

No. 23-55367

IN THE
United States Court of Appeals for the Ninth Circuit

LANA RAE RENNA; DANIELLE JAYMES; HANNAH SPOUSTA; LAURA SCHWARTZ; MICHAEL SCHWARTZ; RICHARD BAILEY; JOHN KLIER; JUSTIN SMITH; JOHN PHILLIPS; PWGG, L.P., a California Limited Partnership; CHERYL PRINCE; DARIN PRINCE; NORTH COUNTY SHOOTING CENTER, INC., a California Corporation; RYAN PETERSON; GUNFIGHTER TACTICAL, LLC, a California Limited Liability Company; FIREARMS POLICY COALITION, INC.; SAN DIEGO COUNTY GUN OWNERS PAC; CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS; SECOND AMENDMENT FOUNDATION; ROBERT MACOMBER; CLINT FREEMAN,

Plaintiffs-Appellees,

v.

ROB BONTA, in his official capacity as Attorney General of California; ALLISON MENDOZA, in her official capacity as Director of Department of Justice Bureau of Firearms,

Defendants-Appellants,

On Appeal from the United States District Court for the Southern District of California; No. 20-cv-2190-DMS-DEB; Hon. Dana M. Sabraw

**BRIEF OF BRADY CENTER TO PREVENT GUN VIOLENCE AS
AMICUS CURIAE FOR APPELLANTS SUPPORTING REVERSAL**

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INTEREST OF *AMICUS CURIAE*¹

The Brady Center to Prevent Gun Violence (Brady) is a nonprofit organization dedicated to reducing gun violence through education, research, and legal advocacy. One of Brady's primary goals is to encourage the implementation of safe designs, distribution, and sales of firearms to reduce gun deaths and injuries, and to protect the rights of governmental bodies to take strong, effective actions to prevent gun violence.

Brady has filed numerous briefs as *amicus curiae* in cases involving firearms regulations, including in this Court, *e.g.*, *Boland v. Bonta*, No. 23-55276 (9th Cir. 2023), *Pena v. Lindley*, 898 F.3d 969 (9th Cir. 2018), and in the United States Supreme Court, *e.g.*, *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008). Brady has also advocated for gun manufacturers to employ safety features that save lives, including the chamber load

¹ The parties have consented to the filing of this *amicus* brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

indicators and magazine disconnect mechanisms at issue in this litigation. For all of these reasons, Brady has a strong interest in the outcome of this appeal.

INTRODUCTION AND SUMMARY

Subject to specified exceptions, California's Unsafe Handgun Act (UHA) requires that semi-automatic pistols made in California or sold in the primary market contain a chamber load indicator (CLI) and a magazine disconnect mechanism (MDM). A chamber load indicator shows in a visible and easily understood way that there is a round in the gun's chamber, *i.e.*, that the gun is loaded with at least one bullet. A magazine disconnect mechanism prevents a gun with a detachable magazine from firing if the magazine is not inserted (thus preventing the gun from firing a chambered round if the holder mistakenly believes the weapon is unloaded merely because the magazine is absent). Both CLIs and MDMs are commonsense safety features that help prevent unintentional discharges of a firearm. The district court erred in preliminarily enjoining California's requirement that new semi-automatic pistols manufactured or sold in the State contain those features.

The Supreme Court has soundly rejected the idea that the Second Amendment protects an unfettered right to access “any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Bruen*, 142 S. Ct. at 2128 (quoting *Heller*, 554 U.S. at 626). Safety regulations applicable to gun manufacturers and sellers are permissible “laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 2162 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626-27).

Under *Bruen*, the first step in the Second Amendment analysis is to determine whether the provision at issue regulates conduct covered by the plain text of the Second Amendment. If the answer to that question is yes, the second step of the inquiry is to determine whether the “regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126. The question under the latter step is whether there exists a “well-established and representative historical analogue”—not a “historical twin” or “dead ringer”—to the challenged law that is “relevantly similar” according to “two metrics”: “*how* and *why* the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 2133 (emphasis added).

As discussed below, the Unsafe Handgun Act's CLI and MDM requirements pass constitutional muster under this rubric. The district court thus erred in striking them down.

Part I of the brief shows that unintentional shootings present a deadly serious concern. Unintentional shootings kill or injure thousands of people every year, often because the individual pulling the trigger mistakenly believes that the gun is unloaded. These shootings exact a huge toll on our society, but they are largely avoidable. Many unintentional gun discharges are preventable by readily available, commonsense safety mechanisms.

Part II demonstrates that chamber load indicators and magazine disconnect mechanisms can save lives and avoid injuries by preventing unintentional discharges of a firearm. CLIs alert the user that the gun is loaded, while MDMs prevent a gun from firing if the magazine is not inserted. Each of these features helps prevent a person from firing a gun on the mistaken assumption that the gun is unloaded.

Finally, Part III explains that, while firearms have undoubtedly undergone "dramatic technological changes," *Bruen*, 142 S. Ct. at 2132, chamber load indicators and magazine disconnect mechanisms are not

new, esoteric technology and are “extremely simple and effective,” U.S. Patent No. 385,360, p. 2 l. 78 (issued July 3, 1888). Both mechanisms were invented more than a century ago. Significantly, the U.S. military and various law enforcement agencies have long relied on standard-issue sidearms containing these safety features. CLIs and MDMs are available on many standard models of semi-automatic pistols and have been part of the ordinary firearms market for years.

The Plaintiffs have, not surprisingly, pointed to no evidence that those who added the Second and Fourteenth Amendments to the Constitution meant to create a constitutional right for persons to access guns lacking feasible, cheap, and simple safety mechanisms that will prevent a vast number of accidental deaths and injuries. There is simply no justifiable reason for those Amendments to be read to enshrine a gun manufacturer’s right to sell firearms that lack such basic and readily available safety devices.

For all of these reasons, and for the reasons given by the State, the district court erred in issuing a preliminary injunction against the

Unsafe Handgun Act's CLI and MDM requirements. The district court's decision should be reversed.²

ARGUMENT

I. Unintentional Shooting Fatalities And Injuries Are A Real And Serious Problem.

The firearm death and injury statistics in this country are staggering. Year after year, hundreds of Americans die and tens of thousands are injured unintentionally by firearms,³ often because the person pulling the trigger mistakenly believed the gun was unloaded. These deaths and injuries need not happen; they can be prevented by widely available, commonsense gun-safety measures.

² This brief addresses CLIs and MDMs, both of which are safety features that will prevent many accidental shootings. It does not address microstamping, but we agree with the State that reversal of the district court's preliminary injunction is also warranted as to microstamping.

³ See, e.g., Ctrs. for Disease Control & Prevention, *Fatal and Nonfatal Injury Reports*, <https://tinyurl.com/yc7j4rcj> (CDC) (last visited May 4, 2023) (filtered by year, means of death or injury, and age).

A. Each year hundreds die and thousands are injured in unintentional shootings.

Every year from 2016 to 2020, on average, over 150,000 people were shot in the United States in intentional and unintentional shootings. More than 45,000 people died in 2020 alone. Over 2,200 of those killed in 2020 were children and adolescents 17 years old or younger. Over 135,000 people a year survive gun injuries, including over 18,000 children and teens.⁴ Nearly half of all children who are hospitalized with firearm injuries are discharged with a disability.⁵

The statistics remain just as tragic when limited to unintentional shootings. Between 2016 and 2020, across the country, each year on average almost 500 people were killed and over 20,000 were wounded in unintentional shootings. In 2020 alone, 535 people died and an estimated 29,317 ended up in emergency rooms because of unintentional shootings.⁶

⁴ *Id.* (2016-2020 averages for annual statistics).

⁵ Jordan S. Taylor et al., *Financial Burden of Pediatric Firearm-Related Injury Admissions in the United States*, PLoS ONE (June 23, 2021), <https://tinyurl.com/39ntachx>.

⁶ CDC, *supra* note 3.

Many of these victims are kids. Each year, about 100 children and teens are unintentionally shot and killed, and about 3,000 are shot unintentionally and survive (although many of those are left disabled).⁷ From 2019 to 2020, the rate of firearm deaths among children and adolescents increased by 29.5% across the board, including deaths from unintentional shootings.⁸

And true child mortality rates from unintentional shootings are likely even higher than reported. A *New York Times* review revealed that the numbers may be twice as high as the “manner of death” records suggest.⁹ This is so because, in coroners’ terms, “homicide just means they died at the hands of another.”¹⁰ Shootings by children thus are often classified as homicides, even when there is no intent to kill and

⁷ Brady Center to Prevent Gun Violence, *Key Statistics: The Facts That Make Us Act*, <https://www.bradyunited.org/key-statistics> (last visited May 4, 2023).

⁸ Jason E. Goldstick et al., Letter to the Editor, *Current Causes of Death in Children and Adolescents in the United States*, *New Eng. J. of Med.* 1955-56 (May 19, 2022), <https://tinyurl.com/mr2hm45t>. In 2020, firearm incidents became the leading cause of death in children and adolescents. *Id.*

⁹ Michael Luo & Mike McIntire, *Children and Guns: The Hidden Toll*, *N.Y. Times* (Sept. 29, 2013), <https://tinyurl.com/bdcvs7v3>.

¹⁰ *Id.*

the shooting was simply accidental.¹¹ Just to give one example, in the *New York Times* review, the death of an 11-year-old girl was not classified as unintentional, even though she was shot and killed by her 12-year-old brother, who mistakenly believed he had removed all the bullets from the gun.¹²

B. Deaths and injuries from unintentional shootings impose an immense societal cost.

Even one death from an unintentional shooting is one too many. And many survivors face physical disabilities, neurological problems, mental health issues, and substance use disorders. Their family members also exhibit an increase in psychiatric disorders.¹³

The U.S. Government Accountability Office estimates that, in 2016 and 2017, initial hospital costs related to firearm injuries exceeded

¹¹ *Id.*; see also RAND, *How Gun Policies Affect Unintentional Injuries and Deaths*, updated Jan. 10, 2023, <https://tinyurl.com/yf3yfxj3> (“[I]nconsistent classification of child firearm deaths by local coroners may result in significant underreporting of unintentional firearm deaths among children aged 17 or younger . . .”).

¹² Luo & McIntire, *supra* note 9.

¹³ Zirui Song et al., *Changes in Health Care Spending, Use, and Clinical Outcomes After Nonfatal Firearm Injuries Among Survivors and Family Members*, 175 *Annals of Internal Med.* 795, 795, 800-01 (June 2022), <https://tinyurl.com/yrtrbwuh>.

\$1 billion per year.¹⁴ A Harvard Medical School study showed that, just in the first year following the injury, gunshot survivors on average spend \$2,495 per month more on health care than their peers.¹⁵

Survivors' healthcare needs may include repeated hospitalizations, emergency room visits, medical procedures, laboratory tests, mental health visits, and medications.¹⁶ No comprehensive estimates exist beyond the first year after the injury, due in part to insufficient funding for firearm injuries research. Some injuries, like traumatic brain injury, require significant, lifelong care and are not even included in these first-year expenses.¹⁷

C. These deaths and injuries do not have to happen.

Unintentional shootings occur for different reasons and in different ways, but they do not have to happen. In particular, about

¹⁴ U.S. Government Accountability Office, *Firearm Injuries, Health Care Service Needs and Costs* 8 (June 2021), <https://tinyurl.com/wjatc4ew> (GAO 2021 Report); *see also* Faiz Gani et al., *Emergency Department Visits for Firearm-Related Injuries in the United States, 2006–14*, 36 *Health Affairs* 1729, 1729 (2017) (estimating that, between 2006 and 2014, annual inpatient costs associated with fatal and nonfatal firearm injuries amounted to \$700 million).

¹⁵ Song, *supra* note 13, at 798.

¹⁶ *Id.* at 799.

¹⁷ GAO 2021 Report, *supra* note 14, at 19, 26-27, 29.

20% of unintentional shootings occur because the person holding the gun did not know it was loaded.¹⁸ Like a broken record, these scenarios have been playing out for decades:

[O]ne might empty a firearm but not notice that a round remains in the chamber, one might typically leave a weapon unloaded and so assume that it is always unloaded, or one might pull the trigger several times without discharge (dry-firing) and so assume the chamber to be empty even though it is not.¹⁹

Tragically, this setting—a person mistakenly believing that a loaded gun is unloaded—is most common for victims between the ages of 10 and 19. Nearly 27% of older children and teens who die in gun incidents die because of such mistakes.²⁰

In one example from the U.S. General Accounting Office’s report examining unintentional shootings in 1988 and 1989, a 15-year-old boy removed the clip from his father’s .22 caliber handgun and jokingly

¹⁸ Sara J. Solnick & David Hemenway, *Unintentional Firearm Deaths in the United States 2005–2015*, *Injury Epidemiology* 4 (2019), <https://tinyurl.com/2de9uwp8>; see also U.S. General Accounting Office, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented* 2-3 (Mar. 19, 1991), <https://tinyurl.com/4u772bz9> (examining 1988-1989 data) (GAO 1991 Report).

¹⁹ GAO 1991 Report, *supra* note 18, at 4.

²⁰ Solnick, *supra* note 18, at 4-5.

pointed the gun at his 11-year-old sister. The boy believed the gun was unloaded, but a round remained in the firing chamber. Upon discharge, it struck his sister in the head. In another example, a 17-year-old boy put a handgun he believed was unloaded into his mouth in front of his two friends. When he pulled the trigger, the gun did not discharge. But it fired when he placed it to his head seconds later.²¹

Fast-forward to 2023. A child in Missouri shot himself accidentally, thinking that the gun was unloaded because the magazine was not in it.²² Likewise, a 17-year-old boy was killed in Menifee, California, while he and his three teenage friends were horseplaying with a firearm they believed was not loaded.²³

Adolescents are not the only ones who can mistakenly and tragically believe that a loaded gun is unloaded. Approximately 35% of adults who responded to a survey by the Johns Hopkins Center for Gun Policy and Research and the National Opinion Research Center

²¹ GAO 1991 Report, *supra* note 18, at 17.

²² Elizabeth VanMetre, *Rogersville Child Shot with Gun, Didn't Know it Was Loaded*, KY3 (Mar. 13, 2023), <https://tinyurl.com/bdfbzxj7>.

²³ City News Service, *Horseplay with Loaded Gun Leads to Teen Death in Menifee*, Patch (Mar. 20, 2023), <https://tinyurl.com/yxk64ypx>.

“believed that a gun could not be fired with the magazine removed,” or said they “didn’t know.” California Bill Analysis, Arguments in Support by Senator Jack Scott (D), Senate Floor, S.B. 489, 2003-2004 Reg. Sess. (Aug. 18, 2003).

This and other misjudgments by adults play out in real life. About 25% of adults between the ages of 20 and 29, and 18% of 30 to 39-year-olds who die in unintentional shootings die due to the mistaken belief that the deadly gun was unloaded.²⁴ And sometimes, adults do not kill or injure themselves or other adults; rather, they unintentionally shoot children, including their own.

Several years ago in Pennsylvania, a seven-year-old boy was shot in the chest and killed when a handgun accidentally fired as his father was climbing into the front seat of the family’s truck. The father had unloaded the magazine at home but did not realize a bullet was still in the chamber.²⁵ In North Carolina, a man was cleaning his gun when the gun accidentally fired, hitting his son in the back of the head. The

²⁴ Solnick, *supra* note 18, at 4-5.

²⁵ Associated Press, *Pa. Dad Accidentally Shoots, Kills 7-year-old Son After Leaving Gun Store*, PennLive (Dec. 10, 2012), <https://tinyurl.com/2p9wwd9c>.

boy's uncle told reporters that “[t]here must have been a bullet lodged in the chamber and it fired and hit him.”²⁶

This “common scenario for unintentional death,” “when someone thought the weapon was unloaded,”²⁷ is one we can avoid. Indeed, these deaths and injuries are particularly gratuitous because they can be prevented with available, commonsense safety mechanisms.

II. The UHA’s Safety Provisions Help Prevent The Unintentional Discharge Of Semi-Automatic Pistols.

Chamber load indicators and magazine disconnect mechanisms are “safety features designed to limit accidental discharges that occur when someone mistakenly believes no round is in the chamber.” *Pena v. Lindley*, 898 F.3d 969, 974 (9th Cir. 2018). Government and academic studies demonstrate that these commonsense safety features, which have been available for decades, save lives and avoid injuries by preventing unintentional shootings.

²⁶ Helen Pow, *Horror as Father Accidentally Shoots Son, 10, Dead in Front of Wife and Daughter as He Cleans Gun in Living Room*, DailyMail.com (Mar. 26, 2013), <https://tinyurl.com/bde24us6>.

²⁷ Solnick, *supra* note 18, at 5.

A. Chamber load indicators improve safety by informing users that a gun is loaded.

A CLI's purpose is simple: to inform the person handling the gun that "a cartridge is in the firing chamber." Cal. Penal Code § 16380. As the record explains, "[b]y quickly and clearly informing a firearm user whether a handgun is loaded, chamber load indicators help prevent accidental discharges that can result in serious injury and death." 2-ER-129 ¶ 13 (Declaration of Special Agent Salvador Gonzalez).

To serve their safety function, chamber load indicators need to be easily visible and need to convey an easily understood message. Cal. Penal Code § 16380. Optimally, a CLI should be in a conspicuous color and should very clearly indicate that the gun is loaded, either with words or via a pictorial diagram. *See* 2-ER-129 ¶ 12 (Gonzalez Declaration); Cal. Code Regs. tit. 11, § 4060(d)(1). In this way, a CLI makes clear that a gun is loaded "without even having to pick it up to check; it acts as a red flag for those handling the gun who may have forgotten that it was loaded." *Pena*, 898 F.3d at 980. On the Smith & Wesson M&P Shield series handgun, for example, the CLI tab is bright red and reads "LOADED WHEN UP." *See* Figure 1 below (Excerpts of

Record (“ER”), *Boland v. Bonta*, No. 23-55276 (9th Cir. Apr. 28, 2023), 6-ER-1238).

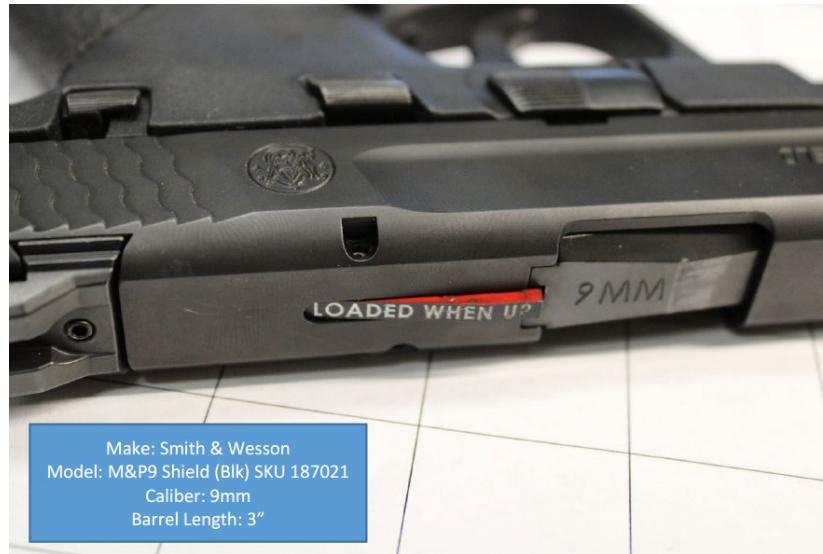


Figure 1. A CLI on the Smith & Wesson M&P9 Shield.

This is the view from the shooter’s perspective:



Figure 2. (*Boland* ER, 6-ER-1239).

This kind of prominent alert helps prevent unintentional shootings. Indeed, government and academic studies have noted that CLIs “could potentially save many lives and would undoubtedly also prevent many injuries.”²⁸ Specifically, the U.S. General Accounting Office estimated that 23% of unintentional deaths caused by firearms could have been prevented by a CLI.²⁹

Similarly, a 2003 study by the Bloomberg School of Public Health at Johns Hopkins University found that approximately 20% of accidental gun deaths (or deaths for which intentionality could not be determined) could have been prevented by a CLI.³⁰ And a study from Emory University’s Rollins School of Public Health “found evidence that loaded chamber indicators, magazine safeties, and firing pin blocs

²⁸ GAO 1991 Report, *supra* note 18, at 1 (examining whether CLIs and child-proof safety devices could prevent accidental shootings); *see also* Daniel W. Webster et al., *The Case for Gun Policy Reforms in America*, Johns Hopkins Ctr. for Gun Pol’y & Rsch., Oct. 2012, at 11.

²⁹ GAO 1991 Report, *supra* note 18, at 17.

³⁰ Jon S. Vernick et al., *Unintentional and Undetermined Firearm Related Deaths: A Preventable Death Analysis for Three Safety Devices*, 9 *Injury Prevention* 307, 308 (2003).

might have prevented as many as one third of the unintended shootings” in the Atlanta metropolitan area between 1996 and 2000.³¹

The Unsafe Handgun Act thus reflects the premise that “[c]hamber load indicators are an important firearm feature that increases safety.” 2-ER-129 ¶ 13 (Gonzalez Declaration).

B. Magazine disconnect mechanisms improve safety by preventing guns from firing when magazines are not inserted.

The Unsafe Handgun Act also requires new semi-automatic pistols to have a magazine disconnect mechanism (sometimes referred to as a magazine safety). This mechanism “prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.” Cal. Penal Code § 16900. Put simply, this tool prevents a gun from firing if the gun’s magazine is removed or is not properly inserted (which could mislead a person into thinking that there is no bullet ready to be fired).

³¹ Richard B. Ismach et al., *Unintended Shootings in a Large Metropolitan Area: An Incident-Based Analysis*, 41 *Annals Emergency Med.* 10, 15 (Jan. 2003).

The record explains that “[t]he purpose of a magazine disconnect mechanism is to prevent accidental discharges, and the resulting risk of serious injury and death, that can occur when a handgun is still loaded despite the magazine having been removed by the user. ... Magazine disconnect mechanisms are designed to increase the safety of both the firearm user and people in the user’s vicinity.” 2-ER-129-130 ¶ 15 (Gonzalez Declaration).

As the government’s expert explained, “a magazine disconnect mechanism is a component of the frame that looks like a small lever, which functions to impede the operation of the firearm.” 2-ER-129 ¶ 14. When the magazine is out of the pistol, the MDM (the small lever in the center of the chamber in Figure 3 below) blocks the firing pin, which prevents a round from discharging if the trigger is pulled. *See id*; Figure 3 (*Boland* ER, 6-ER-1240).



Figure 3. An MDM on the Smith & Wesson M&P9 Shield.

When the magazine is inserted up through a gun's grip and properly seated, it pushes the MDM lever up towards the back of the firearm, which allows the user to fire a round. *See, e.g., Figure 4 (Boland ER, 6-ER-1241).*



Figure 4. A raised MDM on the Smith & Wesson M&P9 Shield.

A magazine disconnect mechanism is thus a commonsense safety feature that prevents a gun with a detachable magazine from firing when the magazine is out of the gun. Many people incorrectly assume that a gun is unloaded if the magazine has been removed or is not fully inserted.³² But crucially, there may still be a round in the chamber ready to be fired, even if the magazine is not in the gun. “Without an

³² Indeed, one study found that 20.3% of adults surveyed did not think a semi-automatic handgun could be fired with the magazine removed, while another 14.5% said they did not know. Of these respondents, 28% lived in a gun-owning household. Jon S. Vernick et al., *“I Didn’t Know the Gun Was Loaded”: An Examination of Two Safety Devices that Can Reduce the Risk of Unintentional Firearm Injuries*, 20 J. Pub. Health & Pol’y 427, 430 (1999).

MDM, a magazine-equipped pistol can be fired if there is a bullet in the chamber, even if the magazine has not been inserted.” *Pena*, 898 F.3d at 980.

In contrast, a gun *with an MDM* will *not* fire if the magazine is removed, even if there is still a round in the chamber. *See* 2-ER-129 ¶ 14 (Gonzalez Declaration); *Hurst v. Glock, Inc.*, 684 A.2d 970, 972 (N.J. Super Ct. App. Div. 1996) (“All semi-automatic pistols should be designed with a magazine safety. ... If the gun cannot be fired when the magazine has been removed, then this type of accident is prevented.”). Like a chamber load indicator, therefore, “[a] magazine safety disconnect is, put simply, another protection against unintended injuries.”³³

A 2012 study by the Johns Hopkins Bloomberg School of Public Health confirmed that unintentional shootings “are highly preventable through proper design of firearms.”³⁴ As explained above, these incidents often occur when gun users do not realize a gun is loaded or

³³ Gary Klein, *In the Hands of the Maker: The Failure of Consumer Product Safety Oversight of Guns*, 33 *Loy. Consumer L. Rev.* 58, 122 (2021).

³⁴ Webster, *supra* note 28, at 11.

do not know that a pistol can have a round loaded in the chamber even if the magazine is removed. “Unintentional shootings of this type *can be prevented by magazine safety disconnect devices and loaded chamber indicators*, relatively inexpensive safety features already available” on many handguns.³⁵ See 2-ER-129-130 ¶ 15 (Gonzalez Declaration) (explaining that “[m]agazine disconnect mechanisms are designed to increase the safety of both the firearm user and people in the user’s vicinity”). “The absence of a chamber load indicator or a magazine disconnect mechanism in a semiautomatic pistol increases the risk of accidental discharge and injury to Californians from use of these handguns.” 2-ER-130 ¶ 16 (Gonzalez Declaration).

III. CLIs And MDMs Have Long Been Technologically And Economically Feasible.

California’s Unsafe Handgun Act does not seek to impose expensive and infeasible technology on gun owners. To the contrary, chamber load indicators and magazine disconnect mechanisms are established, efficient safety mechanisms that have been incorporated

³⁵ *Id.* (emphasis added).

into semi-automatic pistols for nearly as long as such pistols have existed.

A. Both features were invented more than a century ago.

1. In 1888, the U.S. Patent Office granted Daniel M. Lefever a patent for “new and useful Improvements in Breech-Loading Fire-Arms.” U.S. Patent No. 385,360, p. 1 ll. 4-6. The object of this patent was “production of a simple and effective device for the purpose of indicating, without breaking the arm, the presence of a charge in the barrel or barrels” of the firearm. *Id.* at p. 1 ll. 11-14. The device consisted of a small “indicator-pin,” *id.* at p. 1 l. 83, that collided with a loaded round and “protrud[ed] above the barrel,” *id.* at p. 2 ll. 6-11. The “extremely simple and effective” invention, *id.* at p. 2 l. 78, was “an effective means for the prevention of accidental discharges ... since the person handling the arm is immediately made aware of the fact that the arm is charged by the said indicator, and therefore warned to be careful in handling” it, *id.* at p. 2 ll. 32-38.

This “simple and effective” design caught on quickly. By 1908, a patent had been granted for “a chamber-indicator which shall be simple and inexpensive in construction” for “an automatic magazine-pistol,”

although the patent-holder acknowledged his invention “may also be applied, as I would have it understood, to other classes of breech-loading firearms.” U.S. Patent No. 891,438, p. 1 ll. 22-23, 41-44 (issued June 23, 1908). Many gun models designed in the late 19th and early 20th centuries included chamber load indicators, including those manufactured by Browning, Colt, Luger, and Winchester.³⁶ At the beginning of the 21st century, some gun industry advocates expressly recognize that CLIs are “a good idea, especially those that provide a visual and tactile indication that a cartridge is chambered.”³⁷

2. Magazine disconnect mechanisms are nearly as old as CLIs. In 1911, the U.S. Patent Office granted John M. Browning a patent for “certain new and useful Improvements in Firearms.” U.S. Patent No. 984,519, p. 1 ll. 5-6 (issued Feb. 14, 1911). His patent for what would become known as the M1911, the U.S. military’s standard-issue service sidearm from 1911 until 1985, included a magazine disconnect feature:

³⁶ Sean Maddan, *Loaded-Chamber Indicator*, in *Guns in American Society: An Encyclopedia of History, Politics, Culture, and the Law* 515 (Gregg Lee Carter ed., 2012).

³⁷ George Harris, *Status Check: The Benefits of Loaded-Chamber Indicators*, *ShootingIllustrated.com* (Jan. 9, 2018), <https://tinyurl.com/5fsjj9e7>.

Another object of the invention is to produce a firearm of this class in which, to insure absolutely against the dangerous accidental firing sometimes liable to occur if the trigger is pulled after the magazine has been withdrawn, in the belief that all cartridges have been removed from the arm with the magazine, whereas the loaded cartridge last fed to the barrel still remains in the chamber, the magazine-catch shall not only lock the magazine in its seat or at will release the magazine, but the catch shall also automatically lock the trigger against operation whenever there is no magazine in the seat, and shall automatically release the trigger when a magazine is entered into the seat and is there locked by the catch. These objects are attained by mechanism of simple and practical construction, which is perfectly safe, efficient and not liable to get out of order.

Id. at p. 2 ll. 35-55.

So successful was this mechanism that more magazine-disconnect innovation followed. In 1917, Colt was granted a patent for a mechanism “to always and positively prevent such accidental firing” as occurs when people handle guns under “the erroneous belief that after the removal of the cartridge magazine from its seat in the arm, the firing of the same becomes positively impossible.” U.S. Patent No. 1,234,961, p. 1 ll. 31-34, 41-43 (issued July 31, 1917). Smith & Wesson’s .32-caliber semi-automatic pistol, first introduced in 1924, also incorporated a magazine disconnect—as has almost every Smith & Wesson semi-automatic pistol model produced since. *Hurst*, 684 A.2d at

972. And this important safety feature adds little to the overall cost of a gun. *Adames v. Sheahan*, 909 N.E.2d 742, 749 (Ill. 2009) (noting testimony by Beretta witnesses that an MDM “adds at most \$10 to the \$500 price of the gun”).³⁸

Gun manufacturers continue to include chamber load indicators and magazine disconnect mechanisms in semi-automatic pistols because, as Daniel Lefever put it 136 years ago, they are “extremely simple and effective” “means for the prevention of accidental discharges.” U.S. Patent No. 385,360, p. 2 l. 78.

B. The U.S. military and various law enforcement agencies have long relied on firearms with these safety features.

The U.S. military relied on the M1911, first patented by John Browning in 1911, as its standard-issue service sidearm for nearly 70

³⁸ Barry Meier, *Gun Producers’ Use of a Safety Device is Called Erratic*, N.Y. Times, Mar. 19, 1999, at A12 (Smith & Wesson’s magazine safety, incorporated into “virtually every semiautomatic pistol it sold to the public,” consists “of a few springs and a lever that can cost from 9 cents to \$2.”).

years.³⁹ In 1985, the U.S. military replaced the M1911 with the Beretta 92 FS semi-automatic pistol (commonly called the Beretta M9).⁴⁰

The Beretta M9 included a “loaded chamber indicator” as a standard safety feature.⁴¹ “When there is a cartridge in the chamber, the upper surface of the extractor protrudes from the right side of the slide” and can be “felt by touch” as well as visually inspected.⁴² During the Beretta’s decades-long tenure as its standard pistol, the U.S. military bought hundreds of thousands, if not millions, of Berettas for its service members.⁴³

In 2017, the U.S. military replaced the Beretta M9 as its standard-issue sidearm, awarding a new contract to Sig Sauer to manufacture the M17 and M18, full-size and compact versions

³⁹ Bruce N. Canfield, *The U.S. ‘.45 Automatics:’ M1911 & M1911A1 Pistols*, Am. Rifleman (May 9, 2016), <https://tinyurl.com/2n3vk2a3>; U.S. Army Field Manual 23-35, *Automatic Pistol, Caliber .45, M1911 and M1911A1*, Apr. 30, 1940.

⁴⁰ Jason J. Brown, *Remembering How the Beretta M9 Became America’s Sidearm*, NRABlog (Feb. 23, 2017), <https://tinyurl.com/3zyxk2ee>.

⁴¹ U.S. Army TM 9-1005-317-10, *Operator’s Manual, Pistol Semiautomatic, 9mm, M9, Change No. 3*, Dec. 14, 1990, Ch. 2, § I, 2-3.

⁴² *Id.*

⁴³ Brown, *supra* note 40.

respectively of Sig Sauer’s P320 semi-automatic pistol.⁴⁴ Like their Beretta M9 predecessor, the M17 and M18 include a loaded chamber indicator—a small “protru[sion] upwards at the rear of the ejection port through the top of the slide.”⁴⁵

Some law enforcement agencies also use service weapons employing CLIs and MDMs. Agencies as diverse as the New York City Department of Corrections, the U.S. Department of Veterans Affairs, and the Royal Canadian Mounted Police have employed Beretta 92 Series handguns with magazine disconnects, for example. *See Adames*, 909 N.E.2d at 748.⁴⁶ In addition to its other benefits, a magazine disconnect mechanism can help ensure a law enforcement agent’s safety because agents can reduce the risk of being shot with their own weapon

⁴⁴ *See Matter of: Glock, Inc.*, B-414401, 2017 WL 2719339 (Comp. Gen. June 5, 2017); Todd South, *In a First, the Army’s New Handgun Will Be Issued to Team Leaders*, *Army Times* (Nov. 29, 2017), <https://tinyurl.com/2kjsutmz>.

⁴⁵ Sig Sauer P320-M17/P320-M18 Operator’s Manual at 28, <https://tinyurl.com/2p9bj5yp>.

⁴⁶ *See also, e.g.*, Donald J. Mihalek, *Police Sidearms: The Handguns of America’s 10 Largest Departments*, *Tactical Life* (Oct. 26, 2022), <https://tinyurl.com/5yx7zp6k> (describing a New York Police Department service weapon, the S&W 5946, which “features a magazine-disconnect safety”).

by ejecting the magazine if a suspect is trying to seize the gun from the officer.⁴⁷ And Glock advertises that its semi-automatic pistols, which are used by many law enforcement agencies, feature an “extractor [that] acts as a Loaded Chamber Indicator (LCI), visually and physically indicating whether there is a cartridge in the chamber of the pistol.”⁴⁸

C. CLIs and MDMs are available on an array of semi-automatic pistols offered for sale.

As one would expect of such tried-and-true safety mechanisms, chamber load indicators and magazine disconnect mechanisms are available on many semi-automatic pistols offered for sale in the United States, including in California.

By one estimate, 50 percent of semi-automatic models available in 1996 were manufactured with MDMs. *Crawford v. Navegar, Inc.*, 554 N.W.2d 311, 311 (Mich. 1996) (Levin, J., writing in support of granting leave to appeal) (noting that the pistol-manufacturer defendant “argued that an industry standard for magazine safeties does not exist because

⁴⁷ See, e.g., Meier, *supra* note 38.

⁴⁸ See *How the Glock Became America’s Weapon of Choice*, NPR (Jan. 24, 2012, 10:47 AM), <https://tinyurl.com/meeubpu8>; *Glock Technology, Ergonomics*, Glock.com, <https://tinyurl.com/22vawszk> (last visited May 4, 2023).

fifty percent are manufactured without” them); *see also Adames*, 909 N.E.2d at 748-49 (noting that “more than 300 other models of handguns ... incorporate a magazine disconnect safety”). Although at that time only about 11 percent of pistol models were manufactured with CLIs, that percentage has increased, reaching up to 20 percent by 2012.⁴⁹

In terms of California specifically, California’s Roster of Handguns Certified for Sale lists approximately 500 semi-automatic pistols approved for sale in California under the Unsafe Handgun Act. California’s Roster currently includes 32 models employing *both* a CLI and an MDM.⁵⁰ *See* 2-ER-131 ¶ 19 (Gonzalez Declaration).

In short, chamber load indicators and magazine disconnect mechanisms reflect no peculiar, newfangled innovation; they are familiar and widely available gun-safety mechanisms that have been part of ordinary firearms usage for years.

⁴⁹ Vernick, “*I didn’t know the gun was loaded*”, *supra* note 32, at 433; Maddan, *supra* note 36, at 515.

⁵⁰ Cal. Roster of Certified Handguns, <https://tinyurl.com/bddz57zk> (last visited May 4, 2023).

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted,

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