

1 ROB BONTA
 Attorney General of California
 2 R. MATTHEW WISE
 Supervising Deputy Attorney General
 3 NICOLE J. KAU
 Deputy Attorney General
 4 State Bar No. 292026
 300 South Spring Street, Suite 1702
 5 Los Angeles, CA 90013-1230
 Telephone: (213) 269-6220
 6 Fax: (916) 731-2125
 E-mail: Nicole.Kau@doj.ca.gov
 7 *Attorneys for Defendants Governor Gavin Newsom,
 Attorney General Rob Bonta, Secretary Karen Ross,
 8 and 32nd District Agricultural Association*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12
 13

14 **B&L PRODUCTIONS, INC., d/b/a**
 15 **CROSSROADS OF THE WEST, et**
 16 **al.,**

17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM, et al.,**

20 Defendants.

8:22-cv-01518 JWH (JdEx)

**STATE DEFENDANTS’
 SUPPLEMENTAL BRIEF IN
 OPPOSITION TO MOTION FOR
 PRELIMINARY INJUNCTION**

Date: February 10, 2023
 Time: 9:00 a.m.
 Courtroom: 9D
 Judge: The Honorable John W.
 Holcomb

Action Filed: August 12, 2022

21
 22
 23
 24
 25
 26
 27
 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	2
I. <i>Bruen</i> Does Not Prohibit Reasonable Gun Safety Regulations.....	2
II. The Second Amendment Does Not Protect a Right to Sell Firearms at a Particular Location.....	3
III. SB 264 and SB 915 Are Consistent with the Nation’s Historical Tradition of Firearm Regulation	6
A. The Second Amendment Does Not Limit the States’ Police Powers to Address Public Safety Threats as They Arise.....	6
B. There Is a Well-Established Tradition of Regulating Firearms for the Purpose of Promoting Public Safety.....	7
1. Laws Regulating the Commercial Sale of Firearms	7
2. Laws Preventing the Sale of Firearms to Persons Considered Not to Be Law-Abiding	10
3. Laws Prohibiting Firearms in Sensitive Places, Including on Public Property and at Large Gatherings	11
C. The Historical Analogues Are Relevantly Similar to SB 264 and SB 915.....	13
CONCLUSION.....	15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases	Page(s)
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	<i>passim</i>
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010)	2, 3, 6, 11
<i>New York State Rifle & Pistol Ass’n, Inc. v. Bruen</i> , 142 S. Ct. 2111 (2022)	<i>passim</i>
<i>Range v. Attorney General</i> , 53 F.4th 262 (3rd Cir. 2022), rehearing en banc granted, vacated by 56 F.4th 992 (3d Cir. 2023)	11
<i>Second Amendment Arms v. City of Chicago</i> , 135 F. Supp. 3d 743 (N.D. Ill. 2015).....	5
<i>Teixeira v. Cty. of Alameda</i> , 873 F.3d 670 (9th Cir. 2017)	<i>passim</i>
<i>United States v. Holton</i> , No. 3:21-CR-0482-B, 2022 WL 16701935 (N.D. Tex. Nov. 3, 2022).....	8, 15
<i>United States v. Tilotta</i> , No. 3:19-CR-04768-GPC, 2022 WL 3924282 (S.D. Cal. Aug. 30, 2022).....	3
Constitutional Provisions	
Second Amendment.....	<i>passim</i>
Fourteenth Amendment	9, 12
Statutes and Ordinances	
1779 Pa. Laws 193 § 4.....	10
1814 Mass. Acts 464, ch. 192, § 2.....	9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	Page
1821 Laws of the State of Maine 685-86, vol. 2, § 3	9
1825 N.H. Laws 74, ch. 61 § 5	9
1836 Conn. Acts 105 (Reg. Sess.), chap. 1, § 20	9
1844 Mo. Laws 577, ch. 80 § 4	10
1845 Iowa Laws 119, chap 123, § 12.....	9
1847 Ind. Acts 93, chap. 61, § 8, pt. 4.....	9
1852 N.M. Laws 67 § 3	11
1859 Ky. Acts 245 § 23	10
1860 Ga. Laws 56 § 1	10
1869-70 Tenn. Pub. Acts 23-24, ch. 22, § 2.....	12
1870 Ga. Laws 421, title XVI.....	12
1870 La. Acts 159-160	12
1870 Tex. Gen. Laws 63, ch. 46 § 1	12
1883 Mo. Laws 76 § 1	12
1889 Ariz. Sess. Laws 17	12
1891 N.H. Laws 332 § 7.....	10
An Ordinance to Provide for the Regulation and Government of the Avenue and Public Parks in the City and County of San Francisco, in Charge of the Park Commissioners, Ordinance No. 2, § 2 (1872)	12
An Ordinance to Provide for the Regulation and Government of the Avenue and Public Parks in the City and County of San Francisco, in Charge of the Park Commissioners, Ordinance No. 2, § 2 (1872)	12
<i>Fourth Annual Report of the Board of Commissioners of the Central Park</i> , 106 (1861).....	12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	Page
Jerome Bayon, <i>General Digest of the Ordinances and Resolutions of the Corporation of New Orleans</i> 371 (1831) (art. 1) (enacted 1817)	11
Michael John Sullivan, <i>The Revised Ordinance of the City of St. Louis, Together with the Constitution of the United States, Constitution of the State of Missouri, the Scheme for the Separation of the Governments of the City and County of St. Louis, the Charter of the City, and a Digest of the Laws Applicable to the City</i> 635 (1881) (§ 3).....	13
<i>The Minutes of the Senatus Academicus 1799–1842</i>	12
Or. Rev. Stat. 257, § 1	10
Will T. Little et al., <i>Statutes of Oklahoma, 1890</i> , art. 47, § 7 (1890).....	12
Other Authorities	
Robert J. Spitzer, <i>Gun Law History in the United States and Second Amendment Rights</i> , 80 L. & Contemp. Probs. 55, 76 (2017).....	8, 9
Senate Bill 264.....	passim
Senate Bill 915.....	passim

INTRODUCTION

1
2 As set forth in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.
3 Ct. 2111 (2022), the threshold question for any Second Amendment challenge is
4 whether the plain text of the Second Amendment covers the regulated conduct at
5 issue. If the answer is no, then the regulation does not violate the Second
6 Amendment. That is the case here. SB 264 and SB 915 prohibit only the *sale* of
7 firearms, ammunition, and precursor parts on state property. And Plaintiffs have
8 identified no authority suggesting that the Second Amendment guarantees a right to
9 sell firearms at a certain location. That is because the conduct regulated by the
10 challenged laws is not protected by the Second Amendment; rather, those laws are
11 “presumptively lawful regulatory measures,” *Bruen*, 142 S. Ct. at 2162, that do not
12 “meaningfully constrain[]” the right of the public to acquire firearms, *Teixeira v.*
13 *Cty. of Alameda*, 873 F.3d 670, 680 (9th Cir. 2017). Indeed, as of January 11,
14 2023, the public can purchase firearms and ammunition from approximately 1,610
15 dealers in 56 of California’s 58 counties. McGee Decl., ¶¶ 5-6. In the city of Costa
16 Mesa alone, where the Orange County Fair & Event Center (Fairgrounds) is
17 located, there are eight dealers that sell firearms and ammunition—and six are in
18 the same zip code as the Fairgrounds. *Id.*, ¶ 7.

19 But even if Plaintiffs’ Second Amendment rights were implicated by SB 264
20 and SB 915, those laws would survive the second stage of the Second Amendment
21 inquiry because they are “consistent with the Nation’s historical tradition of firearm
22 regulation,” *Bruen*, 142 S. Ct. at 2126—specifically, the long tradition of regulating
23 commercial sales of firearms and ammunition, including in certain sensitive
24 locations. Like the challenged laws here, these historical regulations were designed
25 primarily to prevent illegal weapons trafficking and to ensure that dangerous
26 individuals do not obtain such weapons. In addition, there is a longstanding
27 tradition of regulating firearms in sensitive places, including in public spaces and at
28 large gatherings. For this reason, as well, Plaintiffs are unlikely to prevail on the

1 merits of their Second Amendment claim, and the preliminary injunction motion
2 should be denied.

3 ARGUMENT

4 I. **BRUEN DOES NOT PROHIBIT REASONABLE GUN SAFETY REGULATIONS**

5 *Bruen* articulated the analytical framework that governs the Second
6 Amendment claim here. Courts must first determine whether “the Second
7 Amendment’s plain text covers [the] individual’s [regulated] conduct.” *Bruen*, 142
8 S. Ct. at 2129-30. If it does not, then the analysis stops there and the regulation is
9 constitutional under the Second Amendment. *See id.* Only if the plain text covers
10 the proposed conduct must the government “justify its regulation by demonstrating
11 that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*

12 The Supreme Court also made clear in *Bruen*, as it did in *District of Columbia*
13 *v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742
14 (2010), that governments may continue to adopt reasonable gun safety regulations.
15 *Heller* established that the government may enact a “variety” of regulations for
16 combating the “problem of handgun violence in this country.” *Heller*, 554 U.S. at
17 636. It identified a non-exhaustive list of “presumptively lawful” measures
18 including “longstanding prohibitions on the possession of firearms by felons and
19 the mentally ill,” laws “forbidding the carrying of firearms in sensitive places,” and
20 laws prohibiting the keeping and carrying of “dangerous and unusual weapons.” *Id.*
21 at 626-27, n.26; *see also Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring).
22 Similarly, in *McDonald*, the Court observed that the Second Amendment “by no
23 means eliminates” state and local governments’ “ability to devise solutions to social
24 problems that suit local needs and values.” *McDonald*, 561 U.S. at 785 (“[S]tate
25 and local experimentation with reasonable firearms regulations will continue under
26 the Second Amendment.”). Consistent with these principles, the Supreme Court
27 recognized in *Bruen* that the Second Amendment is not a “regulatory
28 straightjacket.” *Bruen*, 142 S. Ct. at 2133. Accordingly, the Supreme Court’s

1 Second Amendment opinions “should not be taken to cast doubt . . . on laws
 2 imposing conditions and qualifications on the commercial sale of arms.” *Heller*,
 3 554 U.S. at 626-27; *McDonald*, 561 U.S. at 787; *Bruen*, 142 S. Ct. at 2162
 4 (Kavanaugh, J., concurring).

5 **II. THE SECOND AMENDMENT DOES NOT PROTECT A RIGHT TO SELL**
 6 **FIREARMS AT A PARTICULAR LOCATION**

7 The Second Amendment states: “A well regulated Militia, being necessary to
 8 the security of a free State, the right of the people to keep and bear Arms, shall not
 9 be infringed.” U.S. Const. amend. II. This guarantees an “individual [the] right to
 10 possess and carry weapons in case of confrontation[.]” *Bruen*, 142 S. Ct. at 2119
 11 (citation omitted); *see also Heller*, 554 U.S. at 635 (Second Amendment protects
 12 “the right of law-abiding, responsible citizens to use arms in defense of hearth and
 13 home”). But this right is not “absolute” or “unfettered.” *United States v. Tilotta*,
 14 No. 3:19-CR-04768-GPC, 2022 WL 3924282, at *6 (S.D. Cal. Aug. 30, 2022).

15 In particular, there is no “freestanding right . . . to sell firearms.” *Teixeira v.*
 16 *Cty. of Alameda*, 873 F.3d 670, 673 (9th Cir. 2017) (en banc); *Tilotta*, 2022 WL
 17 3924282, at *5 (“The plain text of the Second Amendment does not cover [the]
 18 proposed course of conduct to commercially sell and transfer firearms, because the
 19 plain text of the Second Amendment protects an individual’s right to “possess and
 20 carry weapons in case of confrontation.””). And relatedly, “restrictions on a
 21 commercial actor’s ability to enter the firearms market may [] have little or no
 22 impact on the ability of individuals to exercise their Second Amendment right to
 23 keep and bear arms.” *Teixeira*, 873 F.3d at 687.¹ Plaintiffs cannot establish a

24 ¹ Although the Court finds in its Order for Supplemental Briefing Regarding
 25 Plaintiffs’ Motion for Preliminary Injunction that *Teixeira* is “distinguishable on the
 26 facts because it involved a single business partnership seeking a permit from
 27 Alameda County to open a gun store in an unincorporated portion of the county,”
 28 ECF No. 25 at 2, *Teixeira* remains relevant to the analysis required under *Bruen* for
 at least two reasons: (1) *Teixeira* considered the same type of historical evidence
 called for by *Bruen*, and (2) *Teixeria* held that restricting the places where firearms
 may be sold does not impede consumers’ ability to purchase firearms when
 numerous alternative sales venues are available. *Teixeira*, 873 F.3d at 678.

1 Second Amendment right to sell firearms, let alone a right to sell firearms on
2 government property.

3 Of course, if a restriction on sale of firearms is so draconian as to limit the
4 ability of individuals to “keep and bear Arms” it may impact Second Amendment
5 rights. Thus, in order to establish a cognizable Second Amendment right, a plaintiff
6 challenging a regulation on commercial sales has the burden of showing that the
7 regulation “meaningfully inhibits residents from acquiring firearms within their
8 jurisdiction.” *Teixeira*, 873 F.3d at 680. In *Teixeira*, the plaintiff’s challenge to a
9 county ordinance restricting locations of gun stores failed because local residents
10 were not “meaningfully restricted in their ability to acquire firearms,” given the
11 availability of gun stores in the area. *Teixeira*, 873 F.3d at 687; *see also id.* at 686-
12 87 (“[N]o historical authority suggests that the Second Amendment protects an
13 individual’s right to *sell* a firearm, unconnected to the rights of citizens to “keep
14 and bear” arms.”) (emphasis in original). SB 264 and SB 915 similarly do not
15 prohibit the keeping and bearing of arms. As in *Teixeira*, Plaintiffs have not shown
16 and cannot show that the public’s right to acquire firearms is “meaningfully
17 constrained” by the challenged laws. *Teixeira*, 873 F.3d at 680.

18 Aside from Plaintiffs’ failure to provide evidence of such constraints, which
19 should be dispositive here because they bear the burden on this preliminary
20 injunction motion, this is apparent from the sheer number of licensed firearms and
21 ammunition dealers in California—1,610 to be exact, located in 456 cities, 680 zip
22 codes, and 56 counties. McGee Decl., ¶ 5. In addition, there are 165 licensed
23 dealers that sell ammunition, located in 129 cities, 148 zip codes, and 41 counties.
24 *Id.*, ¶ 6.

25 And in the localities where state venues have hosted gun shows on a handful
26 of weekends a year, brick-and-mortar firearms and ammunition dealers are readily
27 accessible. Take, for example, the city of Costa Mesa, where the OC Fair & Event
28 Center (covered by SB 264) is located. *Eight firearms and ammunition dealers are*

1 *within city limits—and a total of 150 firearms and ammunition dealers are located*
2 *in Orange County.* McGee Decl., ¶ 7. Circumstances are similar in San Diego
3 County, home of the Del Mar Fairgrounds, which has also hosted gun shows in the
4 past. San Diego County has 77 dealers that sell firearms and ammunition. *Id.*, ¶ 7.
5 In light of the prevalence—throughout California and in the particular jurisdictions
6 at issue here—of dealers from which Plaintiffs can purchase firearms and
7 ammunition, there is no plausible argument that prohibiting sales on state property
8 generally or at the OC Fair & Event Center in particular will “meaningfully
9 constrain” Plaintiffs’ ability to “keep and bear” arms. Indeed, Plaintiffs have
10 offered no evidence to that effect, nor have they even alleged as much.

11 The laws struck down in *Heller* and *Bruen* either completely banned handgun
12 possession in the home (*Heller*, 554 U.S. at 635) or categorically prevented
13 individuals with ordinary self-defense needs from carrying a concealed firearm in
14 public (*Bruen*, 142 S. Ct. at 211). In contrast, SB 264 and SB 915 do not prohibit
15 individuals from keeping or bearing arms at all. Nor do they restrict firearm sales
16 at existing brick-and-mortar stores near state property. Even if plaintiffs were to
17 show that some members of the public might prefer to purchase firearms at gun
18 shows, “gun buyers have no right to have a gun store in a particular location[.]”
19 *Teixeira*, 873 F.3d at 680 (“[T]he Second Amendment does not elevate convenience
20 and preference over all other considerations.”); *Second Amendment Arms v. City of*
21 *Chicago*, 135 F. Supp. 3d 743, 754 (N.D. Ill. 2015) (observing that “a slight
22 diversion off the beaten path is no affront to . . . Second Amendment rights” where
23 Plaintiffs alleged that zoning restrictions infringed on their Second Amendment
24 rights without specific facts that their right to possess firearms was abridged).

25 And as explained in Defendants’ Opposition Brief, at pages 23-24, SB 264 and
26 SB 915 are also the sort of “presumptively lawful” regulations on the conditions of
27 commercial sales cited approvingly by the Supreme Court. *See Heller*, 554 U.S. at
28

1 626-27, n.26; *McDonald*, 561 U.S. at 787; *Bruen*, 142 S. Ct. at 2162 (Kavanaugh,
2 J., concurring).

3 **III. SB 264 AND SB 915 ARE CONSISTENT WITH THE NATION’S HISTORICAL**
4 **TRADITION OF FIREARM REGULATION**

5 Even if SB 264 and SB 915 implicated the Second Amendment right to “keep
6 and bear Arms,” they are consistent with the nation’s historical tradition of
7 regulating the commercial sale of weapons, including restrictions based on location
8 of sale. They are thus constitutional under the second stage of the *Bruen* analysis.
9 The closest historical analogues to SB 264 and SB 915 share the same purpose as
10 the laws challenged here: they guard against illegal trafficking of firearms and
11 ammunition, and aim to keep such weapons out of the hands of individuals who are
12 not law-abiding. There is also a longstanding tradition of restricting firearms in
13 sensitive places—in particular, in public spaces and at large gatherings—
14 comparable to the fairgrounds and other state property at issue here. These
15 historical analogues are grounded in a long tradition—dating back to the Founding
16 and even earlier—of governments exercising broad police powers to regulate
17 firearms for the purpose of promoting public safety.

18 **A. The Second Amendment Does Not Limit the States’ Police**
19 **Powers to Address Public Safety Threats as They Arise**

20 The Second Amendment is not absolute. Government regulation is permitted,
21 even though the text of the Second Amendment may be read literally as an
22 “unqualified command” that the right to keep and bear arms “shall not be
23 infringed.” *Bruen*, 142 S. Ct. at 2126 (quoting *Konigsberg v. State Bar of Cal.*, 366
24 U.S. 36, 49 n.10 (1961)).

25 Courts have only just begun to explore the historical origins of the right to
26 keep and bear arms and to define its precise scope and exceptions. *See Heller*, 554
27 U.S. at 625–26 (noting that it should not be surprising that it took the Court so long
28 to decide a Second Amendment case, given that the Court first decided a First
Amendment case in 1931). For purposes of the analysis here, *Bruen* requires only

1 that the government “identify a well-established and representative historical
 2 *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead
 3 ringer for historical precursors, it still may be analogous enough to pass
 4 constitutional muster.” *Bruen*, 142 S. Ct. at 2133. As shown below, the history of
 5 the Second Amendment reflects that governments have exercised robust police
 6 powers to regulate weapons, including by prohibiting the commercial sale of
 7 firearms and ammunition in certain locations, preventing the sale of firearms to
 8 persons considered to be not law-abiding, and banning firearms in crowded
 9 locations—for comparable reasons and imposing comparable burdens to the laws
 10 challenged here.

11 **B. There Is a Well-Established Tradition of Regulating Firearms
 12 for the Purpose of Promoting Public Safety²**

13 **1. Laws Regulating the Commercial Sale of Firearms**

14 There is ample historical evidence that the Second Amendment “did not
 15 encompass a freestanding right to engage in firearms commerce divorced from the
 16 citizenry’s ability to obtain and use guns.” *Teixeira*, 874 F.3d at 684. Because the
 17 Second Amendment “codified a *pre-existing* right” inherited from England,
 18 English legal tradition “dating from the late 1600s”—including the published work
 19 of Sir William Blackstone and St. George Tucker—“demark[s] the limits on the
 20 exercise of that right.” *Bruen*, 142 S. Ct. at 2127-28 (quoting *Heller*, 554 U.S. at
 21 592). While “Blackstone’s and Tucker’s commentaries indicate that both
 22 recognized the right to bear arms in England to have been held by individual British
 23 subjects as a means to provide for the preservation of personal liberties,” “[n]either
 24 of these historic accounts states or implies that the English Bill of Rights
 25

26
 27 ² Many of the cited historical analogues can be found at the Duke Center for
 28 Firearms Law, at <https://firearmslaw.duke.edu/repository/search-the-repository/>, or
 in *Firearms and Weapons Legislation Up to the Early Twentieth Century*, by Mark
 Frassetto, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200991.

1 encompassed an independent right to engage in firearms commerce.” *Teixeira*, 874
2 F.3d at 684.

3 Consistent with these trends, the American colonies both (1) relied on firearms
4 to “protect vulnerable colonial settlements, especially from Indian tribes resisting
5 colonial conquest, and from foreign forces,” and (2) “substantially controlled the
6 firearms trade.” *Teixeira*, 874 F.3d at 684-85 (citing Saul Cornell, *The Early*
7 *American Origins of the Modern Gun Control Debate: The Right to Bear Arms,*
8 *Firearms Regulation, and the Lessons of History*, 17 *Stan. L. & Pol’y Rev.* 571,
9 579 (2006)). This government control “included some restrictions on the
10 commercial sale of firearms.” *Id.* at 685. Several colonies “ma[de] it a crime to
11 sell, give, or otherwise deliver firearms or ammunition to Indians,” and “at least
12 two colonies controlled where colonial settlers could transport or sell guns.” *Id.*
13 Connecticut prohibited the sale of firearms by its residents outside the colony, *id.*
14 (citing 1 Trumbull, *Public Records of the Colony of Connecticut*, 138-139, 145-
15 146), and Virginia prohibited any persons from carrying arms or ammunition
16 beyond what was needed for personal use into “Indian town or more than three
17 miles from an English plantation,” *id.* (citing Acts of Assembly, Mar. 1675-76, 2
18 William Waller Henning, *The Statutes at Large: Being a Collection of All the Laws*
19 *of Virginia, from the First Session of the Legislature, in the Year 1619*, at 336-37
20 (1823)).

21 Colonial governments also adopted laws targeting “the illegal trading and
22 trafficking of arms and ammunition.” *United States v. Holton*, No. 3:21-CR-0482-
23 B, 2022 WL 16701935, at *5 (N.D. Tex. Nov. 3, 2022); *see also* Robert J. Spitzer,
24 *Gun Law History in the United States and Second Amendment Rights*, 80 *L. &*
25 *Contemp. Probs.* 55, 76 (2017) (“Arms and ammunition trafficking was also a
26 concern as early as the seventeenth century, just as it is today.”). For example,
27 Virginia required the recording ““of arms and munitions”” accompanying new
28 arrivals to the colony, and later confiscated ““all ammunition, powder and arms,

1 other than for private use.” Spitzer, at 76 (citing Virginia Act of Feb. 27, 1631,
2 Act LVI, 1 Henning 174-75; Articles at the Surrender of the Countrie of Virginia,
3 Mar. 22, 1651, 1 Henning 365). New York similarly prohibited private individuals
4 from “illegally trading guns, gunpowder, and lead.” *Id.* (citing 1652 N.Y. Laws
5 128).

6 Thus, the Second Amendment, as understood by “[e]arly American legislators
7 and commentators,” was meant to “protect[] Americans against tyranny and
8 oppression.” *Teixeira*, 873 F.3d at 686. But at the same time, “no contemporary
9 commentary suggests that the right codified in the Second Amendment
10 independently created a commercial entitlement to sell guns if the right of the
11 people to obtain and bear arms was not compromised.” *Id.*

12 During the Founding era and the ensuing decades, governments heavily
13 regulated firearms and ammunition, both to ensure the readiness of the militia and
14 to protect the public from harm. Spitzer, at 74. Both Massachusetts and Maine
15 prohibited the sale of any musket or pistol unless it was approved, marked, and
16 stamped. 1814 Mass. Acts 464, ch. 192, § 2; 1821 Laws of the State of Maine 685-
17 86, vol. 2, § 3. And in particular, governments regulated the storage and sale of
18 gunpowder. *Id.* New Hampshire, for example, enacted a law in 1825 penalizing
19 the sale or offer to sell “by retail any gunpowder in any highway, or in any street,
20 lane, or alley, or on any wharf, or on parade or common.” 1825 N.H. Laws 74, ch.
21 61, § 5.³

22
23 ³ State laws delegating authority to local governments to regulate the sale of
24 gunpowder for public safety reasons were commonplace. *See e.g.*, 1845 Iowa Laws
25 119, An Act to Incorporate and Establish the City of Dubuque, chap 123, § 12
26 (delegating authority to cities “to regulate by ordinance the keeping and sale of
27 gunpowder within the city”); An Act Incorporating the Cities of Hartford, New
28 Haven, New London, Norwich and Middletown, 1836 Conn. Acts 105 (Reg. Sess.),
chap. 1, § 20 (delegating authority to “prohibit[] and regulat[e] the bringing in, and
conveying out” of gunpowder); An Act to Reduce the Law Incorporating the City
of Madison, and the Several Acts Amendatory thereto Into One Act, and to Amend
the Same, 1847 Ind. Acts 93, chap 61, § 8, pt. 4 (delegating authority “[t]o regulate
and license, or provide by ordinance for regulating and licensing . . . the keepers of
gunpowder”).

1 Laws regulating the commercial sale of firearms by location were also
 2 prevalent after the ratification of the Fourteenth Amendment. For example,
 3 Oklahoma restricted the sale of firearms “within the Indian country.” Indian
 4 Territory, § 4345 (1899). New Hampshire renewed its law penalizing the sale of
 5 gunpowder in any “highway or street” or “wharf, parade, or common,” and added
 6 that sales of gunpowder could not occur between sunset and sunrise. 1891 N.H.
 7 Laws 332, § 7. And New York City enacted strict laws regulating the sale of
 8 gunpowder within the corporate limits of the city, and prohibited the sale of
 9 gunpowder in any building that was used in part as a “dwelling.” Ordinances of the
 10 City of New York, § 455 (1890).

11 **2. Laws Preventing the Sale of Firearms to Persons** 12 **Considered Not to Be Law-Abiding⁴**

13 There is also a well-established historical tradition of prohibiting the sale of
 14 firearms to persons considered to be untrustworthy—an obvious aim of SB 264 and
 15 SB 915, which prevent individuals from evading background check and other
 16 licensing requirements. Pennsylvania empowered its militia to disarm those who
 17 had not taken an oath or affirmation of allegiance to Pennsylvania. 1779 Pa. Laws
 18 193, § 4. Missouri and Oregon regulated the sale of firearms to Native Americans.
 19 1844 Mo. Laws 577, ch. 80, § 4; 1853 Or. Rev. Stat. 257, § 1. Alabama prohibited
 20 the sale, transfer, or loan of a pistol to minors, and Kentucky prohibited the same to
 21 minors and slaves. 1856 Pamphlet Acts of 1855-6, p. 17; § 23, 1859 Ky. Acts 245.
 22 Similarly, Georgia prohibited the sale of firearms and dangerous weapons to slaves

23
 24 ⁴ Given the historical inquiry mandated by *Bruen*, this brief cites many
 25 relevant firearms laws, some of which were drafted well before the Thirteenth
 26 Amendment’s abolition of slavery and the Fourteenth Amendment’s Equal
 27 Protection Clause. While these laws are pertinent to the discussion, Defendants
 28 emphasize their strong disagreement with racial and other improper discrimination
 that existed in some such laws, and which stand in stark contrast to California’s
 commonsense firearm laws, which are designed to justly and equitably protect all
 Californians. The listing of such racist and discriminatory statutes in this brief
 should in no way be construed as an endorsement of such laws by Defendants or
 their counsel in this matter.

1 or “free person[s] of color.” 1860 Ga. Laws 56 § 1. While the “status-based
2 regulations of this period are repugnant (not to mention unconstitutional),” they
3 demonstrate that governments have long exercised broad authority to restrict the
4 sale of firearms to persons considered to be law-abiding. *Range v. Attorney*
5 *General*, 53 F.4th 262, 276 n.18 (3rd Cir. 2022), *rehearing en banc granted*,
6 *vacated by* 56 F.4th 992 (3d Cir. 2023). Such laws were precursors to modern
7 efforts to prohibit the unregulated sale of firearms to dangerous persons. As
8 discussed in the Defendants’ Opposition Brief, at pages 24-25, a primary purpose of
9 SB 264 and SB 915 is to thwart the trafficking of firearms and prevent non-law-
10 abiding individuals from acquiring arms, as reflected in the legislative findings
11 concerning the prevalence of illegal transactions at gun shows. MPI, RJN, Ex. 2 at
12 3, Ex. 10 at 2, Ex. 17 at 2.

13 3. Laws Prohibiting Firearms in Sensitive Places, Including 14 on Public Property and at Large Gatherings

15 The Supreme Court has thrice recognized that “laws forbidding the carrying of
16 firearms in sensitive places” are “presumptively lawful” and outside the “scope of
17 the Second Amendment.” *Heller*, 554 U.S. at 626-27 & n.26; *see also Bruen*, 142
18 S. Ct. at 2133; *id.* at 2162 (Kavanaugh, J., concurring); *McDonald*, 561 U.S. at 786.
19 The tradition of prohibiting firearms in public spaces where large gatherings are
20 held dates back to medieval England. Indeed, the most well-known law of that
21 period regulating weapons, the Statute of Northampton of 1328, 2 Edw. 3, c. 3
22 (1328), provided that Englishmen were generally not permitted to bring “force in
23 affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets,
24 nor in the presence of the Justices or other Ministers ... upon pain to forfeit their
25 Armour to the King, and their Bodies to Prison at the King’s pleasure.”

26 It was common in early America for governments to prohibit firearms
27 altogether in public spaces and at large gatherings. New Orleans and New Mexico
28 prohibited the carrying of weapons into ballrooms. Jerome Bayon, *General Digest*

1 *of the Ordinances and Resolutions of the Corporation of New Orleans* 371 (1831)
2 (art. 1) (enacted 1817); 1852 N.M. Laws 67, § 3. And firearms were also
3 prohibited in parks. *E.g.*, *Fourth Annual Report of the Board of Commissioners of*
4 *the Central Park*, 106 (1861) (“All persons are forbidden ... [t]o carry firearms or
5 to throw stones or other missiles within [Central Park].”). Public universities such
6 as the University of Virginia, University of Georgia, and the University of North
7 Carolina also prohibited firearms on their property. *University of Virginia Board of*
8 *Visitors Minutes* 6-7 (October 4–5, 1824) (“No Student shall, within the precincts
9 of the University, ... keep or use weapons or arms of any kind[.]”); *The Minutes of*
10 *the Senatus Academicus 1799–1842*, at 86; *Acts of the General Assembly and*
11 *Ordinances of the Trustees, for the Organization and Government of the University*
12 *of North Carolina* 15 (1838).

13 Such laws continued to be enacted after the Fourteenth Amendment was
14 ratified. Many states, including Georgia, Texas, and Missouri, prohibited weapons
15 at large gatherings. 1870 Ga. Laws 421, title XVI, no. 285, § 1 (prohibiting
16 carrying “any dirk, bowie-knife, pistol or revolver, or any kind of deadly weapon,
17 to any court of justice, or any election ground or precinct, or any place of public
18 worship, or *any other public gathering in this State*, except militia muster-
19 grounds”) (emphasis added); 1870 Tex. Gen. Laws 63, ch. 46, § 1 (prohibiting
20 firearms “where persons are assembled . . . into a ball room, social party or other
21 social gathering composed of ladies and gentlemen”); 1883 Mo. Laws 76, § 1
22 (prohibiting firearms in any “public assemblage of persons); *see also* 1869-70
23 Tenn. Pub. Acts 23-24, ch. 22, § 2; 1870 La. Acts 159-160, no. 100, § 73; 1889
24 Ariz. Sess. Laws 17, no. 13, § 3; Will T. Little et al., *Statutes of Oklahoma, 1890*, at
25 496, art. 47, § 7 (1890).

26 Parks were considered sensitive places, as well. San Francisco prohibited
27 firearms on the grounds of Golden Gate Park and Buena Vista Park. “An
28 Ordinance to Provide for the Regulation and Government of the Avenue and Public

1 Parks in the City and County of San Francisco, in Charge of the Park
2 Commissioners,” Ordinance No. 2, § 2 (1872). Philadelphia, St. Louis, St. Paul,
3 and Williamsport, among other cities, similarly prohibited dangerous weapons,
4 including firearms, in their parks. Acts of Assembly Relating to Fairmount Park
5 18, § 21 (1870); Michael John Sullivan, The Revised Ordinance of the City of St.
6 Louis, Together with the Constitution of the United States, Constitution of the State
7 of Missouri, the Scheme for the Separation of the Governments of the City and
8 County of St. Louis, the Charter of the City, and a Digest of the Laws Applicable to
9 the City 635 (1881) (§ 3); Annual Reports of the City Officers and City Boards of
10 the City of Saint Paul 689, No. 6 (1889); Laws and Ordinances for the Government
11 of the Municipal Corporation of the City of Williamsport, Pennsylvania 141, § 1,
12 21 (1891).

13 To be sure, these historical analogues regulated the carrying, not the sale, of
14 firearms in sensitive places. But if anything, that means that such laws were more,
15 not less, restrictive than SB 264 and SB 915, which prohibit the sale of firearms on
16 state property, such as the Fairgrounds. And the laws challenged here, like the
17 analogues identified, share the same purpose of minimizing the risk of deadly
18 conflict in crowded areas.

19 **C. The Historical Analogues Are Relevantly Similar to SB 264 and**
20 **SB 915**

21 *Bruen* explained that a modern law is relevantly similar to a historical
22 analogue if they are comparable in two respects: “how and why the regulations
23 burden a law-abiding citizen’s right to armed self-defense.” *Bruen*, 142 S. Ct.
24 2133. As explained above, SB 264 and SB 915 do not burden the right to self-
25 defense at all, *see supra* at Argument, Section II, but if they did, that burden would
26 be comparable to the historical analogues described above, and they would be
27 comparably justified by the public safety goals they promote.
28

1 First, any burden imposed by SB 264 and SB 915 is minimal because neither
2 law meaningfully constrains the public from acquiring firearms, given the ready
3 access to nearby alternative sites where firearms and ammunition can be purchased.
4 *See supra* at Argument II. SB 264 and SB 915 merely prohibit firearm and
5 ammunition sales on state property, and do not meaningfully restrict the public
6 from acquiring firearms and bearing them for self-defense. The challenged laws are
7 thus, at worst, comparable with historical analogues regulating the commercial
8 sales of firearms and ammunition—and in most instances, are significantly less
9 restrictive than historical restrictions that banned the sale of weapons across
10 geographic regions or jurisdictions (and not just on state-owned property), or that
11 prohibited not only the sale but the carrying of weapons on public property or at
12 large gatherings.

13 Second, when evaluated alongside their historical analogues, SB 264 and SB
14 915 are comparably justified. The California Legislature enacted SB 264 and SB
15 915 to address gun trafficking and prevent dangerous or prohibited persons from
16 acquiring firearms—and more specifically, because of its concern that gun shows
17 are “the critical moment in the chain of custody for many guns, the point at which
18 they move from the somewhat-regulated legal market to the shadowy, no questions-
19 asked illegal market.” MPI, RJN, Ex. 2 at 3, Ex. 10 at 2, Ex. 17 at 2. These laws
20 reflect the Legislature’s judgment that, for public safety reasons, state-owned
21 property should not be used as a venue for the sale of firearms or ammunition,
22 particularly with respect to sales that can evade regulation. In England, before the
23 founding of America, there was no freestanding right to sell firearms, and certainly
24 not on property owned by the State. And the historical record, as described above,
25 reflects consistent regulation of the sale of firearms—including the places of sale—
26 for the purpose of promoting public safety. In short, the historical analogues
27 described above and the challenged laws, “while [in some instances] effected by
28 different means, address similar goals: (1) controlling and tracing the sale of

1 firearms and (2) ensuring dangerous individuals did not obtain firearms.” *Holton*,
2 2022 WL 16701935, at *5; *see* Defs.’ MPI Opp’n at 3-5, 24-25.⁵

3 **CONCLUSION**

4 For the reasons set forth above and in Defendants’ Opposition Brief, ECF No.
5 22, the Court should deny the motion for preliminary injunction.

6 Dated: January 27, 2023

Respectfully submitted,

7 ROB BONTA
8 Attorney General of California
9 R. MATTHEW WISE
Supervising Deputy Attorney General

10 /s/ Nicole J. Kau
11 NICOLE J. KAU
12 Deputy Attorney General
13 *Attorneys for Defendants Governor*
Gavin Newsom, Attorney General
Rob Bonta, Secretary Karen Ross,
and 32nd District Agricultural
Association

14 SA2022303648
15 65708999.docx

16
17
18 ⁵ If the Court is not prepared to find, based on the existing record, that
19 Plaintiffs have failed to establish a likelihood of success on the merits, and that SB
20 264 and SB 915 comport with the Second Amendment, Defendants respectfully
21 request additional time to supplement the record. The Court’s Order for
22 Supplemental Briefing Regarding Plaintiffs’ Motion for Preliminary Injunction
23 (ECF No. 25) gave the parties three weeks to file simultaneous supplemental
24 briefing. However, the historical research and analysis required to answer the
25 difficult historical questions posed by *Bruen* calls for a labor-intensive and time-
26 consuming process. Despite working diligently since receiving the Court’s
27 supplemental briefing order, there remain areas of inquiry relevant to *Bruen*’s text-
28 and-history standard that Defendants have not yet been able to explore fully,
including a deeper canvass of historical state and municipal laws and additional
primary-source research to further understand and contextualize the Nation’s
traditions of firearms regulation and the regulation of other weapons. In the time
allotted to prepare this supplemental brief, Defendants have been able to consult a
limited number of primary sources to develop evidence, but this work could be
expanded to include additional archival and unpublished sources, for example. In
addition, because *Bruen* requires that the government show that the challenged
regulations are consistent with the American historical tradition of firearm
regulation, Defendants respectfully request an opportunity to respond to evidence
put forth by Plaintiffs in their supplemental brief.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the State Defendants, certifies that this brief contains 5,161 words, which complies with the word limit of L.R. 11-6.1.

Dated: January 27, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California

/s/ Nicole J. Kau
NICOLE J. KAU
Deputy Attorney General
*Attorneys for Defendants Governor
Gavin Newsom, Attorney General Rob
Bonta, Secretary Karen Ross, and
32nd District Agricultural Association*

CERTIFICATE OF SERVICE

Case **B&L Productions, Inc., et** No. **8:22-cv-01518 JWH**
Name: **al. v. Gavin Newsom, et al.** **(JDEx)**

I hereby certify that on January 27, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STATE DEFENDANTS’ SUPPLEMENTAL BRIEF IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 27, 2023, at Los Angeles, California.

Carol Chow
Declarant

/s/Carol Chow
Signature