertising makes publication of *Junior Shooters* magazine
21 economically possible, so ending such advertising is not really an option. *Id.*

22 Plaintiffs Junior Sports Magazines and CRPA will also continue to be barred
23 from publishing articles and images that endorse firearm-related products designed
24 for use by minors or come in colors or sizes that might be appealing to minors. *Id.*, ¶
25 6; Suppl. Minnich Decl., ¶ 12. And they could not publish articles written by youth
26 shooters endorsing specific firearms or ammunition appropriate for competitive
27 shooting applications by youth and smaller shooters. Suppl. Fink Decl., ¶ 6; Suppl.
28 Minnich Decl., ¶ 12.

1 Plaintiffs Brown and CRPA will continue to see restrictions on the speech that
2 takes place during their firearms training and safety programs and hunter’s
3 education courses. Suppl. Brown Decl., ¶ 5; Suppl. Minnich Decl., ¶ 8. That is
4 because the newly amended law exempts only speech “offering” or “promoting”
5 these courses. Suppl. Req. Jud. Ntc., Ex. 33 at 11. It does not exempt the speech that
6 takes place at them. *Id.* As a result, Plaintiffs Brown and CRPA must consider
7 whether it is too risky to resume offering such courses to youth under 18. Suppl.
8 Brown Decl., ¶ 5; Suppl. Minnich Decl., ¶ 8. And, if they do choose to resume such
9 offerings, they must carefully censor their speech since such courses inherently
10 include speech promoting firearm-related products, including recommendations
11 about specific products. Suppl. Brown Decl., ¶ 5; Suppl. Minnich Decl., ¶ 8
12 (explaining that California’s own Hunter Safety Course Study Guide—a resource
13 that every hunter education course in the state must use—incorporates endorsements
14 for “firearm-related products,” including hunting ammunition, eye- and ear-
15 protection, adjustable shooting tripods, spotting scopes, and shotgun chokes, among
16 other things).

17 Similarly, CYSSA’s and RCYCSSL’s volunteers and affiliated coaches and
18 trainers will still be prohibited from endorsing, promoting, or suggesting that their
19 young athletes obtain firearm-related products necessary for their success in the
20 shooting sports. Suppl. Coleman Decl., ¶ 8. And they will be barred from endorsing
21 a specific brand of ammunition or a particular firearm that works best for young and
22 smaller athletes without violating the law. Suppl. Coleman Decl., ¶ 8.

23 And finally, even with the new exemption for advertising competitive
24 shooting and hunting programs, AB 2571 still restricts Plaintiffs’ ability to host and
25 sponsor such activities for youth. Suppl. Gomez Decl., ¶¶ 2-5; Suppl. Minnich Decl.,
26 ¶¶ 18-21. That is because these events regularly involve signage, flyers, discussions,
27 branded merchandise, giveaways, and other communications that promote or offer
28 firearm-related products. Suppl. Minnich Decl., ¶ 20. What’s more, like most large-

1 scale events, the cost of hosting these opportunities for youth generally must be
2 offset by sponsors, including businesses that sell or manufacture firearms,
3 ammunition, and related goods. *Id.* Sponsors are offered vendor booth space,
4 banners, logo placement, or other forms advertising at these events in exchange for
5 their financial support. *Id.* It is also customary, just like in other sports, to place
6 sponsor logos on youth competitors’ uniforms and commemorative t-shirts. *Id.*
7 Because AB 2571 provides no exception for sponsors of youth shooting events or
8 for the speech that takes place at such events, the law threatens Plaintiffs’ ability to
9 offer these events for young shooters and effectively silences all the commercial *and*
10 non-commercial speech that takes place that them. Suppl. Gomez Decl., ¶¶ 2-5;
11 Suppl. Minnich Decl., ¶¶ 18-21.

12 What’s more, the AB 160 amendments do not address the vagueness and
13 overbreadth concerns that Plaintiffs identified in their complaint and moving papers.
14 Comp., ¶¶ 7, 48, 114-15; Mot. 15; Reply 4. In fact, by adding *even more* unclear
15 language rather than taking it away, AB 160 makes the law in many ways *more*
16 *vague and more overbroad*. Suppl. Req. Jud. Ntc., Ex. 33 at 11-13 (retaining
17 overbroad and highly subjective references to communications that are “designed,
18 intended, or reasonably appear[] to be attractive to minors” and adding vague
19 references to “any *similar* program, course, or event”). Plaintiffs thus remain unsure
20 exactly what speech is permissible under the law. So every single time they host an
21 event open to youth, publish a magazine or bulletin, offer merchandise for sale,
22 collaborate with industry-member sponsors or advertisers, or communicate with
23 minors, they must weigh the risks of engaging in this otherwise lawful and truthful
24 speech against the very real and very substantial risk of civil liability. Suppl. Brown
25 Decl., ¶¶ 4-5; Suppl. Coleman Decl., ¶ 10; Suppl. Fink Decl., ¶ 9; Suppl. Gomez
26 Decl., ¶ 10; Suppl. Gottlieb Decl., ¶ 14; Suppl. Minnich Decl., ¶ 27. The very
27 thought is anathema to the fundamental right to free speech. *Edge v. City of Everett*,
28 929 F.3d 657, 664-65 (9th Cir. 2019) (requiring “specificity of laws” when “First

1 Amendment freedoms are” implicated because unclear laws might “chill[] protected
2 speech or expression by discouraging participation”).

3
4 **B. AB 2571 Cannot Survive Any Level of Judicial Scrutiny Applicable
to Restrictions on Protected Speech**

5 Because AB 2571 is a content-based and viewpoint-discriminatory restriction
6 on the non-commercial, pro-gun speech and associational activities described above,
7 it is presumed invalid and may be upheld only if the government proves it is
8 “narrowly tailored to serve [a] compelling state interest” under strict scrutiny. *Reed*
9 *v. Town of Gilbert*, 576 U.S. 155, 163 (2015). For the reasons set forth in Plaintiffs’
10 moving papers, the State cannot meet its burden under that exacting test and, in fact,
11 did not even attempt to do so. Mot. 13-15; Reply 13. The Court should thus hold that
12 Plaintiffs’ are likely to succeed on the merits of their First Amendment claims.

13 But even if the Court finds that the AB 160 amendments effectively limit the
14 law’s reach to only speech proposing the commercial sale of firearm-related
15 products, the result is the same. Mot. 15-21; Reply 13-20. By now, it is beyond
16 dispute that AB 2571, both as adopted and as recently amended, bans truthful
17 commercial speech about lawful conduct. Mot. 16-17; Reply 14-15; Req. Jud. Ntc.,
18 Ex 33 at 11-12; *see also* Part I.B., *infra*. The State cannot meet its burden to prove
19 that the law withstands constitutional scrutiny—even under the slightly more
20 forgiving commercial speech test of *Central Hudson*. The AB 160 amendments
21 themselves made this fact all the more clear.

22 **1. Subsection (c)(3), AB 160’s exemption for speech promoting
23 certain lawful activities, confirms that AB 2571 restricts
nonmisleading commercial speech about lawful activities.**

24 Even under the State’s own dubious theory that advertising “firearm-related
25 products” to minors should become a whole new category of prohibited speech, the
26 State’s new “exemption” for communications promoting certain lawful activities
27 swallows the rule. The new exemption reads:

28 This subdivision does not apply to a communication offering
or promoting any firearm safety program, hunting safety or

1 promotional program, firearm instructional course, sport
 2 shooting event or competition, or any similar program,
 3 course, or event, nor does it apply to a communication
 4 offering or promoting membership in any organization, or
 5 promotion of lawful hunting activity, including, but not
 6 limited to, any fundraising event, youth hunting program, or
 7 outdoor camp.

8 Req. Jud. Ntc., Ex. 33 at 11-12 (amended § 22949.80 (a)(3)).

9 This is such a strongly implied admission that it borders on a judicial
 10 admission that minors may lawfully possess and shoot firearms in California.
 11 Indeed, under this new subsection, “firearm industry members” are expressly
 12 allowed to market firearm safety programs, hunting safety courses, firearm
 13 instructional courses, and sport shooting events and competitions to minors—
 14 presumably so that minors may participate in such activities. *Id.* They may also
 15 market “*lawful* hunting activit[ies], including, but not limited to, any fundraising
 16 event, *youth* hunting program, or outdoor camp” where minors are highly likely to
 17 handle and use firearms, ammunition, and related products. *Id.* (emphasis added).

18 In short, the amended law acknowledges on its face that, even if they must do
 19 so under adult supervision or with parental consent, minors may legally handle and
 20 shoot firearms in California. *Id.*; *see also* Cal. Penal Code §§ 29615(a)-(d), 29655;
 21 Barvir Decl., Ex. 32 (Department of Fish & Wildlife form seeking parental consent
 22 for minor to “handle, manipulate, and/or use firearms” during the state hunter’s
 23 safety course). Having vigorously resisted this fairly obvious point in its opposition,
 24 Opp’n 14-15, it was nice of the State to finally concede the point.

25 **2. AB 2571 does not directly or materially advance the State’s**
 26 **purported public safety interest**

27 The State’s concession, however, raises a question: Is the State of California
 28 seriously suggesting that minors may lawfully engage in activities that require the
 use of firearm-related products, but that they (and their consenting parents) can be
 forbidden access to truthful market information about those products before taking
 part in such activities? The “logic” rivals the White Queen’s edict:

“You couldn’t have it if you did want it,” the Queen said.

1 “The rule is, jam tomorrow and jam yesterday – but never
jam today.”

2 “It must come sometimes to ‘jam today,’” Alice objected.

3 “No, it can’t,” said the Queen. “It’s jam every other day:
4 today isn’t any other day, you know.”

5 Lewis Carroll, *Through the Looking-Glass and What Alice Found There*. It’s
6 nonsensical. But more important than that, it illustrates the constitutional vice of AB
7 2571. That is, the law acknowledges that minors can lawfully enjoy the shooting
8 sports in California, but it punishes those who seek to provide minors with truthful
9 information about the firearm-related products necessary to participate in those
10 lawful activities. This is irrational on its face. And it establishes why AB 2571
11 neither directly nor materially advances the State’s purported public safety interests.

12 Rather than *directly* attack the perceived problem of *illegal* possession and
13 use of firearms by minors, AB 2571 approaches the issue exactly backwards. It
14 seeks to *indirectly* dampen the demand for even *legal* possession of firearm-related
15 products through advertising restrictions aimed at both minors and adults. But it
16 does so while simultaneously authorizing speech encouraging minors to participate
17 in activities where they will, in fact, be using firearms and related products. Req.
18 Jud. Nt., Ex. 33 at 11-12. The law is thus clearly not concerned with minors gaining
19 access to actual firearms—just the speech that might entice them to do so. Whatever
20 the constitutional contours of regulations on minors’ access to actual firearms should
21 be (a question not at issue), California’s policy of restricting a minor’s access to
22 *information* about firearm-related products, when California openly admits that
23 minors may lawfully use those products, makes the government seem almost
24 schizophrenic.

25 Again, AB 2571 is, at best, an impermissible restriction on speech that only
26 indirectly serves the State’s public safety interest. *Sorrell v. IMS Health Inc.*, 564
27 U.S. 552, 554-55 (2011) (holding that the state may not “achieve its policy
28 objectives through the indirect means of restraining certain speech by certain

1 speakers”). Even though the Supreme Court and the Ninth Circuit have sometimes
 2 tolerated indirect advertising restrictions to dampen market demand, *see United*
 3 *States v. Edge Broad. Co.*, 509 U.S. 418, 434 (1993), “when a State entirely
 4 prohibits dissemination of truthful, nonmisleading commercial messages for reasons
 5 unrelated to the preservation of a fair bargaining process, there is far less reason to
 6 depart from the rigorous review that the First Amendment generally demands.” 44
 7 *Liquormart v. Rhode Island*, 517 U.S. 484, 501 (1996). Indeed, the State “may not
 8 seek to remove a popular but disfavored product from the marketplace by
 9 prohibiting truthful, nonmisleading advertisements. ...” *Sorrell*, 564 U.S. at 577-78.
 10 This can hardly be truer than when what the government seeks to banish from the
 11 marketplace are *constitutionally protected* products.

12 Indeed, in *Carey v. Population Services Int’l*, 431 U.S. 678 (1977), the
 13 Supreme Court struck down a state law that prohibited the advertisement of
 14 contraceptives to everyone and prohibited both the advertisement and the sale of
 15 such products to minors. The *Carey* Court reiterated that the government may not
 16 “completely suppress the dissemination of concededly truthful information about
 17 entirely lawful activity,” even when that information could be categorized as
 18 “commercial speech.” *Id.* at 700 (quoting *Va. Pharm. Bd. v. Va. Citzs. Consumer*
 19 *Council*, 425 U.S. 748, 773 (1976)). That an expression “may be offensive to some
 20 does not justify its suppression.” *Id.* at 701 (internal quotation omitted). And “[a]s
 21 for the possible ‘legitimation’ of illicit ... behavior”:

22 [W]hatever might be the case if the advertisements directly
 23 incited illicit ... activity among the young, none of the
 24 advertisements in this record can even remotely be
 25 characterized as ‘directed to inciting or producing imminent
 26 lawless action and... likely to incite or produce such action.’
 27 *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). **They**
 28 **merely state the availability of products and services that**
are not only entirely legal, cf. *Pittsburgh Press Co. v.*
***Human Relations Comm’n*, 413 U.S. 376 (1973), but**
constitutionally protected.”

Id. 701-02 (emphasis added).

1 With AB 2571’s newly adopted exemption for communications promoting or
2 offering certain firearm-related programs, California now acknowledges that minors
3 may lawfully participate in shooting and hunting activities though with parental
4 authorization—and that such behavior is, dare we say, normal conduct. If shooting
5 and hunting by minors is itself lawful conduct, it would seem that California has
6 flitted away whatever meager justification it might have had to forbid the
7 dissemination and receipt of communications advertising the availability of lawful
8 firearm-related products necessary for minors to engage in those activities. In short,
9 the law does not directly or materially advance any substantial state interest.

10
11 **3. AB 2571 is far more extensive than necessary to promote the
State’s purported public safety interests.**

12 The last prong of the *Central Hudson* test requires the State to show that the
13 challenged law “is no more extensive than necessary to further” the government’s
14 purported interests. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447
15 U.S. 557, 569-70 (1980). “A statute is more extensive than necessary if the
16 government has other options that could advance its asserted interest in a manner
17 less intrusive on First Amendment rights.” *Tracy Rifle & Pistol LLC v. Harris*, 339
18 F. Supp. 3d 1007, 1018 (E.D. Cal. 2018) (citing *Rubin v. Coors Brewing Co.*, 514
19 U.S. 476, 491 (1995)). “In other words, ‘it should not be overinclusive.’” *Id.*
20 (quoting *Valle Del Sol v. Whiting*, 709 F.3d 808, 825 (9th Cir. 2013)). As established
21 in Plaintiffs’ moving papers and on reply, AB 2571 is more extensive than necessary
22 to achieve the State’s interests because it impermissibly burdens speech about not
23 only the illegal purchase of firearms by minors, but also the lawful use of “firearm-
24 related products” by minors and the lawful purchase and use of such products by
25 adults. It is also more extensive than necessary because the State has several tools
26 available to combat the problem of illegal firearm use by minors that would not
27 restrict speech at all. Mot. 19-21; Reply 17-20.

28 Indeed, California law already criminalizes the sale of firearms to any person

1 under 21, which would also include any attempt, with an overt act, to sell a firearm
2 to a minor. Cal. Penal Code § 27510; *see also id.* § 664 (attempt). State law also
3 mandates locked-storage to prevent the unsupervised and unauthorized access of
4 firearms by minors. Cal. Penal Code § 25100. Further, “to deter [gun] crime, the
5 [g]overnment has an arsenal of criminal laws it may enforce.” *Tracy Rifle & Pistol*
6 *LLC v. Harris*, 339 F. Supp. 3d 1007, 1013 (E.D. Cal. 2018). “[T]he [g]overnment
7 could further its asserted interests simply by enforcing these laws.” *Id.* They attack
8 the problem directly and without restricting any speech at all. Because the
9 government can “achieve its interests in a manner that does not restrict speech,” it
10 “must do so.” *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 371 (2002). If the
11 State feels these safeguards have proven insufficient, “it may pass additional *direct*
12 regulations within constitutionally permissible boundaries.” *Tracy Rifle*, 339 F.
13 Supp. 3d at 1018-19 (emphasis added). It could even mount its own speech
14 campaign decrying the perils of minor firearm use.⁴ But it may *not* strip away First
15 Amendment freedoms through overinclusive speech restrictions in service of even a
16 substantial interest in protecting children from perceived harm. *See Carey*, 431 U.S.
17 at 700-02; *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 581 (2001).

18 The Supreme Court’s reasoning in *Lorillard* is particularly instructive. There,
19 the Supreme Court accepted as uncontroversial that Massachusetts had an interest in
20 preventing minors’ access to tobacco products and noted that state law had already
21 made it illegal to sell or distribute tobacco products to them. *Id.* at 552. Even still,
22 holding that “the governmental interest in protecting children from harmful
23 materials does not justify an unnecessarily broad suppression of speech addressed to
24 adults,” the Court struck Massachusetts’ restrictions on tobacco marketing likely to
25 be observed by children. *Id.* at 581.

26 Like Massachusetts’ ban on tobacco marketing addressed to adults that might

27 ⁴ Indeed, “[t]he Supreme Court has recognized that ‘educational campaign
28 focuses on the problems [at issue] might prove to be more effective’ than advertising
regulations designed to decreased demand of a product.” *Tracy Rifle*, 339 F. Supp.
3d at 1019 (quoting *44 Liquormart*, 517 U.S. at 506 (plurality opinion)).

1 also be consumed by children, California’s AB 2571 restricts not only speech that
2 directly targets children, but also speech directed to adults that “appears to be
3 attractive to minors” under California’s subjective criteria, Cal. Bus. & Prof. Code §
4 22949.80(a)(1). Unlike the prohibition on minor tobacco use imposed by
5 Massachusetts and countenanced by the *Lorillard* Court, however, California’s AB
6 2571 implicitly endorses—by expressly authorizing speech about—lawful minor
7 firearm use. It stands to reason then that California’s ban on firearm-related speech
8 stands on even shakier ground than Massachusetts’ unconstitutional ban on tobacco-
9 related speech. For it can hardly be argued with a straight face that children must be
10 shielded from all mention of the availability of a market of firearm-related products,
11 while acknowledging with the same breath that they may lawfully participate in
12 shooting and hunting activities where they will handle and use actual firearms.

13 That said, even if California had condemned minors engaging in the shooting
14 sports, AB 2571 would still be unconstitutional under the analysis set forth in
15 *Lorillard*. Even if minors could constitutionally be denied all manner of firearm use
16 and possession, the government goes a bridge too far when it broadly suppresses
17 truthful speech by and for adults about lawful and, in fact, constitutionally protected
18 products. *See Carey*, 431 U.S. at 700-02; *Lorillard*, 533 U.S. at 581.

19 The other AB 160 amendments fail to clear up this fatal overbreadth. To the
20 contrary, the trivial word swaps achieved by AB 160 in subsections (a)(1) and
21 (c)(6), especially when read along with the new exemptions found at subsection
22 (a)(3), are without effect vis-à-vis AB 2571’s sins against the First Amendment. The
23 law is still overbroad because it targets speech directed at adults if it might
24 reasonably be said to be attractive to minors, and because it penalizes speech to both
25 adults and minors, even the products are lawful for minors to use. This California
26 may not do. *See Carey*, 431 U.S. at 700-02; *Lorillard*, 533 U.S. at 581.

27 Finally, in *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786 (2011), the
28 Supreme Court took up the issue of violent video games marketed, sold, and rented

1 to minors. The challenged law covered games “in which the range of options
2 available to a player include[d] killing, maiming, dismembering, or sexually
3 assaulting an image of a human being,” *Id.* at 789. Citing well-established law, the
4 Court declined California’s gambit to create a new category of unprotected speech
5 directed at shielding minors and struck the violent video game restriction.

6 The *Brown* Court observed that “as a general matter, . . . government has no
7 power to restrict expression because of its message, its ideas, its subject matter, or
8 its content.” *Id.* at 790 (quoting *Ashcroft v. Am. Civ. Libs. Union*, 535 U.S. 564, 573,
9 (2002) (internal quotations omitted)). While there are “well-defined and narrowly
10 limited classes of speech,” like obscenity, incitement, and fighting words, that may
11 be restricted without constitutional offense, *id.* at 790-91 (quoting *Chaplinsky v.*
12 *New Hampshire*, 315 U.S. 568, 571-72 (1942)), the Court declined to broaden that
13 list to include content-based restrictions designed to protect minors from harm, *id.* at
14 794-95. To the contrary, the Court held, “[s]peech that is neither obscene as to
15 youths nor subject to some other legitimate proscription cannot be suppressed solely
16 to protect the young from ideas or images that a legislative body thinks unsuitable
17 for them.” *Id.* (quoting *Erznoznik v. Jacksonville*, 4322 U.S. 205, 213-214 (1975))
18 (internal quotations omitted).

19 What’s more, the Supreme Court recently held, in *New York State Rifle &*
20 *Pistol Ass’n v. Bruen*, __ U.S. __, 142 S. Ct. 2111 (2022), that the appropriate
21 analysis for Second Amendment challenges requires that “[t]he government . . .
22 justify its regulation by demonstrating that it is consistent with the Nation’s
23 historical tradition of firearm regulation.” *Id.* at 2129-30. California’s firearm-
24 speech restriction, codified by AB 2571, is thus subject to the same mode of analysis
25 as both *Bruen* and *Brown*, which also held that there is no longstanding tradition in
26 this country of specially restricting children’s access to information on the pretext
27 that it exposes them to violence, *Brown*, 564 U.S. at 795-96.

28 And if a California law restricting marketing to minors of immersive, violent

1 video games—in which high scores are measured by body counts at the end of
2 play—cannot withstand the acid test of the First Amendment, then how can
3 California justify censorship of any kind in the marketing of firearm-related
4 products to minors, when the state admits that minors may lawfully engage in
5 activities that require the use of firearms? Simply put, it cannot. And this Court
6 should enjoin enforcement of AB 2571.

7 **II. AB 2571 ALSO VIOLATES PLAINTIFFS’ RIGHT TO EQUAL PROTECTION**

8 Because AB 2571 is *still* a content-based and viewpoint-discriminatory
9 speech restriction, it *still* treats some speech and, necessarily, some speakers
10 differently from others. It thus violates not just the First Amendment rights of
11 speech, association, and press, it also violates the Equal Protection Clause of the
12 Fourteenth Amendment. *Dariano v. Morgan Hill Unif. Sch. Dist.*, 767 F.3d 764,
13 779-780 (9th Cir. 2014).

14 As explained in Plaintiffs’ moving papers, the Equal Protection analysis is
15 “essentially the same” as the First Amendment analysis. Mot. 20 (quoting *id.* at 780;
16 *Police Dep’t of Chic. v. Mosley*, 408 U.S. 92, 101 (1972) (“The Equal Protection
17 Clause requires that statutes affecting First Amendment interests be narrowly
18 tailored to their legitimate objectives.”). Plaintiffs thus incorporate the First
19 Amendment arguments of their moving papers and this supplemental brief. Mot. 22-
20 23; Reply 20-21; Part I, *supra*. If the Court finds that Plaintiffs are likely to succeed
21 on their claim that AB 2571 is an impermissible restriction on their First
22 Amendment rights, it should similarly hold that AB 2571 violates their right to equal
23 protection under the law.

24 **III. THE OTHER PRELIMINARY INJUNCTION FACTORS FAVOR RELIEF**

25 Because, as Plaintiffs have established, Plaintiffs are likely to succeed on the
26 merits of their constitutional claims and the recently adopted amendments to AB
27 2571 did not change that conclusion, the remaining preliminary injunction factors—
28

1 i.e., irreparable harm, balance of the equities, and the public interest—readily
2 follow. Mot. 23-25; Reply 21-23. Preliminary relief is warranted.

3 **CONCLUSION**

4 For the reasons laid out in this court-ordered supplemental brief, as well as in
5 Plaintiffs’ moving papers and reply, the Court should grant Plaintiffs’ Motion for
6 Preliminary Injunction and enjoin the enforcement of section 22949.80 while this
7 case proceeds to a final decision on the merits.

8
9 Dated: September 28, 2022

MICHEL & ASSOCIATES, P.C.

10 *s/ Anna M. Barvir*

11 Anna M. Barvir
12 Counsel for Plaintiffs Junior Sports Magazines,
13 Inc., Raymond Brown, California Youth
14 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.

15 Dated: September 28, 2022

LAW OFFICES OF DONALD KILMER, APC

16 *s/ Donald Kilmer*

17 Donald Kilmer
18 Counsel for Plaintiff Second Amendment
Foundation

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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' SUPPLEMENTAL BRIEF IN SUPPORT OF
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.

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Attorney for Defendant

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

Executed September 28, 2022.



Laura Palmerin