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

14 B&L PRODUCTIONS, INC., d/b/a  
CROSSROADS OF THE WEST;  
15 GERALD CLARK; ERIC JOHNSON;  
CHAD LITRELL; JAN STEVEN  
16 MERSON; CALIFORNIA RIFLE &  
PISTOAL ASSOCIATION,  
17 INCORPORATED; ASIAN PACIFIC  
AMERICAN GUN OWNERS  
ASSOCIATION; SECOND  
18 AMENDMENT LAW CENTER, INC.;;  
and SECOND AMENDMENT  
19 FOUNDATION,

20 Plaintiffs,

21 v.

22 GAVIN NEWSOM, in his official  
capacity as Governor of the State of  
23 California; ROB BONTA, in his official  
capacity as Attorney General of the State  
of California; KAREN ROSS, in her  
24 official capacity as Secretary of  
California Department of Food &  
25 Agriculture and in his personal capacity;  
TODD SPITZER, in his official capacity  
26 as District Attorney of Orange County;  
32nd DISTRICT AGRICULTURAL  
27 ASSOCIATION; DOES 1-10;

28 Defendants.

CASE NO: 8:22-cv-01518 JWH (JDEx)

**PLAINTIFFS' OPPOSITION TO  
STATE DEFENDANTS' MOTION  
FOR RECONSIDERATION OF STAY  
OF INJUNCTION PENDING APPEAL**

Hearing Date: December 15, 2023  
Hearing Time: 9:00 a.m.  
Courtroom: 9D  
Judge: Hon. John W. Holcomb

Action Filed: August 12, 2022

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## INTRODUCTION

1  
2 On October 30, 2023, this Court enjoined enforcement of California Penal  
3 Code sections 27573 and 27575 as violative of both the First Amendment and the  
4 Second Amendment of the United States Constitution. Since then, and relying on the  
5 Court’s order, Plaintiff B&L Productions, Inc., has been working with Defendant  
6 32nd District Agricultural Association (“the District”) to reserve dates to hold gun  
7 show events at the Orange County Fair & Event Center (“the Fairgrounds”). In light  
8 of that fact, the State moved for reconsideration of the denial of its oral request to  
9 stay this Court’s order while the parties litigate the State’s anticipated appeal.

10 Central District Local Rule 7-18 allows the district court to reconsider the  
11 decision of any previous order in the unusual circumstance that it “is presented with  
12 newly discovered evidence, committed clear error, or if there is an intervening  
13 change in the controlling law.” *389 Orange St. Partners v. Arnold*, 342 F.3d 934,  
14 945 (9th Cir. 1999). The State’s motion establishes none of the factors that would  
15 warrant such extraordinary relief. On the contrary, it appears that a primary reason  
16 for bringing this motion is that the parties are complying with this Court’s order to  
17 reserve event dates without delay. This is not the sort of “new material fact” that  
18 justifies disturbing the Court’s decision.

19 Relatedly, the State presents—for the first time—an argument for why a stay  
20 pending appeal should issue. It could have developed this argument in a formal  
21 motion (or at least as part of its opposition to Plaintiffs’ motion for preliminary  
22 injunction), but it failed to raise this new argument until the preliminary injunction  
23 hearing. And even then, the State made only an informal, oral request. It made no  
24 argument that a stay would be appropriate. Hr’g Tr. 72:15-16. The State’s failure to  
25 provide the Court with the legal and factual justification for its request is not good  
26 grounds for reconsideration. Indeed, a motion for reconsideration is not “a chance  
27 for a second bite, and ... a grant of such a motion not based on newly found,  
28 previously unknown facts, would enable the movant to ‘sandbag’ an adversary.”

1 *Senza-Gel Corp. v. Seiffhart*, 803 F.2d 661, 664 (Fed. Cir. 1986).

2 Even if the State did have grounds for reconsideration, it has not shown that it  
3 is entitled to a stay of this Court’s order pending appeal. Federal Rule of Civil  
4 Procedure 62 authorizes a court to stay an injunction pending appeal if the movant  
5 establishes that the factors typically applied to a preliminary injunction motion  
6 warrant a stay. The State did not persuade this Court to deny the motion for a  
7 preliminary injunction in the first instance, and it cannot meet its burden to establish  
8 that this extraordinary relief is warranted upon reconsideration.

9 The Court should deny this motion.

## 10 ARGUMENT

### 11 I. THE STATE DOES NOT MEET THE REQUIREMENTS FOR RECONSIDERATION

12 Local Rule 7-18 provides that courts may reconsider the decision of any  
13 motion only if there is:

14 (a) a material difference in fact or law from that presented to the  
15 Court that, in the exercise of reasonable diligence, could not have  
16 been known to the party moving for reconsideration at the time the  
17 Order was entered, or (b) the emergence of new material facts or a  
change of law occurring after the Order was entered, or (c) a  
manifest showing of a failure to consider material facts presented to  
the Court before the Order was entered.<sup>1</sup>

18 While the court has considerable discretion to reconsider its orders, *see Navajo*  
19 *Nation v. Confed. Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 535, 539  
20 (C.D. Cal. 2021), it “is an ‘extraordinary remedy, to be used sparingly in the  
21 interests of finality and conservation of judicial resources.’” *Feltzs*, 562 F. Supp. 3d  
22 at 539 (quoting *Am. Unites for Kids v. Lyon*, 2015 WL 5822578, at \*3 (C.D. Cal.  
23 Sept. 30, 2015) (citation omitted)). For that reason, “a motion for reconsideration  
24 should not be granted absent *highly unusual circumstances*.” 389 *Orange St.*, 342  
25 F.3d at 945 (emphasis added). The State’s motion presents nothing that to establish  
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27 <sup>1</sup> “Courts in this district have interpreted Local Rule 7-18 to be coextensive  
28 with Rules 59(e) and 60(b)” of the Federal Rules of Civil Procedure. *Feltzs v. Cox*  
*Comm’ns Cal., LLC.*, 562 F. Supp. 3d 535, 539 (C.D. Cal. 2021).



1 those circumstances.

2 1. In support of its motion, the State first claims that new material facts merit  
3 reconsideration: that B&L has been “coordinating with the 32nd District  
4 Agricultural Association to reserve January 20-22, 2024, and March 30-31, 2024,  
5 for gun shows at the Orange County Fairgrounds.” Mot. 2 (citing Richards Decl., ¶¶  
6 4-5). But the fact that B&L and the District are complying with this Court’s order to  
7 secure dates for events in 2024 is only a “new fact” because it is taking place after  
8 publication of the order. But it is not the kind of new fact that establishes grounds  
9 for reconsideration. After all, Plaintiffs expressly moved for a preliminary injunction  
10 so that B&L could immediately reserve dates for and hold gun shows at the  
11 Fairgrounds. Pls.’ Mot. Prelim. Inj. 2.<sup>2</sup> And the purpose of the State’s oral request  
12 for a stay was to prevent B&L from holding a gun show should a preliminary  
13 injunction issue. *See* Mot. 8-9 (arguing that allowing the shows (and the sales of  
14 firearms and ammunition at those shows) to resume pending appeal would cause the  
15 State irreparable harm). In other words, the State’s motion for reconsideration  
16 simply asks this Court for a “second bite” at the request it already made in opposing  
17 Plaintiffs’ motion for preliminary injunction.

18 What’s more, this Court expected that the District would work with B&L to  
19 reserve dates as soon as possible, considering that is precisely what it ordered the  
20 District to do. Order Granting Pls’ Mot. Prelim. Inj. [ECF No. 21] (“Order”) 31. The  
21 State essentially argues that compliance with this Court’s order is a “new material  
22 fact” that warrants reconsideration. But litigants complying with court orders is part  
23 of the regular course of adjudication; it is not a “highly unusual circumstance” that  
24 needs correcting via reconsideration. *See 389 Orange St.*, 342 F.3d at 945. If the

25 \_\_\_\_\_  
26 <sup>2</sup> Specifically, “Plaintiffs ask[ed] this Court to order Defendant 32nd District  
27 Agricultural Association, upon request by Plaintiff B&L Productions, to make  
28 available the next available date for a gun show and allow Crossroads to reserve  
dates for gun show events (and to hold such events) at the Fairgrounds as the  
District would any other event promoters who have previously held events at the  
Fairgrounds.” Pls.’ Mot. Prelim. Inj. 2.

1 State is unhappy with this Court’s ruling, its remedy is to appeal and seek relief from  
2 the Ninth Circuit.

3 Likely expecting that response, the State argues that the Ninth Circuit could  
4 not *resolve* its appeal before the first gun show (tentatively) scheduled for the  
5 weekend of January 20, 2024. Mot. 4. The State’s seems to argue that the ability to  
6 accommodate B&L’s request for a January date—instead of some later date—is a  
7 “new material fact” because this Court did not anticipate that B&L could resume its  
8 shows before the Ninth Circuit could weigh in. Indeed, the State leans on this  
9 Court’s casual observation that “it is unlikely that any gun sales will take place at  
10 the ... Fairgrounds before Defendants have appealed the preliminary injunction.”  
11 Mot. 4 (quoting Order 30).

12 But the fact that a show might take place as soon as January changes nothing.  
13 The Court’s order does not appear to contemplate that the circuit court would *fully*  
14 *resolve* the appeal before gun shows resume, only that the State would *file* an appeal.  
15 From there, the State may request an emergency stay from the Ninth Circuit. Fed. R.  
16 App. P. 8. And given that any January gun show would take place *three months* after  
17 this Court issued its order, the State would have plenty of time to make (and receive  
18 a ruling on) such a request. That is, if the State had promptly appealed and sought  
19 emergency relief as it regularly does in other Second Amendment cases. *See, e.g.,*  
20 *Duncan v. Bonta*, 83 F.4th 803, 805 (9th Cir. 2023) (staying permanent injunction of  
21 California’s “large-capacity magazine” ban pending appeal about two weeks after it  
22 was issued); Order, *Miller v. Bonta*, No. 23-2979 (9th Cir. Oct. 28, 2023) (staying  
23 permanent injunction of California’s “assault weapon” ban pending appeal about  
24 nine days after it was issued).

25 2. Finally, though it is styled as a motion for reconsideration, the State’s  
26 motion appears more like an original motion for stay pending appeal. Indeed, none  
27 of the State’s arguments for why it has a right to stay are new. They reasonably  
28 could have been advanced before this Court’s ruling had the State exercised

1 “reasonable diligence.” Instead, the State chose to make only an informal oral  
2 motion at the hearing on Plaintiff’s motion for preliminary injunction and provided  
3 the Court with no legal or factual argument supporting its request. Hr’g Tr. 72:15-  
4 16. This motion for reconsideration is thus already doomed “because, to the extent  
5 [the State] presented new arguments, [the State] provided no reason that [it] could  
6 not have earlier brought [its] new arguments before the Court.” *Straw v. Avvo, Inc.*,  
7 2021 WL 4592382, at \*1 (W.D. Wash. Oct. 6, 2021). In the Rule 59(e) context, a  
8 motion for reconsideration “may not be used to raise arguments or present evidence  
9 for the first time when they could reasonably have been raised earlier in the  
10 litigation.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). This belated  
11 Local Rule 17-8 effort should be turned away for the same reasons.

12 **II. THE STATE IS NOT ENTITLED TO A STAY OF THE PRELIMINARY INJUNCTION**  
13 **PENDING APPEAL**

14 Federal Rule of Civil Procedure 62(d) allows a district court to suspend,  
15 modify, restore, or grant an interlocutory order for injunction during appeal in  
16 limited circumstances. Fed. R. Civ. P. 62(d); *Natural Res. Def. Council, Inc. v. S.W.*  
17 *Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). “A stay is not a matter of right,  
18 even if irreparable injury might otherwise result”; rather, a stay is “an exercise of  
19 judicial discretion” and the “propriety of its issue is dependent upon the  
20 circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433 (2009).  
21 “The party requesting a stay bears the burden of showing that the circumstances  
22 justify an exercise of that discretion.” *Id.* at 433-34.

23 In determining whether to issue a stay pending, courts consider four factors:  
24 “(1) whether the stay applicant has made a strong showing that he is likely to  
25 succeed on the merits; (2) whether the applicant will be irreparably injured absent a  
26 stay; (3) whether issuance of the stay will substantially injure the other parties  
27 interested in the proceeding; and (4) where the public interest lies.” *Id.* at 434. The  
28 first two factors “are the most critical.” *Id.* As for the first factor, the Ninth Circuit

1 has characterized a “strong showing” in various ways, including “reasonable  
2 probability,” “fair prospect,” “substantial case on the merits,” and “serious legal  
3 questions . . . raised.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011).  
4 But when an applicant relies on “serious legal questions,” it must establish  
5 irreparable harm and that the balance of harms tips *sharply* in its favor. *See id.* at  
6 966; *Tribal Vill. of Akutan v. Hodel*, 859 F.2d 662, 663 (9th Cir. 1988).

7 **A. The State Has Not Shown a Strong Likelihood of Success**

8 1. The State has not shown a “strong likelihood” that it will succeed in its  
9 attempt to overturn this Court’s decision on either, let alone both, of Plaintiffs’  
10 constitutional claims. For all the reasons explained in this Court’s preliminary  
11 injunction order, “Plaintiffs—not Defendants—have shown a likelihood of success  
12 on the merits of Plaintiffs’ constitutional claims.” Order 30. Simply put, the Court  
13 correctly decided this case. Its 31-page, single-spaced order comprehensively and  
14 thoughtfully analyzes the critical constitutional issues this case presents. And it  
15 relies on a faithful application of the principles set forth in leading Supreme Court  
16 and Ninth Circuit authorities governing First and Second Amendment challenges.

17 For instance, having engaged in a straightforward application of the history-  
18 and-tradition test clarified by the Supreme Court in *Bruen*, this Court rightly held  
19 that California’s ban on firearm and ammunition sales at the Fairgrounds likely  
20 violates the Second Amendment. Order 20-27; *see N.Y. State Rifle & Pistol Ass’n,*  
21 *Inc. v. Bruen*, 142 S. Ct. 2111, 2131 (2022). First, the Court held that the ban  
22 “sufficiently implicates[s] individual rights under the Second Amendment.” Order  
23 24. That is because the Second Amendment, which protects the right to keep and  
24 bear arms for self-defense, “must protect the attendant rights of gun ownership that  
25 make keeping and bearing arms meaningful,” like the right to buy lawful firearms  
26 and ammunition. Order 22. That conclusion is amply supported by binding Ninth  
27  
28

1 Circuit precedent, as well as the persuasive authorities of sister districts.<sup>3</sup> And it can  
2 hardly be argued that a ban on sales does not, at the very least, *implicate* the Second  
3 Amendment right to acquire lawful firearms and ammunition—even if sales might  
4 be conducted elsewhere. Because that is so, the Court rightly held the State to its  
5 burden “affirmatively prove that its firearms regulation is part of the historical  
6 tradition that delimits the outer bounds of the right to keep and bear arms.” Order 24  
7 (quoting *Bruen*, 142 S. Ct. at 2127).

8 The State’s motion merely recycles the same arguments this Court has already  
9 heard and rejected. Mot. 5-8. In support of its claim that the Challenged Statutes  
10 pass First Amendment muster, for instance, the State tries desperately to link gun  
11 shows and gun crime. Mot. 6. This time, however, the State cites AB 893 and two  
12 “reports” prepared by the California Department of Justice for the years 2021 and  
13 2022. *Id.* (citing Defs.’ Req. Jud. Ntc., Ex. A at 53, Ex. B at 56, Ex. C at 1). But  
14 even if the State could plausibly argue that it only discovered (its own) records after  
15 the Court decided the motion, it has not shown that it could not have discovered  
16 them earlier “through the exercise of reasonable diligence” or “that the new  
17 evidence is of such magnitude that it would likely have changed the outcome of the  
18 case.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 998 (9th Cir. 2001); *Alvarado v.*  
19 *Hartford Life & Accident Ins.*, No. CV 11-00176, 2012 WL 12548145, at \*3 (C.D.  
20 Cal. Jan. 31, 2012).

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22 <sup>3</sup> Order 22 (citing *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008)  
23 (striking down a ban on handguns, even though the statute at issue permitted the  
24 ownership of other types of firearms); *Jackson v. City & Cnty. of San Francisco*,  
25 746 F.3d 953, 697 (9th Cir. 2014) (extending Second Amendment rights to the  
26 purchase of ammunition, because “without bullets, the right to bear arms would be  
27 meaningless”); *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en  
28 banc) (“[T]he core Second Amendment right to keep and bear arms for self-defense  
‘wouldn’t mean much’ without the ability to acquire arms.”) (citing *Heller*, 554 U.S.  
at 617-18); *Boland v. Bonta*, 2023 WL 2588565, at \*4 (C.D. Cal. Mar. 20, 2023)  
(granting a preliminary injunction against a California law preventing plaintiffs from  
“purchas[ing] state-of-the-art handguns for self-defense” because the restriction  
infringed Second Amendment rights); *Renna v. Bonta*, 2023 WL 2846937 (S.D. Cal.  
April 3, 2023) (also enjoining California laws imposing onerous safety regulations  
on the sale of new handgun models)).

1 Both AB 893 and the DOJ reports could have been submitted as part of the  
2 State’s opposition to Plaintiffs’ motion for preliminary injunction. Indeed, Plaintiffs  
3 put the State on notice of the Legislature’s lack of evidence for its “vague claims”  
4 that illegal sales to prohibited persons and other crimes happen at California gun  
5 shows. Pls. Mem. Supp. Mot. Prelim. Inj. (“MPI”) 16; Pls. Reply Mem. Supp. Mot.  
6 Prelim. Inj. (“MPI Reply”) 5-6. AB 893 was adopted nearly three years before this  
7 case was even filed. *Id.*, Ex. C (approved October 2019). The 2021 report was  
8 released almost a year before the State filed its last brief. *Id.*, Ex. A (published Mar.  
9 30, 2022). And the 2022 report was released three days before the hearing and six  
10 months before the Court ruled. *Id.*, Ex. B (published April 3, 2023). Yet the State  
11 chose not to submit any of this “evidence” till now, making a motion for  
12 reconsideration improper. *Davidson v. City of Culver City*, No. CV 04-2220, 2004  
13 WL 5361891, at \*1 (C.D. Cal. Sept. 20, 2004), *aff’d sub nom.*, *Davidson v. Culver*  
14 *City*, 159 F. App’x 756 (9th Cir. 2005).<sup>4</sup>

15 More importantly, the Court has already rejected the State’s claim that “the  
16 evidentiary record establishes that the gun-show setting uniquely lends itself to  
17 illegal transactions.” *Compare* Mot. 6, *with* Order 30. And the State’s new evidence  
18 is not “of such magnitude that it would likely have changed th[at] outcome.” *Far*  
19 *Out Prods.*, 247 F.3d at 998. The *two* incidents purportedly related to gun shows in  
20 2021 and 2022 are not substantively different from the incidents cited in the

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22 <sup>4</sup> Further, introduction of the DOJ reports violates the Federal Rules of  
23 Evidence. While this Court may take judicial notice that California publishes such  
24 reports, that is not a blank check to accept proffered evidence that lacks foundation,  
25 has not been authenticated, lacks relevance, is more like undisclosed expert  
26 testimony, and in the final analysis is rank hearsay. Pls.’ Obj. Re: Defs.’ Req. Jud.  
27 Ntc. 1-4. Space and time constraints do not permit Plaintiffs to catalogue the myriad  
28 ways the information in these reports can be impeached. But it does raise significant  
questions. Were these “crimes” committed at gun shows, or was probable cause  
merely developed? Were these “crimes” a violation of federal law, state law, or  
both? Were the events B&L gun shows? Were they held at state-owned properties or  
private venues? Were the event promoters cited or charged with violating any law?  
Did the arrests result in any convictions or were the charges dropped? Are these  
“crimes” from 2021 and 2022 still crimes in a post-*Bruen* legal landscape?

1 legislative history of SB 264 and discussed in Plaintiffs’ briefing.<sup>5</sup> Like SB 264’s  
2 findings, the “new” DOJ reports “do not identify any specific harms at the Orange  
3 County Fairgrounds, *nor do they indicate that gun shows present any particular risk*  
4 *that exceeds those of lawful gun sales accomplished at brick-and-mortar stores.*”  
5 Order 18 (double emphasis added). To the contrary, “in California, where both gun  
6 shows themselves and gun commerce generally are regulated, sales at gun shows are  
7 not a risk factor among licensed retailers for disproportionate sales of crime guns.”  
8 Barvir Decl. Supp. Mot. Prelim. Inj., Ex. 33 at 33 (cited by Order 16).

9 Even less helpful are AB 893’s allegations that 14 crimes were recorded  
10 during B&L events held at the Del Mar Fairgrounds between 2013 and 2017. Mot. 6  
11 (citing Defs.’ Req. Jud. Ntc. Ex. C at 1). Even if the State presented proof of these  
12 crimes, AB 893 makes no attempt to compare this to the number of crimes recorded  
13 at other similarly sized events at the venue during that period. Nor does it  
14 distinguish between the type of crimes this bill purports to target (e.g., illegal  
15 transfers, straw purchases, sales of illegal firearms or accessories) and run-of-the-  
16 mill crimes likely to occur whenever thousands of people descend on one venue  
17 (e.g., petty thefts, traffic violations, public drunkenness, simple assault).

18 As for the Second Amendment, the State argues (again) that the gun show ban  
19 is constitutional because people can still buy guns from gun stores. Mot. 8. This  
20 Court already (rightly) rejected that premise when it held that, assuming *Texeira* is  
21 still good law, even if “plenty of brick-and-mortar gun stores exist throughout both  
22 California and Orange County that sell firearms and ammunition, [the State] fail[s]

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24 \_\_\_\_\_  
25 <sup>5</sup> Compare Mot. 6 (citing Defs.’ Req. Jud. Ntc., Ex. A at 53, Ex. B at 56), with  
26 MPI 16 (citing Pls. Req. Jud. Ntc., Ex. 9 at 47) (explaining that the “legislature  
27 made no effort to show that such incidents are common or unique to gun shows in  
28 California—where gun shows are regulated at least as heavily as retailers operating  
out of brick-and-mortar stores”); MPI Reply 5-6 (explaining that legislative findings  
that a handful of crimes have occurred at gun shows have never been corroborated  
by evidence and, in any event, does not establish that crimes are more likely to occur  
at gun shows on *public* property than at gun stores or gun shows held on *private*  
property).

1 to identify how the general experience of Plaintiffs’ gun shows can be replicated by  
2 alternative forums in the area.” Order 23-24.

3 Moreover, arguing that “Plaintiffs can readily purchase firearms and  
4 ammunition at hundreds of brick-and-mortar stores near the Fairgrounds,” Mot. 8,  
5 the State essentially argues that the *burden* on Plaintiffs is light relative to the State’s  
6 supposed *interest* in banning gun shows. That is no more than a barely veiled  
7 attempt to revive the sort of judge-empowering, interest-balancing that *Bruen*  
8 expressly rejected. *Bruen*, 142 S. Ct. at 2131. The State cannot credibly argue that it  
9 is exceedingly likely to prevail on appeal where it would require the reviewing court  
10 to stray from this binding Supreme Court precedent, even if other circuit courts have  
11 done so. This Court faithfully carried out its duty, as must the Ninth Circuit, “to  
12 apply [the principles] announced by *Heller* [and its progeny] to the challenged  
13 provisions....” *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1285 (D.C.  
14 Cir. 2011) (Kavanaugh, J., dissenting) (rejecting majority’s decision to uphold  
15 blanket ban on common semi-automatic rifles and magazines).

16 In sum, the State has failed to prove a strong likelihood of successfully  
17 overturning this Court’s decision that the Challenged Statutes are likely  
18 unconstitutional under *both* the First and Second Amendments.

19 2. Alternatively, the State argues that a stay may be warranted because this  
20 case raises serious legal questions that have not yet been resolved by the Ninth  
21 Circuit. Mot. 5-8. “Serious questions are substantial, difficult and doubtful, as to  
22 make them a fair ground for litigation and thus for more deliberative investigation.”  
23 *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991). Concededly, the legal  
24 questions at the heart of this matter are “serious.” *Silvester v. Harris*, No. 11-cv-  
25 2137, 2014 WL 661592, at \*3 (Nov. 20, 2014) (recognizing that a case challenging  
26 California’s 10-day waiting period for gun purchases raised serious questions  
27 because “Second Amendment law is evolving”). But this is true of many appeals,  
28 especially those involving constitutional challenges, like this one. Thus, cases that



1 raise important questions rarely warrant a stay of injunctive relief unless the moving  
2 party also establishes that the remaining factors all counsel in favor of a stay. In such  
3 cases, the State must prove that it “will suffer irreparable harm” without the stay and  
4 that the balance of the hardships “tips *sharply* in their favor.” *Se. Alaska Conserv.*  
5 *Council v. U.S. Army Corps of Eng’rs.*, 472 F.3d 1097, 1100 (9th Cir. 2006)  
6 (emphasis added). As explained below, the State has failed to meet this burden.

7 **B. The State Has Not Shown That It Will Suffer Irreparable Harm**

8 The factor of irreparable harm is a “bedrock requirement” for issuance of a  
9 stay. *Leiva-Perez*, 640 F.3d at 965. Indeed, because the State must rely on the  
10 “serious legal questions” this case presents to satisfy the first factor for a stay, the  
11 State bears a *heavy* burden to show that it “will suffer irreparable” harm if a stay  
12 does not issue. *Se. Alaska*, 472 F.3d at 1100. But the State has not shown that it will  
13 be irreparably harmed in any way simply by returning to the status quo that was in  
14 place for three decades before the Challenged Statutes took effect, let alone that the  
15 balance of harms tips “sharply” in its favor. *Leiva-Perez*, 640 F.3d at 966. Indeed,  
16 after rehashing its losing merits arguments for pages, the State devotes just one  
17 paragraph to why the equities, including irreparable harm, favor a stay. Mot. 9.

18 First, a party “cannot suffer harm from an injunction that merely ends an  
19 unlawful practice or reads a statute as required to avoid constitutional concerns.”  
20 *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *see Valle del Sol Inc. v.*  
21 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (“[I]t is clear that it would not be  
22 equitable ... to allow the state ... to violate the requirements of federal law.”)  
23 (citations omitted). Even so, the State makes a passing reference to “the public harm  
24 inherent in suspension of validly enacted statutes.” Mot. 9. But even “to the extent a  
25 state suffers an abstract form of harm whenever one of its acts is enjoined, that harm  
26 is not dispositive because such a rule would eviscerate the balancing of competing  
27 claims of injury.” *Silvester v. Harris*, No. 11-cv-2137, 2014 WL 6611592, at \*3  
28 (E.D. Cal. Nov. 20, 2014) (discussing *Indep. Living Ctr. of S. Cal. v. Maxwell-Jolly*,

1 572 F.3d 644, 658 (9th Cir. 2009)).

2 Second, the State weakly argues that it will be irreparably harmed if  
3 Californians resume purchasing firearms and ammunition at gun shows on public  
4 property because the Challenged Statutes prevent “illegal firearms-related sales at  
5 gun shows.” Mot. 9. Relying again on the late-presented reports, the State’s  
6 argument is unconvincing. *Id.* (citing Defs.’ Req. Jud. Ntc., Ex. A at 53, Ex. B at  
7 56). The “evidence” proves, at most, that California’s gun-show-regulation regime  
8 has helped law enforcement ferret out two incidents of criminal behavior at gun  
9 shows. It does not prove that such incidents are *more likely* to occur at gun shows on  
10 public property than at gun stores or gun shows on private property, or that banning  
11 *lawful* firearm sales would directly prevent *illegal* sales. Even if it did, “California’s  
12 interest in stopping crimes committed with illegal weapons, ‘as important as it is,  
13 cannot justify’ prohibiting the complete sale of lawful firearms at gun shows,” Order  
14 15 (quoting *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447  
15 U.S. 557, 566 (1980)), “especially when those same firearms are available for  
16 purchase at regular gun stores,” *id.* (citing Cal. Penal Code § 26805).

17 The State also mentions that there is no waiting period for ammunition  
18 purchases, so attendees may buy ammunition on site. Mot. 9 (citing Cal. Penal Code  
19 §§ 26815, 30370). True enough, but ammunition sales at gun shows are still subject  
20 to background checks and countless other regulations. That process is the same no  
21 matter whether the sale takes place at a gun show or at a brick-and-mortar store. Cal.  
22 Penal Code §§ 30312, 30352, 30370. The State provides *no* evidence that illegal  
23 ammunition sales take place at gun shows or that background checks are any less  
24 effective at stopping unlawful transactions at gun shows on public property than  
25 they are at gun stores. That is partly why the Court was right to hold that there is no  
26 “appreciably higher risk of illegal gun sales occurring at gun shows than there is at  
27 brick-and-mortar stores in California.” Order 30.

28 The State thus cannot show that irreparable harm will result if the Court does

1 not stay its injunction pending appeal. On the contrary, as discussed below, it is  
2 Plaintiffs who will suffer irreparable harm.

3 **C. The Balance of Equities and Public Interest Do Not Favor a Stay**

4 When the government is a party, the last two factors—the balance of equities  
5 and the public interest—merge. *Nken*, 556 U.S. at 435. The Court’s inquiry thus  
6 weighs the interests of Plaintiffs, the government, and the public, balancing the  
7 relative harms to each should preliminary relief be granted or denied. The Ninth  
8 Circuit has long held that when challenging government action that affects the  
9 exercise of constitutional rights—especially First Amendment freedoms—“[t]he  
10 balance of equities and the public interest ... tip sharply in favor of enjoining the”  
11 law. *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). For “[i]t is  
12 always in the public interest to prevent the violation of a party’s constitutional  
13 rights. *Index Newsps. LLC v. U.S. Marshalls Serv.*, 977 F.3d 817 (9th Cir. 2020)  
14 (emphasis added). Indeed, there is a “‘significant public interest’ in upholding free  
15 speech principles, as the ‘ongoing enforcement of the potentially unconstitutional  
16 [law] ... would infringe not only the free expression interests of plaintiffs, but also  
17 the interests of other people’ subjected to the same restrictions.” *Id.* (citation  
18 omitted). On the other hand, “the public interest is not harmed by preliminarily  
19 enjoining ... a law that is probably unconstitutional.” *Am. Civ. Libs. Union v.*  
20 *Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012).

21 Enjoining the enforcement of the Challenged Statutes will end the irreparable  
22 harm Plaintiffs are now suffering, including the violation of their rights under the  
23 First and Second. But not only Plaintiffs’ rights are at stake, so too are the rights of  
24 all people seeking to engage in protected expression barred by the State’s gun show  
25 ban, as well as those who seek to hear the messages the state has banished. What’s  
26 more, Plaintiffs cannot really even insist that the State post a bond to cover lost  
27 profits and any event costs incurred since the Court ordered the District to work with  
28 B&L to reserve dates. Money damages are not an adequate remedy at law when

1 fundamental rights are being violated.

2 In short, Plaintiffs’ interests far outweigh any abstract interest the State  
3 generally has in enforcing its legislative enactments or its speculative interest in  
4 promoting public safety through the enforcement of the Challenged Statutes. To be  
5 sure, the State may have a public safety interest in preventing “illegal firearm sales.”  
6 But enforcement of the Challenged Statutes does not serve those interests in any  
7 meaningful way, as this Court has already held. Order 14-16, 18.

8 **CONCLUSION**

9 Based on the above, the State’s motion for reconsideration appears to be an  
10 unserious effort to delay the appeal of this case so that the appeal of a ruling the  
11 State prefers can be heard first without the Ninth Circuit having the benefit of this  
12 Court’s thorough consideration of these issues. *See B&L Productions, Inc. v.*  
13 *Newsom*, 2023 WL 3443280 (S.D. Cal. Mar. 14, 2023) (notice of appeal filed May  
14 11, 2023). Though such conduct is sanctionable, Plaintiffs do not request sanctions,  
15 but they do ask this Court to deny the State’s motion for the reasons stated in this  
16 opposition.

17 Dated: November 22, 2023

**MICHEL & ASSOCIATES, P.C.**

*/s/ Anna M. Barvir*

18 Anna M. Barvir  
19 Counsel for Plaintiffs B&L Productions, Inc.,  
20 California Rifle & Pistol Association,  
21 Incorporated, Gerald Clark, Eric Johnson, Chad  
22 Littrell, Jan Steven Merson, Asian Pacific  
American Gun Owner Association, Second  
Amendment Law Center, Inc.

23 Dated: November 22, 2023

**LAW OFFICES OF DONALD KILMER, APC**

*/s/ Donald Kilmer*

24 Donald Kilmer  
25 Counsel for Plaintiff Second Amendment  
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**ATTESTATION OF E-FILED SIGNATURES**

I, Anna M. Barvir, am the ECF User whose ID and password are being used to file this PLAINTIFFS’ OPPOSITION TO STATE DEFENDANTS’ MOTION FOR RECONSIDERATION OF STAY OF INJUNCTION PENDING APPEAL. In compliance with Central District of California L.R. 5-4.3.4, I attest that all signatories are registered CM/ECF filers and have concurred in this filing.

Dated: November 22, 2023                    /s/ Anna M. Barvir  
Anna M. Barvir

**LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Plaintiffs, certifies that this brief is less than 25 pages, which complies with the page limit set by the court’s standing order dated August 17, 2022.

Dated: November 22, 2023                    /s/ Anna M. Barvir  
Anna M. Barvir

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**CERTIFICATE OF SERVICE**  
IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

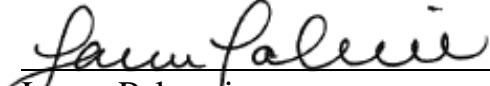
**PLAINTIFFS’ OPPOSITION TO STATE DEFENDANTS’ MOTION FOR RECONSIDERATION OF STAY OF INJUNCTION PENDING APPEAL**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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

Executed November 22, 2023.

  
\_\_\_\_\_  
Laura Palmerin