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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Lana Rae Renna; Danielle Jaymes; Laura Schwartz; Michael Schwartz; Robert Macomber; Clint Freeman; John Klier; Justin Smith; John Phillips; Cheryl Prince; Darin Prince; Ryan Peterson; PWGG, L.P.; North County Shooting Center, Inc.; Gunfighter Tactical, LLC; Firearms Policy Coalition, Inc.; San Diego County Gun Owners PAC; Citizens Committee for the Right to Keep and Bear Arms; and Second Amendment Foundation,

Plaintiffs,

v.

Robert Bonta, Attorney General of California; and Allison Mendoza,[1] Director of the California Department of Justice Bureau of Firearms,

Defendants.

Case No.: 20-cv-2190-DMS-DEB

PLAINTIFFS' OBJECTIONS TO EVIDENCE SUBMITTED IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT

Date: February 10, 2023
Time: 1:30 p.m.
Courtroom 13A (13th Floor)
Hon. Dana M. Sabraw

[1] Allison Mendoza is substituted for former Bureau of Firearms Director Luis Lopez and former Acting Director Blake Graham. Fed. R. Civ. P. 25(d).

Plaintiffs submit the following objections to evidence submitted by Defendants in opposition to Plaintiffs' Motion for Preliminary Injunction or, Alternatively, Motion for Summary Judgment:

Objections to the Declaration of Saul Cornell (ECF No. 72-5)

Subject Matter	Objections
1. The general purpose and intent of Prof. Cornell's declaration is to provide for Defendants "an expert opinion on the history of firearms regulation in the Anglo-American legal tradition, with a particular focus on how the Founding era understood the right to bear arms, as well as the understanding of the right to bear arms held at the time of the ratification of the Fourteenth Amendment to the United States Constitution." ¶1	Objection: Plaintiffs generally object to the provision of any such opinion, and all the content of the declaration in support of the opinion (i.e., ¶¶ 2-61), as calling for an improper "legal conclusion, an opinion on an ultimate issue of law." *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008). To that end, Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).

2. Prof. Cornell's declaration cites numerous copyrighted publications and sources throughout the declaration that were not produced as exhibits or attachments and that are neither publicly available nor readily accessible because they must be obtained in print or by accessing a secured online database.	Objection: The declaration lacks a proper foundation and Defendants have failed to carry their burden as the proponents of the evidence as to each assertion in the declaration based on publications and sources that have not been produced, and are not readily accessible to Plaintiffs and the Court, because the contents of these materials cannot be reviewed to verify that they provide proper support for the assertions for which Prof. Cornell cites them.
3. Prof. Cornell's assertion that firearm regulations are and always have been constitutionally permissible so long as they "d[o] not destroy the right of self-defense." ¶21	Objection: Improper "legal conclusion, an opinion on an ultimate issue of law." *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Crow Tribe of Indians*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law."). Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court").
4. Prof. Cornell's assertion that, "To constitute an infringement of the right the law must burden the right of self-defense to such a degree that it effectively negates it. As long as laws stay within this threshold they have been held to be constitutional." ¶61	Objection: Improper "legal conclusion, an opinion on an ultimate issue of law." *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Crow Tribe of Indians*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law."). Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are

	impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court")
5. Prof. Cornell's assertion that "*Bruen's* methodology requires judges to distinguish between the relevant history necessary to understand early American constitutional texts and a series of myths about guns and regulation that were created by later generations to sell novels, movies, and guns themselves." ¶24	Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court"). Objection: Vague, ambiguous, and lacking foundation as to "a series of myths about guns and regulation that were created by later generations to sell novels, movies, and guns themselves."
6. Prof. Cornell's assertion that "there was no comparable societal ill to the modern gun violence problem for Americans to solve in the era of the Second Amendment." ¶25	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "societal ill" and "the modern gun violence problem."
7. Prof. Cornell's assertion that "[l]evels of gun violence among those of white European ancestry in the era of the Second Amendment were relatively low compared to modern America." ¶26; Figure 1 on page 17	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as "to relatively low compared to modern America."
8. Prof. Cornell's assertion that "[t]hese low levels of violence among persons of European ancestry contrasted with the high levels of violence involving the tribal populations of the region." ¶26	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "low" and "high" of violence "involving the tribal populations of the region."

9. Prof. Cornell's discussion about the "what fears motivated American gun policy in the era of the Second Amendment." ¶26	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "what fears motivated American gun policy in the era of the Second Amendment."
10. Prof. Cornell's assertion that "[t]he pressing problem Americans faced at the time of the Second Amendment was that citizens were reluctant to purchase military style weapons which were relatively expensive and had little utility in a rural society." ¶26	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "[t]he pressing problem Americans faced at the time of the Second Amendment."
11. Prof. Cornell's assertion that "Americans were far better armed than their British ancestors, but the guns most Americans owned and desired were those most useful for life in an agrarian society." ¶26	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to what "most Americans owned and desired."
12. Prof. Cornell's assertion that "[l]imits in Founding-era firearms technology also militated against the use of guns as effective tools of interpersonal violence in this period." ¶26	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "the use of guns effective tools of interpersonal violence."
13. Prof. Cornell's assertion that "there was not a serious homicide problem looming over debates about the Second Amendment." ¶28	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "a serious

	homicide problem looming over debates about the Second Amendment."
14. Prof. Cornell's assertion that "[n]or were guns the primary weapon of choice for those with evil intent during this period." ¶28	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "the primary weapon of choice for those with evil intent."
15. Prof. Cornell's assertion that "[t]he skill and time required to load and fire flintlock muzzle loading black powder weapons meant that they were less likely to be used in crimes of passion." ¶28	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "less likely to be used in crimes of passion."
16. Prof. Cornell's assertion that "[t]he preference for storing them unloaded also meant they posed fewer dangers to children from accidental discharge." ¶28	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Lack of foundation.
17. Prof. Cornell's assertion that "[t]he Founding generation did not confront a gun violence problem similar in nature or scope to the ills that plague modern America." ¶29	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "a gun violence problem similar in nature or scope to the ills that plague modern America."
18. Prof. Cornell's assertion that "[t]he Founding generation faced a different, but no less serious problem, American reluctance to purchase the type of weapons needed to effectively arm their militias," ¶29, the remainder of this	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Lack of foundation.

paragraph discussing this topic, and the portion of ¶30 on the same topic.	
19. Prof. Cornell's assertion that "[g]un policy in the Founding era reflected these realities, and accordingly, one must approach any analogies drawn from this period's regulations with some caution when applying them to a modern heterogeneous industrial society capable of producing a bewildering assortment of firearms whose lethality would have been almost unimaginable to the Founding generation." ¶30	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "one must approach any analogies drawn from this period's regulations with some caution," and as to "a modern heterogeneous industrial society capable of producing a bewildering assortment of firearms whose lethality would have been almost unimaginable to the Founding generation." Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court").
20. Prof. Cornell's assertion that "laws created for a society without much of a gun violence problem enacted at a time of relative gun scarcity, at least in terms of militia weapons, have limited value in illuminating the challenges Americans face today." ¶30	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "without much of a gun violence problem enacted at a time of relative gun scarcity" and "limited value in illuminating the challenges Americans face today." Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury

	as to the applicable law is the distinct and exclusive province of the court").
21. Prof. Cornell's reliance on "1805 Mass. Acts 588, An Act to Provide for the Proof of Fire Arms Manufactured Within This Commonwealth, Ch. 35," Exhibit 3 to his declaration. ¶33 & n. 58.	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible.").
22. Prof. Cornell's assertion that "[t]he calculus of individual self-defense changed dramatically in the decades following the adoption of the Second Amendment." ¶34	Objection: Vague, ambiguous, and lacking foundation as to "[t]he calculus of individual self-defense changed dramatically."
23. Prof. Cornell's assertion that "[t]he same technological changes and economic forces that made wooden clocks and other consumer goods such as Currier and Ives prints common items in many homes also transformed American gun culture" and "made handguns and a gruesome assortment of deadly knives, including the dreaded Bowie knife, more common." ¶34	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "transformed American gun culture."
24. Prof. Cornell's assertion that "[e]conomic transformation was accompanied by a host of profound social changes that gave rise to America's first gun violence crisis. As cheaper, more dependable, and easily concealable handguns proliferated in large numbers, Americans, particularly southerners, began sporting them with alarming regularity. The change in behavior was most noticeable in the case of handguns. ¶34	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Vague, ambiguous, and lacking foundation as to "profound social changes that gave rise to America's first gun violence crisis."
25. Prof. Cornell's assertion that "[t]he response of states to the emergence of	Objection: Vague, ambiguous, and lacking foundation as to "the emergence

new firearms that threatened the peace was a plethora of new laws." ¶35	of new firearms that threatened the peace." Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).
26. Prof. Cornell's assertion that "[i]n every instance apart from a few outlier cases in the Slave South, courts upheld such limits on the unfettered exercise a right to keep and bear arms. The primary limit identified by courts in evaluating such laws was the threshold question about abridgement: did the law negate the ability to act in self-defense." ¶35	Objection: Improper "legal conclusion, an opinion on an ultimate issue of law" *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Crow Tribe of Indians*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law."). Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury

	as to the applicable law is the distinct and exclusive province of the court"). Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).
27. Prof. Cornell's assertion that "t]he antebellum case law examined by *Heller* makes clear that the metric used by courts to evaluate laws was simple and reflected the concept of infringement. Laws that undermined the right of self-defense were generally struck down, regulations that limited but did not destroy the right were upheld." ¶36	Objection: Improper "legal conclusion, an opinion on an ultimate issue of law" *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Crow Tribe of Indians*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law."). Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury

	as to the applicable law is the distinct and exclusive province of the court"). Objection: Vague, ambiguous, and lacking foundation as to "the concept of infringement."
28. Prof. Cornell's assertion that "[s]ome states opted to tax some common weapons to discourage their proliferation," ¶37, and the laws cited in support of this assertion in footnote 68.	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).
29. Prof. Cornell's assertion that "[s]tate police power authority was at its pinnacle in matters relating to guns or gun powder." ¶41	Objection: Vague, ambiguous, and lacking foundation as to "at its pinnacle in matters relating to guns or gun powder."

30. Prof. Cornell's discussion of laws and regulations related to the storage of gun powder in ¶¶42-44, 47, the related footnotes 79-82, 86-87, and Exs. 4 & 5	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).
31. Prof. Cornell's assertion that "[a] slow process of judicializing this concept of police, transforming the Founding era's idea of a 'police right' into a judicially enforceable concept of the 'police power' occurred beginning with the Marshall Court and continuing with the Taney Court," ¶45, and his subsequent discussions of "this concept," "approach," and "this power" regarding "police power" in ¶¶45-46, 48 and the related footnotes 84-86, 89-91	Objection: Improper "legal conclusion, an opinion on an ultimate issue of law." *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Crow Tribe of Indians*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law."). Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are

	impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court"). Objection: Vague, ambiguous, and lacking foundation as to "judicializing this concept of police, transforming the Founding era's idea of a 'police right' into a judicially enforceable concept of the 'police power.'" Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).
32. Prof. Cornell's discussion of the 1840 decision of the Alabama Supreme Court in *State v. Reid*, 1 Ala. 612, as reflecting "the way police power jurisprudence was used by antebellum	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible.").

judges to adjudicate claims about gun rights and the right of the people to regulate." ¶49	Objection: Improper "legal conclusion, an opinion on an ultimate issue of law" *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Crow Tribe of Indians*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law."). Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court"). Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).

33. Prof. Cornell's discussion of the Reconstruction era, 1863-1877, and all the laws and regulations cited for support regarding this era. ¶¶50-58 & n. 95-110	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).
34. Prof. Cornell's assertion that "[a]s the Second Amendment's text makes clear, weapons that undermine the security of a free state are not within the scope of its protections." ¶59	Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court"). Objection: Vague, ambiguous, and lacking foundation as to "weapons that undermine the security of a free state."

35. Prof. Cornell's assertion that "[t]he statutes at issue in this case are analogous to a long-established tradition of firearms regulation in America, beginning in the colonial period and stretching across time to the present. This venerable tradition of using police power authority to craft specific laws to meet shifting challenges has continued to the present day." ¶60	Objection: Improper "legal conclusion, an opinion on an ultimate issue of law." *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Crow Tribe of Indians*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law."). Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court"). Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).

36. Prof. Cornell's assertion that "[t]he metric used by courts to adjudicate questions about the scope of permissible regulation has remain constant over the long arc of American history. To constitute an infringement of the right the law must burden the right of self-defense to such a degree that it effectively negates it. As long as laws stay within this threshold they have been held to be constitutional." ¶61	Objection: Improper "legal conclusion, an opinion on an ultimate issue of law." *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Crow Tribe of Indians*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law."). Objection: Erroneous statement of the governing law. *Id.* at pp. 1058-59 ("erroneous statements of law" are impermissible since "instructing the jury as to the applicable law is the distinct and exclusive province of the court"). Objection: Prof. Cornell's reliance on or reference to mid- or late-19th century historical sources is inapt for the Court's analysis. *Bruen* makes clear that all sources are not equal when evaluating the historical record. Because "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," the key historical evidence centers around the Second Amendment's adoption in 1791 and, to a certain extent, the Fourteenth Amendment's adoption in 1868. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2136–37 (2022) (citation omitted). Thus, courts "must guard against giving postenactment history more weight than it can rightly bear," *id.* at 2136, and "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text," *id.* at 2137 (citation omitted).

Objections to the Declaration of Salvador Gonzalez (ECF No. 72-4)

Subject Matter	Objections
37. Gonzalez's assertion that "[t]he handguns on the Roster are suitable and sufficient for the purpose of self-defense. They do not lack any features that render them materially less effective for self-defense than other handguns." ¶9	Objection: Vague, ambiguous, and lacking foundation as to "suitable and sufficient for the purpose of self-defense" and "materially less effective for self-defense."
38. Gonzalez's assertion that "[s]ome manufacturers have released updated models of semiautomatic pistols on the Roster that are currently ineligible to be added to the Roster. However, these updated versions include only minor differences and are not materially more effective for self-defense than the versions on the Roster." ¶9	Objection: Vague, ambiguous, and lacking foundation as to "not materially more effective for self-defense."
39. Gonzalez's discussion of the purported significance and efficacy of chamber load indicators in firearm "safety." ¶¶12-13, 16	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible.").
40. Gonzalez's discussion of the purported significance and efficacy of magazine disconnect mechanisms in firearm "safety." ¶¶14-16	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible.").
41. Gonzalez's reliance on findings in the 1991 General Accounting Office ("GAO") report, Exhibit B, that "About 1 of every 3 deaths from accidental firearm discharges could be prevented by a firearms safety device," and "23% of deaths could have been prevented by a chamber load indicator." ¶16	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible."). Objection: Unreliable and misleading; the sample size was exceedingly small, as the GOA study was based on only 107 cases (Ex. B at 16), and the researchers acknowledged many of the cases of

	injury were either "nonpreventable" or influenced by a failure to follow basic protocols for proper firearm use: "we believe that some clearly would have been prevented had the shooter (1) been more careful in handling the weapon, (2) not been intoxicated, or (3) received training in firearm handling. We used gun safety materials published by the National Rifle Association to develop statements of basic safety practices. Among the 107 cases we examined, 90 involved clear violations of good gun-handling practices." Ex. B at 17
42. Gonzalez's discussion of the purported significance and efficacy of microstamping in firearm "safety." ¶17	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible.").
43. Gonzalez's discussion of the purported significance and efficacy of "firing" and "drop safety" tests. ¶18	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible.").
44. Gonzalez's assertion that "[s]ince 2014, the number of handguns on the Roster has consistently hovered around 800," and it contained 499 semiautomatic pistols at the end of 2022. ¶19	Objection: Misleading in focusing solely on data since 2014 and ignoring all data before 2014. Indeed, Defendants claim they "lack knowledge" about the number and composition of their own roster such that they cannot even address, much less dispute, Plaintiffs' assertion that 1,273 makes and models of approved handguns, including 883 semiautomatics, were on the roster at the end of 2013 (Third Amended Complaint ¶72; Defendants' Answer to TAC ¶72).
45. Gonzalez's discussion of the purported significance and efficacy of firearm "safety devices." ¶20	Objection: Relevancy. FRE Rule 402 ("Irrelevant evidence is not admissible.").

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