

Appeal No. 23-15199

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SAFARI CLUB INTERNATIONAL,
an Arizona nonprofit corporation, et al.,

Plaintiff-Appellants,

v.

ROB BONTA, in his official capacity as
Attorney General of the State of California,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of California
Hon. Dale A. Drozd
Case No. 2:22-cv-01395-DAD-JDP

**PLAINTIFF-APPELLANTS' MOTION
TO HAVE CASES HEARD TOGETHER**

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**CERTIFICATE OF INTERESTED PARTIES AND
CORPORATE DISCLOSURE STATEMENT**

Safari Club International, The United States Sportsmen's Foundation, and the Congressional Sportsmen's Foundation have no parent companies. Nor do any publicly-held companies have a 10% or greater ownership interest in Safari Club International, The United States Sportsmen's Foundation, and the Congressional Sportsmen's Foundation.

Dated: February 23, 2023

SNELL & WILMER L.L.P.

By: Cameron Schlager
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Attorneys for Plaintiff-Appellants

INTRODUCTION

Plaintiff-Appellants are three conservation-advocacy organizations challenging the constitutionality of California Business and Professions Code section 22949.80, which prohibits a broad range of educational and advertising communications concerning lawful conservation- and Second-Amendment-related activities and products. This appeal involves several issues that are the same as or closely related to those raised in another currently pending appeal: *Junior Sports Magazines, Inc., et al., v. Rob Bonta*, Case No. 22-56090. As such, and for the reasons more fully described below, Plaintiff-Appellants respectfully request that this appeal be heard with the appeal in *Junior Sports Magazines* to promote judicial and party economy, and that the Court deem amicus briefs filed in one of these two cases as filed in the other case as well, in order to eliminate the likelihood of significant redundancy in amicus filings between the cases.

BACKGROUND

I. Appellants Challenge Section 22949.80.

Appellants Safari Club International, The United States Sportsmen's Alliance Foundation, and the Congressional Sportsmen's Foundation are three conservation advocacy organizations challenging California's prohibition on their lawful commercial advertising activities as a violation of the First, Fifth, and Fourteenth Amendments to the United States Constitution. The California Legislature openly declared its purpose for enacting Section 22949.80: to prevent

advocates of lawful Second Amendment-related activities from “attract[ing] future legal gun owners” and “recruiting children into gun culture.”¹ To this end, Section 22949.80 makes it unlawful for any “firearm industry member” to “advertise, market, or arrange for placement of an advertising or marketing communication offering or promoting any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.” Cal. Bus. & Prof. Code § 22949.80(a)(1).

Appellants sought a declaration in the district court that Section 22949.80’s prohibition of educational and advertising communications concerning lawful Second Amendment-related activities and products violates their rights under the Constitution. Appellants also sought to preliminarily enjoin Defendant-Appellee Rob Bonta, in his official capacity as Attorney General of the State of California, from enforcing Section 22949.80 on the grounds that it: (1) violates the Fifth Fourteenth Amendments because it is unconstitutionally vague; (2) violates the First Amendment by imposing content- and speaker-based restrictions on lawful speech; (3) violates the First Amendment by prohibiting nonmisleading commercial speech concerning lawful activity without advancing any legitimate

¹ California Senate Judiciary Committee, AB 2571 (Bauer-Kahan) (June 14, 2022) at 7–8 (quoting Josh Sugarman, Violence Policy Center, *“Start Them Young”*: *How the Firearms Industry and Gun Lobby Are Targeting Your Children*, VPC (Feb. 2016)).

State interest; (4) infringes Appellants' First Amendment rights to freely assemble and associate; and (5) violates the Fourteenth Amendment's Equal Protection Clause by discriminating against Appellants and others similarly situated without a constitutionally permissible justification.

In an order dated January 12, 2023, the district court denied Appellants' motion for preliminary injunction, ruling they did not have a likelihood of success on the merits and, consequently, that Appellants failed to show irreparable harm. Order at 40:1–11. The district court further concluded, for the same reason, that the balance of the equities weighed against preliminary injunctive relief. Order at 40:12–41:12. In rejecting Appellants' First Amendment speech claims, the district court expressly relied on *Junior Sports Magazines* as supporting five dispositive findings:

(1) Section 22949.80 regulates only commercial speech and, therefore, is not subject to heightened scrutiny under the First Amendment, Order at 14:15–15:2 (citing *Junior Sports Mags. Inc. v. Bonta*, No. 2:22-cv-04663-CAS-JC, 2022 WL 14365026, at *12 (C.D. Cal. Oct. 24, 2022));

(2) The statute prohibits some nonmisleading commercial speech concerning lawful activities, Order at 19:1–4 (citing *Junior Sports Mags.*, 2022 WL 14365026, at *16);

(3) California has a substantial interest in addressing what the district court characterized as “the serious and ever-increasing problem of gun violence involving minors,” Order at 20:6–13 (citing, *inter alia*, *Junior Sports Mags.*, 2022 WL 14365026, at *16–*17);

(4) Appellants failed to show that Section 22949.80 does not directly and materially advance California’s interest “in ensuring that minors do not unlawfully possess firearms and in protecting its citizens, especially minors, from gun violence,” Order at 25:3–7 (citing *Junior Sports Mags.*, 2022 WL 14365026, at *23); and

(5) Section 22949.80 is a “reasonable fit for advancing the state’s interest in ensuring that minors do not unlawfully possess firearms and in protecting its citizens, especially minors, from gun violence,” Order at 28:4–9 (citing *Junior Sports Mags.*, 2022 WL 14365026, at *27–*28).

The district court also relied on *Junior Sports Magazines* in support of its conclusion that Section 22949.80 does not implicate Appellants’ First Amendment rights to freely associate. Order at 29:5–13 (citing *Junior Sports Mags.*, 2022 WL 14365026, at *29). Likewise, citing *Junior Sports Magazines*, the district court determined that the statute does not violate the Fourteenth Amendment’s Equal Protection Clause. Order at 39:16–26.

The district court further concluded that Appellants failed to show Section 22949.80 is overbroad in violation of the First Amendment. Order at 30:1–10. While it did not directly cite *Junior Sports Magazines* in that part of the decision, the district court’s overbreadth holding nonetheless implicitly relied on *Junior Sports Magazines* because it was premised entirely on the court’s earlier findings that Section 22949.80 regulates only commercial speech and survives intermediate scrutiny under that standard. Order at 30:1–7.

Finally, the district court also held that Appellants failed to establish that Section 22949.80 is unconstitutionally vague on its face in violation of the Fifth and Fourteenth Amendments. Order at 39:5–14.

II. The Junior Sports Magazines Appeal.

The *Junior Sports Magazines* appeal, which was noticed less than three months prior to this one, raises the same or closely related issues. For example, *Junior Sports Magazines* challenges Section 22949.80 on the grounds that it violates the First and Fourteenth Amendments to the United States Constitution. The district court in that case also denied Plaintiff-Appellants’ motion for preliminary injunction, finding that they were not likely to succeed in showing that Section 22949.80 violates their rights under the First and Fourteenth Amendments to the federal constitution. *See generally Junior Sports Mags.*, 2022 WL 14365026. As in this case, *Junior Sports Magazines* denied preliminary injunctive

relief on the grounds that Section 22949.80 regulates only commercial speech and does so in a constitutional manner. *See id.* at *12–*29.

The *Junior Sports Magazine* appeal was noticed on November 21, 2022. Plaintiff-Appellants in *Junior Sports Magazine* filed their Opening Brief on December 19, 2022. Amici The Second Amendment Law Center, Jews for the Preservation of Firearm Ownership, and Citizens Committee for the Right to Keep and Bear Arms filed their brief in support of Plaintiff-Appellants on December 27, 2022. After receiving a 30-day extension, Defendant-Appellee Rob Bonta filed his Answering Brief on January 27, 2023, and Plaintiff-Appellants filed their Reply Brief on February 17, 2023. This Court has not yet scheduled *Junior Sports Magazines* for oral argument.

ARGUMENT

I. Hearing this Case with *Junior Sports Magazines* Will Promote Judicial Economy and Precedential Uniformity.

Because *Junior Sports Magazines* and this case raise closely related issues and their underlying findings and holdings are interrelated, hearing them together would promote efficiency for both the Court and the parties, and reduce the risk of inconsistent rulings.

There are multiple overlapping issues between *Junior Sports Magazines* and this case; the district court cited *Junior Sports Magazines* nine times in its order below. In both, this Court will be called upon to decide the threshold question of

whether Section 22949.80 imposes content- and speaker-based restrictions on non-commercial and commercial speech and, therefore, is subject to strict scrutiny under the First Amendment, instead of the test found in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980). In both cases, Plaintiff-Appellants contend that because Section 22949.80 imposes content- and speaker-based restrictions on both non-commercial and commercial speech, it is properly subject to strict scrutiny. Even if this Court were to conclude that Section 22949.80 is not subject to strict scrutiny, both appeals raise the common question of whether Section 22949.80 withstands intermediate scrutiny under *Central Hudson*. Plaintiff-Appellants in both cases contend it does not. And, in both appeals, this Court must decide whether Section 22949.80 unconstitutionally discriminates against “firearm industry members” in violation of equal protection. Finally, like Appellants here, Plaintiff-Appellants in *Junior Sports Magazines* argued below, and now in their appeal, that Section 22949 is overbroad. *See* Appellants’ Opening Br., *Junior Sports Mags., Inc., v. Bonta*, No. 22-56090, at 8, 20, 35, & 42.

Having two separate panels of this Court hear these cases, or having these cases heard at different times, would be significantly less efficient than a full airing of the issues at the same time before the same panel, when any briefing and argument relevant to both cases may be considered simultaneously. Furthermore,

given the common issues between these cases, Plaintiff-Appellants anticipate there may be significant overlap between the amicus briefs that will be filed in their support and in support of Defendant-Appellees in the two cases. To avoid the redundancy and inconvenience of having largely similar amicus briefs filed in each case, Plaintiff-Appellants request that the Court order that any amicus brief filed under *Junior Sports Magazines*' case number (22-56090) be deemed to have been filed under *Safari Club International's* case number (23-15199), and vice versa.

Specifically, to address the efficiency concerns described above, Plaintiff-Appellants request that:

1. *Safari Club International* be assigned to the same panel as *Junior Sports Magazines*;
2. *Safari Club International* be set for oral argument on the same day as *Junior Sports Magazines*; and
3. The Court order that any amicus brief filed under *Junior Sports Magazines*' case number (22-56090) be deemed to have been filed under *Safari Club International's* case number (23-15199), and any amicus brief filed in *Safari Club International* be deemed to have been filed in *Junior Sports Magazines*.

Granting these requests would not only promote efficiency, but also but also maximize uniformity between rulings and reduce the risk of inconsistent results.

II. The Cases May be Heard Together Without Delay or Prejudice to Any Party.

The procedural posture of the cases also weighs in favor of hearing them together. Because the two appeals were commenced within three months of one another, they are at a similar stage. Merits briefing in *Junior Sports Magazines* concluded only days ago – on February 17, 2023 – and there has been no argument in either case. The briefing schedule in this case will be expedited pursuant to Circuit Rule 3-3 and, thus, will not cause any prejudicial delay of the *Junior Sports Magazines* case.

OPPOSING COUNSEL’S POSITION

Appellants have conferred with all other counsel in this case and in *Junior Sports Magazines* about this request.

Plaintiff-Appellants in *Junior Sports Magazines* do not take a position on the relief requested.

Defendant-Appellee in this appeal and the *Junior Sports Magazines* appeal, Attorney General Rob Bonta, generally defers to this Court’s process for handling related appeals, but asks the Court not to accelerate the current briefing schedule in this case.


CONCLUSION

For the foregoing reasons, Plaintiff-Appellants respectfully request that this Court: (1) assign this case to the same panel as *Junior Sports Magazines* (22-

56090); (2) order this case set for hearing on the same day as *Junior Sports Magazines*; and (3) deem any amicus brief filed in either case as filed in both.

Dated: February 23, 2023

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