

No. 23-3793

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

GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF
CALIFORNIA AND IN HIS PERSONAL CAPACITY, ET AL.,
Defendants-Appellants,

v.

B&L PRODUCTIONS, D/B/A CROSSROADS OF THE WEST, ET AL.,
Plaintiffs-Appellees.

**On Appeal from the United States District Court
for the Central District of California**

No. 8:22-cv-01518 JWH (JDEx)
The Honorable John W. Holcomb, Judge

**STATE APPELLANTS' EXCERPTS OF RECORD
VOLUME 2 of 2**

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January 16, 2024

VOLUME 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION
HONORABLE JOHN W. HOLCOMB, U.S. DISTRICT JUDGE

B&L PRODUCTIONS, INC., et al.,)
)
Plaintiffs,) **Certified Transcript**
)
vs.) Case No.
) 8:22-cv-01518-JWH-JDE
)
GAVIN NEWSOM, in his official)
Capacity as Governor of the State)
of California, et al.,)
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MOTION HEARING
THURSDAY, APRIL 6, 2023
10:05 A.M.
SANTA ANA, CALIFORNIA

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1 **SANTA ANA, CALIFORNIA; THURSDAY, APRIL 6, 2023**

2 **10:05 A.M.**

3 - - -

4
10:05AM 5 THE COURTROOM DEPUTY: Calling Item Number 1, Case
6 Number SACV-22-01518-JWH, B&L Productions, Inc., et al., vs.
7 Gavin Newsom, et al.

8 Counsel, please state your appearances for the
9 record, beginning with the plaintiff.

10:05AM 10 MS. BARVIR: Thank you. Anna Barvir, B-a-r-v-i-r,
11 for Plaintiffs B&L Productions, et al.

12 THE COURT: All right. Ms. Barvir, good morning.

13 MR. KILMER: Good morning, Your Honor. Donald
14 Kilmer. I'll be assisting with Ms. Barvir if she needs it. I
10:05AM 15 don't think she will.

16 THE COURT: All right. Good morning, Mr. Kilmer.

17 MS. KAU: Deputy Attorney General -- Deputy Attorney
18 General Nicole Kau on behalf of the State defendants.

19 THE COURT: All right. Ms. Kau, good morning.

10:05AM 20 MR. SAROSY: Good morning. Deputy Attorney General
21 Charlie Sarosy, also on behalf of State defendants. I'm a
22 colleague of Ms. Kau; so I'm not speaking today.

23 THE COURT: Okay. And good morning, Mr. Sarosy.

24 We are here on defendant's motion for a preliminary
10:06AM 25 injunction pertaining to a couple of California statutes.

1 Counsel, thank you very much for the extensive
2 briefing. I reread my orders asking for supplemental briefing
3 yesterday. They were perhaps harsher than I intended them to
4 be. So I hope you haven't taken too much offense. But I
10:06AM 5 deeply appreciate the additional briefing and explanations that
6 you have given to me.

7 What I would like to do is -- I'll tell you, I have
8 a hard stop at noon. I'm hoping that this hearing won't go
9 that far. But if it does, it does. And if we need to come
10:06AM 10 back after lunch, please be prepared to do that. But I hope to
11 get through all of my questions and hear what you want to tell
12 me before then.

13 So in terms of how we're going to conduct the
14 hearing, what I'd like to do is I have a number of questions
10:07AM 15 I'm going to pose to each of you. Just the way I've structured
16 and the way I'm thinking about it, I think I'll start with the
17 defendant -- defendants. But I'll ask you both questions.
18 Please focus on the question and don't feel you need to get
19 your whole argument in in response to my sort of rifle-shot
10:07AM 20 question. I didn't mean to make a pun there, but my narrow
21 question.

22 And then the point is I'm going to give you each a
23 chance, after all my questions are done, to tell me whatever
24 else you want to tell me. Maybe my questions will have covered
10:07AM 25 what you want to -- what you want to accomplish in this

1 hearing, and maybe they don't. And if they don't, you'll have
2 a chance to tell me.

3 Okay. Let me start with defendants, as I said. So
4 let me start with the commercial speech question. As I
10:08AM 5 understand it, defendants contend that these two statutes are
6 not pertaining to they do not prevent anyone from engaging in
7 commercial speech; correct?

8 MS. KAU: Right.

9 THE COURT: Okay. Now, the statutes themselves
10:08AM 10 specifically prohibit certain individuals -- state officer, an
11 employee, operator, lessee or licensee of any state
12 property from -- and here's the critical part -- contract --
13 well, showing contract for, authorize, or allow the sale of any
14 firearm, et cetera. I want to focus on the verbs: contract
10:09AM 15 for, authorize, or allow.

16 Now, as I understand defendant's argument pertaining
17 to commercial speech, defendants say transactions themselves,
18 the mere exchange of money for a firearm, that's not speech,
19 commercial, or otherwise. It's simply a transaction. And
10:09AM 20 defendants rely on *Nordyke* -- I'll call it *Nordyke* 1997 for
21 that proposition; correct?

22 MS. KAU: Right, Your Honor.

23 THE COURT: And -- but where I'm going -- let me
24 play devil's advocate. How can defendants maintain that
10:10AM 25 position when the statutes themselves prevent contracting for,

1 authorizing, or allowing the sale of firearms? Doesn't
2 contracting for, authorizing, or allowing, perhaps each verb in
3 itself, doesn't each pertain to -- necessarily pertain to
4 speech?

10:10AM 5 MS. KAU: So vendors are allowed to advertise, but a
6 consummation of a sale is not allowed.

7 THE COURT: By the statutes?

8 MS. KAU: Yes. Effectively.

9 THE COURT: So the papers get into this a little
10:10AM 10 bit, and I think plaintiffs dispute this. I think plaintiffs
11 say that -- I'm paraphrasing, but my understanding of
12 plaintiff's argument was plaintiffs contacted the 32nd District
13 officials and tried to set up a gun show that did not involve
14 actual transactions. And they were put off and put off and put
10:11AM 15 off. So effectively, what you say is not true, that even
16 advertising is not permitted. But you dispute that?

17 MS. KAU: We do. We have spoken to our client, and
18 it has been made clear between the parties that they are able
19 to conduct a gun show as long as the laws are complied with.

10:11AM 20 THE COURT: When you say "law is complied with," no
21 transactions?

22 MS. KAU: Right.

23 THE COURT: You can -- gun culture discussions,
24 communications are fine, it's just no transactions?

10:11AM 25 MS. KAU: That's right.

1 THE COURT: How does that square with *Nordyke* 1997?
2 Doesn't *Nordyke* 1997 explicitly say that -- and again, I'm
3 going to paraphrase -- that communications around transactions
4 are necessarily commercial speech?

10:12AM 5 MS. KAU: So in that case, there was a lease
6 prohibiting actual sales, and the lease specifically prohibited
7 offering for sale. And that it also noted that as a threshold
8 question, that the transactions there is not prohibited outside
9 of that lease. So in contrast here, the laws don't prohibit
10:12AM 10 offering for sale, like an advertisement, and the laws do
11 preclude the transaction.

12 THE COURT: I should have highlighted it in my copy
13 of *Nordyke* 1997.

14 What page are you on when you referred to what it --
10:13AM 15 what that case holds?

16 MS. KAU: I'm just looking at my notes. Sorry.

17 THE COURT: Oh, okay. But the terms of that lease
18 didn't just prohibit sales, but also offering for sale. Okay.
19 I think I understand your argument.

10:14AM 20 One more question on this. Defendants' position
21 that the statutes at issue, if I may characterize it this way,
22 only pertain to -- only prohibit transactions and, therefore,
23 do not touch upon the speech. How do you account for the fact
24 that transactions -- transactions could never be completed at
10:14AM 25 gun shows because of the ten-day waiting period and the

1 requirement that one also -- a buyer always has to retrieve the
2 firearm, pick it up from a brick-and-mortar store?

3 So the transaction is never going to be completed at
4 a gun show. California is unlike, as I understand it, some
10:15AM 5 other states that have so-called gun show loopholes. That is
6 not the case here. So transactions never occur at gun shows.

7 So how do you account for that in taking the
8 position that all that is prohibited by these statutes is
9 transactions?

10:15AM 10 MS. KAU: I'm not sure I understand your question,
11 Your Honor.

12 THE COURT: Well, defendants take the position that
13 there's no speech prohibited by these statutes, and that is
14 because what is prohibited is not speech, but transactions;
10:15AM 15 right?

16 MS. KAU: Right.

17 THE COURT: Do I understand defendants' position so
18 far?

19 MS. KAU: Right.

10:15AM 20 THE COURT: How can that be the case? How could you
21 possibly be right in saying it is merely transactions that are
22 prohibited here? Given the fact that in California,
23 transactions could never be completed at a gun show because
24 California requires a ten-day waiting period, among other
10:16AM 25 things, a ten-day waiting period and the actual retrieval of

1 the firearm at a brick-and-mortar store?

2 MS. KAU: Well, it is well within the legislature's
3 discretion to address a problem that's -- for some reason at
4 gun shows there is a high risk of gun trafficking, even from
10:16AM 5 the recent apps report from the Department of Justice.

6 THE COURT: So you're talking about a policy
7 argument. And I have no doubt that the legislature was very
8 sincere in what it was attempting to accomplish. I don't know
9 that that is at issue here in terms of the sincerity or perhaps
10:16AM 10 even -- what's the word I'm looking for? -- significance of the
11 problem, no doubt. I mean, let's -- for the purposes of this
12 argument, I think that's conceded and agreed upon.

13 But the question is -- the question is more -- is
14 less about policy. It's more about the law and Supreme Court
10:17AM 15 jurisprudence on commercial speech. How could it be the case
16 that these -- how could you take the position that these
17 statutes merely prohibit transactions when the transaction is
18 never going to be done at a gun show? It could only be
19 ultimately completed, you know, later after a ten-day waiting
10:17AM 20 period and at a brick-and-mortar store.

21 MS. KAU: Well, if I'm understanding the question
22 correctly, the legislature can prohibit the initial offer and
23 acceptance, that consummation, that contract, if you will, on
24 state property. So even if there are subsequent actions that
10:18AM 25 have to be taking place to follow through, the legislature can

1 prohibit that offer and acceptance on its state property.

2 THE COURT: So you're saying there are multiple
3 elements to a transaction. Offer and acceptance are a couple
4 of them. And those two, for example, are prohibited at the gun
10:18AM 5 show by these statutes?

6 MS. KAU: That's right.

7 THE COURT: Okay. I think we touched upon this, but
8 what's presently in the record in terms of defendants'
9 willingness to contract with plaintiffs to -- so that gun shows
10:19AM 10 could be conducted where there are no transactions?

11 MS. KAU: We've submitted a declaration from the
12 district saying that it will allow and facilitate and
13 accommodate their events as long as all laws are complied with.

14 THE COURT: So -- and let's see. Whose declaration
10:19AM 15 was that?

16 MS. KAU: It is Document 2020-1, declaration of
17 Jennifer Olvera. 22- -- sorry -- 22-1.

18 THE COURT: So this is paragraph -- well, it's
19 really paragraph 10 of that declaration; correct? Ms. Olvera
10:21AM 20 is saying if contacted -- paraphrasing -- the district will
21 allow plaintiffs to conduct a gun show that does not involve
22 transactions?

23 MS. KAU: Yes, Your Honor.

24 THE COURT: Okay. But that hasn't happened yet?

10:21AM 25 MS. KAU: From what I understand, there has not been

1 a request to reserve the facilities and not allow the
2 transactions.

3 THE COURT: Okay. Let's go to Central Hudson test
4 for commercial speech. Let's assume, for the sake of these
10:21AM 5 questions, that these statutes prohibit commercial speech.
6 Well, let's say we're analyzing commercial speech. The first
7 step of the Central Hudson test is does the regulation concern
8 a lawful activity and speech that's not misleading. Again, I'm
9 paraphrasing. But that's basically the first step, is it not?

10:22AM 10 MS. KAU: Yes.

11 THE COURT: Okay. Now, the defendants say, "Well,
12 this speech does not concern a lawful activity because the
13 activity has been prohibited by these statutes."

14 Is that defendants' position?

10:22AM 15 MS. KAU: It is precluded by the statutes.

16 THE COURT: But isn't that circular? This activity
17 is prohibited because we said this activity is prohibited.
18 Aren't we analyzing whether or not it's a lawful activity?

19 MS. KAU: So in the Santa Clara case, it wasn't a
10:22AM 20 law precluding it. It was just a lease term. And here we have
21 state laws that do preclude the transaction.

22 THE COURT: Are you talking about *Nordyke* 2003?

23 MS. KAU: Yes.

24 THE COURT: What was the ultimate resolution of that
10:23AM 25 case?

1 MS. KAU: That case held that because this was just
2 a county lease, the transaction is lawful.

3 THE COURT: The regulation -- the lease --

4 MS. KAU: So the county lease regarding the use of
10:23AM 5 the property prohibited sales of firearms and offering for
6 sales of firearms on its county property. And so that case
7 noted that this is a lease. This isn't a law that is
8 disallowing the transactions. And so here it is not just a
9 lease, not just a contract, it is laws that are precluding this
10:24AM 10 activity.

11 THE COURT: What laws preclude the activity? The
12 ones that are at issue in the case; right?

13 MS. KAU: Right.

14 THE COURT: Okay. Are you saying that the law's
10:24AM 15 existence, that is, the existence of SB 264 and 915, the law's
16 existence is the source of its own constitutional validity?

17 MS. KAU: So commercial speech, there is protection
18 there, assuming that the underlying activity is lawful. And
19 here, it is significant that the laws have made that underlying
10:25AM 20 activity not allowed. So it is significant to that threshold
21 question.

22 THE COURT: It's these two statutes themselves --

23 MS. KAU: Right.

24 THE COURT: -- that render the activity unlawful
10:25AM 25 and, therefore, the activity fails the Central Hudson test for

1 commercial speech. Is that defendants' position?

2 MS. KAU: So to be clear, the laws don't necessarily
3 punish a vendor. It doesn't seem to read like that, but it
4 does make it not allowed. It does preclude the transaction,
10:25AM 5 which is different from just saying the Orange County
6 Fairgrounds has made its own policy, or the Orange County
7 Fairgrounds went into a contract because that is -- it has a
8 different effect than the law that is precluding certain
9 activity. So that is very relevant to that threshold question.

10:26AM 10 THE COURT: Okay. Now, I'm trying to understand the
11 relationship between a Central Hudson commercial speech
12 analysis and a limited public forum analysis. From defendants'
13 perspective -- well, I think plaintiffs argue that the
14 fairgrounds is not a -- not merely a limited public forum, it's
10:27AM 15 perhaps much broader than that. It's a public forum.

16 Defendants dispute that and -- but did defendants concede that
17 the fairgrounds is at least a limited public forum?

18 MS. KAU: Yes.

19 THE COURT: Okay. So how -- trying to understand
10:27AM 20 how to do the constitutional -- the First Amendment analysis
21 under Central Hudson test for commercial speech.

22 Now, again, I think plaintiffs contend that this is
23 not merely commercial speech. But put that aside, if we're
24 thinking about commercial speech here, what is the relationship
10:28AM 25 between the Central Hudson test and the limited public forum

1 analysis? That is, which do I do first? Which should the
2 Court do first? What if the regulation at issue, these
3 statutes, fail one but not the other? Help me with the
4 relationship.

10:28AM 5 MS. KAU: (No audible response.)

6 THE COURT: You want to come back to that one? You
7 want your colleague to answer it?

8 MS. KAU: So we would suggest that the Court analyze
9 under commercial speech first.

10:29AM 10 THE COURT: Okay.

11 MS. KAU: And under that analysis, it is highly
12 significant that it is laws themselves that are precluding an
13 activity rather than just an internal policy or a contract
14 between parties. And that makes it distinguishable from the
10:29AM 15 2003 case.

16 The Government has a substantial interest, as the
17 Court mentioned, in reducing firearms trafficking and to
18 increase public safety. And under this intermediate scrutiny
19 test under the Central Hudson, the regulation directly advances
10:30AM 20 that interest in targeting transactions on its property and is
21 not more extensive than necessary.

22 THE COURT: Well, let's say we're at that point of
23 the analysis. And let's say -- let's say plaintiffs clear the
24 hurdle of it being -- this speech being -- pertaining to a
10:30AM 25 lawful activity and it's not misleading. You establish that

1 the regulations advances substantial government interest. So
2 now we're at the last step of the Central Hudson test. You're
3 saying that these regulations are not broader than necessary to
4 serve that public -- that governmental interest; correct?

10:30AM 5 MS. KAU: That's right.

6 THE COURT: So the governmental interest is to
7 prohibit, among other things, the illicit -- the improper
8 gun-related transactions that occur at gun shows; is that
9 correct?

10:31AM 10 THE WITNESS: That's correct.

11 THE COURT: So tell me why these regulations are not
12 much broader than necessary to address that. Because these
13 regulations prohibit negotiations for transactions that, were
14 they conducted in a brick-and-mortar store, would be perfectly
10:31AM 15 acceptable, perfectly legal.

16 MS. KAU: That's right. And so the legislature is
17 trying to address illegal transactions at gun shows. And,
18 also, there is a significant amount of guns used at crimes
19 that, at one point, are traceable to gun shows. And so in
10:32AM 20 targeting that only, it created a law that addresses gun
21 transactions on state property which would affect gun shows.
22 It does not affect a brick-and-mortar store transactions. And
23 so it is targeted.

24 THE COURT: Are you saying that statistics have
10:32AM 25 shown that there are firearms used in crimes, and the sources

1 of those firearms were from transactions that were initiated at
2 gun shows, and that's a higher proportion than transactions
3 that were initiated at brick-and-mortar stores?

4 MS. KAU: No, we're not saying that it's a higher
10:32AM 5 proportion necessarily, but it is a significant amount that are
6 traceable to gun shows. And it might not necessarily be that a
7 criminal has gone to a gun show to get it, but for some reason,
8 at gun shows studies have shown that that's the point where the
9 guns become less regulated and move off the regulated sphere.

10:33AM 10 And so studies have shown that if you look through
11 the line of transactions, many guns used at crimes are
12 traceable to, at one point, having been transferred at a gun
13 show.

14 THE COURT: Legally transferred at a gun show, but
10:33AM 15 then subsequently illegally transferred?

16 MS. KAU: Both.

17 THE COURT: Okay. And what -- help me. Where in
18 the record are you referring to? Where is that analysis or
19 study?

10:33AM 20 MS. KAU: So the legislative histories cite to many
21 gun studies. And you can look at one of the attachments to the
22 motion for preliminary injunction.

23 THE COURT: One of plaintiffs' papers?

24 MS. KAU: Yes.

10:34AM 25 THE COURT: What page, please?

1 MS. KAU: It is -- so looking at the motion, it is
2 the Declaration of Anna M. Barvir, Exhibit 10.

3 THE COURT: Okay.

4 MS. KAU: And in addition --

10:34AM 5 THE COURT: So hold on. 20- -- it's 21-3?

6 MS. KAU: 21-2.

7 THE COURT: Okay. What page?

8 MS. KAU: 50.

9 THE COURT: Five-zero. Okay. That is Exhibit 8?

10:35AM 10 MS. KAU: Exhibit 10.

11 THE COURT: You're looking at the page numbers at
12 the bottom right; I was looking at the ECF page numbers.

13 MS. KAU: Oh, sorry.

14 THE COURT: I'm there. Exhibit 10. Ms. Barvir's
10:35AM 15 declaration in support of the motion, Exhibit 10, ECF 21-2, and
16 it's page -- starting on page 58 of 177 -- or 59, I guess, at
17 177 is the substantive exhibit.

18 So this is the senate committee -- California senate
19 committee on public safety. This is a report from that
10:36AM 20 committee; is that correct?

21 MS. KAU: Right.

22 THE COURT: And where is the -- where are the
23 statistics that you were talking about that show that
24 transactions of firearms at gun shows, as I understood your
10:36AM 25 argument, are involved in a great number of crimes?

1 MS. KAU: It starts at -- so I'm looking at the
2 pages at the top now, 61.

3 THE COURT: Uh-huh.

4 MS. KAU: And at the second half.

10:36AM 5 THE COURT: Yes.

6 MS. KAU: So that first full paragraph below the
7 "Need For This Bill." And it continues on to the next page.

8 THE COURT: So sort of in the middle of that
9 paragraph I'm reading:

10:37AM 10 "According to the Giffords Law Center to
11 prevent gun violence, gun shows often create the
12 opportunity to circumvent gun safety laws and are a
13 common venue for straw purchases and illegal gun
14 transfers."

10:37AM 15 Is that what you're referring to?

16 MS. KAU: Yes.

17 THE COURT: Okay.

18 MS. KAU: I also want to note that in addition to
19 studies cited by the legislative history here, there are -- the
10:37AM 20 Department of Justice apps report have found illegal
21 transactions occurring at gun shows as well. So...

22 THE COURT: So is it your argument that --

23 MS. KAU: I'm sorry, the next page, second paragraph
24 also discusses how:

10:38AM 25 "Gun shows rank second to corrupt dealers as

1 a source for illegally trafficked firearms. Though
2 violent criminals do not buy most of their guns
3 directly from gun shows, gun shows are the critical
4 moment in the chain of custody for many guns, the
10:38AM 5 point at which they move from the somewhat
6 regulated legal market to the shadowy,
7 no-questions-asked illegal market."

8 THE COURT: Okay. So you're citing articles and
9 studies that show that there are illegal transactions that
10:38AM 10 occur at gun shows or through gun shows or as a result of gun
11 shows; is that correct?

12 MS. KAU: Yes, Your Honor.

13 THE COURT: But those transactions are already
14 prohibited by other law. I mean, there's a whole body of law
10:39AM 15 that regulates how firearms transactions can take place in
16 California, put aside gun shows; correct?

17 MS. KAU: Correct. And the legislature is well
18 within its discretion to further address the concern.

19 THE COURT: The statutes at issue here would make
10:39AM 20 it -- it would be a violation of these statutes for individuals
21 to engage in what would otherwise be legal transactions for
22 firearms; correct?

23 MS. KAU: Well, the law is now -- preclude those
24 transactions on state property.

10:40AM 25 THE COURT: These two statutes?

1 MS. KAU: Correct.

2 THE COURT: Right. But for the statutes, the
3 transactions that are now prohibited by these statutes, they
4 would otherwise be permissible under California law; correct?

10:40AM 5 MS. KAU: Right. They have been permissible. But
6 the legislature now wants to address -- further address this
7 problem.

8 THE COURT: And you're saying these statutes
9 prohibit transactions but do not prohibit gun shows generally
10 if the gun shows do not involve transactions; correct?

11 MS. KAU: Correct.

12 THE COURT: So given that that's the case, how do
13 the -- how is it that these statutes are not broader than
14 necessary to address the problem? I mean, as I'm reading what
10:41AM 15 you've cited here from Ms. Barvir's declaration, it's the gun
16 shows themselves that supposedly lead to illegal transactions
17 and, I'm assuming, increased crime, and the things that the
18 legislature is legitimately trying to prevent; correct?

19 MS. KAU: So the laws strike that balance of
10:41AM 20 allowing the public to still gather and engage in free speech
21 rights while limiting the transactions on state property in
22 those kinds of events, and it allows the public to meet vendors
23 and purchase firearms at their local store.

24 THE COURT: Well, do these statutes permit that? So
10:41AM 25 let's say there was a gun show that you say is permissible

1 under these statutes where nobody is engaging in transactions.
2 I understood you just now to say that an individual could go to
3 that gun show, there could be a vendor there, and they could
4 talk all about a firearm, which one the individual may want to
10:42AM 5 purchase, why one would be better than another for the
6 individual's needs, desires, talk about a price. The only
7 thing that cannot happen is enter into the contract to buy.
8 The two of them, the individual and the vendor, would then have
9 to go over to the brick-and-mortar store and finish that deal;
10:42AM 10 is that correct?

11 MS. KAU: That's right.

12 THE COURT: And all that is permitted under these
13 statutes?

14 MS. KAU: Yes.

10:42AM 15 THE COURT: Well, how can that be the case given
16 that the statutes expressly prohibit an operator licensee --
17 lessee or licensee of the state property, that is, I assume,
18 the vendor, from contracting for, authorizing, or allowing the
19 sale of any firearm? Isn't what I just -- hypothetically just
10:43AM 20 gave you, aren't they contracting for?

21 MS. KAU: So actually, it is the district that is
22 not allowed to let transactions occur on its property.

23 THE COURT: Okay. Well, take my hypothetical. Are
24 you saying the vendor would have to be -- you're saying this
10:43AM 25 statute doesn't regulate what the vendor can and cannot do.

1 It's the District that gives the lease or the license to, say,
2 Crossroads. So that lease or license has -- will say, "Hey, no
3 contracting for firearms." And then Crossroads presumably
4 turns around and contracts with vendors to show up. But does
10:44AM 5 Crossroads have to say, "Oh, by the way, vendors, you can't
6 contract for firearms"?

7 You told me my hypothetical was a permissible --
8 would be permissible even under these statutes. How can that
9 be?

10:44AM 10 MS. KAU: So the District cannot allow vendors or a
11 promoter to allow contracts or sales of firearms, et cetera, on
12 this property. So when a member of the public meets a vendor
13 at the gun show, they cannot make an agreement to purchase a
14 firearm. They can discuss what is being sold in interest, but
10:44AM 15 any further discussion of offer and acceptance must be done
16 outside of the event.

17 THE COURT: Okay. So the individual can talk to the
18 vendor, and the individual can say, "Great. Thanks for all the
19 information. I want to buy firearm X, and I'm willing to pay Y
10:45AM 20 for it. Let's do this." The vendor has to say, "I'll stop.
21 We got to go over to my brick-and-mortar store to get this
22 done"?

23 MS. KAU: That's right.

24 THE COURT: And that would be permissible?

10:45AM 25 MS. KAU: That's right.

1 THE COURT: Okay. Backing up to the record and
2 Ms. --

3 Probably mispronouncing your name. Barvir?

4 MS. BARVIR: Barvir.

10:45AM 5 THE COURT: Backing up to Ms. Barvir's declaration
6 that we were looking at a moment ago, what's the link, if any,
7 between these statistics, these studies, that are cited in this
8 California senate committee on public safety report? What's
9 the linkage, if any, between them and Orange County

10:46AM 10 Fairgrounds?

11 MS. KAU: So these studies do seem to be broader on
12 gun shows and are not specific to Orange County Fairgrounds.

13 THE COURT: Is there any linkage to the Orange
14 County Fairgrounds in the record?

10:46AM 15 MS. KAU: You mean from these studies?

16 THE COURT: From these studies or -- is there
17 anything in the record that says, "Oh, wow. Orange County
18 Fairgrounds, that's where bad things are happening. And this
19 gun violence and these things that the legislature is
10:46AM 20 legitimately trying to address and prohibit, it's the Orange
21 County gun show that's the problem or is the source or is
22 involved somehow"?

23 MS. KAU: I don't believe there has been a specific
24 study about the Orange County Fairgrounds. However, the
10:47AM 25 legislative history does discuss illicit concerns from the

1 San Diego Fairgrounds. And, also, the more recent apps report
2 from the Department of Justice discuss gun shows in California
3 as well. And under immediate scrutiny, it doesn't require that
4 the studies have to be direct to the Orange County Fairgrounds.

10:47AM 5 It just needs to show that the government interest is
6 substantial.

7 And so the government interest is about reducing
8 firearms trafficking from gun shows, and the laws are only
9 targeting transactions at gun shows on state property. This is
10:48AM 10 not -- I'm sorry.

11 THE COURT: No, I'm sorry. I don't want to cut you
12 off. Please continue.

13 MS. KAU: Oh, yes. So we are under intermediate
14 scrutiny, not strict scrutiny.

10:48AM 15 And the *Nordyke* -- sorry. That's all. The *Nordyke*
16 2011 cases is irrelevant on that point.

17 THE COURT: Remind me about the outcome of that one.

18 MS. KAU: Can I get back to you on that, Your Honor?

19 THE COURT: Yes.

10:49AM 20 Let's go back to the relationship between the
21 Central Hudson commercial speech test and analysis and the
22 limited public forum analysis.

23 Is commercial speech afforded lesser protection in a
24 limited public forum?

10:49AM 25 MS. KAU: So the limited public forum test only

1 requires that laws are viewpoint neutral, and then also the
2 intermediate scrutiny analysis. So that covers commercial and
3 noncommercial speech.

4 THE COURT: Okay. In terms of neutral
10:50AM 5 applicability, have vendors or promoters, other than plaintiffs
6 or those associated with plaintiffs, have any of them been
7 impacted or affected by these two statutes at issue? I mean,
8 playing devil's advocate, how could these statutes have neutral
9 applicability if the only vendors, promoters that are affected
10:50AM 10 are gun show vendors?

11 MS. KAU: Because their speech is allowed, but the
12 transaction, which is not speech, can be regulated. So if the
13 sale of the gun is not speech or commercial speech, then the
14 regulation is not regulating speech or commercial speech.

10:51AM 15 THE COURT: Okay. But I don't think that answers my
16 question. Are there any other vendors that have been impacted?
17 I mean, are the car show vendors impacted? Are the -- I'm
18 making this up -- are the alcohol and beer shows -- whatever
19 other types of shows. I know it's in the record, but the other
10:51AM 20 types of shows, are any of those shows affected or impacted in
21 any way by these two statutes at issue?

22 MS. KAU: To the extent if the vendor wanted to sell
23 guns at a car show, then they would be impacted. But
24 importantly, guns are different from selling a car or selling
10:51AM 25 books. It is a very unique regulated industry. And so it

1 applies to not just B&L, but all vendors that seek to sell
2 firearms on state property. So in that way, it is viewpoint
3 neutral.

4 Because it's, first of all, not regulating speech.

10:52AM 5 It's not regulating commercial speech. And it would apply to
6 all parties seeking to sell guns on state property. And
7 vendors not at gun shows are not impacted. Or vendors, once
8 they leave state property and conduct the transaction at their
9 brick-and-mortar stores, they are not impacted. And it is
10:52AM 10 reasonable, in light of the forum, because it still allows the
11 public to gather and engage in speech, and it only targets
12 transactions on state property.

13 THE COURT: Just now you said it allows the public
14 to gather and engage in speech. So the State is not seeking to
10:53AM 15 quell or quench so-called gun culture speech.

16 MS. KAU: That's right.

17 THE COURT: So long as it does not involve a
18 transaction; is that correct?

19 MS. KAU: That's right. The Ninth Circuit has held
10:53AM 20 that the exchange of money for a gun is not speech.

21 THE COURT: That's *Nordyke* 2007; right?

22 MS. KAU: 3, Santa Clara.

23 THE COURT: But 1997.

24 MS. KAU: Yes.

10:53AM 25 THE COURT: I think I was -- I understood you to be

1 quoting or referring to *Nordyke* 1997; am I right?

2 MS. KAU: Right.

3 THE COURT: Okay. Let's turn to the Second

4 Amendment analysis. The first step in the *Bruen* analysis

10:54AM 5 asks -- I'm going to paraphrase -- does the regulation restrict

6 an individual's Second Amendment rights, the rights expressly

7 articulated in the Second Amendment? And is it the defendants'

8 position that Second Amendment rights are not impacted or

9 affected or restricted by these regulations, these statutes at

10:54AM 10 issue? Because one never has the right to -- the right to

11 transact in firearms is not covered by the Second Amendment; is

12 that right? Am I understanding that argument correctly?

13 MS. KAU: Excuse me. The Second Amendment does not

14 encompass a right to acquire arms in a specific location. And

10:55AM 15 so in that context when there are 1,610 firearms dealers across

16 the state, and six in the same ZIP code as the fairgrounds, the

17 Second Amendment right to acquire firearms is not implicated

18 here. And to add on to that, gun shows occur several weekends

19 in a year, whereas brick-and-mortar stores, they hold their

10:55AM 20 regular hours.

21 THE COURT: Are there any other gun shows on -- that

22 have -- are we only talking about the OC Fairgrounds in terms

23 of gun shows in Orange County? The fairgrounds in Costa Mesa?

24 MS. KAU: Yes. So 264 is about the Orange County

10:55AM 25 Fairgrounds.

1 THE COURT: But are there any other fairgrounds --
2 are there any other -- put aside fairgrounds, are there any
3 other state properties in Orange County where gun shows have
4 been hosted or have been sought to be hosted?

10:56AM 5 MS. KAU: I don't think so, Your Honor. I have not
6 done specifically a search on that.

7 THE COURT: What's the closest other state property
8 where gun shows have been hosted or have been sought to be
9 hosted? Is it down in Del Mar?

10:56AM 10 MS. KAU: There is one in Del Mar, yes. I'm not
11 sure specifically mileagewise.

12 THE COURT: What if you go north or east? How about
13 the Inland Empire, L.A.? What are the gun shows up there?

14 MS. KAU: There's that one in San Bernardino.

10:56AM 15 THE COURT: Is that the closest, those directions,
16 nonsouth?

17 MS. KAU: That is my guess. I have not looked
18 closely at this.

19 THE COURT: Are there any private venues in
10:57AM 20 Orange County that host or have sought to host gun shows? I'm
21 not talking about brick-and-mortar stores, I'm talking about
22 gun shows.

23 MS. KAU: Not that I know of.

24 THE COURT: So I told you at the very beginning, I
10:57AM 25 appreciated the -- all of the supplemental briefing. What is

1 the -- assuming we get to the second step of *Bruen*, what's the
2 best historical analog to these regulations at issue?

3 MS. KAU: So first there is no longstanding
4 tradition that firearms dealers can sell wherever they want
10:57AM 5 especially not on state property. That has not been found
6 historically.

7 Second, the laws are consistent with the
8 well-established right to control one's own property and the
9 tapestry of laws regulating firearms and ammunition for public
10:58AM 10 safety, including regulations on gunpowder, shooting galleries,
11 sales locations, factory locations, preventing firearms
12 trafficking, and sensitive places.

13 THE COURT: Okay. Let me turn to -- what's the
14 current status of those San Diego cases? That was
10:58AM 15 Judge Bencivengo's case that involved the moratorium where she
16 granted a preliminary injunction; right? And then there was
17 Judge Battaglia's case, recently last August, where he -- it
18 was procedurally a little bit different. I think it was a
19 motion to dismiss. But he -- his order there, I think, found
10:59AM 20 that AB -- the regulation at issue there -- I don't have it
21 right in front of me.

22 MS. KAU: 893.

23 THE COURT: Thank you.

24 -- 893, he found that that did not implicate
10:59AM 25 commercial speech; right?

1 My question is what's the status of each of those
2 two cases?

3 MS. KAU: In the B&L parallel case about 893, the
4 Court granted defendants' motion to dismiss the First Amended
10:59AM 5 Complaint. And that includes the First Amendment and Second
6 Amendment.

7 THE COURT: And then did plaintiff choose not to
8 amend and the case was over? Is that what happened?

9 MS. KAU: Yes. That's right.

10:59AM 10 THE COURT: So that case is completely done?

11 MS. KAU: There's no judgment yet, but the status is
12 that the Court dismissed the First Amended Complaint. And I
13 believe plaintiffs have noted that they will not amend.

14 THE COURT: But there's no judgment. So there may
11:00AM 15 be an appeal?

16 MS. KAU: That's --

17 THE COURT: That's a question for them?

18 MS. KAU: Yeah.

19 THE COURT: And then the -- that earlier case, that
11:00AM 20 was a B&L against the 22nd District Agricultural Association
21 and many other defendants. What's the procedural status of
22 that one?

23 MS. KAU: I don't know, Your Honor.

24 THE COURT: Okay. All right. Counsel, thank you
11:00AM 25 very much. Like I said, I'll give you a chance to make any

1 additional argument that you'd like to, but let me turn to
2 plaintiffs' counsel.

3 MS. KAU: Thank you, Your Honor.

4 THE COURT: Thank you.

11:01AM 5 Good morning again, Ms. Barvir.

6 MS. BARVIR: Good morning, Your Honor.

7 THE COURT: I'll try to pronounce it correctly.

8 MS. BARVIR: You're doing great.

9 THE COURT: Okay. Well, let's start with where I
11:01AM 10 left off. Judge Battaglia's order last August in the B&L
11 against 22nd Association District, there he -- he pretty
12 expressly held that AB 893, which seems very similar, if not
13 identical, for practical purposes, to the statute -- statutes
14 at issue here, he found that there was -- that that statute did
11:02AM 15 not implicate commercial speech relying on -- well, the *Nordyke*
16 line of cases. How do you overcome that here?

17 MS. BARVIR: Overcome the *Nordyke* line of cases or
18 overcome Judge Battaglia's ruling?

19 THE COURT: His ruling, I understand, is not
11:02AM 20 precedential, of course. But his reasoning, why is his
21 reasoning not correct?

22 MS. BARVIR: With respect, we disagree with
23 Judge Battaglia's reasoning on the First Amendment speech
24 analysis from start to finish, but especially with regard to
11:02AM 25 the commercial speech analysis because it creates this, I

1 think, false nuance of a difference between a transaction and
2 the speech that surrounds it.

3 And I think that Your Honor's questioning of my
4 colleague from the DOJ, she got very clear in saying speech was
11:03AM 5 implicated. Offer and acceptance is necessarily speech. Even
6 if words aren't used, there's expressive contact that shows "I
7 want to buy this. I'm willing to offer you \$500 for it. I'll
8 take it." That is speech. The money -- sorry, Your Honor.

9 THE COURT: I'm sorry. Forgive me for interrupting
11:03AM 10 you. I want to hear the rest, but on that point, I also
11 understood Ms. Kau --

12 Am I pronouncing your name correctly?

13 MS. KAU: Yes, Your Honor.

14 THE COURT: Ms. Kau also -- understood her to say
11:03AM 15 that under my hypothetical with the individual and the vendor,
16 they can do everything short of the transaction. They can talk
17 all about it, get it all set up. They just simply -- I'm
18 paraphrasing what I understood her to say. There would not be
19 a -- an enforceable contract that could be completed at the
11:04AM 20 fairgrounds. They would have to step out, go over to the
21 brick-and-mortar store, and then finish that up. But they
22 could talk about it all they wanted, negotiate it. That's all
23 perfectly fine.

24 MS. BARVIR: That's an interesting answer to
11:04AM 25 Your Honor's hypothetical because earlier in her remarks,

1 counsel did say that offer and acceptance would be -- would
2 be -- would not be permissible under the statute.

3 THE COURT: I don't think she was saying -- I think
4 she was saying the same thing. I think at the end there where
11:04AM 5 she -- "conceded" is the right word -- but agreed that there
6 could be all kinds of communications, discussions about the
7 transaction, there just couldn't be -- what I understood her
8 position to be, they could not create an enforceable contract.
9 There could not be offer and acceptance.

11:05AM 10 I guess it would be possible for the two of them,
11 the individual and the vendor, to step over to the
12 brick-and-mortar store and say, "Great, I want that deal we
13 just talked about," and the vendor could say, "Oh, no, no.
14 That deal isn't good here. You're going to have to pay twice
11:05AM 15 as much now. We never had a valid contract." That's what I
16 understood her to say. There was no offer and acceptance at
17 the fairgrounds.

18 MS. BARVIR: Right. I'm not sure how the statute is
19 clear about that. Just says sales can't happen. I don't
11:05AM 20 know -- I think that that kind of goes to how would this even
21 be enforceable against these folks, these vendors. How are
22 they to know what constitutes the okay speech versus the speech
23 that that is what -- that now is a transaction. And I think
24 that that goes to -- that goes to -- and I think a reason that
11:05AM 25 that becomes really unclear is something Your Honor was getting

1 at earlier, which is the fact that this law, you would think,
2 has to do something; right?

3 And the law, as it stands under the gun show act,
4 already says that the transaction, the actual giving of money
11:06AM 5 and the handing over the firearm cannot happen at gun shows for
6 any purpose, like it can only happen at least ten days later
7 after the background check is handled, and it has to happen at
8 the brick and mortar.

9 So if it doesn't -- if it doesn't affect the kind of
11:06AM 10 speech that we're talking about here, the "I want to buy this
11 from you." "Okay, let's get that paperwork started, but we
12 have to finish it later," if it doesn't ban that, then what
13 does it ban? I think that's the question that my clients are
14 curious to have answered.

11:06AM 15 Can we get it cleared up, that they're allowed to do
16 that? I don't know. I don't know that counsel standing here
17 today can bind the State or anyone that would be enforcing this
18 law against my clients, I don't think that what she says here
19 can say that that's actually true, can make sure that it
11:06AM 20 doesn't get enforced against them, and that the 32nd District
21 would allow those kinds of speeches to happen because that
22 creates liability for the District.

23 THE COURT: I talked a little bit about Ms. Kau,
24 what the record reveals in terms of gun shows that don't
11:07AM 25 involve transactions. I understand plaintiffs to take the

1 position that plaintiffs tried to negotiate to do that,
2 notwithstanding the fact that it probably would not have been
3 profitable. They tried to negotiate for that and they got put
4 off, whereas Ms. Kau says that the declaration that she pointed
11:07AM 5 to, which I failed to note, but the one she pointed to, I think
6 somebody from the 32nd District said, "Oh no, we're happy to
7 have those negotiations."

8 Does that not indicate we need more factual
9 development? How can I rule on that when that seems up in the
11:08AM 10 air?

11 MS. BARVIR: Because it's not up in the air,
12 Your Honor. If you look at Ms. Olvera's declaration that the
13 DOJ pointed to, she says, "If we were contacted, we'd do this."
14 However, that -- but then she goes no further to say, "Hey, we
11:08AM 15 actually were contacted."

16 And what Ms. Tracy Olcott says in her declaration,
17 which is Docket Number 21-5, paragraphs 6, 7, and 9,
18 Ms. Olcott, who is the producer for Crossroads, explains that
19 she had both, in late 2021, sought to get her contract dates
11:08AM 20 for 2022 before the 32nd District Agricultural Association to
21 be approved in advance of this law taking effect. The District
22 refused to put those contracts on their calendar, put it off
23 until January when they could deny them, which they did.

24 And in December, it's not clear from the declaration
11:09AM 25 exactly which dates she -- Ms. Olcott reached out to the DAA,

1 but she says "We offered to host, I guess, gun show-and-tell,"
2 because it wouldn't be their business model of a gun show to
3 have transactions happen.

4 THE COURT: Did you just coin "gun show-and-tell"?

11:09AM 5 MS. BARVIR: I think I did. We tend to call it
6 that.

7 THE COURT: Was that in your papers?

8 MS. BARVIR: No, sir.

9 THE COURT: That's the first time I'm hearing that.
11:09AM 10 So we'll use that, gun show-and-tell.

11 MS. BARVIR: Gun show-and-tell.

12 She -- they did offer to -- because it is correct,
13 what Ms. Olvera says if we reach out to -- we would allow it to
14 happen as long as the laws are abided by. Ms. Tracy Olcott
11:09AM 15 responded, "Yeah, okay, we'll do that. Even though that's not
16 going to be profitable for us, we'll try it to mitigate our
17 damages while we have our MPI heard." But nothing. There had
18 been crickets, crickets, crickets. And there were repeated
19 attempts. Perhaps she could have worked harder maybe, more and
11:10AM 20 more emails, but got nowhere. Up to today, there are still no
21 gun shows in Orange County. And B&L has them not at Del Mar or
22 anywhere in the state.

23 With regard to -- I think Your Honor was asking
24 questions about other locations for gun shows. My clients were
11:10AM 25 trying to find private places because the State has not

1 overturned or repealed the gun show. So gun shows can
2 apparently still happen on private properties.

3 Unfortunately -- excuse me -- a couple things are
4 happening there. When the State kind of artificially limits
11:10AM 5 where these things can happen by taking away this public
6 avenue, the private properties can charge whatever, and that
7 makes it difficult. But more than that, these fairgrounds kind
8 of are a very unique type of venue. They're very much larger
9 than any type of private venue. There isn't something similar
11:11AM 10 that can accommodate my client's business model.

11 THE COURT: So it affects the market.

12 MS. BARVIR: Correct.

13 THE COURT: Let's turn to the Central Hudson test in
14 the lawful prong. You heard my questions to Ms. Kau about the
11:11AM 15 circularity of defendants' reasoning. I think you may have
16 highlighted that in your papers; right?

17 MS. BARVIR: Yes, Your Honor, I think that's right.

18 THE COURT: But the -- let me play devil's advocate
19 with you. To determine whether or not what is prohibited by
11:11AM 20 the statutes at issue is lawful activity, do we have to do a
21 *Bruen* analysis first? That is, do plaintiffs need to show --
22 to satisfy the Central Hudson test for commercial speech? Do
23 they have to show that these regulations really restrict
24 someone's First Amendment rights? And --

11:12AM 25 MS. BARVIR: You mean Second Amendment rights?

1 THE COURT: Yes. I meant Second Amendment rights.
2 That is, do plaintiffs need to show that because of these
3 regulations, individuals who want to engage in transactions
4 cannot, that their Second Amendment rights is sort of
11:12AM 5 derivative rights to buy and sell arms? You have the right
6 under the Second Amendment to bear them, to keep and bear them.
7 But to keep and bear them, you got to own them. To own them,
8 you got to buy them presumably or be gifted them. And so
9 there's a derivative Second Amendment right to transact in
11:13AM 10 arms; right?

11 MS. BARVIR: Correct.

12 THE COURT: Is that derivative right to transact in
13 arms, is that implicated? Is that harmed in any way by these
14 regulations? If there are lots of -- sorry for the long and
11:13AM 15 winding question. But if there are lots of ways for
16 individuals to transact in arms, lots of gun and --
17 brick-and-mortar stores nearby so it's not like this could --
18 these transactions could only be initiated at gun shows, is
19 there any restriction of anyone's Second Amendment rights as a
11:13AM 20 result of these restrictions, these statutes? And if so, does
21 that implicate the lawful activity piece of the Central Hudson
22 test? That was probably the longest --

23 MS. BARVIR: It was a long question there. I'm
24 going to unpack each of them. And I think I'm going to start
11:14AM 25 with explaining that while -- I think Central Hudson's analysis

1 about the lawful speech can be handled in two ways. And one
2 would, of course, be to find that, well, the law that would bar
3 these transactions, it violates the Second Amendment because
4 there is an intended right to buy and sell firearms that is
11:14AM 5 necessary to the right to keep and bear arms under the Second.
6 That would be one way to say, well, you can't use the law at --
7 these challenge laws themselves to then establish their own --
8 the First Amendment constitutionality because they violate the
9 Second. And so those laws would have to go away and then
11:14AM 10 restrict -- and so there's no underlying unlawful sale to make
11 speech -- commercial speech that would be able to be restricted
12 under the commercial speech doctrine Central Hudson test.

13 But you don't have to get there, I think, because
14 sales of lawful firearms in California aren't illegal, only
11:15AM 15 this very specific type are. To say that we can pass a law
16 that makes only -- makes lawful -- otherwise lawful
17 transactions, really only unlawful in this one very specific
18 place, I think that if -- if firearms transactions were
19 illegal, obviously all of them, that would obviously violate
11:15AM 20 the Second. But it might support like a statement that you
21 can't have speech about unlawful sales.

22 If we're talking -- if the statutes were to say
23 something about restricting unlawful sales and so having
24 conversations, for instance, to try and overcome, I don't know,
11:15AM 25 maybe restrictions on sales of machine guns at the Orange

1 County Fairgrounds, well, then, maybe you're talking about
2 unlawful sales that the statutes can restrict the speech
3 regarding, but not all sales which would incorporate -- would
4 include lawful sales. Does that make sense?

11:16AM 5 THE COURT: Yes. Yes, but let me back up a bit.
6 You said we don't even need to get there. But let's say my
7 analysis leads me to we do need to get there. Can
8 plaintiffs -- do I need to have more evidence about the impact
9 of these regulations in terms of individuals' ability to
10 transact in firearms?

11 MS. BARVIR: Absolutely not, Your Honor. That would
12 be reliance on *Teixeira* which is dead law after *Bruen*. In
13 talking about -- in making the record about how -- basically
14 how severe a burden on pulling sales off of public property,
11:16AM 15 just because you can maybe buy similar firearms, and that
16 itself is hard to say because gun shows have a very -- are a
17 very specific market. A lot of times folks sell things that --
18 excuse me -- that they may not be able to stock in Turner's
19 because that is going to be something that's more commercially
11:17AM 20 wanted. So you might find more rare items, the antiques and
21 such. But setting that aside --

22 THE COURT: Did you use the word "Turner's"?

23 MS. BARVIR: Yes. Sorry. Turner's is a large-scale
24 sporting goods store.

11:17AM 25 THE COURT: Okay.

1 MS. BARVIR: So bigger brick-and-mortars might sell
2 things that are really common to sell because that's better for
3 their business as opposed to a gun show where people might be
4 looking for more different types of ammunition or whatever.

11:17AM 5 In any event, that was kind of getting off onto a
6 tangent, because what I'm trying to say here is that the
7 existence of other places to buy firearms is a severity of the
8 burden test.

9 The first step of *Bruen* talks about whether or
11:17AM 10 not -- excuse me -- contact is covered by the plain text of the
11 Second Amendment. There's no talk about how well you can
12 exercise it somewhere else. Fundamental rights just don't work
13 that way anyway. But *Bruen* specifically tells us that the
14 Government takes the burden of proving its historical tradition
11:18AM 15 as soon as -- as soon as the Court finds that the Second
16 Amendment's plain text is implicated.

17 So when you're talking about a restriction on a sale
18 of firearms or ammunition, Ninth Circuit already tells us in
19 *Duncan*, in *Jackson*, in other cases, in *Teixeira* itself -- maybe
11:18AM 20 that was the panel decision that got en banc, but those cases
21 already tell us that we do have a right to acquire firearms,
22 ammunition, and necessary parts.

23 So I think that it's already an open-shut case that
24 the Second Amendment is, at a minimum, implicated. So now the
11:18AM 25 Government needs to prove an enduring American tradition of

1 distinctly similar historical laws.

2 THE COURT: Let me ask -- let me test your
3 position that -- I understood your position to be any
4 regulation that impedes one's Second Amendment right to keep
11:19AM 5 and bear arms satisfies Step 1 of *Bruen*. And then we go to
6 Step 2; right?

7 MS. BARVIR: I think that's right, Your Honor.

8 THE COURT: So let's say there's a bizarre
9 regulation that said, "Yeah, you get to keep and bear arms in
11:19AM 10 this state, but not if you're wearing plaid. You're wearing
11 plaid, sorry, can't keep and bear arms." Now, it would seem
12 like if you want to keep and bear arms, just don't wear plaid.
13 Doesn't seem like that big of a deal.

14 Would that be -- would that regulation pass muster
11:19AM 15 under Step -- where does this fall in Step 1?

16 MS. BARVIR: If it's a ban on the certain group of
17 people, just because I'm wearing plaid or not, or if they are
18 plaid, that is a restriction on their ability to possess
19 firearms, you know, protected arms, that passes half of the
11:20AM 20 first step. And it probably would -- wouldn't survive the
21 historical analysis either because it's a ban on possession.

22 THE COURT: Let's put that aside. Let's put Step 2
23 aside. Just do Step 1. So is it your position that the
24 regulation says you cannot keep and bear arms in this state if
11:20AM 25 you wear plaid; implicates, restrains an individual's Second

1 Amendment rights such that we -- such that we then go to
2 Step 2?

3 MS. BARVIR: 100 percent. Probably also violates
4 the First Amendment because we have a right to express
11:20AM 5 ourselves in what we wear.

6 THE COURT: And putting that aside -- and I
7 deliberately chose plaid because I didn't want to implicate
8 somebody's race or gender or anything like that. Trying to
9 pick something bizarre.

11:20AM 10 MS. BARVIR: I understand.

11 THE COURT: Anyway, so your answer is yes?

12 MS. BARVIR: Definitely.

13 THE COURT: Okay. What's the best case that I can
14 look at that helps me understand whether or not a seemingly
11:21AM 15 benign restriction, like the plaid restriction, violates Step 1
16 of the *Bruen* test, such that you need to go to Step 2?

17 MS. BARVIR: Post-*Bruen*, I don't think you're going
18 to find someone like that, because I think most courts that
19 have taken these cases since *Bruen* came down last June,
11:21AM 20 understand that that first step is almost -- it's almost a
21 hypothetical question. I mean, you might -- there may be a
22 situation, for instance, like local business licensing that
23 impacts firearms businesses where they can -- maybe you have to
24 have a license. Maybe that would be something that's not --
11:21AM 25 that's something that applies to everyone. But there really

1 aren't cases like that.

2 Perhaps a similar sort of benign -- I don't know of
3 a case like that. You've got current -- the most recently we
4 have *Boland*, which had to deal with California's handgun roster
11:22AM 5 requiring -- that had minimum -- excuse me -- minimum -- the
6 State called them safety standards for firearms, but these were
7 chamber load indicators, magazine disconnect mechanisms, and
8 microstamping. And the Court there found that these types of
9 requirements -- you can call them safety or can you call them
11:22AM 10 plaid requirements, they impact the ability to have firearms.

11 THE COURT: Talking about Judge Carney's case?

12 MS. BARVIR: Yes. And I think there was a similar
13 companion case in the Southern District called *Renna* found the
14 same thing.

11:22AM 15 THE COURT: The Ninth Circuit recently did
16 something --

17 MS. BARVIR: Did something.

18 THE COURT: -- pertaining to those two District
19 Court decisions; is that correct?

11:22AM 20 MS. BARVIR: Not *Renna*. I think the Court -- the
21 District Court in *Renna* I think issued a stay on its own -- on
22 its injunction. In *Boland*, the State immediately sought an
23 emergency stay from the Ninth Circuit of the injunction, which
24 not entirely surprising that that would happen.

11:23AM 25 THE COURT: But just help me understand

1 procedurally. Both the *Boland* case -- in the *Boland* case,
2 Judge Carney issued an injunction preventing the State from
3 enforcing that particular regulation; correct?

4 MS. BARVIR: The -- all the chamber load indicator,
11:23AM 5 magazine disconnect, and microstamping, yes. The State only
6 sought to enjoin or stay the injunction of the magazine
7 disconnect mechanism and CLI and allow the microstamping
8 injunction to take effect, as I understand it.

9 THE COURT: Okay. Where I'm going with this is the
11:24AM 10 Ninth Circuit's emergency stay of a piece of the *Boland*
11 injunction doesn't affect what we're talking about here;
12 correct?

13 MS. BARVIR: I do not think it does. That is more
14 of a -- I think a stopgap measure to prevent in case that it
11:24AM 15 gets overturned on appeal so that the DOJ isn't dealing with
16 new -- you know, an influx of new guns coming into the roster
17 in the meantime. It's one of those can of worms you can't put
18 the lid back on. And so I don't think it changes anything
19 about the analysis of whether or not the Second Amendment is
11:24AM 20 implicated by those kinds of laws.

21 THE COURT: You heard me ask the -- ask Ms. Kau the
22 question about the relationship between Central Hudson test
23 involving commercial speech and the limited forum analysis. I
24 didn't articulate it very well because I'm not sure I know
11:25AM 25 precisely what I'm asking. I'm just trying to understand the

1 contours and the relationship between the two doctrines. Can
2 you flesh it out for me at all?

3 MS. BARVIR: It -- I think that you're having a hard
4 time coming with the question because it is a kind of a
11:25AM 5 confusing analysis. A lot of times when you see courts getting
6 into the commercial speech doctrine, it's because it's really
7 clear that it's a commercial speech case. And they don't talk
8 a whole lot oftentimes. They don't talk a whole lot about
9 those kind of threshold questions of whether or not speech is
11:25AM 10 implicated at all and whether or not it's in a limited or
11 public forum. And so a lot of times they dive just right into
12 Central Hudson.

13 But I think I would agree with opposing counsel in
14 saying that the limited public forum analysis doesn't really
11:25AM 15 change if it's a commercial speech or not -- or an ideological
16 speech question because the test is as they are. There's no --
17 if it's limited public forum or not, the test for Central
18 Hudson is the test for Central Hudson. That said, there is --

19 THE COURT: I want to hear that, but let me make
11:26AM 20 sure I'm tracking you so far.

21 The parties -- the lowest common denominator here in
22 terms of the parties -- in terms of the type of forum we have
23 here, public versus nonpublic versus all the different flavors,
24 Ms. Kau conceded that this is at least a limited public forum.
11:26AM 25 And, of course, plaintiffs agree that this is at least a

1 limited public forum. You think it's much more, and they think
2 it's --

3 MS. BARVIR: Plaintiffs' briefing does say it's, at
4 minimum, a designated public forum. But the tests aren't
11:26AM 5 really different regardless.

6 THE COURT: So as I understand it, Ninth Circuit
7 limited public forum is a subset or a type of designated public
8 forum; is that correct?

9 MS. BARVIR: I think that's right.

10 THE COURT: But the bottom line is because everybody
11 agrees we can talk for these purposes as if the fairgrounds --
12 the State-owned spaces that we're talking about here, are at
13 least a limited public forum, the analysis we need to do is the
14 commercial speech analysis under Central Hudson; is that
11:27AM 15 correct?

16 MS. BARVIR: Plaintiffs do not concede that,
17 Your Honor, because --

18 THE COURT: Okay. Tell me plaintiffs' position.

19 MS. BARVIR: Plaintiffs' position is that it can be
11:27AM 20 either way. We think that commercial speech is not the only
21 speech that's affected here. Because for all intents and
22 purposes and the very -- the whole reason for the bill was to
23 ban gun shows, and they have effectively been banned. They
24 have not happened since 2021.

11:27AM 25 ///

1 **(Reporter requests clarification**
2 **for the record.)**

3 MS. BARVIR: I'm sorry.

4 They've not happened since 2021. All of the speech
11:27AM 5 that happens at these events has been banned effectively.

6 THE COURT: So you don't concede that this is merely
7 commercial speech?

8 MS. BARVIR: That's correct.

9 THE COURT: You believe that this is the highest
11:28AM 10 level of protected political speech?

11 MS. BARVIR: That's correct, Your Honor. Many of
12 the vendors at these places, my client, California Rifle &
13 Pistol Association, my colleague's client's Second Amendment
14 foundation, these are nonprofit organizations who spread progun
11:28AM 15 Second Amendment right to self-defense messages at gun shows,
16 and they've been shut out as well because they can't
17 effectively have these events.

18 I think it's really important to understand that the
19 model of a gun show relies on these transactions. We can sit
11:28AM 20 here and tit for tat about what point does it become a
21 transaction? At what point is it speech versus not speech in
22 that commercial transaction? When it comes down to it, if a
23 vendor cannot make money at an event, it will not pay money to
24 be at the event. It will continue its business as it does at
11:29AM 25 its brick-and-mortar stores. And if they're not there to be

1 the financial foothold of this event, the event can't happen.

2 And the State knew that when it passed the bill.

3 And so what happens is they have to take their balls
4 and go home, and CRPA is left out in the cold unable to go to
11:29AM 5 gun shows to spread a message to encourage people to join their
6 nonprofit membership organization.

7 THE COURT: So you're saying -- well, I think you
8 said it -- I want to confirm you said a number of things here.
9 I heard you say a "gun show-and-tell," if I can adopt that --

11:29AM 10 MS. BARVIR: You may.

11 THE COURT: -- clever moniker. A gun show-and-tell
12 implicates the highest most protected level of speech.

13 MS. BARVIR: It would if some vendors come to a gun
14 show to show off their really cool old historic curios and
11:30AM 15 relics. They might show them on a table and people are going
16 to look at them. And they're not for sale. They're just to
17 see, show-and-tell, talk about them. But the organizations
18 that come, that really allow the business to happen are the
19 sale -- the sellers of firearms, ammunition, and parts.

11:30AM 20 THE COURT: Where I was going was I understood the
21 defendants to concede that a gun show-and-tell is not
22 prohibited by these statutes at issue. Put aside whether the
23 representation made today comports with the record. I know you
24 dispute that. Put that aside for the moment. The defendants
11:30AM 25 concede that a gun show-and-tell is perfectly fine. The

1 defendants concede that. Plaintiffs say, well, a gun
2 show-and-tell is not economically feasible, a mere gun
3 show-and-tell. There needs to be a full-blown gun show.

4 But as far as that analysis goes, why is that the
11:31AM 5 State's problem?

6 MS. BARVIR: Because that's why they passed it. The
7 legislative record is really clear that that's why they passed
8 it.

9 THE COURT: Do we need to get into legislative
11:31AM 10 intent to address those issues?

11 MS. BARVIR: We could, and the record is full of
12 legislative intent about that. The documents that are attached
13 to plaintiffs' request for judicial notice and my declaration
14 as well as statements made to the media and to the district
11:31AM 15 associations themselves, the sponsor of the bill, Senator Min
16 wrote to the defendant District -- 32nd DAA and told them
17 "We've banned gun shows. You can't adopt these contracts. And
18 if you do, I'll sue you."

19 THE COURT: If the Court were to engage in a peer
11:31AM 20 textualist analysis, the Court -- this court or a court would
21 not get into all of that legislative history and what
22 Senator Min wrote and said and did in -- and what motivated the
23 bill. We look merely at the -- a court would look merely at
24 the text of the statute.

11:32AM 25 So my question is, to get into this -- what

1 defendants are telling me now is that a gun show-and-tell is
2 perfectly fine. If that's the case, if I issue an injunction
3 here, it's to permit the full-blown gun show?

4 MS. BARVIR: Uh-huh.

11:32AM 5 THE COURT: But the gun show-and-tell, if a gun
6 show-and-tell is permissible -- again, I'm struggling with
7 where the First Amendment starts and stops and commercial
8 speech versus political speech. Defendants are telling me that
9 plaintiffs' First Amendment rights are not implicated because
11:33AM 10 plaintiffs can have a gun show-and-tell.

11 So I guess where I am is don't we have to do a
12 commercial speech analysis? If what plaintiffs are asking me
13 to enjoin is the statute to the extent that it prohibits
14 full-blown gun shows, don't I have to get into commercial
11:33AM 15 speech?

16 MS. BARVIR: Sure, but the ruling is -- I mean, the
17 analysis is going to end the same -- the conclusion is the
18 same. They can't meet intermediate scrutiny.

19 I really don't -- but I still do not see how it's
11:33AM 20 possible to say the peer speech isn't implicated. The
21 understanding is that if you can't afford to have -- you know,
22 you can't financially have this, it's not the business model of
23 gun shows. The gun shows goes away, and so the peer speech
24 goes away too. I don't know how you can divorce the two.

11:34AM 25 But if we're going to go down the lane and get to

1 commercial speech, the state has not established that the
2 challenge statutes meet intermediate scrutiny either.

3 THE COURT: Your point is you still win --

4 MS. BARVIR: Yes, sir.

11:34AM 5 THE COURT: -- if we do commercial speech analysis?

6 MS. BARVIR: Yes, sir.

7 THE COURT: Okay.

8 MS. BARVIR: And I think I want to actually add to
9 that too, because I think it's really clear, and Your Honor
11:34AM 10 started to go down this line of questioning earlier about
11 whether or not it's content neutral or even viewpoint neutral.
12 And the point that I think I was hearing -- or the question you
13 were asking about is does this -- does this law affect people
14 at the quilt show? Does it affect the car show? Does it
11:35AM 15 affect, you know, the food and wine fairs? And the response I
16 hear is, well, of course, to the extent that they want to sell
17 guns.

18 The business model of a car show is not to sell
19 guns. The business model of a food and wine festival is not to
11:35AM 20 sell guns. The business model of a quilt show is not to sell
21 guns. Guns are sold at gun shows. It affects gun show vendors
22 at gun shows in a very unique way.

23 And the fact that it only restricts that kind of --
24 and I'm going to keep saying it -- this is speech, the speech
11:35AM 25 related to those commercial sales, that is not a

1 content-neutral position. It is -- and because, as
2 Judge Bencivengo found -- and I believe it was 2019's B&L case
3 in the Southern District, in practical terms because the gun
4 shows, the messages there are overwhelmingly progun. It
11:35AM 5 probably goes into viewpoint discriminatory territory.

6 So regardless of whether we're talking about
7 commercial speech or pure ideological speech, because the law
8 is not content neutral, strict scrutiny applies.

9 THE COURT: I understand.

11:36AM 10 You mentioned the -- I'll call them the San Diego
11 cases.

12 MS. BARVIR: Yes.

13 THE COURT: Those two cases, the two decisions by
14 those two district judges, they are irreconcilable, are they
11:36AM 15 not?

16 MS. BARVIR: That's our position. I'm the attorney
17 for both those cases. It was a very surprising 180 for us to
18 see, yes.

19 THE COURT: Well, it's two different --

11:36AM 20 MS. BARVIR: Two different judges. And
21 Judge Battaglia was within his Article III authority to find
22 the way he did. But I think that Your Honor and
23 Judge Bencivengo are also within their authority to find
24 differently than he did.

11:36AM 25 THE COURT: And what is the status? Did we talk

1 about that? I want to make sure of the status of the
2 Judge Battaglia case.

3 MS. BARVIR: Judge Battaglia issued -- there have
4 been two grants of a motion to dismiss from the State. The
11:37AM 5 first motion to dismiss was with leave to amend on the First
6 Amendment and equal protection claims. And we were speaking a
7 bit about that earlier whether or not plaintiffs could show --
8 it was ruled on basically the *Nordyke* analysis of whether or
9 not a transaction is speech.

11:37AM 10 The more recent -- very recent ruling came down --
11 excuse me -- from Judge Battaglia that also dismissed the First
12 Amended Complaint. The First Amendment and equal protection
13 claims were dismissed with prejudice no more -- on that
14 amendment. It opened the door for amendment on the Second
11:37AM 15 Amendment claims if plaintiffs could show that there was no
16 other place for them to buy the arms and ammunition that they
17 wanted to at the gun show.

18 Plaintiffs, as we are here, dis- -- filed a notice
19 to the Court. We were not going to amend. There's no way
11:38AM 20 that -- we're not going to allege that because *Teixeira* isn't
21 the law anymore. And to establish that severity of burden is
22 not on plaintiffs anymore, but that case will be appealed once
23 a judgment is final.

24 THE COURT: Okay. Let me check my notes, see if I
11:38AM 25 have any more questions for you before we go into your

1 respective arguments.

2 MS. BARVIR: If I could, Your Honor, I would like to
3 point to some of the record on the State's evidence -- well,
4 the legislature's record of what types of crime and crime guns
11:38AM 5 are emerging from gun shows.

6 THE COURT: Hold on. Hold that. I do want to hear
7 that, but hold that thought, please.

8 **(The Court and court reporter confer**
9 **off the record.)**

11:40AM 10 THE COURT: Let's take a five-minute break for the
11 court reporter, and then we'll come back and finish up. We'll
12 be done before we break for lunch. Thank you very much,
13 Counsel. Five minutes.

14 **(Recess from 11:40 a.m. to 11:49 a.m.)**

11:49AM 15 THE COURT: So you don't need to recall the case.
16 Thank you, Madam Clerk.

17 Let's just pick up where we left off and then finish
18 up hopefully in just a few minutes.

19 I was going to ask a question. The -- it's a little
11:49AM 20 off the wall, but the Amended Complaint has this allegation
21 about California legislatures -- California legislatures have
22 threatened the 32nd District's board members with personal
23 liability?

24 MS. BARVIR: Yes, sir.

11:49AM 25 THE COURT: Where does that fit in, if at all? That

1 was in the Complaint. Is there any evidence?

2 MS. BARVIR: I believe the letter was attached to
3 my -- I think the Declaration of Anna Barvir, which would be
4 Docket Number 21-3, I believe, that the letter is attached. It
11:50AM 5 was what I was referencing earlier, Your Honor, Senator Min.

6 So the history has to do with there was a clause in
7 the law, the first -- the one that was specifically about the
8 Orange County Event Center --

9 THE COURT: Yes.

11:50AM 10 MS. BARVIR: -- that would allow contracts that were
11 entered into before January 1st, 2022, to go forward. So if
12 there were shows that were planned for 2022, for instance, they
13 could happen without the limitations of the law. So in trying
14 to finalize their contracts for 2022, my clients requested that
11:50AM 15 the DA -- the 32nd DAA adopt those contracts. It's part of the
16 procedure for getting your events on schedule. They had -- the
17 dates had been set, but the contracts hadn't yet been approved
18 by the board.

19 And so they requested repeatedly that those be
11:51AM 20 adopted and so that the contracts for 2022 could go in effect
21 before the law took effect. And so the -- while the board was
22 considering this -- considering adopting those contracts,
23 Senator Min got word that they were considering adopting those
24 contracts and sent them a letter. It is Document 21-3,
11:51AM 25 Exhibit 31, PDF page 45, Bates-stamped 208.

1 THE COURT: 45 at 108 [sic]?

2 MS. BARVIR: Yes. That's correct. It's a letter
3 from Senator Min. So if you scroll down to -- or go down to
4 the second page of that letter, he goes on about that he's
11:52AM 5 surprised that they're considering adopting those contracts and
6 that -- let me find it.

7 Is this the letter? Oh, it's the third page.

8 (Reading:)

9 "Let me be clear, should the Board vote to
11:52AM 10 approve Item 6B and preapprove a long-term contract
11 with Crossroads of the West or any other gun show
12 operator, I would explore litigation and
13 legislation seeking to avoid these contracts. I
14 also believe that any such action by the Board
11:52AM 15 would potentially expose its members to personal
16 liability, since they would be acting specifically
17 with clear intent to subvert and evade the purpose
18 of a statute they believed was likely to take
19 effect in opposition to clearly establish public
11:52AM 20 policy."

21 THE COURT: And therefore, what? Where does that
22 fit into this --

23 MS. BARVIR: Why was it raised?

24 THE COURT: -- preliminary injunction analysis?

11:53AM 25 MS. BARVIR: It was just going to the -- the

1 indication that --

2 THE COURT: Animus?

3 MS. BARVIR: Was going to animus. It was going to
4 the legislative intent that this was a ban of gun shows. If
11:53AM 5 you read the entire letter, he does explain -- he calls it a
6 "ban on gun shows." It goes to the legislative intent behind
7 the law. It goes to the animus for gun shows and gun culture.
8 And it also explains why the district -- the defendant district
9 kind of felt -- at least felt like it had its hands tied and
11:53AM 10 could not adopt the contracts that weren't sitting for it. So
11 all of those things. It just shows that they did not adopt the
12 contracts as well.

13 THE COURT: Okay. That exhausts my questions. It's
14 your motion, Ms. Barvir, so tell me whatever else you'd like to
11:53AM 15 tell me, and then I'll hear from Ms. Kau. I'll give you the
16 last word, but we are pressed for time. And we've gone through
17 a lot. And I think it's apparent that I've reviewed the
18 papers.

19 MS. BARVIR: Yes. Very. And I appreciate
11:54AM 20 Your Honor's time and, obviously, clear detailed attention to
21 all of our briefing and the evidence. That is very much
22 appreciated.

23 I just really wanted to, I think, quickly turn
24 Your Honor's attention. There was some conversation. If we're
11:54AM 25 talking about our first amendment claim and the interest and

1 why the Government passed the law, this State was pointing
2 to -- I think -- they were calling it my declaration, but it
3 was actually an exhibit to the request for judicial notice. It
4 was a legislative history document that had a couple of quotes
11:54AM 5 about this is where gun shows -- or they become -- where gun
6 transactions may be legal become seedy or something like that.
7 These were quotes from gun control advocate groups, like
8 Giffords and Violence Policy Center.

9 If Your Honor, though, looks at my -- the Barvir
11:54AM 10 Declaration, Docket 21-3, Exhibit 34 is one of the documents --
11 is one of the reports that the legislature relied on. It is a
12 report from the Violence Policy Research Program. It's kind of
13 where a lot of these quotes from the gun control groups kind of
14 come from and where they based their allegations about criminal
11:55AM 15 guns or access to criminal guns, gun trafficking relating to
16 gun shows.

17 But I think it's really clear that those reports
18 that the State's relying on, the quotes that they're taking
19 from the Giffords policy center and I think Americans For
11:55AM 20 Progress [sic], those are all nationwide concerns. Concerns
21 about what happens at gun shows that do not have -- that have
22 what Your Honor earlier called gun show loopholes. Things that
23 do not have the strict, heavy regulation that California has.

24 California's restrictions at gun shows are the same
11:55AM 25 as they are at brick-and-mortar stores, except now you can't

1 sell guns on state property. But before under the Gun Show
2 [sic] Control Act, they're the same. And the Violence Policy
3 Research Program's report expressly recognizes that, quote:

4 "In California, where both gun shows
11:56AM 5 themselves and gun commerce generally are
6 regulated, sales at gun shows are not a risk factor
7 among licensed retailers for disproportionate sales
8 of crime guns."

9 That is in the report that the State cited in its
11:56AM 10 legislative report.

11 THE COURT: Is that Exhibit 34 or 33?

12 MS. BARVIR: I think I cited 33. But when I looked
13 at 33, it appears to be another letter. I believe it's
14 Exhibit 34.

11:56AM 15 THE COURT: I think it's Exhibit 33.

16 MS. BARVIR: Oh, so I was right the first time.

17 THE COURT: But what page of the exhibit did you
18 read from just now?

19 MS. BARVIR: 32 and 33, which would be the Bates
11:56AM 20 page stamps. Oh, it is 33, Your Honor. Sorry for the
21 confusion.

22 THE COURT: I think it's ECF page 84 and 85 of 108
23 on document 21-3. Do you have a number on the bottom right or
24 the bottom left of the page you're looking at?

11:57AM 25 MS. BARVIR: Sorry. So many page numbers on one

1 document, Your Honor.

2 THE COURT: Just give me any page number because I
3 think I have them all.

4 MS. BARVIR: I believe the original pagination was
11:58AM 5 32 and 33.

6 THE COURT: Okay. I think that corresponds to, like
7 I said, pages -- ECF pages 84 and 85 of 108.

8 MS. BARVIR: I think you're right.

9 THE COURT: Yeah. I think I found your quote.

11:58AM 10 MS. BARVIR: Yes.

11 THE COURT: I believe that's where it is. I just
12 wanted to make sure we nailed down where in the record you're
13 referring to.

14 MS. BARVIR: And on top of that, there was also some
11:58AM 15 discussion of -- in the legislative record or at least in the
16 bill they -- the legislature cited a few -- a handful of crimes
17 that were snuffed out in the Del Mar Fairgrounds that were
18 then -- that language was copied and pasted in the
19 OC Fairgrounds bill and then into the statewide bill.

11:59AM 20 THE COURT: So is the point there is a paucity of
21 evidence linking Orange County-based gun shows with the sorts
22 of violence and crime that the legislature is legitimately
23 seeking to address and prohibit?

24 MS. BARVIR: There's no evidence that
11:59AM 25 California-based gun shows -- not just Orange County and not

1 just Del Mar. The evidence that the State was relying on is
2 nationwide.

3 THE COURT: Okay. I understand the point.

4 MS. BARVIR: And -- okay.

11:59AM 5 But the -- and so moving on from that part of the
6 speech analysis, we wanted to really quickly move to -- just
7 shift gears to the Second Amendment analysis and wanted to be
8 really clear for Your Honor about what plaintiffs' position is
9 about how the analysis actually works.

11:59AM 10 We are in an interesting time having *Bruen* just come
11 down something like nine months ago to -- how that operates as
12 kind of moving quickly in different cases. So our briefing may
13 be unclear from one to the next about exactly what our position
14 is. Our position -- plaintiffs' position is that once the
12:00PM 15 Second Amendment's plain text is implicated, Government has to
16 prove --

17 THE COURT: Which, I believe, it is here --

18 MS. BARVIR: We do.

19 THE COURT: -- for the reasons that we discussed.

12:00PM 20 MS. BARVIR: Correct.

21 If we're going to get to the second part of the
22 analysis, it's plaintiffs' position that the State has to prove
23 a history of -- an enduring American history of distinctly
24 similar laws. And in this case, that would be laws going back
12:00PM 25 to the founding era -- not the 20th Century, not the late 19th

1 Century that -- to the founding era that are very, very close
2 to what they're doing here, which is a restriction on
3 commercial sales of all lawful firearms, including commonly
4 owned protected arms.

12:00PM 5 And the reason they have to be that close, and we're
6 not talking about something a little -- a lower bar because the
7 State hasn't established and doesn't even argue that this is a
8 case of a law that is trying to address a new societal concern
9 or a dramatic technological change. If it had, we may be in a

12:01PM 10 world where *Bruen* says we talk about relevantly similar laws,
11 and that's when we start considering the how and the why, if
12 something is a comparable type of restriction or a comparable
13 justification.

14 So we think -- plaintiffs think that the State has
12:01PM 15 to show the distinctly similar. Haven't done that. But even
16 if the State were to be given that slightly lower bar of
17 relevantly similar, none of the laws that the State has put
18 forth meet either of those metrics.

19 THE COURT: I understand that argument. Thank you.

12:01PM 20 One question. You said has to be -- the focus --
21 the State's focus, the defendants' focus has to be founding
22 era.

23 MS. BARVIR: Yes.

24 THE COURT: Since the Fourteenth Amendment is
12:02PM 25 necessarily implicated because of the incorporation doctrine,

1 do we also look or instead look or additionally look at post
2 Civil War times?

3 MS. BARVIR: That's a really good question, Your
4 Honor. And to an extent there is some debate about whether or
12:02PM 5 not that's up in the air, it's plaintiffs' position that both
6 *Heller* and *Bruen* have led us to the answer that 19th Century
7 times surrounding the Fourteenth Amendment ratification is not
8 as relevant as founding era 18th Century laws. And that to the
9 extent they're relevant at all, it is only to confirm what was
12:02PM 10 already known about the Second Amendment's scope and what can
11 be restricted during the founding, during the 1700s.

12 And that has to be because the law -- the
13 Constitution -- I'm sorry -- the rights cannot mean one thing
14 as against the federal government than they mean against the
12:03PM 15 states or the local government.

16 Plaintiffs talk about this at length, I believe,
17 around page 5 of their most recent supplemental brief. That's
18 Document Number 32.

19 THE COURT: Yes. Yes. Okay. Thank you.

12:03PM 20 MS. BARVIR: Thank you, Your Honor.

21 THE COURT: As I said, I'll give you a brief last
22 word.

23 MS. BARVIR: Thank you, Your Honor.

24 THE COURT: Thank you.

12:03PM 25 Ms. Kau, did you care to say any more?

1 MS. KAU: Yes, Your Honor.

2 The Court had asked the procedural status of two
3 older cases, the B&L case from 2019. That case was about a
4 complete ban on gun shows, the whole event. And the status is
12:04PM 5 that the case is ended. The Court had granted the injunction
6 given the severity of that -- the underlying action with the
7 whole ban.

8 And the *Nordyke* 2011 case, it has been affirmed the
9 dismissal of the First Amendment claim, and it did not violate
12:04PM 10 the Second Amendment either. And that held that the possession
11 of arms on county property is not speech.

12 And to address plaintiffs' argument, there is a lot
13 of emphasis on the business model, but there is no right to
14 profitable speech. The First Amendment doesn't provide it, and
12:05PM 15 the Second Amendment doesn't provide it. Any group that wants
16 to engage in speech will take their own business decisions and
17 make that for themselves when they engage in that speech.
18 There is no right to restriction-free speech.

19 As for the commercial speech, we do address that in
12:05PM 20 our papers of page 15 in our opposition. But going over that
21 briefly here, we iterate that the exchange of money for a gun
22 is not speech, nor is it commercial speech.

23 The Central Hudson test first discusses lawfulness.
24 And the law -- the statutes are highly relevant here and that
12:05PM 25 it is the laws that are precluding it, which is very different

1 from the *Nordyke vs. Santa Clara* case just discussing a county
2 lease that wanted to preclude such transactions. And so all
3 speech about firearms is allowable short of that offer and
4 acceptance.

12:06PM 5 THE COURT: So on that point, looking into two
6 San Diego cases, the earlier one, Judge Bencivengo's case
7 disagrees with the position you're taking now. The later one,
8 Judge Battaglia's case, agrees with the position you're taking
9 now; correct?

12:06PM 10 MS. KAU: Well, the earlier one was a complete ban
11 on sales, which is very different from here. And so --

12 THE COURT: The moratorium?

13 MS. KAU: Right.

14 THE COURT: Moratorium --

12:06PM 15 MS. KAU: On gun shows.

16 THE COURT: It's easier to find commercial speech on
17 a moratorium versus an AB 893 or S- -- the two statutes at
18 issue here; correct?

19 MS. KAU: Correct.

12:07PM 20 THE COURT: I understand.

21 MS. KAU: Because the prohibited activity is very
22 different.

23 THE COURT: I understand your argument.

24 MS. KAU: And there was a -- there is no vagueness
12:07PM 25 claim either. So to the extent there is any vagueness claim

1 brought up here, that would not be allowed procedurally.

2 THE COURT: I don't follow your point.

3 MS. KAU: Plaintiffs had discussed the vagueness of
4 whether -- what conduct or what speech was allowed and not
12:07PM 5 allowed. But to the extent they bring a vagueness claim, that
6 is not procedurally correct right now.

7 THE COURT: I understand. I understand.

8 MS. KAU: There is also discussion about the
9 public's ability to purchase firearms with these two laws in
12:07PM 10 effect. But plaintiffs have not produced any statistics that
11 law-abiding people purchased the majority of their firearms at
12 gun shows. And so we look at 150 firearms dealers in
13 Orange County, eight in the same city, six in the same ZIP
14 code, one cannot plausibly argue that the public is unable to
12:08PM 15 purchase firearms.

16 THE COURT: And that goes to what aspect of the
17 arguments? Are you on *Bruen* Step 1?

18 MS. KAU: Yes. That goes to *Bruen* Step 1, but it
19 can also be applied to *Bruen* Step 2.

12:08PM 20 THE COURT: I understand.

21 MS. KAU: As to whether the laws are relevant from
22 the 1800s, plaintiffs' counsel did rightly say -- correctly say
23 that the laws from the 1800s confirm the understanding of the
24 Second Amendment. So therefore, laws from the 1800s are highly
12:09PM 25 relevant because they show what was consistent and understood

1 to be about the Second Amendment that has continued through the
2 1800s.

3 There was also discussion about how before these two
4 laws came into effect, transactions were allowed, but
12:09PM 5 afterwards they are not. Just because laws are new does not
6 make them unconstitutional. There can be new laws prohibiting
7 sales of firearms, for example, at a certain distance from a
8 school.

9 Just because it was allowed before and not allowed
12:09PM 10 now doesn't mean that the new law is invalid because there is
11 no right to sell a firearm in any particular location, but it
12 is allowed. And as the numbers show, there are plenty of
13 firearm dealers for the public to purchase from.

14 THE COURT: Well, there must be some limit to that.

12:10PM 15 Taking your example of some distance from the school, if a
16 state said, "Sure, you can sell firearms, vendors, but not
17 within 100 miles of the school," well, that's going to -- there
18 are probably very few places in the state of California, as an
19 example, that are not within 100 miles of any school. And

12:10PM 20 those places are probably so remote that it wouldn't be --
21 wouldn't make any sense to have a business there anyway.

22 So that would probably not pass the *Bruen* test.

23 Concur?

24 MS. KAU: Right. If it effectively banned sales in
12:10PM 25 the country and made it extremely hard and inaccessible to buy

1 firearms, then yes. But that is not at all the case here.

2 THE COURT: But you're saying that's just not our
3 facts here. That may be correct that there's some -- there's
4 some limit, if we take your school example, some distance from
12:11PM 5 a school that would be too long of a distance, there would be a
6 Second Amendment violation. You concede that?

7 MS. KAU: Right.

8 THE COURT: But that's just not our facts here?

9 MS. KAU: Not at all.

12:11PM 10 THE COURT: Okay.

11 MS. KAU: There is also discussion about *Teixeira*
12 being good law or not. *Teixeira* discussed whether the Second
13 Amendment was implicated. And that is the plain text analysis.

14 THE COURT: You think *Teixeira* -- the outcome of
12:11PM 15 *Teixeira* would not change under *Teixeira*'s analysis or if
16 *Teixeira* had been analyzed under *Bruen*; correct?

17 MS. KAU: That's right.

18 THE COURT: I understand.

19 MS. KAU: Plaintiffs also brought up the exhibits
12:11PM 20 regarding gun show studies. That quote did not address private
21 transactions at gun shows. It did not address ammunition
22 transactions which do not require the same waiting period. So
23 ultimately, the legislature, in its discretion, can continue to
24 address a problem even if it may be a lesser problem than
12:12PM 25 outside the state. It can still address a pressing concern.

1 As to who has the burden in the plain text, *Bruen*
2 does not specify that the states do have that burden. The
3 state's burden comes at the second stage regarding the
4 historical inquiry.

12:12PM 5 THE COURT: Plaintiff has to -- plaintiff has to
6 satisfy the first step of the *Bruen* test. Is that your
7 position?

8 MS. KAU: It's unclear who has that burden. I
9 believe that both parties need to address that issue.

12:12PM 10 THE COURT: Okay.

11 MS. KAU: And under plaintiffs' argument and
12 understanding, the Second Amendment would always be implicated
13 if anything was tangentially related to the Second Amendment.
14 But that cannot be true.

12:13PM 15 I'd like to correct myself. And as to the first
16 step, it is plaintiffs' burden for the plain text argument.

17 THE COURT: What do you do with my plaid
18 hypothetical? Do you remember it?

19 MS. KAU: Yes.

12:13PM 20 THE COURT: State says "Yes, citizens, individuals,
21 you have the right to keep and bear arms, Second Amendment.
22 Great. Good for you. Yes, you have those rights, but not if
23 you're wearing plaid. If you're wearing plaid, no, not in our
24 state."

12:13PM 25 MS. KAU: So that hypothetical deals to keeping and

1 bearing arms. Here we're not at keeping and bearing arms,
2 we're actually buying firearms on state property.

3 THE COURT: Well, I know, but I'm trying to explore
4 *Bruen* Step 1 and what sorts of regulations restrict an
12:14PM 5 individual's abilities to enjoy his or her Second Amendment
6 rights.

7 MS. KAU: So in that example, it's specific to
8 keeping and bearing arms, which is in the plain text of the
9 Second Amendment. And so, therefore, it would implicate the
12:14PM 10 Second Amendment.

11 THE COURT: Okay. So are you saying that if the
12 regulation was -- if you're wearing plaid, you cannot transact
13 an arms, you can't buy or sell if you're wearing plaid? That
14 would be an acceptable regulation because that's not direct,
12:14PM 15 pure Second Amendment rights. Is that what you're saying?

16 MS. KAU: Aside from First Amendment right?

17 THE COURT: Put that aside, yes.

18 MS. KAU: I think it's -- it would be more likely
19 constitutional.

12:15PM 20 THE COURT: Okay.

21 MS. KAU: Because the ability to acquire firearms is
22 not at all meaningfully constrained.

23 THE COURT: I understand. Thank you.

24 MS. KAU: As to whether a legislator's intent means
12:15PM 25 that the law is discriminatory, the Supreme Court has said that

1 it is about the text of the law, not about an alleged
2 legislature's motive.

3 Lastly, I want to emphasize that not only does
4 plaintiff have to show likelihood of success, but there are
12:15PM 5 also the equitable factors. And the public interest weighs
6 against injunctive relief here because we are addressing
7 firearms trafficking. We are addressing increasing public
8 safety, whereas plaintiffs can still have their gun shows and
9 engage in speech.

12:16PM 10 They can still gather, and they can also purchase
11 their firearms. There is no allegation that the public is
12 unable to purchase their firearms because they are not able to
13 buy them on the occasional weekend at a gun show.

14 THE COURT: I understand.

12:16PM 15 MS. KAU: And for the record, if the Court does
16 grant the motion, we ask for a stay pending appeal.

17 THE COURT: I understand. Okay. Ms. Kau, thank you
18 very much.

19 MS. KAU: Thank you, Your Honor.

12:16PM 20 THE COURT: Ms. Barvir, any brief reply argument?

21 MS. BARVIR: I'm going to rest after two -- just two
22 points of clarification.

23 With regard to any statement that the law is unclear
24 about what a sale is is not about bringing a vagueness claim at
12:17PM 25 this point. It has everything to do with the chilling effect

1 the law might have on speakers, which is a speech claim and
2 overbreadth issue.

3 Aside from that, plaintiffs would object to any
4 11th-hour seeking of a stay that has not been fully briefed by
12:17PM 5 the parties and would ask that if that's going to happen, that
6 the Court entertain full briefing before issuing something like
7 that. And with that, plaintiffs would rest on their papers and
8 argument today.

9 THE COURT: Thank you.

12:17PM 10 I meant to ask this earlier. Both parties had asked
11 the Court to take judicial notice of certain documents. I'm
12 inclined to do that. I didn't see any big objection to that,
13 putting aside the declarations on the supplemental briefing.

14 So no objections to the request for judicial notice;
12:17PM 15 correct?

16 MS. KAU: No, Your Honor.

17 MS. BARVIR: No, sir.

18 THE COURT: And I'm not inclined -- well, the
19 declarations in support of the supplemental briefing, those
12:18PM 20 declarations just seem like more briefing. Was I missing
21 something? Was there really any evidence that was provided?

22 MS. KAU: Yes, they helped provide context to the
23 times when from the founding era -- that's the 1600s and
24 through the 1800s for the types of laws that were needed,
12:18PM 25 technology, what was happening. And so it helps show --

1 THE COURT: So it really is evidence. It's expert
2 opinion?

3 MS. KAU: Right.

4 THE COURT: Okay. And it's objected to?

12:18PM 5 MS. BARVIR: That's right, Your Honor.

6 THE COURT: Well, I'm not going to resolve that
7 right now. I'll think about that some more.

8 Counsel, thank you very much. I do need to move on
9 for lots of reasons. Court reporter has other important
10 matters to get to. I do very much appreciate the quality of
11 your briefing, both sides. And, again, thank you for
12 responding to my requests for supplemental briefing. I really
13 do appreciate that. Thanks for your preparation and your
14 argument and your time here today, and I'll try to get an order
12:19PM 15 on this motion as quickly as I can, and then we'll just see
16 where it goes from there.

17 I understand this very last piece about if I grant
18 it, State wants a chance to -- would like me to stay the --
19 stay the injunction for some period of time. You're way ahead
12:19PM 20 of me. I understand the request. I understand the objection
21 to the request. We'll get there when we get there and, also,
22 obviously, figure out where the rest of this case goes after I
23 make a decision on this motion.

24 So with that, thank you very much. Have a good rest
12:20PM 25 of the day and rest of the week.

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THE COURTROOM DEPUTY: All rise.

(Proceedings concluded at 12:20 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
)
STATE OF CALIFORNIA)

I, DEBBIE HINO-SPAAN, FEDERAL OFFICIAL REALTIME COURT REPORTER, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: May 14, 2023

/S/ DEBBIE HINO-SPAAN

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8 *and 32nd District Agricultural Association*

9
10 **B&L PRODUCTIONS, INC., d/b/a**
CROSSROADS OF THE WEST, et
11 **al.,**

12 Plaintiffs,

13 v.

14 **GAVIN NEWSOM, et al.,**

15 Defendants.

8:22-cv-01518 JWH (JDEx)

**DECLARATION OF SAUL
CORNELL IN SUPPORT OF
STATE DEFENDANTS' SECOND
SUPPLEMENTAL BRIEF**

Date: April 6, 2023
Time: 9:00 a.m.
Courtroom: 9D
Judge: The Honorable John W.
Holcomb

Action Filed: August 12, 2022

17 I, Saul Cornell, declare under the penalty of perjury that the following is true
18 and correct:

19 1. I have been asked by the Office of the Attorney General for the State
20 of California to provide an expert opinion on the history of firearms regulation in
21 the Anglo-American legal tradition, with a particular focus on how the Founding
22 era understood the right to bear arms, as well as the understanding of the right to
23 bear arms held at the time of the ratification of the Fourteenth Amendment to the
24 United States Constitution. In *N.Y. State Rifle & Pistol Association, Inc. v. Bruen*,
25 the U.S. Supreme Court underscored that text, history, and tradition are the
26 foundation of modern Second Amendment jurisprudence. This modality of
27 constitutional analysis requires that courts analyze history and evaluate the
28 connections between modern gun laws and earlier approaches to firearms regulation

1 in the American past. This declaration explores these issues in some detail. Finally,
2 I have been asked to evaluate the statutes at issue in this case, particularly regarding
3 its connection to the tradition of firearms regulation in American legal history.

4 2. This declaration is based on my own personal knowledge and
5 experience, and if I am called to testify as a witness, I could and would testify
6 competently to the truth of the matters discussed in this declaration.

7 **BACKGROUND AND QUALIFICATIONS**

8 3. I am the Paul and Diane Guenther Chair in American History at
9 Fordham University. The Guenther Chair is one of three endowed chairs in the
10 history department at Fordham and the only one in American history. In addition to
11 teaching constitutional history at Fordham University to undergraduates and
12 graduate students, I teach constitutional law at Fordham Law School. I have been a
13 Senior Visiting research scholar on the faculty of Yale Law School, the University
14 of Connecticut Law School, and Benjamin Cardozo Law School. I have given
15 invited lectures, presented papers at faculty workshops, and participated in
16 conferences on the topic of the Second Amendment and the history of gun
17 regulation at Yale Law School, Harvard Law School, Stanford Law School, UCLA
18 Law School, the University of Pennsylvania Law School, Columbia Law School,
19 Duke Law School, Pembroke College Oxford, Robinson College, Cambridge,
20 Leiden University, and McGill University.¹

21 4. My writings on the Second Amendment and gun regulation have been
22 widely cited by state and federal courts, including the majority and dissenting
23 opinions in *Bruen*.² My scholarship on this topic has appeared in leading law
24 reviews and top peer-reviewed legal history journals. I authored the chapter on the
25 right to bear arms in *The Oxford Handbook of the U.S. Constitution* and co-

26 ¹ For a full *curriculum vitae* listing relevant invited and scholarly
27 presentations, see Exhibit 1.

28 ² *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

1 authored the chapter in *The Cambridge History of Law in America* on the Founding
2 era and the Marshall Court, the period that includes the adoption of the Constitution
3 and the Second Amendment.³ Thus, my expertise not only includes the history of
4 gun regulation and the right to keep and bear arms, but also extends to American
5 legal and constitutional history broadly defined. I have provided expert witness
6 testimony in *Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper*, No.
7 14-cv-02850 (D. Colo.); *Chambers, v. City of Boulder*, No. 2018 CV 30581 (Colo.
8 D. Ct., Boulder Cty.), *Zeleny v. Newsom*, No. 14-cv-02850 (N.D. Cal.), and *Miller v.*
9 *Smith*, No. 2018-cv-3085 (C.D. Ill.); *Jones v. Bonta*, 3:19-cv-01226-L-AHG (S.D.
10 Cal.); *Baird v. Bonta*, No. 2:19-cv-00617 (E.D. Cal.); *Worth v. Harrington*, No. 21-
11 cv-1348 (D. Minn.); *Miller v. Bonta*, No. 3:19-cv-01537-BEN-JLB (S.D. Cal.); and
12 *Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB (S.D. Cal.).

13 **RETENTION AND COMPENSATION**

14 5. I am being compensated for services performed in the above-entitled
15 case at an hourly rate of \$500 for reviewing materials, participating in meetings,
16 and preparing reports; \$750 per hour for depositions and court appearances; and an
17 additional \$100 per hour for travel time. My compensation is not contingent on the
18 results of my analysis or the substance of any testimony.

19 **BASIS FOR OPINION AND MATERIALS CONSIDERED**

20 6. The opinion I provide in this report is based on my review of the
21 amended complaint filed in this lawsuit, my review of the local ordinances at issue
22 in this lawsuit, my education, expertise, and research in the field of legal history.
23 The opinions contained herein are made pursuant to a reasonable degree of
24 professional certainty.

25
26 ³ Saul Cornell, *The Right to Bear Arms*, in THE OXFORD HANDBOOK OF THE
27 U.S. CONSTITUTION 739–759 (Mark Tushnet, Sanford Levinson & Mark Graber
28 eds., 2015); Saul Cornell & Gerald Leonard, *Chapter 15: The Consolidation of the
Early Federal System*, in 1 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 518–544
(Christopher Tomlins & Michael Grossberg eds., 2008).

1 **SUMMARY OF OPINIONS**

2 7. Understanding text, history, and tradition require a sophisticated grasp
3 of historical context. One must canvass the relevant primary sources, secondary
4 literature, and jurisprudence to arrive at an understanding of the scope of
5 permissible regulation consistent with the Second Amendment’s original
6 understanding.

7 8. It is impossible to understand the meaning and scope of Second
8 Amendment protections without understanding the way Americans in the Founding
9 era approached legal questions and rights claims. In contrast to most modern
10 lawyers, the members of the First Congress who wrote the words of the Second
11 Amendment and the American people who enacted the text into law were well
12 schooled in English common law ideas. Not every feature of English common law
13 survived the American Revolution, but there were important continuities between
14 English law and the common law in America.⁴ Each of the new states, either by
15 statute or judicial decision, adopted multiple aspects of the common law, focusing
16 primarily on those features of English law that had been in effect in the English
17 colonies for generations.⁵ No legal principle was more important to the common
18 law than the concept of the peace.⁶ As one early American justice of the peace
19 manual noted: “the term peace, denotes the condition of the body politic in which
20

21 _____
22 ⁴ William B. Stoebuck, *Reception of English Common Law in the American*
23 *Colonies*, 10 WM. & MARY L. REV. 393 (1968); MD. CONST. OF 1776,
24 DECLARATION OF RIGHTS, art. III, § 1; Lauren Benton & Kathryn Walker, *Law for*
25 *the Empire: The Common Law in Colonial America and the Problem of Legal*
26 *Diversity*, 89 CHI.-KENT L. REV. 937 (2014).

27 ⁵ 9 STATUTES AT LARGE OF PENNSYLVANIA 29-30 (Mitchell & Flanders eds.
28 1903); FRANCOIS XAVIER MARTIN, A COLLECTION OF STATUTES OF THE
PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH-CAROLINA 60–61
(Newbern, 1792); *Commonwealth v. Leach*, 1 Mass. 59 (1804).

⁶ LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND*
THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH
(University of North Carolina Press, 2009).

1 no person suffers, or has just cause to fear any injury.”⁷ Blackstone, a leading
2 source of early American views about English law, opined that the common law
3 “hath ever had a special care and regard for the conservation of the peace; for peace
4 is the very end and foundation of civil society.”⁸

5 9. In *Bruen*, Justice Kavanaugh reiterated *Heller*’s invocation of
6 Blackstone’s authority as a guide to how early Americans understood their
7 inheritance from England. Specifically, Justice Kavanaugh stated in unambiguous
8 terms that there was a “well established historical tradition of prohibiting the
9 carrying of dangerous and unusual weapons.”⁹ The dominant understanding of
10 the Second Amendment and its state constitutional analogues at the time of their
11 adoption in the Founding period forged an indissoluble link between the right to
12 keep and bear arms with the goal of preserving the peace.¹⁰

13 10. The right of the people to pass laws to promote public health and
14 safety is one of the most fundamental right in the pantheon of American rights. The

15 _____
16 ⁷ JOSEPH BACKUS, THE JUSTICE OF THE PEACE 23 (1816).

17 ⁸ 1 WILLIAM BLACKSTONE, COMMENTARIES *349.

18 ⁹ *District of Columbia v. Heller*, 554 U.S. 570, 626–627 (2008), and n. 26.
19 Blackstone and Hawkins, two of the most influential English legal writers consulted
20 by the Founding generation, described these types of limits in slightly different
21 terms. The two different formulations related to weapons described as dangerous
22 and unusual in one case and sometimes as dangerous or unusual in the other
23 instance, see Saul Cornell, *The Right to Carry Firearms Outside of the Home:
24 Separating Historical Myths from Historical Realities*, 39 FORDHAM URB. L.J.
25 1695134 (2012). It is also possible that the phrase was an example of an archaic
26 grammatical and rhetorical form hendiadys; see Samuel Bray, ‘Necessary AND
27 Proper’ and ‘Cruel AND Unusual’: *Hendiadys in the Constitution*, 102 VIRGINIA L.
28 REV. 687 (2016).

¹⁰ On Founding-era conceptions of liberty, see JOHN I. ZURLY, THE LAW OF
LIBERTY (1775). The modern terminology to describe this concept is “ordered
liberty.” See *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). For a more recent
elaboration of the concept, see generally JAMES E. FLEMING & LINDA C. MCCLAINE,
ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES (Harvard University
Press, 2013). On Justice Cardozo and the ideal of ordered liberty, see *Palko v.
Connecticut*, 302 U.S. 319, 325 (1937); John T. Noonan, Jr., *Ordered Liberty:
Cardozo and the Constitution*, 1 CARDOZO L. REV. 257 (1979); Jud Campbell,
Judicial Review, and the Enumeration of Rights, 15 GEO. J.L. & PUB. POL’Y 569
(2017).

1 idea of popular sovereignty, a core belief of the Founding generation, included a
2 right of legislatures to enact laws to promote the common good. Although modern
3 lawyers and jurists are accustomed to thinking of this concept under the rubric of
4 state police power, the Founding generation viewed it as a right, not a power.¹¹ The
5 first state constitutions clearly articulated such a right — including it alongside
6 more familiar rights such as the right to bear arms.¹² Pennsylvania’s Constitution
7 framed this estimable right succinctly: “That the people of this State have the sole,
8 exclusive and inherent right of governing and regulating the internal police of the
9 same.” “Constitutional rights,” Justice Scalia wrote in *Heller*, “are enshrined with
10 the scope they were thought to have when the people adopted them.”¹³ Included in
11 this right was the most basic right of all: the right of the people to regulate their
12 own internal police. Thus, if Justice Scalia’s rule applies to the scope of the right to
13 bear arms, it must also apply to the scope of the right of the people to regulate their
14 internal police, a point that Chief Justice Roberts and Justice Kavanaugh have each
15 asserted in their interpretations of *Heller* and subsequent jurisprudence. The history
16 of gun regulation in the decades after the right to bear arms was codified in both the
17 first state constitutions and the federal bill of rights underscores this important
18 point.

19 11. In the years following the adoption of the Second Amendment and its
20 state analogues, firearm regulation increased. Indeed, the individual states

21 _____
22 ¹¹ On the transformation of the Founding era’s ideas about a “police right”
23 into the more familiar concept of “police power,” *See generally* Aaron T. Knapp,
24 *The Judicialization of Police*, 2 CRITICAL ANALYSIS OF L. 64 (2015); *see also*
25 MARKUS DIRK DUBBER, *THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS*
26 *OF AMERICAN GOVERNMENT* (2005); Christopher Tomlins, *Necessities of State:*
27 *Police, Sovereignty, and the Constitution*, 20 J. OF POL’Y HIST. 47 (2008).

28 ¹² PA. CONST. of 1776, ch. I, art. III; MD. DECLARATION OF RIGHTS, art. IV
(1776); N.C. DECLARATION OF RIGHTS, art. I, § 3 (1776); and VT. DECLARATION OF
RIGHTS, art. V (1777).

¹³ *Heller*, 554 U.S. at 634–35; William J. Novak, *Common Regulation: Legal*
Origins of State Power in America, 45 HASTINGS L.J. 1061, 1081–83 (1994);
Christopher Tomlins, *Necessities of State: Police, Sovereignty, and the*
Constitution, 20 J. POL’Y HIST. 47 (2008).

1 exercised their police powers to address longstanding issues and novel problems
2 created by firearms in American society. Over the eighteenth and nineteenth
3 centuries, American regulation increased as states grappled with advances in
4 firearm technology and changes in American society. Regulation touched every
5 aspect of guns from the manufacturing, storage, and sale of gunpowder, to
6 regulating where firearms and other dangerous weapons might be carried in public.

7 **I. THE HISTORICAL INQUIRY REQUIRED BY *BRUEN*, *MCDONALD*, AND**
8 ***HELLER***

9 12. The United States Supreme Court’s decisions in *Heller*, *McDonald*,¹⁴
10 and *Bruen* have directed courts to look to text, history, and tradition when
11 evaluating the scope of permissible firearms regulation under the Second
12 Amendment. In another case involving historical determinations, Justice Thomas,
13 the author of the majority opinion in *Bruen*, has noted that judges must avoid
14 approaching history, text, and tradition with an “ahistorical literalism.”¹⁵ Legal
15 texts must not be read in a decontextualized fashion detached from the web of
16 historical meaning that made them comprehensible to Americans living in the past.
17 Similarly, a mechanistic strategy of digital searching for historical gun laws would
18 be incapable of answering the historical inquiries required under *Bruen*. Instead,
19 understanding the public meaning of constitutional texts requires a solid grasp of
20 the relevant historical contexts—how firearms technology has changed, how
21 consumer demand has waxed and waned, and how the people, acting through their
22 representatives, respond to societal ills created by those changes.¹⁶

23
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25 ¹⁴ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

26 ¹⁵ *Franchise Tax Board of California v. Hyatt*, 139 S. Ct. 1485, 1498 (2019)
(Thomas, J.) (criticizing “ahistorical literalism”).

27 ¹⁶ See Jonathan Gienann, *Historicism and Holism: Failures of Originalist*
28 *Translation*, 84 *FORDHAM L. REV.* 935 (2015).

1 13. Moreover, as *Bruen* makes clear, history neither imposes “a regulatory
2 straightjacket nor a regulatory blank check.”¹⁷ The Court acknowledged that when
3 novel problems created by firearms are at issue, “a more nuanced approach” is
4 appropriate.¹⁸ *Bruen* differentiates between cases in which contested regulations
5 are responses to long standing problems and situations in which modern regulations
6 address novel problems with no clear historical analogues from the Founding era or
7 the era of the Fourteenth Amendment.

8 14. In the years between *Heller* and *Bruen*, historical scholarship has
9 expanded our understanding of the history of arms regulation in the Anglo-
10 American legal tradition, but much more work needs to be done to fill out this
11 picture.¹⁹ Indeed, such research is still ongoing: new materials continue to emerge;
12 and since *Bruen* was decided, additional evidence about the history of regulation
13 has surfaced and new scholarship interpreting it has appeared in leading law
14 reviews and other scholarly venues.²⁰

15 15. As Justice Scalia noted in *Heller*, and Justice Thomas reiterated in
16 *Bruen*, the original Second Amendment was a result of interest balancing
17 undertaken by the people themselves in framing the federal Constitution and the
18 Bill of Rights.²¹ Although “free-standing balancing” by judges is precluded by
19 *Heller*, the plain meaning of the Second Amendment’s text recognizes a role for
20 regulation explicitly and further asserts that actions inimical to a free state fall

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22 ¹⁷ *Bruen*, 142 S. Ct. 2111, 2133.

23 ¹⁸ *Id.* at 2132.

24 ¹⁹ Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of
Second Amendment Law & Policy*, 80 L. & CONTEMP. PROBS. 1 (2017).

25 ²⁰ *Symposium — The 2nd Amendment at the Supreme Court: “700 Years Of
26 History” and the Modern Effects of Guns in Public*, 55 U.C. DAVIS L. REV. 2495
(2022); *NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE
27 OF GUNS IN AMERICAN LAW AND SOCIETY* (Joseph Blocher, Jacob D. Charles &
28 Darrell A.H. Miller eds., forthcoming 2023).

²¹ *Bruen*, 142 S. Ct. at 2131; *Heller*, 554 U.S. at 635.

1 outside of the scope of the right instantiated in the text.²² The Second Amendment
2 states: “A well regulated Militia, being necessary to the security of a free State, the
3 right of the people to keep and bear Arms, shall not be infringed.” U.S. Const.
4 amend. II. Thus, from its outset, the Second Amendment recognizes both the right
5 to keep and bear arms and the right of the people to regulate arms to promote the
6 goals of preserving a free state. Although rights and regulation are often cast as
7 antithetical in the modern gun debate, the Founding generation saw the two goals as
8 complimentary. Comparing the language of the Constitution’s first two
9 amendments and their different structures and word choice makes this point crystal
10 clear. The First Amendment prohibits “abridging” the rights it protects. In standard
11 American English in the Founding era, to “abridge” meant to “reduce.” Thus, the
12 First Amendment prohibits a diminishment of the rights it protects. The Second
13 Amendment’s language employs a very different term, requiring that the right to
14 bear arms not be “infringed.”²³ In Founding-era American English, the word
15 “infringement” meant to “violate” or “destroy.” In short, when read with the
16 Founding era’s interpretive assumptions and legal definitions in mind, the two
17 Amendments set up radically different frameworks for evaluating the rights they
18 enshrined in constitutional text. Members of the Founding generation would have
19 understood that the legislature could regulate the *conduct* protected by the Second
20 Amendment and comparable state arms bearing provisions as long as such
21 regulations did not destroy the underlying *right*. An exclusive focus on rights and a

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²² *Heller*, 554 U.S. at 635.

25 ²³ The distinction emerges clearly in a discussion of natural law and the law
26 of nations in an influential treatise on international law much esteemed by the
27 Founding generation: “Princes who infringe the law of nations, commit as great a
28 crime as private people, who violate the law of nature,” J.J. BURLAMAQUI, THE
PRINCIPLES OF NATURAL LAW (Thomas Nugent trans., 1753) at 201. This book was
among those included in the list of important texts Congress needed to procure, *see*
Report on Books for Congress. [23 January] 1783.” *Founders Online*. National
Archives, <https://founders.archives.gov/documents/Madison/01-06-02-0031>.

1 disparagement of regulation is thus antithetical to the plain meaning of the text of
2 the Second Amendment.

3 16. John Burn, author of an influential eighteenth-century legal dictionary,
4 illustrated the concept of infringement in the context of his discussion of violations
5 of rights protected by the common law. Liberty, according to Burns, was not
6 identical to that “wild and savage liberty” of the state of nature. True liberty, by
7 contrast, only existed when individuals created civil society and enacted laws and
8 regulations that promoted *ordered* liberty. Regulation was the indispensable
9 correlate of rights in Founding era constitutionalism.²⁴

10 17. Burn’s conception of the close connection between liberty and
11 regulation was widely shared by others in the Anglo-American world. Similarly,
12 Nathan Bailey’s *Dictionarium Britannicum* (1730) defined “abridge” as to
13 “shorten,” while “infringe” was defined as to “break a law.”²⁵ And his 1763 *New*
14 *Universal Dictionary* repeats the definition of “abridge” as “shorten” and “infringe”
15 as “to break a law, custom, or privilege.”²⁶ Samuel Johnson’s *Dictionary of the*
16 *English Language* (1755) defines “infringe” as “to violate; to break laws or
17 contracts” or “to destroy; to hinder.”²⁷ Johnson’s definition of “abridge” was “to
18 shorten” and “to diminish” or “to deprive of.”²⁸ And Noah Webster’s *An*
19 *American Dictionary of the English Language* (1828) largely repeats Johnson’s
20 definitions of “infringe” and “abridge.”²⁹

22 ²⁴ *Liberty*, A NEW LAW DICTIONARY (1792); *See also*, Jud Campbell,
23 *Natural Rights, Positive Rights, and the Right to Keep and Bear Arms*, 83 LAW &
CONTEMP. PROBS. 31, 32–33 (2020)

24 ²⁵ *Abridge*, DICTIONARIUM BRITANNICUM (1730).

25 ²⁶ *Abridge*, NEW UNIVERSAL DICTIONARY (1763).

26 ²⁷ *Infringe*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

27 ²⁸ *Abridge*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

28 ²⁹ *Abridge, Infringe*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE
(1828).

1 18. For the framers, ratifiers, and other relevant legal actors in the
2 Founding era, regulation, including robust laws, was not understood to be an
3 “infringement” of the right to bear arms, but rather the necessary foundation for the
4 proper exercise of that right as required by the concept of ordered liberty.³⁰ As one
5 patriotic revolutionary era orator observed, almost a decade after the adoption of the
6 Constitution: “True liberty consists, not in having *no government*, not in a
7 *destitution of all law*, but in our having an equal voice in the formation and
8 execution of the laws, according as they effect [*sic*] our persons and property.”³¹
9 By allowing individuals to participate in politics and enact laws aimed at promoting
10 the health, safety, and well-being of the people, liberty flourished.³²

11 19. The key insight derived from taking the Founding era conception of
12 rights seriously and applying the original understanding of the Founding era’s
13 conception of liberty is the recognition that regulation and liberty are both hard
14 wired into the Amendment’s text. The inclusion of rights guarantees in
15 constitutional texts was not meant to place them beyond the scope of legislative
16 control. “The point of retaining natural rights,” originalist scholar Jud Campbell
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18 ³⁰ Dan Edelstein, *Early-Modern Rights Regimes: A Genealogy of*
19 *Revolutionary Rights*, 3 CRITICAL ANALYSIS L. 221, 233–34 (2016). *See generally*
20 GERALD LEONARD & SAUL CORNELL, *THE PARTISAN REPUBLIC: DEMOCRACY,*
21 *EXCLUSION, AND THE FALL OF THE FOUNDERS’ CONSTITUTION, 1780s–1830s*, at 2;
22 Victoria Kahn, *Early Modern Rights Talk*, 13 YALE J.L. & HUMAN. 391 (2001)
(discussing how the early modern language of rights incorporated aspects of natural
rights and other philosophical traditions); Joseph Postell, *Regulation During the*
American Founding: Achieving Liberalism and Republicanism, 5 AM. POL.
THOUGHT 80 (2016) (examining the importance of regulation to Founding political
and constitutional thought).

23 ³¹ Joseph Russell, *An Oration; Pronounced in Princeton, Massachusetts, on*
24 *the Anniversary of American Independence, July 4, 1799*, at 7 (July 4, 1799), (text
available in the Evans Early American Imprint Collection) (emphasis in original).

25 ³² *See generally* QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* (1998)
26 (examining neo-Roman theories of free citizens and how it impacted the
development of political theory in England); *THE NATURE OF RIGHTS AT THE*
27 *AMERICAN FOUNDING AND BEYOND* (Barry Alan Shain ed., 2007) (discussing how
the Founding generation approached rights, including the republican model of
28 protecting rights by representation).

1 reminds us “was not to make certain aspects of natural liberty immune from
2 governmental regulation. Rather, retained natural rights were aspects of natural
3 liberty that could be restricted only with just cause and only with consent of the
4 body politic.”³³ Rather than limit rights, regulation was the essential means of
5 preserving rights, including self-defense.³⁴ In fact, without robust regulation of
6 arms, it would have been impossible to implement the Second Amendment and its
7 state analogues. Mustering the militia required keeping track of who had weapons
8 and included the authority to inspect those weapons and fine individuals who failed
9 to store them safely and keep them in good working order.³⁵ The individual states
10 also imposed loyalty oaths, disarming those who refused to take such oaths. No
11 state imposed a similar oath as pre-requisite to the exercise of First Amendment-
12 type liberties. Thus, some forms of prior restraint, impermissible in the case of
13 expressive freedoms protected by the First Amendment or comparable state
14 provisions, were understood by the Founding generation to be perfectly consistent
15 with the constitutional right to keep and bear arms.³⁶

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17 ³³ Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L.
18 REV. 517, 527 (2019) (emphasis in original). See generally Saul Cornell, *Half*
19 *Cocked: The Persistence of Anachronism and Presentism in the Academic Debate*
20 *Over the Second Amendment*, 106 J. OF CRIM. L. AND CRIMINOLOGY 203, 206
21 (2016) (noting that the Second Amendment was not understood in terms of the
22 simple dichotomies that have shaped modern debate over the right to bear arms).

20 ³⁴ See Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15
21 GEO. J.L. & PUB. POL’Y 569, 576–77 (2017). Campbell’s work is paradigm-
22 shifting, and it renders Justice Scalia’s unsubstantiated claim in *Heller* that the
23 inclusion of the Second Amendment in the Bill of Rights placed certain forms of
24 regulation out of bounds totally anachronistic. This claim has no foundation in
25 Founding-era constitutional thought, but reflects the contentious modern debate
26 between Justice Black and Justice Frankfurter over judicial balancing, on Scalia’s
27 debt to this modern debate, see generally SAUL CORNELL, *THE POLICE POWER AND*
28 *THE AUTHORITY TO REGULATE FIREARMS IN EARLY AMERICA* 1–2 (2021),
https://www.brennancenter.org/sites/default/files/2021-06/Cornell_final.pdf
[<https://perma.cc/J6QD-4YXG>] and Joseph Blocher, *Response: Rights as Trumps of*
What?, 132 HARV. L. REV. 120, 123 (2019).

26 ³⁵ H. RICHARD UVILLER & WILLIAM G. MERKEL, *THE MILITIA AND THE*
27 *RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT* 150 (2002).

27 ³⁶ Saul Cornell. *Commonplace or Anachronism: The Standard Model. the*
28 *Second Amendment, and the Problem of History in Contemporary Constitutional*

1 20. In keeping with the clear public meaning of the Second Amendment’s
2 text and comparable state provisions, early American governments enacted laws to
3 preserve the rights of law-abiding citizens to keep and bear arms and promote the
4 equally vital goals of promoting public safety. The proper metric for deciding if
5 such laws were constitutional was and remains the same today: whether a
6 regulation infringes on the right protected by the Second Amendment.³⁷

7 **II. FROM MUSKETS TO PISTOLS: CHANGE AND CONTINUITY IN EARLY**
8 **AMERICAN FIREARMS REGULATION**

9 21. Guns have been regulated from the dawn of American history.³⁸ At the
10 time *Heller* was decided, there was little scholarship on the history of gun
11 regulation and a paucity of quality scholarship on early American gun culture.³⁹
12 Fortunately, a burgeoning body of scholarship has illuminated both topics,
13 deepening scholarly understanding of the relevant contexts needed to implement
14 *Bruen*’s framework.⁴⁰

15 22. The common law that Americans inherited from England always
16 acknowledged that the right of self-defense was not unlimited but existed within a
17 well-delineated jurisprudential framework. The entire body of the common law
18 was designed to preserve the peace and the right of self-defense existed within this
19 larger framework.⁴¹ Statutory law, both in England and America functioned to
20 further secure the peace and public safety. Given these indisputable facts, the
21 Supreme Court correctly noted, the right to keep and bear arms was never
22 *Theory 16 CONSTITUTIONAL COMMENTARY* 988 (1999).

23 ³⁷ Saul Cornell and Nathan DeDino, *A Well Regulated Right: The Early*
24 *American Origins of Gun Control*, 73 *FORDHAM L. REV.* 487 (2004).

25 ³⁸ Robert I. Snitzer, *Gun Law History in the United States and Second*
26 *Amendment Rights*, 80 *L. & CONTEMP. PROBS.* 55 (2017).

27 ³⁹ *Id.*

28 ⁴⁰ Ruben & Miller, *supra* note 19, at 1.

⁴¹ Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law:*
Preserving Liberty and Keeping the Peace, 80 *L. & CONTEMP. PROBS.* 11 (2017).

1 understood to prevent government from enacting a broad range of regulations to
2 promote the peace and maintain public safety.⁴² In keeping with this principle, the
3 Second Amendment and its state analogues were understood to enhance the concept
4 of ordered liberty, not undermine it.⁴³

5 23. *Bruen*'s methodology requires judges to distinguish between the
6 relevant history necessary to understand early American constitutional texts and a
7 series of myths about guns and regulation that were created by later generations to
8 sell novels, movies, and guns themselves.⁴⁴ Unfortunately, many of these myths
9 continue to cloud legal discussions of American gun policy and Second
10 Amendment jurisprudence.⁴⁵

11 24. Although it is hard for many modern Americans to grasp, there was no
12 comparable societal ill to the modern gun violence problem for Americans to solve
13 in the era of the Second Amendment. A combination of factors, including the
14 nature of firearms technology and the realities of living life in small, face-to-face,
15 and mostly homogenous rural communities that typified many parts of early
16 America, militated against the development of such a problem. In contrast to
17 modern America, homicide was not the problem that government firearm policy
18 needed to address at the time of the Second Amendment.⁴⁶

19 25. The surviving data from New England is particularly rich and has
20 allowed scholars to formulate a much better understanding of the dynamics of early

21 _____
22 ⁴² *McDonald*, 561 U.S. at 785 (noting “[s]tate and local experimentation
with reasonable firearms regulations will continue under the Second
Amendment”).

23 ⁴³ See generally Saul Cornell, *The Long Arc Of Arms Regulation In Public:
24 From Surety To Permitting*, 1328-1928, 55 U.C. DAVIS L. REV. 2547 (2022)

25 ⁴⁴ PAMELA HAAG, *THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF
AMERICAN GUN CULTURE* (2016).

26 ⁴⁵ RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN
27 TWENTIETH-CENTURY AMERICA* (1993); JOAN BURBICK, *GUN SHOW NATION: GUN
CULTURE AND AMERICAN DEMOCRACY* (2006).

28 ⁴⁶ RANDOLPH ROTH, *AMERICAN HOMICIDE* 56, 315 (2009).

1 American gun policy and relate it to early American gun culture.⁴⁷ Levels of gun
2 violence among those of white European ancestry in the era of the Second
3 Amendment were relatively low compared to modern America. These low levels of
4 violence among persons of European ancestry contrasted with the high levels of
5 violence involving the tribal populations of the region. The data presented in
6 Figure 1 is based on the pioneering research of Ohio State historian Randolph Roth.
7 It captures one of the essential facts necessary to understand what fears motivated
8 American gun policy in the era of the Second Amendment. The pressing problem
9 Americans faced at the time of the Second Amendment was that citizens were
10 reluctant to purchase military style weapons which were relatively expensive and
11 had little utility in a rural society. Americans were far better armed than their
12 British ancestors, but the guns most Americans owned and desired were those most
13 useful for life in an agrarian society: fowling pieces and light hunting muskets.⁴⁸
14 Killing pests and hunting birds were the main concern of farmers, and their choice
15 of firearm reflected these basic facts of life. Nobody bayoneted turkeys, and pistols
16 were of limited utility for anyone outside of a small elite group of wealthy,
17 powerful, and influential men who needed these weapons if they were forced to
18 face an opponent on the field of honor in a duel, as the tragic fate of Alexander
19 Hamilton so vividly illustrates.⁴⁹

21 ⁴⁷ It is important to recognize that there were profound regional differences in
22 early America. See JACK P. GREENE, PURSUITS OF HAPPINESS: THE SOCIAL
23 DEVELOPMENT OF EARLY MODERN BRITISH COLONIES AND THE FORMATION OF
24 AMERICAN CULTURE (1988). These differences also had important consequences
25 for the evolution of American law. See generally David Thomas Konig,
26 *Regionalism in Early American Law*, in 1 THE CAMBRIDGE HISTORY OF LAW IN
27 AMERICA 144 (Michael Grossberg & Christopher Tomlins eds., 2008).

28 ⁴⁸ Kevin M. Sweeney, *Firearms Ownership and Militias in Seventeenth and
Eighteenth Century England and America*, in A RIGHT TO BEAR ARMS?: THE
CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND
AMENDMENT (Jennifer Tucker et al. eds., 2019).

⁴⁹ Joanne B. Freeman, *AFFAIRS OF HONOR: NATIONAL POLITICS IN THE NEW
REPUBLIC* (2001).

1 26. Limits in Founding-era firearms technology also militated against the
2 use of guns as effective tools of interpersonal violence in this period. Eighteenth-
3 century muzzle-loading weapons, especially muskets, took too long to load and
4 were therefore seldom used to commit crimes. Nor was keeping guns loaded a
5 viable option because the black powder used in these weapons was not only
6 corrosive, but it attracted moisture like a sponge. Indeed, the iconic image of rifles
7 and muskets hung over the mantle place in early American homes was not primarily
8 a function of aesthetics or the potent symbolism of the hearth, as many today
9 assume. As historian Roth notes: “black powder’s hygroscopic, it absorbs water, it
10 corrodes your barrel, you can’t keep it loaded. Why do they always show the gun
11 over the fireplace? Because that’s the warmest, driest place in the house.”⁵⁰
12 Similar problems also limited the utility of muzzle-loading pistols as practical tools
13 for self-defense or criminal offenses. Indeed, at the time of the Second
14 Amendment, over 90% of the weapons owned by Americans were long guns, not
15 pistols.⁵¹

Figure 1

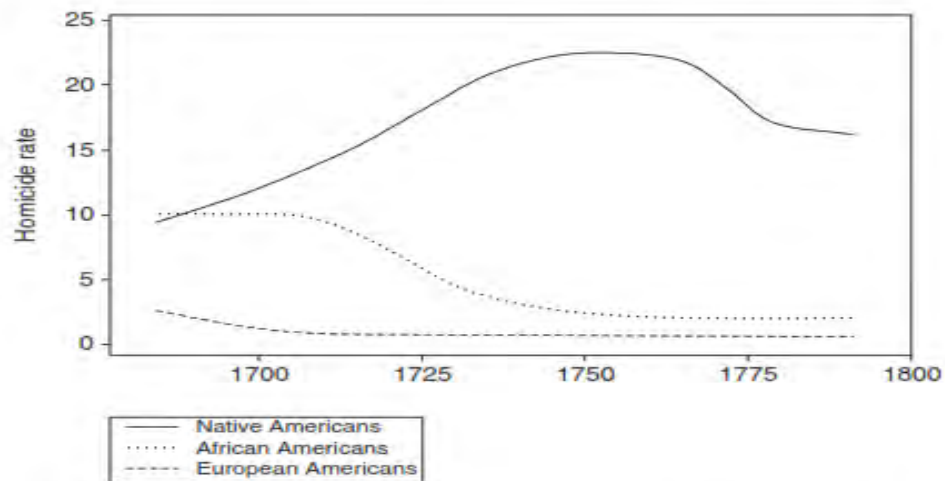


Figure 2.3 Unrelated-adult homicide rates in New England by race, 1677–1797 (per 100,000 persons per year).

26 ⁵⁰ Randolph Roth, Transcript: *Why is the United States the Most Homicidal in*
27 *the Affluent World*, NATIONAL INSTITUTE OF JUSTICE (Dec. 1, 2013),
<https://nij.ojp.gov/media/video/24061#transcript--0>.

28 ⁵¹ Sweeney, *supra* note 48.

1 27. As Roth’s data makes clear, there was not a serious homicide problem
2 looming over debates about the Second Amendment. Nor were guns the primary
3 weapon of choice for those with evil intent during this period.⁵² The skill and time
4 required to load and fire flintlock muzzle loading black powder weapons meant that
5 these types of firearms were less likely to be used in crimes of passion. The
6 preference for storing them unloaded also meant they posed fewer dangers to
7 children from accidental discharge.

8 28. In short, the Founding generation did not confront a gun violence
9 problem similar in nature or scope to the ills that plague modern America.

10 29. The Founding generation faced a different, but no less serious
11 problem: American reluctance to purchase the type of weapons needed to
12 effectively arm their militias. Despite repeated efforts to exhort and legislate to
13 promote this goal, many states were failing to adequately equip the militia with
14 suitable firearms that could withstand the rigors of the type of close-quarters hand-
15 to-hand combat required by eighteenth-century military tactics. A gun had to be
16 able to receive a bayonet and serve as a bludgeon if necessary. The light-weight
17 guns favored by the overwhelmingly rural population of early America were well
18 designed to put food on the table and rid fields of vermin, but these weapons were
19 not well suited to eighteenth-century ground wars. When the U.S. government
20 surveyed the state of the militia’s preparedness shortly after President Jefferson
21 took office in 1800, the problem had not been solved. Although Massachusetts
22 boasted above 80% of its militia armed with military quality weapons, many of the
23 southern states lagged far behind, with Virginia and North Carolina hovering at
24 about less than half the militia properly armed.⁵³

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27 ⁵² HAAG, *supra* note 44.

28 ⁵³ Sweeney, *supra* note 48.

1 30. As a result, the government took an active role in encouraging the
2 manufacturing of arms and had a vested interest in determining what types of
3 weapons would be produced.⁵⁴ The American firearms industry in its infancy was
4 thus largely dependent on government contracts and subsidies.

5 31. In short, the market for firearms in early America shared very few
6 features with the contemporary world of firearms commerce. Gun shows, gun
7 supermarkets, and internet sales are just a few of the many ways Americans acquire
8 firearms today. Although estimates vary, there are now more guns than people in
9 contemporary America. Today's Americans are awash in sea of guns and have a
10 myriad of choices when they wish to acquire a firearm. Early America firearms
11 production in the era of the Second Amendment, in contrast, was dominated by
12 artisan production. Local gun smiths, not big box stores such as Walmart, were
13 responsible for selling firearms. Most sellers and buyers of firearms in early
14 America were members of the same community and needed to maintain an ongoing
15 relationship with their local gun smith to keep their guns in good working order.
16 These informal ties of kin and community that defined the close-knit communities
17 of early America meant that individuals were effectively vetted and monitored by
18 their neighbors in ways that share little with the largely anonymous world of
19 modern firearms commerce. In addition, early American firearms, in contrast with
20 modern weapons, needed frequent repair, so much so that many gunsmiths devoted
21 most of their time to repair, not the manufacture or assembly of arms.⁵⁵

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23
24 ⁵⁴ Lindsay Schakenbach Regele, *A Different Constitutionality for Gun*
25 *Regulation*, 46 HASTINGS CONST. L.Q. 523, 524 (2019); Andrew I. B. Fagal,
American Arms Manufacturing and the Onset of the War of 1812, 87 NEW ENG. Q.
26 526, 526 (2014).

27 ⁵⁵ Scott Paul Gordon, *The Ambitions of William Henry*, 136 *Pennsylvania*
28 *Magazine of History and Biography* 253 (2012). Pennsylvania was one of the main
regions of early American gunsmithing, M.L. Brown, *Firearms in Colonial*
America: The Impact on History and Technology, 1492-1792 (1980).

1 32. Although much of the supervision of this market was achieved through
2 these informal means, governments in early America also regulated the sale of
3 firearms and ammunition in multiple ways.

4 33. One form of government regulation of the early American firearms
5 industry was through laws providing for the inspection of weapons.⁵⁶ The danger
6 posed by defective or poorly manufactured arms could be catastrophic. A burst
7 barrel of a musket or fowling piece could turn a firearm into a pipe bomb, maiming
8 or killing an unfortunate user. Indeed, without such regulation, the industry may
9 not have survived.

10 34. Other laws targeted arms and ammunition trafficking. For example,
11 Connecticut prohibited the sale of ammunition by its residents outside the colony.⁵⁷
12 Similarly, states regulated the sale of arms by taxation and permit schemes.⁵⁸

13 35. Gunpowder was extensively regulated, from manufacture to sale,
14 transportation, and storage. New Hampshire, for example, enacted a law in 1825
15 penalizing the sale or offer to sell “by retail any gunpowder in any highway, or in
16 any street, lane, or alley, or on any wharf, or on parade or common.”⁵⁹ The purpose
17 of this law and other similar laws was to promote public safety.

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20 ⁵⁶ See, e.g., 1814 Mass. Acts 464, An Act In Addition To An Act, Entitled
21 “An Act To Provide For The Proof Of Fire Arms, Manufactured Within This
22 Commonwealth,” ch. 192, § 1 (“All musket barrels and pistol barrels, manufactured
23 within this Commonwealth, shall, before the same shall be sold, and before the
24 same shall be stocked, be proved by the person appointed according to the
25 provisions of an act”); § 2 (“That if any person or persons, from and after the
26 passing of this act, shall manufacture, within this Commonwealth, any musket or
27 pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol,
28 without having the barrels first proved according to the provisions of the first
section of this act, marked and stamped according the provisions of the first section
of the act.”)

⁵⁷ 1 Trumbull, *Public Records of the Colony of Connecticut*, 79 (December 1, 1642), 138-139 (April 19, 1646), 145-146 (October 30, 1646).

⁵⁸ See, e.g., An Act Entitled Revenue, 1858 N.C. Sess. Laws 34, chap. 25, § 27, pt. 15; An Act to Tax Guns and Pistols in the County of Washington, 1867 Miss. Laws 327, § 1.

⁵⁹ 1825 N.H. Laws 74, ch. 61, § 5.

1 36. Examples of state laws delegating authority to local governments to
2 regulate the sale of gunpowder for public safety include:

- 3 • An Act to Incorporate and Establish the City of Dubuque, 1845 Iowa
4 Laws 119, chap 123, § 12 (delegating authority to cities “to regulate by
5 ordinance the keeping and sale of gunpowder within the city”);
6
- 7 • An Act Incorporating the Cities of Hartford, New Haven, New London,
8 Norwich and Middletown, 1836 Conn. Acts 105 (Reg. Sess.), chap. 1, §
9 20 (delegating authority to “prohibit[] and regulat[e] the bringing in, and
10 conveying out” of gunpowder); and
11
- 12 • An Act to Reduce the Law Incorporating the City of Madison, and the
13 Several Acts Amendatory thereto Into One Act, and to Amend the Same,
14 1847 Ind. Acts 93, chap 61, § 8, pt. 4 (delegating authority “[t]o regulate
15 and license, or provide by ordinance for regulating and licensing . . . the
16 keepers of gunpowder”).

17 37. Early American governments also regulated where shooting galleries
18 could be located—again, for the purpose of promoting public safety. For example,
19 governments required licenses to open shooting galleries and oftentimes set explicit
20 limits on locations. Historical examples include:

- 21 • Burlington, Iowa, in 1841, requiring an application for erecting a shooting
22 battery. *Ordinances of the City of Burlington, with Head Notes and an*
23 *Analytic Index*, § 1 (1841), at 149-150 (Chas. Ben. Darwin, Thompson &
24 Co. Printers, 1856) (listing other conditions);
25
- 26 • The East Feliciana Parish, Louisiana, in 1847, forbidding “shooting of
27 guns, pistols, or any other fire arms within the limits of the town of
28

1 Clinton” *Digest of the Laws and Ordinances of the Parish of East*
2 *Feliciana, Adopted by the Police Jury of the Parish*, sec. 1. (September
3 session, 1847), at 80 (John C. White, Whig Office, September 1, 1848);

- 4
- 5 • Rhode Island, in 1851, forbidding any pistol or rifle gallery in the
6 “compact part of the town of Newport” 1851 R.I. Pub. Laws 9, An
7 Act in Amendment of an Act Entitled an Act Relating to Theatrical
8 Exhibitions and Places of Amusement, §§ 1-2, in *The Revised Statutes of*
9 *the State of Rhode Island and Providence Plantations: To Which are*
10 *Prefixed, The Constitutions of the United States and of the State*, chp. 80,
11 section 2 (January Session 1857), at 204-205 (Samuel Ames, Chairman,
12 Sayles, Miller and Simons 1857) (same).

 - 13
 - 14 • San Francisco, California in 1853, requiring a license to keep a pistol or
15 rifle shooting gallery. *Ordinances and Joint Resolutions of the City of*
16 *San Francisco: Together with a List of the Officers of the City and*
17 *County, and Rules and Orders of the Common Council* 220, Ordinance
18 No. 498, section 13 (December 29, 1853), at 220 (Monson & Valentine
19 1854).

 - 20
 - 21 • Memphis, Tennessee, in 1863 requiring a license to set up a pistol gallery,
22 and prohibited such galleries “in the first story of any building in [the]
23 city[.]” *Digest of the Charters and Ordinances of the City of Memphis,*
24 *Together with the Acts of the Legislature Relating to the City, with an*
25 *Appendix Page*, Chp. 5, Art. VI., at 147-148 (October 7, 1863) (WM. H.
26 Bridges, Argus Book and Job Office 1863) (among other requirements);
27 and
28

- 1 • New Orleans, Louisiana, in 1870, prohibiting “any pistol or shooting
2 gallery within the limits of the city of New Orleans without having first
3 obtained the consent of” residents and common council. *The Laws and*
4 *General Ordinances of the City of New Orleans: Together with the Acts of*
5 *the Legislature, Decisions of the Supreme Court, and Constitutional*
6 *Provisions Relating to the City Government: Revised and Digested,*
7 *Pursuant to an Order of the Common Council*, Section 1, art. 636 (5), at
8 257 (Henry Jefferson Leovy, Simmons & Co. New Ed. 1870).

9 38. The calculus of individual self-defense changed dramatically in the
10 decades following the adoption of the Second Amendment.⁶⁰ The early decades of
11 the nineteenth century witnessed a revolution in the production and marketing of
12 guns.⁶¹ The same technological changes and economic forces that made wooden
13 clocks and other consumer goods such as Currier and Ives prints common items in
14 many homes also transformed American gun culture.⁶² These same changes also
15 made handguns and a gruesome assortment of deadly knives, including the dreaded
16 Bowie knife, more common. The culmination of this gradual evolution in both
17 firearms and ammunition technology was the development of Samuel Colt’s pistols
18 around the time of the Mexican-American War.⁶³ Economic transformation was
19 accompanied by a host of profound social changes that gave rise to America’s first
20 gun violence crisis. As cheaper, more dependable, and easily concealable handguns
21 proliferated in large numbers, Americans, particularly southerners, began sporting

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24 ⁶⁰ Cornell, *supra* note 3, at 745.

25 ⁶¹ Lindsay Schakenbach Regele, *Industrial Manifest Destiny: American*
Firearms Manufacturing and Antebellum Expansion, 93 BUS. HIST. REV. 57 (2018).

26 ⁶² Sean Wilentz, *Society, Politics, and the Market Revolution*, in THE NEW
AMERICAN HISTORY (Eric Foner ed., 1990).

27 ⁶³ WILLIAM N. HOSLEY, COLT: THE MAKING OF AN AMERICAN LEGEND (1st
28 ed. 1996).

1 them with alarming regularity. The change in behavior was most noticeable in the
2 case of handguns.⁶⁴

3 39. The response of states to the emergence of new firearms that
4 threatened the peace was more regulation. When faced with changes in technology
5 and consumer behavior, as well as novel threats to public safety, the individual
6 states enacted laws to address these problems. In every instance apart from a few
7 outlier cases in the Slave South, courts upheld such limits on the unfettered exercise
8 a right to keep and bear arms. The primary limit identified by courts in evaluating
9 such laws was the threshold question about infringement: whether the law negated
10 the ability to act in self-defense.⁶⁵ In keeping with the clear imperative hard-wired
11 into the Second Amendment, states singled out weapons that posed a particular
12 danger for regulation or prohibition. Responding in this fashion was entirely
13 consistent with Founding-era conceptions of ordered liberty and the Second
14 Amendment.

15 **III. RECONSTRUCTION AND THE EXPANSION OF STATE POLICE POWER TO**
16 **REGULATE FIREARMS (1863-1877)**

17 40. Founding-era constitutions treated the right of the people to regulate
18 their internal police separately from the equally important right of the people to
19 bear arms. These two rights were separate in the Founding era but were mutually
20 reinforcing: both rights were exercised in a manner that furthered the goal of
21 ordered liberty. Reconstruction-era constitutions adopted a new textual formulation
22 of the connection between these two formerly distinct rights, fusing the two
23 together as one single constitutional principle. This change reflected two profound
24 transformations in American politics and law between 1776 and 1868. First, the
25 judicial concept of police power gradually usurped the older notion of a police right

26 ⁶⁴ Cornell, *supra* note 9, at 716.

27 ⁶⁵ On southern gun rights exceptionalism, see Eric M. Ruben & Saul Cornell,
28 *Firearms Regionalism and Public Carry: Placing Southern Antebellum Case Law*
in Context, 125 YALE L.J. F. 121, 128 (2015).

1 grounded in the idea of popular sovereignty. As a result, state constitutions no
2 longer included positive affirmations of a police right. Secondly, the constitutional
3 “mischief to be remedied” had changed as well.⁶⁶ Constitution writers in the era of
4 the American Revolution feared powerful standing armies and sought to entrench
5 civilian control of the military. By contrast, constitution writers in the era of the
6 Fourteenth Amendment were no longer haunted by the specter of tyrannical Stuart
7 Kings using their standing army to oppress American colonists. In place of these
8 ancient fears, a new apprehension stalked Americans: the proliferation of
9 especially dangerous weapons and the societal harms they caused.⁶⁷

10 41. The new language state constitutions employed to describe the right to
11 bear arms enacted during Reconstruction responded to these changed circumstances
12 by adopting a new formulation of the venerable right codified in 1776, linking the
13 right to bear arms inextricably with the states broad police power to regulate
14 conduct to promote health and public safety.⁶⁸ For example, the 1868 Texas
15 Constitution included new language that underscored the indissoluble connection
16 that Anglo-American law had long recognized between the right to keep and bear
17 arms and regulation of guns. “Every person shall have the right to keep and bear
18 arms, in the lawful defence of himself or the government, under such regulations as

19 _____
20 ⁶⁶ The mischief rule was first advanced in *Heydon’s Case*. (1584) 76 Eng.
21 Ren. 637 (KB) — the legal principle that the meaning of a legal text was shaped by
22 an understanding of the state of the common law prior to its enactment and the
23 mischief that the common law had failed to address and legislation had intended to
24 remedy — continued to shape Anglo-American views of statutory construction, and
25 legal interpretation more generally, well into the nineteenth century. For
26 Blackstone’s articulation of the rule, see 1 BLACKSTONE, *supra* note 8, at *61. The
27 relevance of common law modes of statutory construction to interpreting
28 antebellum law, including the mischief rule, is clearly articulated in 1 ZEPHANIAH
SWIFT, A DIGEST OF THE LAWS OF THE STATE OF CONNECTICUT 11 (New Haven, S.
Converse 1822). For a modern scholarly discussion of the rule, see Samuel L.
Bray, *The Mischief Rule*, 109 GEO. L.J. 967, 970 (2021).

⁶⁷ See *McDonald*, 561 U.S. at 767–68

⁶⁸ Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America*, 55 U.C. DAVIS L. REV. 65 (2022).

1 the Legislature may prescribe.”⁶⁹ Nor was Texas an outlier in this regard. Sixteen
2 state constitutions adopted during this period employed similarly expansive
3 language.⁷⁰ Millions of Americans living in the newly organized western states and
4 newly reconstructed states of the former confederacy adopted constitutional
5 provisions that reflected this new formulation of the right to bear arms. Thus,
6 millions of Americans were living under constitutional regimes that acknowledged
7 that the individual states’ police power authority over firearms was at its apogee
8 when regulating guns.⁷¹

9 42. This expansion of regulation was entirely consistent with the
10 Fourteenth Amendment’s emphasis on the protection of rights and the need to
11 regulate conduct that threatened the hard-won freedoms of recently free people of
12 the South and their Republican allies. The goals of Reconstruction were therefore
13 intimately tied to the passage and enforcement of racially neutral gun regulations.⁷²

14 43. Reconstruction ushered in profound changes in American law, but it
15 did not fundamentally alter the antebellum legal view that a states’ police powers
16 were rooted in the people’s right to make laws to protect the peace and promote
17 public safety. Nor did Reconstruction challenge the notion that these powers were
18 at their zenith when dealing with guns and gun powder. In fact, the Republicans
19 who wrote the Fourteenth Amendment were among the most ardent champions of
20 an expansive view of state police power. As heirs to the antebellum Whig vision of

21 ⁶⁹ TEX. CONST. OF 1868, Art. I, § 13; for similarly expansive constitutional
22 provision enacted after the Civil War, *see* IDAHO CONST. OF 1889, art. I, § 11 (“The
23 people have the right to bear arms for their security and defense; but the legislature
24 shall regulate the exercise of this right by law.”); UTAH CONST OF 1896, art. I, § 6
25 (“[T]he people have the right to bear arms for their security and defense, but the
26 legislature may regulate the exercise of this right by law.”).

27 ⁷⁰ Cornell, *supra* note 68, at 75–76.

28 ⁷¹ *Id.*

⁷² ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND
RECONSTRUCTION REMADE THE CONSTITUTION* (2019); Brennan Gardner Rivas,
Enforcement of Public Carry Restrictions: Texas as a Case Study, 55 U.C. DAVIS L.
REV. 2603 (2022).

1 a well-regulated society, Reconstruction-era Republicans used government power
2 aggressively to protect the rights of recently freed slaves and promote their vision
3 of ordered liberty.⁷³

4 44. Indeed, the passage of the Fourteenth Amendment was premised on the
5 notion that the individual states would not cede their police power authority to the
6 federal government. The author of Section One of the Fourteenth Amendment,
7 John Bingham, reassured voters that the states would continue to bear the primary
8 responsibility for “local administration and personal security.”⁷⁴ As long as state
9 and local laws were racially neutral and favored no person over any other, the
10 people themselves, acting through their representatives, were free to enact
11 reasonable measures necessary to promote public safety and further the common
12 good.⁷⁵

13 45. It would be difficult to understate the impact of this new paradigm for
14 gun regulation on post-Civil War legislation. Across the nation legislatures took
15 advantage of the new formulation of the right to bear arms included in state
16 constitutions and enacted a staggering range of new laws to regulate arms. Indeed,
17 the number of laws enacted skyrocketed, increasing by over four hundred percent
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21 ⁷³ Robert J. Kaczorowski. *Congress’s Power to Enforce Fourteenth*
22 *Amendment Rights: Lessons from Federal Remedies the Framers Enacted*. 42
23 *HARV. J. ON LEGIS.* 187 (2005); Christopher Tomlins. *To Improve the State and*
24 *Condition of Man: The Power to Police and the History of American Governance*
25 53 *BUFFALO L. REV.* 1215 (2005/2006).

26 ⁷⁴ John Bingham. *Speech*. *CINCINNATI DAILY GAZETTE* (Sept. 2, 1867), as
27 quoted in Saul Cornell and Justin Florence. *The Right to Bear Arms in the Era of*
28 *the Fourteenth Amendment: Gun Rights or Gun Regulation*, 50 *SANTA CLARA L.*
REV. 1043, 1058 (2010).

⁷⁵ For a discussion of how the courts wrestled with the meaning of the
Amendment, see WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM*
POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE (1998).

1 from antebellum levels.⁷⁶ Not only did the number of laws increase, but the
2 number of states and localities passing such laws also expanded.⁷⁷

3 46. Henry Campbell Black, the author of *Black's Law Dictionary*,
4 described the police power as “inalienable” and echoed the view of a long line of
5 jurists who noted that the scope of the power was not easily defined and the
6 determination of its limits was best left to courts on a case-by-case basis.⁷⁸ Indeed,
7 even the most ardent critics of the police power, such as conservative legal scholar
8 Christopher G. Tiedeman, acknowledged that “police power of the State extends to
9 the protection of the lives, limbs, health, comfort and quiet of all persons, and the
10 protection of all property within the State.”⁷⁹

11 47. In keeping with the larger goals of Reconstruction, Republicans sought
12 to protect the rights of African Americans to bear arms but were equally insistent on
13 enacting strong racially neutral regulations aimed at public safety. Violence
14 directed against African Americans, particularly the campaign of terror orchestrated
15 by white supremacist para-military groups prompted Republican dominated
16 legislatures in the Reconstruction South to pass a range of racially neutral gun
17 regulations.⁸⁰ The racially neutral gun laws enacted by Republicans were in part a
18 reaction to the discriminatory black codes passed by neo-confederate legislatures
19 earlier in Reconstruction. The Black Codes violated the Second Amendment, but
20 the wave of firearms legislation passed by Republican controlled state legislatures

21 ⁷⁶ See Spitzer, *supra* note 38, at 59–61 tbl. 1.

22 ⁷⁷ *Id.*

23 ⁷⁸ HENRY CAMPBELL BLACK, HANDBOOK OF CONSTITUTIONAL LAW, 334–344
(2d ed., 1897).

24 ⁷⁹ CHRISTOPHER G. TIEDEMAN, A TREATISE ON THE LIMITATIONS OF THE
25 POLICE POWER IN THE UNITED STATES 4–5 (1886) (citing *Thorpe v. Rutland R.R.*, 27
Vt. 140, 149–50 (1854)).

26 ⁸⁰ Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in*
27 *Reconstruction Texas*, 4 TEX. A&M L. REV. 95, 113–17 (2016); Brennan G. Rivas,
28 *An Unequal Right to Bear Arms: State Weapons Laws and White Supremacy in*
Texas, 1836–1900, 121 SOUTHWESTERN QUARTERLY 284 (2020).

1 in the South were consciously crafted to honor the Second Amendment and protect
2 individuals from gun violence.⁸¹

3 48. The laws enacted during Reconstruction underscore the fact that robust
4 regulation of firearms during Reconstruction was not a novel application of the
5 police power, but an expansion and continuation of antebellum practices.
6 Moreover, these efforts illustrated a point beyond dispute: the flexibility inherent in
7 police power regulations of guns. American states had regulated arms since the
8 dawn of the republic and Reconstruction simply renewed America's commitment to
9 the idea of well-regulated liberty.

10 49. Laws aimed at limiting arms in important public venues where people
11 gathered were also enacted by Reconstruction-era governments to preserve the
12 peace and enable civil society to flourish.⁸² Some examples include laws banning
13 firearms in churches, schools, and other public places in which people gathered in
14 significant numbers.⁸³ Such laws were rooted in practices dating back centuries.
15 Indeed, the Statute of Northampton (1328) prohibited guns in fairs and markets—
16 places where people gathered in large numbers to engage in commerce,

17 _____
18 ⁸¹ See Darrell A. H. Miller, *Peruta, The Home-Bound Second Amendment,*
19 *and Fractal Originalism*, 127 HARV. L. REV. 238, 241 (2014); see also Robert J.
20 Kaczorowski, *Congress's Power to Enforce Fourteenth Amendment Rights:*
Lessons from Federal Remedies the Framers Enacted, 42 HARV. J. ON LEGIS. 187,
205 (2005) (discussing Republican use of federal power to further their aims,
including to enforce the Fourteenth Amendment).

21 ⁸² See, e.g., 1890 Okla. Laws 495, art. 47, sec. 7 (“It shall be unlawful for any
22 person, except a peace officer, to carry into any church or religious assembly, any
23 school room or other place where persons are assembled for public worship, for
24 amusement, or for educational or scientific purposes, or into any circus, show or
public exhibition of any kind, or into any ball room, or to any social party or social
gathering, or to any election, or to any place where intoxicating liquors are sold, or
to any political convention, or to any other public assembly, any of the weapons
designated in sections one and two of this article.”)

25 ⁸³ For a good illustration of the colonial policy, see An Act for the Better
26 Security of the Inhabitants by Obliging the Male White Persons to Carry Fire Arms
27 to Places of Public Worship, 1770, reprinted in GEORGIA COLONIAL LAWS 471
(1932). For a good example of the restrictive approach taken during
28 Reconstruction, see J. Hockaday, REVISED STATUTES OF THE STATE OF MISSOURI
(1879) at 224.

1 entertainment, and politics. Americans in the Founding era copied elements of this
2 ancient law and included these prohibitions in laws enacted after the American
3 Revolution.⁸⁴

4 50. One location that required additional regulation was public parks. The
5 creation of large urban public parks in the 1850s posed new challenges for
6 preserving the peace and public safety. Statutes prohibited possession of arms in
7 these important public spaces in major urban areas of every region of the nation.⁸⁵

8 51. The federal government also passed laws limiting firearms in its parks.
9 Such regulations are especially important because federal lands were indisputably
10 governed by the Second Amendment, irrespective of the incorporation doctrine.⁸⁶
11 The Secretary of the Interior underscored the danger posed by firearms in parks
12 when he wrote that, in Yellowstone, an “[a]bsolute prohibition of firearms in the
13 park is recommended.⁸⁷

14 _____
15 ⁸⁴ Statute of Northampton 1328, 2 Edw. 3, c. 3 (Eng.), *reprinted in* 1 THE
16 STATUTES OF THE REALM 258 (London, John Raithby ed., 1235–1377). On the
17 importance of the Statute of Northampton to maintain the peace, see generally A.J.
18 Musson, *Sub-Keepers and Constables: The Role of Local Officials in Keeping the*
19 *Peace in Fourteenth-century England*, 117 ENG. HIST. REV. 1 (2002). On the
20 continuities between this feature of English law and early American gun laws, see
21 Cornell, *supra* note 43.

22 ⁸⁵ *San Francisco Municipal Reports*, 499 (1874); *Law and Ordinances*
23 *Governing the Village of Hyde Park* (1875); *The Municipal Code of Chicago*, 391
24 (1881); *Ordinances of the City of Boulder* 157 (1899); *The Revised Ordinances of*
25 *the City of Danville* (1883); *A Digest of the Laws and Ordinances of the City of*
26 *Philadelphia from the Year 1701 to the 21 Day of June, 1887*, at 513 (1887); *The*
27 *Revised Municipal Code of Ohio*, 196 (1899); *Report of the Board of Park*
28 *Commissioners of the City of Rochester, N.Y.: 1888 to 1898*, 98 (1898); *The*
Municipal Code of the City of Spokane, Washington: Comprising the Ordinances of
the City ... Revised to October 22, 1896, 316 (1896); *Proceedings of the Common*
Council of the City of Saint Paul 133 (1892); *Annual Report of the Park*
Commissioners of the City of Lynn for the Year Ending 1893, at 45 (1893); *Charter*
and Ordinances of the City of New Haven: Together with Legislative Acts Affecting
Said City 293 (1898); *A Digest of the Acts of Assembly Relating to and the General*
Ordinances of the City Pittsburgh 496 (1897).

⁸⁶ Report of the Department of the Interior ... [with Accompanying
Documents] 499 (1899); Report of the Secretary of the Interior for the Fiscal Year,
125 (1900).

⁸⁷ *The Abridgment: Containing Messages of the President of the United*
States to the Two Houses of Congress with Reports of Departments and Selections

1 **IV. BRUEN’S FRAMEWORK AND THE SCOPE OF PERMISSIBLE REGULATION**

2 52. The power to regulate and in some cases prohibit dangerous or unusual
3 weapons has always been central to the police power authority of states and
4 localities.⁸⁸

5 53. Political scientist Robert Spitzer’s overview of the history of firearms
6 regulation underscores a basic point about American law: “The lesson of gun
7 regulation history here is that new technologies bred new laws when circumstances
8 warranted.”⁸⁹ States and localities have regulated arms and ammunition since the
9 earliest days of the American Republic. The statutes at issue in this case are
10 analogous to a long-established tradition of firearms regulation in America,
11 beginning in the colonial period and stretching across time to the present. This
12 venerable tradition of using police power authority to craft specific laws to meet
13 shifting challenges has continued to the present day.⁹⁰ The adaptability of state and
14 local police power provided the flexibility governments needed to deal with the
15 problems created by changes in firearms technology and gun culture.

16 54. Sales of weapons have been subject to regulation since before the
17 Founding. In addition, carrying of weapons in sensitive places, including places
18 where large gatherings occur, has been regulated by localities, states, and the
19 federal government over the course of American history.

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from Accompanying Papers 618 (1893).

26 ⁸⁸ Spitzer, *supra* note 38.

27 ⁸⁹ *Id.*

28 ⁹⁰ Gary Gerstle, *Liberty and Coercion: The Paradox of American Government, from the Founding to the Present* (Princeton Univ. Press, 2015).

1 Executed on February 15, 2023 at Redding, CT.

2 *Saul Cornell*

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4 Saul Cornell

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EXHIBIT A

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Education			
1989	University of Pennsylvania	Ph.D.	Dissertation: “The Political Thought and Culture of the Anti-Federalists”
1985	University of Pennsylvania	MA	History
1982	Amherst College	BA	History - Magna Cum Laude
1980-81	University of Sussex, Brighton, England		

Teaching Experience		
2009-2020	Guenther Chair in American History	Fordham University
2011-2022	Adjunct Professor of Law	Fordham Law School
2005-2008	Professor of History	The Ohio State University
1997-2005	Associate Professor, History	The Ohio State University
1995	Thomas Jefferson Chair	University of Leiden, The Netherlands
1991-1997	Assistant Professor, History	The Ohio State University
1989-1991	Assistant Professor, History	College of William and Mary

Fellowships and Grants

- 2019-2020 The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University
- 2018-2019 Senior Research Scholar in Residence, Floersheimer Center for Constitutional Democracy, Cardozo Law School
- 2014 Senior Research Scholar in Residence, University of Connecticut Law School
- 2011 Senior Research Scholar in Residence, Yale Law School
- 2003-2008 Joyce Foundation, Second Amendment Center Grant, \$575,000
- 2003-2004 NEH Fellowship
- 2002-2005 Department of Education, Teaching American History Grant, Historyworks, \$2,000,000
- 2002 Gilder-Lehrman Fellowship
- 2001-2002 Joyce Foundation Planning Grant, \$40,000
- 2001 American Council of Learned Societies (ACLS)
- 1999-2000 Betha Grant, Batelle Memorial Endowment, Ohio Teaching Institute, \$100,000
- 1998 Thomas Jefferson Memorial Foundation, Research Fellowship
- 1995 Thomas Jefferson Chair in American Studies, Fulbright Lecturing Award
- 1994 Ohio State University Seed Grant
- 1993 Ohio State University Special Research Assignment
- 1992 Ohio State University Grant-In-Aid
- 1989-1991 NEH Post-Doctoral Fellow, Institute of Early American History and Culture

Prizes and Awards

- 2006 Langum Prize in Legal History 2006
- 2006 History News Network, Book of the Month
- 2006 History News Network, Top Young Historian
- 2001 Society of the Cincinnati, History Book Prize, a Triennial Award for the Best Book on the American Revolutionary Era
- 2000 Choice Outstanding Academic Book

Book Publications

The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders Constitution *New Histories of American Law*, series eds., Michael Grossberg and Christopher Tomlins (Cambridge University Press, 2019) [With Gerald Leonard]

The Second Amendment On Trial: Critical Essays on District of Columbia v. Heller (University of Massachusetts Press, 2013) [with Nathan Kozuskanich]

Visions of America: A History of the United States [co-authored with Jennifer Keene and Ed O'Donnell] (First edition, 2009),(second edition 2013) (third edition, 2016)

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Whose Right to Bear Arms Did the Second Amendment Protect? (Bedford/St. Martins Press, 2000) (Paperback 2000)

The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828 (Institute of Early American History and Culture, University of North Carolina Press, 1999) (paperback edition 2001)

Editor, Retrieving the American Past: Documents and Essays on American History, (Pearson, 1994-2008)

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“History and Tradition or Fantasy and Fiction: Which Version of the Past Will the Supreme Court Choose in *NYSRPA v. Bruen?*,” 49 *Hastings Constitutional Law Quarterly* (2022): 145-177.

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- “A New Paradigm for the Second Amendment,” Law and History Review 22 (2004): 161-7
- “Gun Laws and Policies: A Dialogue,” Focus on Law Studies: Teaching about Law in the Liberal Arts (American Bar Association, 2003)
- “The Militia Movement,” Oxford Companion to American Law (Oxford University Press, 2002)
- “Don’t Know Much About History: The Current Crisis in Second Amendment Scholarship,” Northern Kentucky Law Review (2003)
- “A Right to Bear Quills or Kill Bears? A Critical Commentary on the Linkage between the 1st and 2nd Amendment in Recent Constitutional Theory,” in The Limits of Freedom in A Democratic Society (Kent State University Press, 2001)
- “The Irony of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional History,” in American Law Ways and Folkways (Odense University Press, Denmark 2001)
- “Commonplace or Anachronism: The Standard Model, The Second Amendment, and the Problem of History in Contemporary Constitutional Theory,” Constitutional Commentary (1999): 221-246
- “Mere Parchment Barriers? Anti-Federalists, the Bill of Rights, and the Question of Rights Consciousness,” in Government Proscribed: The Bill of Rights (University of Virginia Press, 1998): 175-208

- “Moving Beyond the Great Story: Post-Modern Prospects, Post-Modern Problems, A Forum on Robert Berkhofer, Jr. Beyond the Great Story” American Quarterly (1998): 349-357
- “The Anti-Federalists,” in The Blackwell Companion to American Thought, eds., James Kloppenberg (London, 1995)
- “The Bill of Rights,” in The Blackwell Companion to American Thought, eds., James Kloppenberg (London, 1995)
- “Splitting the Difference: Textualism, Contextualism, and Post-Modern History,” American Studies (1995): 57-80
- “Canon Wars II: The Return of the Founders,” Reviews in American History 22 (1994): 413-417
- “Moving Beyond the Canon of Traditional Constitutional History: Anti-Federalists, the Bill of Rights and the Promise of Post-Modern Historiography,” Law and History Review (1994): 1-28
- “Early American History in a Post-Modern Age,” William and Mary Quarterly 50 (1993): 329-341
- “Liberal Republicans, Republican Liberals?: The Political Thought of the Founders Reconsidered,” Reviews in American History 21 (1993): 26-30
- “Politics of the Middling Sort: The Bourgeois Radicalism of Abraham Yates, Melancton Smith, and the New York Anti-Federalists,” in New York in the Age of the Constitution (New York Historical Society, 1992): 151-175
- “Aristocracy Assailed: Back-Country Opposition to the Constitution and the Problem of Anti-Federalist Ideology,” Journal of American History (1990): 1148-1172
- “The Changing Historical Fortunes of the Anti-Federalists,” Northwestern University Law Review (1989): 39-73
- “Reflections on the ‘Late Remarkable Revolution in Government,’ Aedanus Burke and Samuel Bryan’s Unpublished History of the Ratification of the Federal Constitution,” The Pennsylvania Magazine of History and Biography (1988): 103-130

Book Reviews:

- Journal of American History
- William and Mary Quarterly
- American Studies Journal of the Early Republic
- Pennsylvania Magazine of History and Biography
- American Quarterly
- American Journal of Legal History
- Law and History Review

Journal Manuscript Referee:

- Journal of American History
- William and Mary Quarterly
- Diplomatic History
- Pennsylvania Magazine of History and Biography
- Law and History Review
- Harvard Law Review

- Stanford Law Review
- Yale Law Journal

Book Manuscript Reviewer:

- University Press of Virginia
- University of North Carolina Press
- Stanford University Press
- University of Massachusetts Press
- Oxford University Press
- Cambridge University Press
- University of Michigan Press
- Harvard University Press

Invited Lectures:

“Race, Regulation, and Guns: The Battleground in the Debate Over the Second Amendment,”
Haber/Edelman Lecture: University of Vermont, Fall 2021

“Second Amendment Myths and Realities,” University of Tampa, Honors College Symposium,
November 30, 2018.

“The Common Law and Gun Regulation: Neglected Aspects of the Second Amendment Debate,” Guns
in Law, Amherst College, Law Justice and Society (2016)

“The New Movement to End Gun Violence.” UCLA Hammer Museum (2016)

“No Person May Go Armed”: A Forgotten Chapter in the History of Gun Regulation” The Elizabeth
Battelle Clark Legal History Series, Boston University College of Law, 2016

Legacy Speaker Series: “Guns in the United States,” University of Connecticut (2016) “How does the
Second Amendment Apply to Today?”

American Constitution Society/ Federalist Society Debate, Tulane Law School, New Orleans (2016)

“The Second Amendment and The Future of Gun Regulation: Forgotten Lessons From U.S. History,”
Constitution Day Lecture, Goucher College, (2015)

Keynote Lecture: “The Second Amendment and American Cultural Anxieties: From Standing Armies to
the Zombie Apocalypse” Firearms and Freedom: The Relevance of the Second Amendment in the
Twenty First Century, Eccles Center, British Library (Spring 2015)

“Narratives of Fear and Narratives of Freedom: A Short Cultural History of the Second Amendment,”
Comparing Civil Gun Cultures: Do Emotions Make a Difference? Max Plank Institute, Berlin (2014)

“History and Mythology in the Second Amendment Debate,” Kollman Memorial Lecture, Cornell
College, Iowa (Spring, 2013)

“Will the Real Founding Fathers Please Stand Up or Why are so few Historians Originalists”
Constitution Day Lecture, Lehman College, Fall 2011

“Lawyers, Guns, and Historians: The Second Amendment Goes to Court,” SHEAR/HSP Public Lecture,
Philadelphia, July, 2008

- The Robert H. and Alma J. Wade Endowment Lecture, Kentucky Wesleyan University, “The Early American Origins of Gun Control” (2006)
- “Jefferson, Mason, and Beccaria: Three Visions of the Right to Bear Arms in the Founding Era,” Bill of Rights Lecture, Gunston Hall Plantation, Fairfax, VA (2003)
- “A New Paradigm for the Second Amendment,” Finlay Memorial Lecture, George Mason University, (2001)
- “Academic Gunsmoke: The Use and Abuse of History in the Second Amendment Debate,” Cadenhead Memorial Lecture, University of Tulsa, (2000)
- “Why the Losers Won: The Rediscovery of Anti-Federalism in the Reagan Years,” Thomas Jefferson Inaugural Lecture, University of Leiden, Netherlands, (1995)

Presentations:

- “From Ideology to Empiricism: Second Amendment Scholarship After Heller, “ Hastings Constitutional Law Quarterly Symposium, Heller at Ten, January 18, 2019
- “Firearms and the Common Law Tradition,” Aspen Institute, Washington, DC (2016)
- “The Original Debate over Original Meaning Revisited, ” British Group in Early American History, Annual Meeting, Cambridge, England (2016)
- “Second Amendment Historicism and Philosophy” The Second Generation of Second Amendment Scholarship” Brennan Center, NYU 2016
- “The Reception of the Statute of Northampton in Early America: Regionalism and the Evolution of Common Law Constitutionalism” OIEAHC and the USC/Huntington Library Early Modern Studies Institute May 29–30, 2015
- “The Right to Travel Armed in Early America: From English Restrictions to Southern Rights,” British Group in Early American History, Annual Conference Edinburgh, Scotland (2014)
- “Progressives, Originalists, and Pragmatists: The New Constitutional Historicism and the Enduring Legacy of Charles Beard,” Charles Beard, Economic Interpretation and History, Rothmere Center, Oxford University (2012)
- CUNY Early American Seminar, “The People’s Constitution v. the Lawyer’s Constitution,” 2011 Roundtable : “The Work of J.R. Pole,” SHEAR , Philadelphia, Pennsylvania 2011)
- “The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation?” Bearing Arms, Policy, Policing, and Incorporation After Heller, Santa Clara Law School (2010)
- “Re-envisioning Early American History,” American Historical Association Annual Meeting, San Diego (2010)
- “The Ironic Second Amendment” Firearms, the Militia, and Safe Cities: Merging History, Constitutional Law and Public Policy, Albany Law School (2007)
- “*District of Columbia v. Heller* and the Problem of Originalism,” University of Pennsylvania Constitutional Law Workshop, Philadelphia (2007)

- “Progressives and the Gun Control Debate,” American Constitution Society, Harvard Law School, (2006)
- “The Problem of Popular Constitutionalism in Early American Constitutional Theory,” American Association of Law Schools, Annual Conference (2006)
- “Popular Constitutionalism and the Whiskey Rebellion,” Symposium on Larry Kramer’s The People Themselves, Chicago-Kent Law School (2005)
- Roundtable Discussion on the Second Amendment and Gun Regulation, NRA/ GMU Student’s For the Second Amendment Symposium (2005)
- “The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History,” Gun Control: Old Problems, New Problems, Joint Conference Sponsored by the John Glenn Institute and Stanford Law School (2005)
- “Original Rules for Originalists?” University of Minnesota Law School (2005)
- “The Fourteenth Amendment and the Origins of the Modern Gun Debate,” UCLA, Legal History Workshop (2004)
- “Beyond Consensus, Beyond Embarrassment: The Use and Abuse of History in the Second Amendment Debate,” American Society of Legal History, Austin, TX (2004)
- “Armed in the Holy Cause of Liberty: Guns and the American Constitution,” NYU Legal History Colloquium (2004)
- “Digital Searches and Early American History,” SHEAR Brown University (2004)
- “Well Regulated: The Early American Origins of Gun Control,” The Second Amendment and the Future of Gun Regulation,” Joint Conference Sponsored by the John Glenn Institute and Fordham Law School, New York (2004)
- “Minuteman, Mobs, and Murder: Forgotten Contexts of the Second Amendment,” Department of History, University of California Berkeley (2003)
- “History vs. Originalism in the Second Amendment Debate,” Federalist Society/ American Constitution Society, George Washington University Law School, Washington D.C. (2003)
- “Self-defense, Public Defense, and the Politics of Honor in the Early Republic,” Lake Champlain Early American Seminar, Montreal (2003)
- “The Ironic Second Amendment” “Gun Control: Controversy, Social Values, and Policy,” University of Delaware Legal Studies Conference, Newark, Delaware (2003)
- “Individuals, Militias, and the Right to Bear Arms: The Antebellum Debate Over Guns,” Institute for Legal Studies, University of Wisconsin School of Law (2004)
- “Guns in the British Atlantic World: New Research, New Directions” Society for the Historians of the Early American Republic, Ohio State University (2003)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” American Bar Foundation, Chicago (2003)
- “The Changing Meaning of the Armed Citizen in American History,” “Americanism Conference,” Georgetown University (2003)

- “A New Paradigm for the Second Amendment?” Supreme Court Historical Society, Washington, D.C. (2002)
- “Constitutional History as Cultural History: The Case of the Second Amendment” European American Studies Association, Bordeaux, France (2002)
- “Don’t Know Much About History: The Current Crises in Second Amendment Scholarship,” Salmon P. Chase College of Law, Symposium, “The Second Amendment Today,” (2002)
- “History, Public Policy, and the Cyber-Age: Gun Control Policy after the Emerson Decision,” Sanford Institute of Public Policy, Duke University (2002)
- “Constitutional History After the New Cultural History: The Curious Case of the Second Amendment,” Society of the Historians of the Early American Republic, Baltimore (2001)
- Roundtable Discussion, “The State of Second Amendment Scholarship,” American Historical Association (2001)
- “Armed in the Holy Cause of Liberty: Critical Reflections on the Second Amendment Debate,” Vanderbilt University Law School (2001)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” Boston University Law School, (2000)
- “The Current State of Second Amendment Scholarship,” National Press Club Washington, D.C. American Bar Association, (2000)
- “Taking the Hype out of Hyper-Text, Or What Should Textbook Companies Being Doing for us on the Web,” OAH St. Louis, Missouri (1999)
- “The Ironies of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional Theory,” European American Studies Association, Lisbon, Portugal (1998)
- “Deconstructing the Canon of American Constitutional History” American Society of Legal History, Seattle, Washington (1998)
- “Beyond Meta-narrative: The Promise of Hypertext,” American Studies Association, Seattle, Washington (1998)
- “Text, Context, Hypertext,” American Historical Association, Washington D.C. (1998)
- “Jefferson and Enlightenment,” International Center for Jefferson Studies, Charlottesville, VA, (1998)
- “Copley’s Watson and the Shark: Interpreting Visual Texts with Multi-media Technology,” American Studies Association, Washington, D.C. (1997)
- “Multi-Media and Post-Modernism,” H-Net Conference, Technology and the Future of History, East Lansing, Michigan (1997)
- Comment on Jack Rakove’s Original Meanings, Society of the Historians of the Early Republic, State College, PA (1997)
- “Teaching with Multi-Media Technology,” Indiana University, spring 1997 “Constitutional History from the Bottom Up: The Second Amendment as a Test Case,” McGill University, Montreal, Canada (1996)

- “Just Because You Are Paranoid, Does Not Mean the Federalists Are Not Out to Get You: Freedom of the Press in Pennsylvania,” University of Pennsylvania (1995)
- “Multi-Media and Post-Modernism: The Future of American Studies?” Lecture, Erasmus University, Rotterdam, Netherlands (1995)
- “Post-Modern American History? Ratification as a Test Case,” St. Cross College, Oxford University, Oxford, England (1994)
- “The Other Founders,” NYU Legal History Seminar,” NYU Law School (1994)
- “Reading the Rhetoric of Ratification,” paper presented at “Possible Pasts: Critical Encounters in Early America,” Philadelphia Center for Early American Studies, Philadelphia, PA (1994)
- “American Historiography and Post-Modernism,” Organization of American Historians, Atlanta, GA (1994)
- “The Anti-Federalist Origins of Jeffersonianism,” Columbia Seminar on Early American History (1994)
- “American History in a Post-Modern Age?” American Historical Association, San Francisco, CA (1994)
- “Post-Modern Constitutional History?” Indiana University School of Law, Bloomington, IN (1993)
- Participant, Institute of Early American History and Culture, planning conference, “New Approaches to Early American History,” Williamsburg, VA (1992)
- “Mere Parchment Barriers? Federalists, Anti-Federalists and the Problem of Rights Consciousness,” American Studies Association, Baltimore, MD (1991)
- “James Madison and the Bill of Rights: a comment on papers by Jack Rakove, Ralph Ketcham and Max Mintz,” Organization of American Historians and Center for the Study of the Presidency Conference, “America's Bill of Rights at 200 Years,” Richmond, VA, (1991)
- Symposium participant, “Algernon Sidney and John Locke: Brothers in Liberty?” Liberty Fund Conference, Houston, TX (1991)
- “Mere Parchment Barriers? Antifederalists, the Bill of Rights and the Question of Rights Consciousness,” Capitol Historical Society, Washington, D.C. (1991)
- “Anti-Federalism and the American Political Tradition,” Institute of Early American History and Culture Symposium, Williamsburg, VA (1989)

Interviews, Editorials, Essays, Podcasts:

- “Clarence Thomas’ Latest Guns Decision Is Ahistorical and Anti-Originalist”
SLATE June 24, 2022

- Cherry-picked history and ideology-driven outcomes: Bruen’s originalist distortions,” SCOTUSblog (Jun. 27, 2022, 5:05 PM),
- “The Right Found a New Way to Not Talk About a School Shooting,” SLATE May 25, 2022
- “The Horror in New York Shows the Madness of the Supreme Court’s Looming Gun Decision,” *Slate* May 19, 2022
- “Guns, Guns Everywhere: Last week’s subway Shooting was Horrifying. If the Supreme Court Creates a National Right to Carry, the Future will be Worse,” *New York Daily News* Apr 17, 2022
- “The Supreme Court’s Latest Gun Case Made a Mockery of Originalism” *Slate* November 10, 2021
- “‘Originalism’ Only Gives the Conservative Justices One Option On a Key Gun Case,” *Washington Post*, November 3, 2021
- “Neither British Nor Early American History Support the Nearly Unfettered Right to Carry Arms,” *Slate* November 02, 2021
- “Will the Supreme Court Create Universal Concealed Carry Based on Fantasy Originalism?” *Slate* November 1, 2021
- “Biden was Wrong About Cannons, but Right About the Second Amendment,” *Slate* June 29, 2021
- “Barrett and Gorsuch Have to Choose Between Originalism and Expanding Gun Rights,” *Slate* April 29, 2021 *Slate*
- “What Today’s Second Amendment Gun Activists Forget: The Right Not to Bear Arms,” *Washington Post*, January 18, 2021
- “Could America’s Founders Have Imagined This?” *The New Republic*, December 20, 2019
- “Don’t Embrace Originalism to Defend Trump’s Impeachment” *The New Republic*, December 5, 2019
- “The Second-Amendment Case for Gun Control” *The New Republic*, August 4, 2019
- “The Lessons of a School Shooting—in 1853” *Politico*, March 24, 2018.
- “Originalism and the Second Amendment in *District of Columbia v. Heller*,” *University of Chicago Law Review*, Podcast, Briefly 1.9, Wed, 04/11/2018
- “Sandy Hook and the Original Meaning of the Second Amendment,” *Time* December, 2017
- “The State of the Second Amendment,” National Constitution Center, Podcast October, 2017
- “Gun Anarchy and the Unfree State: The Real History of the Second Amendment,” *The Baffler On-line* October 2017
- “Five Types of Gun Laws the Founding Fathers Loved” *Salon* October 22, 2017
- “Half Cocked,” *Book Forum* April 2016
- “Let’s Make an Honest Man of Ted Cruz. Here’s how we Resolve his “Birther” Dilemma with Integrity” *Salon* January 23, 2016
- “Guns Have Always Been Regulated,” *The Atlantic Online* December 17, 2015
- “The Slave-State Origins of Modern Gun Rights” *The Atlantic Online* 30, 2015 [with Eric Ruben]
- PBS, “Need to Know: ‘Debating the Second Amendment: Roundtable’” April 26, 2013
- “All Guns are not Created Equal” Jan 28, 2013 *Chronicle of Higher Education* [with Kevin Sweeney]

- “What the ‘Right to Bear Arms’ Really Means” *Salon* January 15, 2011 “Elena Kagan and the Case for an Elitist Supreme Court,” *Christian Science Monitor* May 20, 2010
- “Gun Points,” *Slate*, March 8, 2010 (With Justin Florence, and Matt Shors)
- “What’s Happening to Gun Control,” *To the Point*, NPR. March 11, 2010
- “Getting History Right,” *National Law Journal*, March 1, 2010
- “History and the Second Amendment,” *The Kojo Nnamdi Show* , WAMU (NPR) March 17, 2008
- “The Court and the Second Amendment,” *On Point* with Tom Ashbrook, WBUR (NPR) March 17, 2008
- “Aim for Sensible Improvements to Gun Regulations,” *Detroit Free Press*, April 29, 2007
- “A Well Regulated Militia,” *The Diane Rehm Show*, WAMU (NPR) Broadcast on Book TV (2006)
- “Taking a Bite out of the Second Amendment,” *History News Network*, January 30, 2005
- “Gun Control,” *Odyssey*, Chicago NPR September 8, 2004
- “Loaded Questions,” *Washington Post Book World* February 2, 2003
- “The Right to Bear Arms,” Interview *The Newshour*, PBS May 8, 2002
- “Real and Imagined,” *New York Times*, June 24, 1999

Other Professional Activities

- Editorial Board, Constitutional Study, University of Wisconsin Press (2014-present)
- Advisory Council, Society of Historians of the Early American Republic (SHEAR) (2007-2009)
- Program Committee, Annual Conference, Society of the Historians of the Early American Republic, Philadelphia, PA 2008
- Editorial Board, American Quarterly (2004-2007)
- Director, Second Amendment Research Center, John Glenn Institute for Public Service and Public Policy, 2002- 2007
- Fellow, Center for Law, Policy, and Social Science, Moritz College of Law, Ohio State University 2001- 2004
- Local Arrangements Committee, Annual Conference, Society of the Historians of the Early American Republic, Columbus, OH 2003
- Project Gutenberg Prize Committee, American Historical Association, 2004, 2002
- Program Committee, Annual Conference, Society of the Historians of the Early Republic, 2001
- Co-Founder Ohio Early American Studies Seminar
- NEH Fellowship Evaluator, New Media Projects, Television Projects
- Multi-media Consultant and Evaluator, National Endowment for the Humanities, Special, Projects, Division of Public Programs, Grants Review Committee (1999)

Court Citations, Amicus Briefs and Expert Witness Reports

US Supreme Court:

N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. ___, 50 2022 U.S. Lexis 3055 (2022)

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. ___, 26, 28, 45, 47 2022 U.S. Lexis 3055 (2022) (Breyer, J. dissenting)

McDonald v. City of Chicago, Ill., 561 U.S. 742, 900, 901 n.44 (2010) (Stevens, J., dissenting).

McDonald v. City of Chicago, Ill., 561 U.S. 742, 914, 933 (2010) (Breyer, J., dissenting).

D.C. v. Heller, 554 U.S. 570, 666 n.32, 671, 685 (2008) (Stevens, J., dissenting).

Federal Courts:

Jones v. Bonta, United States Court of Appeals, Ninth Circuit. May 11, 2022 --- F.4th ---- 2022 WL 1485187.

Duncan v. Bonta, United States Court of Appeals, Ninth Circuit. November 30, 2021 19 F.4th 1087 2021

Young v. Hawaii, 992 F.3d 765, 785-86 (9th Cir. 2021) (en banc).

Kanter v. Barr, 919 F.3d 437, 446 n.6, 457, 462, 464 (7th Cir. 2019) (Barrett, J., dissenting).

Medina v. Whitaker, 913 F.3d 152, 159 (D.C. Cir.), cert. denied sub nom. Medina v. Barr, 140 S. Ct. 645 (2019).

Young v. Hawaii, 896 F.3d 1044, 1066 (9th Cir. 2018), reh'g en banc granted, 915 F.3d 681 (9th Cir. 2019).

Young v. Hawaii, 896 F.3d 1044, 1077 (9th Cir. 2018) (Clifton, J., dissenting), reh'g en banc granted, 915 F.3d 681 (9th Cir. 2019).

Teixeira v. Cty. of Alameda, 873 F.3d 670, 684–85 (9th Cir. 2017).

Kolbe v. Hogan, 813 F.3d 160, 175 (4th Cir. 2016), on reh'g en banc, 849 F.3d 114 (4th Cir. 2017).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 348 (3d Cir. 2016).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 370–71, 371 n.17, 372 n.19 (3d Cir. 2016) (Hardiman, J., concurring).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 389 n.85, 405 n.187 (3d Cir. 2016) (Fuentes, J., concurring).

Peruta v. Cty. of San Diego, 824 F.3d 919, 935 (9th Cir. 2016).

Peruta v. Cty. of San Diego, 742 F.3d 1144, 1185, 1188 (9th Cir. 2014) (Thomas, J., dissenting).

Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 714 F.3d 334, 342 n.19, 343 n.23 (5th Cir. 2013) (Jones, J., dissenting).

Kachalsky v. Cty. of Westchester, 701 F.3d 81, 95 & n.21 (2d Cir. 2012).

Moore v. Madigan, 702 F.3d 933, 935 (7th Cir. 2012).

Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 700 F.3d 185, 200, 202–03 (5th Cir. 2012).

United States v. Carpio-Leon, 701 F.3d 974, 980 (4th Cir. 2012).

United States v. Greeno, 679 F.3d 510, 519 (6th Cir. 2012).
United States v. Yancey, 621 F.3d 681, 684 (7th Cir. 2010).
United States v. Rene E., 583 F.3d 8, 12, 15–16 (1st Cir. 2009).
Miller v. Sessions, 356 F. Supp. 3d 472, 481 (E.D. Pa. 2019).
Grace v. D.C., 187 F. Supp. 3d 124, 138 n.11 (D.D.C. 2016).
Powell v. Tompkins, 926 F. Supp. 2d 367, 386 (D. Mass. 2013), aff'd, 783 F.3d 332 (1st Cir. 2015).
United States v. Tooley, 717 F. Supp. 2d 580, 589–591 (S.D.W. Va. 2010), aff'd, 468 F. App'x 357 (4th Cir. 2012).
United States v. Boffil-Rivera, No. 08-20437-CR, 2008 WL 8853354, 6 (S.D. Fla. Aug. 12, 2008), report and recommendation adopted sub nom.
United States v. Gonzales-Rodriguez, No. 08-20437-CR, 2008 WL 11409410 (S.D. Fla. Sept. 22, 2008), aff'd sub nom.
United States v. Boffil-Rivera, 607 F.3d 736 (11th Cir. 2010).

State Courts:

Norman v. State, 215 So. 3d 18, 30 & nn.11–12 (Fla. 2017).
Posey v. Com., 185 S.W.3d 170, 179–180 (Ky. 2006).
Posey v. Com., 185 S.W.3d 170, 185 n.3 (Ky. 2006) (Scott, J., concurring).
State v. Craig, 826 N.W.2d 789, 796 (Minn. 2013).
People v. Handsome, 846 N.Y.S.2d 852, 858 (N.Y. Crim. Ct. 2007).
Zaatari v. City of Austin, No. 03-17-00812-CV, 2019 WL 6336186, 22 (Tex. App. Nov. 27, 2019) (Kelly, J., dissenting).
State v. Roundtree, 2021 WI 1, 395 Wis. 2d 94, 952 N.W.2d 765
State v. Christen, 2021 WI 39, 958 N.W.2d 746

Amicus Briefs:

Amicus Brief, Harper v. Moore, No. 21-1271 (U.S. Supreme Court, 2022) [ISLT and Gerrymandering]
Amicus Brief KOX V. STATE OF GEORGIA, SUPREME COURT STATE OF GEORGIA Case No. S23A0167 [Second Amendment and Campus Carry]
Amicus Brief, NYSRPA v. Bruen, No. 20-843 (U.S. Supreme Court, 2021) [2nd Amendment]
Amicus Brief, Young v. State of Hawaii N O . 12-17808 (9th Cir. 2020) [2nd Amendment]
Amicus Brief, Gould v. Morgan, No. 17-2202 (1st Cir. 2018) [2nd Amendment]
Amicus Brief, Flanagan vs. Becerra, Central District of California Case (2018) [2nd Amendment]
Amicus Brief, Gill v. Whitford (US Supreme Court, 2017) [Partisan Gerrymandering]
Amicus Brief, Woollard v Gallagher, (4th Cir. 2013) [Second Amendment]

Amicus Brief *Heller v. District of Columbia* [Heller II] (US Court of Appeals for D.C.) (2010) [2nd Amendment]
Amicus Brief, *McDonald v. City of Chicago* (US Supreme Court, 2010) [14th Amendment]
Amicus Brief, *District of Columbia v. Heller* (US Supreme Court 2008) [2nd Amendment]
Amicus Brief, *Silvera v. Lockyer*, case on appeal (9th Circuit 2003) [2nd Amendment]
Amicus Brief, *Emerson v. U.S.* case on appeal (5th Circuit 1999) [2nd Amendment]
Pro-bono Historical Consultant State of Ohio, *McIntyre v. Ohio*, (U.S. Supreme Court, 1995) [1st Amendment]

Expert Witness Reports

Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper, 14-cv-02850 (D. Colo.).
Chambers, et al., v. City of Boulder, 2018 CV 30581 (Colo. D. Ct. City of Boulder, filed June 14, 2018).
Zeleny v. Newsom, 14-cv-02850 (N.D. Cal.).
Miller, et al v. Smith, et al., 2018 cv 3085 (C.D. Ill.).
Jones v. Bonta United States Court of Appeals, --- F.4th ---- , 2022 WL 1485187 (9th Cir., May 11, 2022).
Baird v. Bonta, No. 2:19-cv-00617 (E.D. Cal.).
Worth v. Harrington, 21-cv-1348 (D. Minn.).

Law Review Symposia Organized

Second Amendment:

“The Second Amendment and the Future of Gun Regulation: Historical, Legal, Policy, and Cultural Perspectives,” 73 *Fordham L. Rev.* 487 (2004).
“Gun Control: Old Problems, New Paradigms” 17 *Stan. L. & Pol’y Rev.* 671 (2006).
“A Symposium on Firearms, the Militia and Safe Cities: Merging History, Constitutional Law and Public Policy,” 1 *Alb. Gov’t L. Rev.* 292 (2008).
”The 2nd Amendment at the Supreme Court: “700 Years of History” and the Modern Effects of Guns in Public,” 55 *U.C. Davis L. Rev.* 2545 (2022).

New Originalism:

“The New Originalism” 82 *Fordham L. Rev.* 721 (2013).
“Historians and the New Originalism: Contextualism, Historicism, and Constitutional Meaning” 84 *Fordham L. Rev.* 915 (2015).

CERTIFICATE OF SERVICE

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

I hereby certify that on February 24, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DECLARATION OF SAUL CORNELL IN SUPPORT OF STATE DEFENDANTS’ SECOND SUPPLEMENTAL BRIEF

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

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 24, 2023, at Los Angeles, California.

Carol Chow
Declarant

/s/Carol Chow
Signature

SA2022303648

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7 *Attorneys for Defendants Governor Gavin Newsom,*
Attorney General Rob Bonta, Secretary Karen Ross,
8 *and 32nd District Agricultural Association*

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

13
14 **B&L PRODUCTIONS, INC., d/b/a**
15 **CROSSROADS OF THE WEST, et**
16 **al.,**

17 Plaintiffs,

18 v.

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

20 Defendants.

8:22-cv-01518 JWH (JDEx)

DECLARATION OF PATRICK J. CHARLES IN SUPPORT OF STATE DEFENDANTS' SECOND SUPPLEMENTAL BRIEF

Date: February 24, 2023
Time: 9:00 a.m.
Courtroom: 9D
Judge: The Honorable John W. Holcomb
Action Filed: August 12, 2022

21
22 I, Patrick J. Charles, declare under the penalty of perjury that the following is
23 true and correct:

24 1. I have been retained by the California Department of Justice as a
25 historical expert on Second Amendment matters, including the regulation of
26 firearms on "sensitive places."
27
28

1 2. I have been compensated for my work on this declaration at a rate of
2 \$100 per hour.

3 **BACKGROUND AND QUALIFICATIONS**

4 3. I am a historian, legal scholar, and author of dozens of articles and
5 books on the Constitution (including the Second Amendment), legal history, and
6 standards of review. I received my L.L.M. in Legal Theory and History with
7 distinction from Queen Mary University of London in 2014, J.D. from Cleveland-
8 Marshall College of Law in 2009, and B.A. in History and International Affairs
9 with honors from George Washington University in 2005. My writings on the
10 history of the law have been cited by the Supreme Court of the United States,
11 federal Circuit Courts of Appeal, federal District Courts, and State supreme courts.
12 A true and correct copy of my curriculum vitae is attached as **Exhibit A** to this
13 declaration.

14 4. For the past 12 years I have served as a historian for the United States
15 Air Force (USAF) in several capacities, including deploying several times with
16 Special Operations Forces (SOF) for contingency operations in Afghanistan and the
17 Middle East. I currently serve as the Research Division Supervisor for the Air
18 Force Historical Research Agency (AFHRA) located at Maxwell Air Force Base,
19 Alabama, where I oversee all historical information requests and archival research
20 for the USAF.

21 5. This declaration was compiled and completed outside my official
22 duties for the USAF. Moreover, the contents and opinions expressed in this
23 declaration are solely my own, and not those of the USAF, AFHRA, Department of
24 Defense, or the federal government.

25 **I. BRUEN AND THE “SENSITIVE PLACES” DOCTRINE**

26 6. *Bruen* established a general test for the lower courts when examining
27 the constitutionality of modern firearm regulations. First, the challenger must show
28 that “the Second Amendment’s plain text covers an individual’s conduct.” 142 S.

1 Ct. at 2129-30. If the challenger succeeds in this pursuit, the “government must
2 then justify its regulation by demonstrating that it is consistent with the Nation’s
3 tradition of firearm regulation.” *Id.* at 2130. At this second step, the government is
4 required to provide historical laws analogous—not identical—to the modern
5 regulation. *Id.* at 2133. The *Bruen* Court went on to note that “even if a modern-
6 day regulation is not a dead ringer for historical precursors, it still may be
7 analogous enough to pass constitutional muster.” *Id.*

8 7. One regulatory area that the *Bruen* Court expounded upon was that of
9 “sensitive places,” *i.e.*, locations “where arms carrying could be prohibited with the
10 Second Amendment.” *Id.* (citations omitted). And in expounding upon this rule,
11 the Court singled out prohibitions on carrying in “schools and government
12 buildings” as two constitutionally permissive examples. *Id.* (quoting *District of*
13 *Columbia v. Heller*, 554 U.S. 570, 626 (2008)). The Court upheld arms carrying
14 prohibitions at these two locations despite “the historical record yield[ing]
15 relatively few” examples. *Id.* In other words, the Court found it “settled” that
16 “these locations were [indeed] ‘sensitive places’” because it was not made “aware
17 of [any] disputes regarding the lawfulness of such prohibitions.” *Id.*

18 8. In support of its conclusion, the *Bruen* Court cited two sources. Both
19 provided relatively few historical laws that *expressly* prohibited the carrying of
20 firearms in school and government buildings by the mid-nineteenth century. *See*
21 David. B. Kopel & Joseph S. Greenlee, *The “Sensitive Places” Doctrine: Location*
22 *Limits on the Right to Bear Arms*, 13 CHARLESTON L. REV. 205, 229-36, 244-47
23 (2018); Brief of Amicus Curiae the Independent Institute in Support of Petitioners,
24 *New York State Rifle & Pistol Association, Inc. v. City of New York, New York*, No.
25 18-280, at 11-17. This historical research is consistent with my own and is
26 expounded upon in Part II.

1 **II. THE HISTORY OF “SENSITIVE PLACES” PREDATING THE FOUNDING OF**
2 **AMERICA TO THE NINETEENTH CENTURY, FROM ENGLAND TO**
3 **AMERICA**

4 9. For nearly five centuries in England, from the late thirteenth century
5 through the late eighteenth century, what constituted a “sensitive place” in which
6 arms bearing could be prohibited was rather broad. It encompassed densely
7 populated areas, as well as areas where people regularly congregated or conducted
8 commerce. The “fairs” and “markets” language contained within the 1328 Statute
9 of Northampton makes this abundantly clear. 2 Edw. 3, c. 3 (1328) (Eng.). So too
10 do several other English legal sources. For instance, in 1351, Edward III issued a
11 proclamation declaring it was unlawful to “go armed” with dangerous weapons
12 “within the City of London, or within the Suburbs, or any other places between the
13 said city and the Palace of Westminster...except the officers of the King...” *Royal*
14 *Proclamation as to the Wearing of Arms in the City, and at Westminster; and as to*
15 *Playing at Games in the Palace at Westminster*, MEMORIALS OF LONDON AND LIFE
16 268-69, 273 (H.T. Riley ed., 1868).

17 10. Similarly, in John Carpenter’s 1419 treatise *Liber Albus*, it stipulates
18 that “no one, of whatever condition he be, go armed in the said *city [of London] or*
19 *in the suburbs*, or carry arms, by day or by night, except the va[^l]lets of the great
20 lords of the land, carrying the swords of their masters in their presence, and the
21 serjeants-at-arms of his lordship the King, of my lady the Queen, the Prince, and the
22 other children of his lordship the King, and the officers of the City, and such
23 persons as shall come in their company in aid of them, at their command, for saving
24 and maintaining the said peace; under the penalty aforesaid, and the loss of their
25 arms and armour.” JOHN CARPENTER, *LIBER ALBUS: THE WHITE BOOK OF THE CITY*
26 *OF LONDON* (Henry Thomas Riley ed., 1861); *see also id.* at 229, 555, 556, 558,
27 560, 580 (providing other examples denoting that going armed in densely populated
28 public places was unlawful).

1 11. English prohibitions on going armed in “sensitive places” were worded
2 quite broadly, and therefore there was no need for the law to carve out individual
3 locations. Churches or places of worship is the one notable exception. *See* 4 Hen
4 4, c. 29 (1403) (“no Man be armed nor bear defensible armor to Merchant Towns
5 Churches nor Congregations in the same, nor in the Highways, in affray of the
6 Peace or the King’s Liege people”).

7 12. The extent to which this English understanding of what constituted a
8 “sensitive place”—that is where arms bearing could be prohibited—traveled across
9 the Atlantic is difficult to determine. Local enforcement records did not survive for
10 historical posterity, and therefore it is impossible for historians or anyone to
11 reconstruct exactly how often, when, and where armed carriage restrictions were
12 enforced. Most instances of legal enforcement were done at the local level, and, as
13 a result, the records of said enforcement have been lost to time. And those records
14 of enforcement that have miraculously survived often require time consuming,
15 archival research, not ad hoc, keyword digital searches. *See, e.g.,* Brennan Gardner
16 Rivas, *Enforcement of Public Carry Restrictions: Texas as a Case Study*, 55 U.C.
17 DAVIS L. REV. 2603 (2022).

18 13. What the historical record does unequivocally inform is that armed
19 carriage restrictions and the English common law against ‘going armed’ indeed
20 made their way into the American Colonies and subsequent United States. *See*
21 Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: History*
22 *Versus Ahistorical Standards of Review*, 60 CLEV. ST. L. REV. 1, 31-32 (2012).
23 Additionally, historians can state with certainty that state and local governments
24 were well within their authority to prohibit armed assemblies circa the late
25 eighteenth century, no matter whether said assemblies were deemed the militia or
26 not. *See* Patrick J. Charles, *The 1792 National Militia Act, the Second Amendment,*
27 *and Individual Militia Rights: A Legal and Historical Perspective*, 9 GEO. J.L. &
28 PUB. POL’Y 323, 326,-27, 374-90 (2011); *An Act to Prevent Routs, Riots, and*

1 *Tumultuous Assemblies, and the Evil Consequences Thereof*, September Session,
2 Chapter VIII (Mass. 1786); *An Act for the More Speedy and Effectual Suppression*
3 *of Tumults and Insurrections in the Commonwealth*, September Session, Chapter IX
4 (Mass. 1787); *An Act to Prevent Routs, Riots, and Tumultuous Assemblies* (N.J.
5 1797); *An Act to Prevent Hunting with Fire-Arms in the City of New-York, and the*
6 *Liberties Thereof* (NY 1763); *An Act Against Riots and Rioters* (Pa. 1705); *see also*
7 William Rawle, *A View of the Constitution of the United States* 126 (2d ed., 1829)
8 (noting that the Second Amendment “ought not . . . in any government . . . be
9 abused to the disturbance of the public peace,” which included the assembling “of
10 persons with arms, for an unlawful purpose”). This is because it had long been
11 understood that any armed assemblage required the consent of government
12 officials.¹

13 14. In America, examples of laws expressly prohibiting dangerous
14 weapons at specific locations date back to the mid-seventeenth century.² From the
15 ratification of the Constitution through the Antebellum Era, such express, location-
16 specific armed carriage prohibitions were largely adopted by institutions of higher
17 learning.³ Not one of these laws was ever challenged or professed to be inviolate of
18 the right to keep and bear arms.

19
20 ¹ This understanding of the law goes all the way back to the 1328 Statute of
21 Northampton. *See* 2 Edw. 3, c. 3 (1328) (Eng.); *see also* 3 CALENDAR OF CLOSE
22 ROLLS, RICHARD II, 1385-1389, at 399-400 (May 16, 1388, Westminster) (H.C.
Maxwell-Lyte ed., 1914); 1 CALENDAR OF CLOSE ROLLS, RICHARD II, 1377-1381, at
34 (December 1, 1377, Westminster) (H.C. Maxwell-Lyte ed., 1914).

23 ² For instance, two Maryland laws prohibited dangerous weapons within
legislative assemblies. 1647 Md. Laws 216; 1650 Md. Laws 273.

24 ³ *See, e.g.*, THE MINUTES OF THE SENATE ACADEMICUS OF THE STATE OF
25 GEORGIA, 1799-1842, at 86 (1810) (“no student shall be allowed to keep any gun,
26 nistol. Dagger. Dirk sword cane or any other offensive weapon in College or
elsewhere...”); UNIVERSITY OF VIRGINIA BOARD OF VISITORS MINUTES 6-7 (October
27 4-5, 1824) (“No Student shall, within the precincts of the University, introduce, keep
or use any... weapons or arms of any kind...”); LAWS OF WATERVILLE COLLEGE,
28 MAINE (1832) (“No Student shall keep firearms, or any deadly weapon whatever. He
shall bring no gunpowder upon the College premises...”)

1 15. It is not until the mid-to-late nineteenth century that one can really
2 begin to see some historical consistency when it comes to local and state
3 governments enacting express, location-specific armed carriage prohibitions.⁴ For
4 instance, an 1869 Tennessee law prohibited the carrying of dangerous weapons into
5 “any election...fair, race course, or other public assembly of the people.” PUBLIC
6 STATUTES OF THE STATE OF TENNESSEE SINCE THE YEAR 1858, at 108 (James H.
7 Shankland ed., 1871).

8 16. Not long thereafter, Texas prohibited the carrying of dangerous
9 weapons “into any church or religious assembly, any school-room or other place
10 where persons assembled for educational, literary, or scientific purposes, or into a
11 ball room, social party, or other social gathering, composed of ladies and
12 gentlemen, or to any election precinct on the day or days of any election, where any
13 portion of the people of this state are collected to vote at any election, or to any
14 other place where people may be assembled to muster or to perform any other
15 public duty, or any other public assembly...” *An Act Regulating the Right to Keep
16 and Bear Arms*, Aug. 12, 1870, reprinted in 2 GEORGE W. PASCHAL, A DIGEST OF
17 THE LAWS OF TEXAS: CONTAINING THE LAWS IN FORCE, AND THE REPEALED LAWS
18 ON WHICH RIGHTS REST FROM 1864 TO 1872, at 1322 (1873).

19 17. That same year, Georgia provided that “no person in said State of
20 Georgia be permitted or allowed to carry about his or her person any . . . pistol or
21 revolver, or any kind of deadly weapon, to any Court of justice, or any election
22 ground, or precinct, or any place of public worship, or any other public gathering in
23 this State...” 1870 Ga. Laws 421.

24
25
26 ⁴ There are, of course, a few exceptions, such as two mid-seventeenth century
27 Maryland laws that prohibited dangerous weapons within legislative assemblies.
28 1647 Md. Laws 216; 1650 Md. Laws 273. But other than these two Maryland laws,
the historical record until the mid-to-late nineteenth century provides very little in
the way of express “sensitive” locations where armed carriage could be prohibited.

1 18. In 1889, Arizona law provided that “[i]f any person shall go into any
2 church or religious assembly, any school room, or other place where persons are
3 assembled for amusement or for educational or scientific purposes, or into any
4 circus, show or public exhibition of any kind, or into a ball room, social party or
5 social gathering, or to any election precinct on the day or days of any election,
6 where any portion of the people of this Territory are collected to vote at any
7 election, or to any other place where people may be assembled to minister or to
8 perform any other public duty, or to any other public assembly, and shall have or
9 carry about his person a pistol or other firearm . . . he shall be punished by a fine
10 not less than fifty nor more than five hundred dollars, and shall forfeit to the County
11 the weapon or weapons so found on his person.” 1889 Ariz. Sess. Laws 16.

12 19. Then there was the state of Oklahoma, which in 1890 prohibited the
13 carrying of dangerous weapons “into any church or religious assembly, any school
14 room or other place where persons are assembled for public worship, for
15 amusement, or for educational or scientific purposes, or into any circus, show or
16 public exhibition of any kind, or into any ball room, or to any social party or social
17 gathering, or to any election, or to any place where intoxicating liquors are sold, or
18 to any political convention, or to any other public assembly...” *Article 47:*
19 *Concealed Weapons*, undated, STATUTES OF OKLAHOMA 1890, at 495-96 (Will T.
20 Little, L.G. Pitman, & R.J. Barker eds., 1891).

21 20. In addition to these state laws, localities also enacted laws that
22 expressly defined so-called “sensitive places” where armed carriage could be
23 prohibited. One example of a local mid-to-late nineteenth century “sensitive
24 places” law is that of Columbia, Missouri, which in 1890 passed an ordinance
25 prohibiting the carrying of dangerous weapons “into any church, or place where
26 people have assembled for religious worship; or into any school room, or place
27 where people are assembled for educational, literary or social purposes; or into any
28 court room, during the sitting of court, or to any election precinct on any election

1 day; or into any other public assemblage of persons met for any lawful purpose...”
2 *Chapter XVII: Carrying Concealed Weapons—Firing Guns, Pistols, Fire Crackers,*
3 *Etc.*, May 22, 1890, reprinted in GENERAL ORDINANCES OF THE TOWN OF
4 COLUMBIA, IN BOONE COUNTY, MISSOURI 34, 35 (Lewis M. Switzler ed., 1890).⁵
5 The Columbia ordinance mirrored Missouri state law.⁶

6 21. Stockton, Kansas provides another example. In 1887, Stockton
7 prohibited the carrying of dangerous weapons “into any church or place where the
8 people have assembled for public worship, or into any school room or place where
9 people have assembled for educational, literary or social purposes, or to any
10 election on any election day, or into any court room during the sitting of court, or
11 into any other public assemblage of persons ...or shall go upon the public streets or
12 public places of the city...” *Ordinance No. 76: An Ordinance Prohibiting Deadly*

13 ⁵ See LAWS OF MISSOURI: GENERAL AND LOCAL LAWS PASSED AT THE
14 REGULAR SESSION OF THE TWENTY-EIGHTH GENERAL ASSEMBLY 158, 166 (1877),
15 available at <https://catalog.hathitrust.org/Record/000534559> (1877 Missouri state
16 law empowering city and town councils, such as Columbia, with the authority to
17 “prohibit and punish the carrying of firearms and other deadly weapons, concealed
18 or otherwise”). Like Columbia, Webb City, Missouri and Huntsville, Missouri
19 enacted similar laws. See *Ordinance No. 577: An Ordinance Defining What Shall*
20 *constitute Misdemeanors or Offenses Against the City of Webb City, and Providing*
21 *Penalties Therefor*, May 15, 1905, reprinted in REVISED ORDINANCES OF THE CITY
22 OF WEBB CITY, MISSOURI, 1905, at 99, 100 (1905), available at
23 <https://catalog.hathitrust.org/Record/008604358>; *An Ordinance in Relation to*
24 *Carrying Deadly Weapons*, July 17, 1894, THE REVISED ORDINANCES OF THE CITY
25 OF HUNTSVILLE, MISSOURI OF 1894, at 58-59 (1894), available at
26 <https://everytownlaw.org/documents/2022/12/huntsville-mo-1894.pdf/>.

27 ⁶ The ordinance mirrored an 1874 Missouri state law titled “An Act to
28 Prevent the Carrying of Weapons in Public Assemblies of the People.” See ACTS OF
THE...GENERAL ASSEMBLY OF THE STATE OF MISSOURI 43 (1874), available at
<https://catalog.hathitrust.org/Record/000534559> (prohibiting persons from “go[ing]
into any church or place where people have assembled for religious worship” with
“any kind of fire-arms” or “deadly weapon”); LAWS OF MISSOURI: GENERAL AND
LOCAL LAWS PASSED AT THE REGULAR SESSION OF THE TWENTY-EIGHTH GENERAL
ASSEMBLY 50-51 (1875), available at
<https://catalog.hathitrust.org/Record/000534559> (same). In 1883, the Missouri state
law was amended to increase the fine. See LAWS OF MISSOURI PASSED AT THE
SESSION OF THE THIRTY-SECOND GENERAL ASSEMBLY 76 (1883); *State v. Reando*
(Mo. 1878) (Missouri Supreme Court decision upholding 1874 law as
constitutional, describing the law as “nothing more than a police regulation, made
in the interest of peace and good order, perfectly within the power of the legislature
to make.”).

1 *Weapons*, July 1, 1887, reprinted in STOCKTON REVIEW AND ROOKS COUNTY
2 RECORD (KS), July 1, 1887, at 1.

3 22. Looking at these “sensitive places” laws from a macro level, it is safe
4 to conclude that come mid-to-late nineteenth century state and local governments
5 maintained the authority to prohibit the carrying of dangerous weapons in a variety
6 of “sensitive places” where people were known to congregate.⁷ Such “sensitive

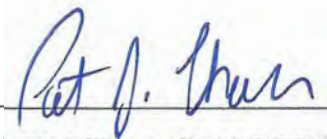
7 ⁷ It worth noting that several localities viewed the “sensitive places” doctrine
8 as extending across their respective corporate or commercial limits. *See, e.g., A*
9 *DIGEST OF THE LAWS AND ORDINANCES FOR THE GOVERNMENT OF THE CITY OF*
10 *HARRISBURG, PENNSYLVANIA IN FORCE JANUARY 1, A.D. 1906*, at 557-58 (1906),
11 *available at* <https://catalog.hathitrust.org/Record/100565572> (1873 ordinance
12 prohibiting the open or concealed carrying of “any pistol, dirk-knife, slung-shot or
13 deadly weapon, within the city limits...except police officers...”); *THE REVISED*
14 *ORDINANCES OF PROVO CITY, UTAH 96 (1893)* (“Every person who shall wear, or
15 carry upon his person any pistol, or other fire arm, slungshot, false-knuckles,
16 bowieknife, dagger or any other dangerous or deadly weapon within the city limits
17 of this city is guilty of an offence, and upon conviction thereof shall be liable to a
18 fine in any sum not exceeding twenty-five dollars, or to be imprisoned in the city
19 jail not exceeding twenty-five days, or to both fine and imprisonment.”); *THE*
20 *REVISED ORDINANCES OF PAYSON CITY, UTAH 84 (1893)* (“Every person who shall
21 wear, or carry upon his person any pistol, or other firearm, slungshot, false-
22 knuckles, bowieknife, dagger or any other dangerous or deadly weapon within the
23 limits of this city is guilty of an offense, and upon conviction thereof shall be liable
24 to a fine in any sum not exceeding twenty-five dollars, or to be imprisoned in the
25 city jail not exceeding twenty-five days, or to both fine and imprisonment.”); *THE*
26 *REVISED ORDINANCES OF TOOELE CITY, UTAH 87 (1893)* (“Every person who shall
27 wear, or carry upon his person any pistol, or other fire arm, slungshot, false-
28 knuckles, bowieknife, dagger or any other dangerous or deadly weapon, is guilty of
an offence, and upon conviction thereof shall be liable to a fine in any sum not
exceeding twenty-five dollars, or to be imprisoned in the city jail not exceeding
twenty-five days, or to both such fine and imprisonment.”); *An Ordinance to*
Prohibit Intoxication, Breach of Peace, Carrying Deadly Weapons, the Use of
Obscene Language, the Discharge of Fire-Arms, and to Close Places of Amusement
on Sunday in the City of Wallace, Kansas, Jan. 31, 1889, reprinted in WALLACE
COUNTY REGISTER (KS), Feb. 9, 1889, at 2 (“Any person who shall be found
carrying on his person a pistol, bowie knife, dirk or other deadly weapon shall upon
conviction be fined in any sum not exceeding \$25 or by imprisonment in the city
jail not exceeding 30 days; Provided however that this section shall not apply to any
peace officer of the state, counties or cities of this state and provided further that if
it shall appear to the court trying the offense that the accused was engaged in any
legitimate business or calling that would necessitate the carrying of any such
weapons, such persons shall be acquitted.”); *Ordinance No. 97: Ordinance Related*
to Carrying Deadly Weapons, May 17, 1882, reprinted in BURLINGTON DEMOCRAT
(KS), May 26, 1882, at 2 (“That is shall be unlawful for any person hereafter to
carry on his or her person a pistol, bowie-knife, dirk or other deadly weapon,
concealed or otherwise, within the corporate limits of sad City of Burlington,
Provided: This Section shall not apply to any person carrying a deadly weapon
while in the performance of his or her legitimate business, wherein the law

1 places” categories included 1) places where large public assemblies generally took
2 place, *i.e.*, parks, town squares, and the like; 2) places where events of amusement
3 took place, *i.e.*, places where people congregate for large planned events; 3)
4 churches and places of worship; 4) polling places and other buildings where
5 political activity generally took place; 5) schools and institutions of higher learning;
6 and 6) bars, clubs, social venues, or anywhere in which alcohol or psychoactive or
7 mood altering drugs were purchased or consumed.

8 23. What historically buttresses that each of these categories were
9 generally understood to be “sensitive places” is the fact that there is no historical
10 evidence that informs otherwise. As far as I am aware, not one nineteenth-century
11 court of law found any of these “sensitive places” categories to be unconstitutional.
12 The same is true for nineteenth-century legal commentary—not one calls these
13 sensitive places categories into constitutional question.

14 I declare under penalty of perjury under the laws of the United States of
15 America that the foregoing is true and correct.

16 Executed on 22 February 2023

17
18 
19 PATRICK J. CHARLES

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22
23
24
25 commands such person to carry a deadly weapon.”); *Miscellaneous Ordinance*, Jun.
26 24, 1871, reprinted in ABILENE WEEKLY CHRONICLE (KS), Jun. 29, 1871, at 3
27 (“That any person who shall carry within the corporate limits of the city of Abilene
28 or commons, a pistol, revolver, gun, musket, dirk, bowie knife, or other dangerous
weapon upon his person, either openly or concealed, except to bring the same and
forthwith [to] deposit it or them at their house, store room, or residence, shall be
fined seventy-five dollars.”).

EXHIBIT A

PATRICK J. CHARLES
www.patrickjcharles.com

EDUCATION

- Queen Mary-University of London School of Law**, LLM Legal Theory and History with Distinction, Dec 2014.
Legal Theory and History Full Scholarship Recipient
Peer Review Editor, Queen Mary Law Journal
- Cleveland-Marshall School of Law**, Juris Doctor, May 2009.
2008 Judge John R. Brown Award for Legal Writing (\$10,000 award given annually to best student article, note, comment or paper in the United States)
- George Washington University**, B.A. History with Honors, International Affairs Conflict & Security,
International Affairs European Affairs, Jun 2005.

EXPERIENCE

- Air Force Historical Research Agency, USAF**, Maxwell AFB, AL *Lead Research Team Archivist* 04/22 – Pres
- U.S. Special Operations Command, Legislative Affairs, USAF**, Washington, DC *Legislative Liaison* 01/21 – 4/22
- U.S. Senate, Office of U.S. Senator Martin Heinrich**, Washington, DC *Legislative Fellow* 01/20 – 01/21
- Dept of State, Office of U.S. Foreign Assistance Resources**, Washington, DC *Legislative Analyst* 07/19 - 01/20
- U.S. Special Operations Command, USAF**, MacDill AFB, FL *Senior Historian* 07/16 - 07/19
- Journal of Immigration, Asylum, and Nationality Law**, London, UK *Peer Review Editor* 09/15 - 09/18
- 24th Special Operations Wing, USAF**, Hurlburt Field, FL *Historian* 08-14 - 07/16
- 352nd Special Operations Group, USAF**, Mildenhall, UK *Historian* 12/10 - 08/14
- Immigration Reform Law Institute**, Washington, DC *Legal Analyst/Legal Historian* 5/09 - 12/10
- United States Marine Corps**, Shanghai, China *Sergeant/Assistant Detachment Commander* 8/97 - 8/02

FELLOWSHIPS AND GRANTS

- United States Air Force, Air Force Legislative Fellows Program, July 2019-April 2022.
- Eisenhower Foundation Research Travel Grant 2019, Dwight D. Eisenhower Presidential Library, Abilene, KS.
- Carl Albert Congressional Research Center Visiting Scholars Grant 2018, University of Oklahoma, Norman, OK.
- Bordin-Gillette Research Fellowship 2018, University of Michigan Bentley Historical Library, Ann Arbor, MI.
- Clark-Yudkin Research Fellowship 2013-14, United States Air Force Academy Library, Colorado Springs, CO.

BOOK PUBLICATIONS AND BOOK CHAPTERS

- Vote Gun: How Gun Rights Became Politicized in the United States* (Columbia University Press, 2023).

“The ‘Reasonable Regulation’ Right to Arms: The Gun Rights Second Amendment Before the Standard Model,” *A Right to Bear Arms?: The Contested Role of History in Contemporary Debates on the Second Amendment*, Jennifer Tucker, Barton C. Hacker, and Margaret Vining eds. (Smithsonian Institution Press, 2019).

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Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry (Prometheus Books, 2018).

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Historicism, Originalism and the Constitution: The Use and Abuse of History in American Jurisprudence (McFarland, 2014).

The Second Amendment: The Intent and its Interpretation by the States and the Supreme Court (McFarland, 2009).

Irreconcilable Grievances: The Events that Shaped the Declaration of Independence (Heritage Books, 2008).

ARTICLES AND OTHER PRINT PUBLICATIONS

“The Fugazi Second Amendment: *Bruen’s* Test, History, and Tradition Problem and How to Fix It,” 71 *Cleveland State Law Review* _ (forthcoming 2023).

“Racist History and the Second Amendment: A Critical Commentary,” 43 *Cardozo Law Review* 1343 (2022).

“The Invention of the Right to ‘Peaceable Carry’ in Modern Second Amendment Scholarship,” 2021 *Illinois Law Review Online* 195 (2021).

“The Faces of the Second Amendment Outside the Home, Take Three: Critiquing the Circuit Courts Use of History-in-Law,” 67 *Cleveland State Law Review* 197 (2019).

“The Second Amendment and the Basic Right to Transport Firearms for Lawful Purposes, 13 *Charleston Law Review* 125 (2018) (invited).

“The Forgotten Emblems of the World War II Air Commandos,” 6 *Air Commando Journal*, Issue 3, 2018: 42-47.

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“The Faces of the Second Amendment Outside the Home, Take Two: How We Got Here and Why it Matters,” 64 *Cleveland State Law Review* 373 (2016) (lead article).

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- “The Second Amendment and Militia Rights: Distinguishing Standard Model Legal Theory from the Historical Record,” 40 *Fordham Urban Law Journal City Square* 1 (2013).
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-
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PRESENTATIONS, PANELS, AND DEBATES

“Race and Guns in America,” Duke University Academic Roundtable, November 19, 2021.

“Debate with Stephen P. Halbrook: What Rights Does the Second Amendment Guarantee Outside the Home,” Federalist Society, November 17, 2021 (available online).

“Militias Challenge Gun Laws in Virginia: ‘It’s About Shooting Tyrants in the Face,’” *CBS News*, November 12, 2020 (available online).

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“Jim Bohannon Show: *Armed in America* Book Talk,” *Westwood One Affiliates*, April 19, 2019 (available online).

“Law and Society Series: The Second Amendment 228 Years Later,” Riley Institute and Charleston Law Review, Charleston, SC, February 2019.

“Book Talk: History of Gun Rights in America,” National Constitution Center, Philadelphia, PA, February 2018 (available online).

“Guns in American Society,” Wesleyan University, Middletown, CT, October 2017.

“Firearms and the Common Law Tradition,” Aspen Institute, Washington, DC, September 2016.

“Fifty Years of 7th Special Operations Squadron History,” Duxford Imperial War Museum, Cambridge, UK, May 2014.

- “History and the Meaning of the Constitution,” Cleveland-Marshall School of Law, Cleveland, Ohio, April 2014.
- “How Much Do We Really Know About Our Gun Laws?” *NPR WBEZ 91.5 Afternoon Shift*, Chicago, IL, January 14, 2013 (available online).
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- “The Second Amendment Steps Outside,” *Huffington Post Live*, New York, NY, December 12, 2012 (available online).
- “The Objective Dilemma Facing State Immigration Enforcement,” Indiana University School of Law—Indianapolis Junior Faculty Workshop, Indianapolis, Indiana, March 2012.
- “Does the Second Amendment Extend Outside the Home?” Cleveland-Marshall School of Law, Cleveland, Ohio, March 2012.
- “Foreign Affairs Preemption and the Federal-State Spheres of Government,” St. John’s University School of Law Immigration Symposium, New York, New York, March 2012.
- “The History and Evolving Conceptions of the Right to Bear Arms,” Fordham School of Law Second Amendment Symposium, New York, New York, March 2012 (available online).
- “State Policy Potpourri: Some Comparative Assessments,” and “Curtailing Birthright Citizenship,” Washburn School of Law Breaching Borders Symposium, Topeka, Kansas, October 2011 (available online).
- “Law Enforcement Authority to Verify Immigration Status: *Estrada v. Rhode Island*,” Law Enforcement and Public Safety Channel, Washington, District of Columbia, April 2010.
- “*McDonald v. City of Chicago*: An Anglo-American Right to Arms?” Cleveland-Marshall School of Law, Cleveland, Ohio, April 2010.
- “Debate with Clark M. Neilly on *McDonald v. City of Chicago*,” Akron University School of Law Federalist Society, Akron, Ohio, April 2010.
- “Keynote Speaker for ‘Chamber to Chambers: Second Amendment Symposium,’” and “Panelist for ‘Who’s Right to Bear Arms?’” Northeastern University School of Law, Boston, Massachusetts, March 2010.
- “Bearing Arms in the Ohio Constitution,” Cleveland-Marshall School of Law, Cleveland, Ohio, April 2008.
- “Washington’s Decision: George Washington’s Decision to Reaccept Black Enlistments,” Trenton Chamber of Commerce Patriot Week, Trenton, New Jersey, December 2006.

AWARDS

- Joint Civilian Service Commendation Award, July 2019.
- Allan S. Major Award for Air Force History Program Excellence, July 2016 (Air Force Level Award).
- 24th Special Operations Wing Supervisory Civilian of the Quarter, Civilian Category IV, July 2015.
- Allan S. Major Award for Air Force History Program Excellence, July 2014 (Air Force Level Award).

352d Special Operations Group Supervisory Civilian of the Quarter, Civilian Category II, March 2013.

352d Special Operations Group Supervisory Civilian of the Quarter, Civilian Category II, March 2012.

Air Force Special Operations Command Excellence in Periodic History Award, February 2012.

Judge John R. Brown Award for Excellence in Legal Writing, August 2008 (National Award).

Certificate of Commendation, Commanding Officer, Marine Security Guard Battalion, May 2002.

Meritorious Mast, United States Marine Corps, April 2000.

Meritorious Mast, United States Marine Corps, August 1999.

Navy and Marine Corps Achievement Medal, United States Marine Corps, July 1999.

Certificate of Commendation, Commanding Officer, Marine Aviation Support Group, April 1998.

CERTIFICATE OF SERVICE

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

I hereby certify that on February 24, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DECLARATION OF PATRICK J. CHARLES IN SUPPORT OF STATE DEFENDANTS’ SECOND SUPPLEMENTAL BRIEF

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

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 24, 2023, at Los Angeles, California.

Carol Chow
Declarant

/s/Carol Chow
Signature

SA2022303648

1 ROB BONTA
 Attorney General of California
 2 R. MATTHEW WISE
 Supervising Deputy Attorney General
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 7 *Attorneys for Defendants Governor Gavin Newsom,
 Attorney General Rob Bonta, Secretary Karen Ross,
 8 and 32nd District Agricultural Association*

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

13
 14 **B&L PRODUCTIONS, INC., d/b/a**
 15 **CROSSROADS OF THE WEST, et**
 16 **al.,**

17 Plaintiffs,

18 v.

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

20 Defendants.

8:22-cv-01518 JWH (JDEx)

**DECLARATION OF ELENE
 MCGEE IN SUPPORT OF STATE
 DEFENDANTS' SUPPLEMENTAL
 BRIEF**

Date: February 10, 2023
 Time: 9:00 a.m.
 Courtroom: 9D
 Judge: The Honorable John W.
 Holcomb
 Action Filed: August 12, 2022

21 I, Elene McGee, declare as follows:

22 1. I am employed by the California Department of Justice, Office of the
 23 California Attorney General, in the Division of Law Enforcement, Bureau of
 24 Firearms, as a Staff Services Manager II. My duties include planning, organizing,
 25 directing and administering the work of professional staff responsible for a diverse
 26 set of tasks and functions which are managed by four Staff Services Managers who
 27 oversee the Training, Information and Compliance Unit and the Licensing and
 28

1 Certificate of Eligibility Unit. I review and evaluate work flow and quality of
2 work; ensure processing time lines and deadlines are met by all units; establish and
3 maintain project priorities; monitor and exercise control over assigned
4 resources/projects in accordance with DLE/Bureau policies and procedures; and
5 make recommendations to bureau-level management. I implement new
6 programs/procedures, manage projects and allocate resources. I have personal
7 knowledge of the following facts, and if called as a witness, I could and would
8 testify competently thereto.

9 2. The Bureau of Firearms maintains the Centralized List of Firearms
10 Dealers, and the registry of all licensed ammunition vendors.

11 3. The dealers on the Centralized List of Firearms Dealers are eligible to
12 sell firearms and ammunition as well as process private party transfers, internet
13 sales, and pawn broker/consignment (if properly licensed) transactions in the State
14 of California. In order to be eligible, they have to obtain: (1) a valid federal firearm
15 license, (2) any regulatory or business license(s) required by local government, (3)
16 a valid Seller's Permit issued by the California Department of Tax and Fee
17 Administration, (4) a Certificate of Eligibility issued by the California Department
18 of Justice, (5) a license granted by the licensing authority of the respective city and
19 county, and (6) a valid listing on the DOJ Centralized List of Firearms Dealers.

20 4. Licensed Ammunition Vendors are eligible to sell ammunition in the
21 State of California. To be eligible to sell ammunition in the State of California, the
22 vendor must obtain: (1) a valid federal firearm license, if the applicant is federally
23 licensed, (2) any regulatory or business license(s) required by local government, (3)
24 a valid Seller's Permit issued by the California Department of Tax and Fee
25 Administration, and (4) a certificate of eligibility issued by the Department of
26 Justice.

27
28

1 5. As of January 11, 2023, there are 1,610 dealers on the Centralized List
2 of Firearms Dealers. They are authorized to sell firearms and ammunition across
3 the state, and are located in 456 cities, 680 zip codes, and 56 counties.

4 6. As of January 11, 2023, there are 165 licensed vendors that sell
5 ammunition, located in 129 cities, 148 zip codes, and 41 counties.

6 7. As of January 11, 2023, there are 150 dealers that sell firearms and
7 ammunition, as well as 12 vendors that sell ammunition, in Orange County; and,
8 there are 77 dealers that sell firearms and ammunition, as well as 16 vendors that
9 sell ammunition, in San Diego County. As of January 11, 2023, there are eight
10 dealers on the Centralized List of Firearms Dealers that are located in the city of
11 Costa Mesa. The Centralized List of Firearms Dealers also lists six dealers located
12 in the zip code 92626 (within the city of Costa Mesa).

13 8. The Bureau of Alcohol, Tobacco, Firearms and Explosives maintains a
14 list of Federal Firearms Licenses, and the information can be filtered by state
15 (available at <https://www.atf.gov/firearms/listing-federal-firearms-licensees>). The
16 difference between the information provided in this ATF database and that in the
17 Centralized List is that there may be Federal Firearms Licensees who have not
18 established or set up their business yet in California, and therefore, not conducting
19 any firearm sales. In addition, the ATF database captures other Federal Firearms
20 License types which are not listed on the Centralized List of Firearms Dealers.
21 Type 1 and type 2 of the Federal Firearms Licensees correlate with the licensees in
22 the Centralized List of Firearms Dealers.

23 I declare under penalty of perjury under the laws of the United States that the
24 foregoing is true and correct.

25 Dated January 27, 2023, at Sacramento, California.

26 *Elene McGee*

27 _____
 Elene McGee

28 SA2022303648

CERTIFICATE OF SERVICE

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

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

DECLARATION OF ELENE MCGEE IN SUPPORT OF STATE DEFENDANTS’ SUPPLEMENTAL BRIEF

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

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

Carol Chow
Declarant

/s/Carol Chow
Signature

SA2022303648

1 ROB BONTA
Attorney General of California
2 R. MATTHEW WISE
Supervising Deputy Attorney General
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Attorney General Rob Bonta, Secretary Karen Ross,
8 and 32nd District Agricultural Association*

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

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

16 Plaintiffs,

17 v.

18 **GAVIN NEWSOM, et al.,**

19 Defendants.
20
21

8:22-cv-01518 JWH (JDEx)

**DECLARATION OF JENNIFER
OLVERA IN SUPPORT OF STATE
DEFENDANTS' OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

Date: January 6, 2023
Time: 9:00 a.m.
Courtroom: 9D
Judge: The Honorable John W.
Holcomb
Trial Date: TBD
Action Filed: August 12, 2022

22 I, Jennifer Olvera, declare as follows:
23

24 1. I am employed by the 32nd District Agricultural Association (the
25 District) as Event Services Supervisor. My duties include supervising the team of
26 Event Coordinators, event oversight, working with operations teams to set up and
27 tear down shows, event estimating, pre-show contracting, post-show settlements,
28

1 and event booking and sales. I have personal knowledge of the following facts,
2 and if called as a witness, I could and would testify competently thereto.

3 2. The District is a state institution that is responsible for the OC Fair &
4 Event Center, in the County of Orange, the City of Costa Mesa (the Fairgrounds).
5 Its purpose is to hold fairs, expositions, and exhibitions to showcase various
6 industries and industrial enterprises. It has the authority to enter into contracts with
7 third-party event organizers to conduct events such as concerts, festivals, and
8 industry shows at the Fairgrounds.

9 3. B&L Productions, Inc. (B&L) dba Crossroads of the West (Crossroads)
10 is a repeat client that holds approximately 5 large-scale events (each for a whole
11 weekend) a year at the Fairgrounds. The events are the same in nature: a gun
12 show, with numerous vendors that serve food, sell firearm accessories and gear,
13 offer firearms related training and information, and sell firearms, precursor parts,
14 and ammunition.

15 4. The standard procedure for a returning client, such as Crossroads, to
16 reserve the Fairgrounds, starts with a client representative contacting the Event
17 Services Department of the District. Given the scale of Crossroads' events, it is
18 preferred for dates to be reserved at least one year in advance. The Event Services
19 Department would typically respond to the client representative within three to five
20 days. Once dates are finalized, the Event Services Department drafts a rental
21 agreement, which details the services and facilities provided, along with the costs.
22 Finalizing a rental agreement for execution typically takes six to eight months.
23 After full execution of the agreement, the Event Services Department continues to
24 prepare for the event, making sure that the required insurance, payment, permits,
25 and necessary staff, among other things, are accounted for.

26 5. On July 20, 2021, Tracy Olcott from Crossroads contacted me via e-mail,
27 to reserve five weekends for gun shows in 2022. I responded the next day that four
28

1 out of the five weekends were available and that we would put those dates on hold
2 for them.

3 6. On October 8, 2021, SB 264 was signed into law.

4 7. On December 3, 2021, Ms. Olcott followed up via e-mail to me about the
5 event dates and asked if the rental contracts could be prepared by the end of 2021. I
6 did not respond at that time, as our staff was in the midst of considering what, if
7 any, impact SB 264 would have on Crossroads' reservations.

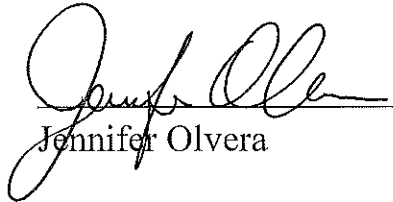
8 8. Plaintiff B&L commenced this lawsuit on August 12, 2022, and the
9 District is named as one of the defendants.

10 9. Crossroads has not made any inquiries to the District since December 3,
11 2021, about reserving dates for its events.

12 10. If contacted, the District will coordinate with Crossroads in reserving the
13 Fairgrounds for events. As is true for any event promoter, any reservation made by
14 Crossroads would be contingent on its event complying with all applicable laws,
15 including SB 264 (Penal Code § 27575) and SB 915 (Penal Code § 27573).

16
17 I declare under penalty of perjury under the laws of the United States that the
18 foregoing is true and correct.

19 Dated Dec 9, 2022, at Costa Mesa, California.

20
21 
22 Jennifer Olvera

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CERTIFICATE OF SERVICE

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

I hereby certify that on December 9, 2022, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DECLARATION OF JENNIFER OLVERA IN SUPPORT OF STATE DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

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

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 9, 2022, at Los Angeles, California.

Carol Chow
Declarant

/s/Carol Chow
Signature

SA2022303648

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9 Attorneys for Plaintiffs B&L Productions, Inc., California Rifle & Pistol
10 Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven
11 Merson, Asian Pacific American Gun Owner Association, Second Amendment Law
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19 Attorney for Plaintiff Second Amendment Foundation

20 IN THE UNITED STATES DISTRICT COURT
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 B&L PRODUCTIONS, INC., d/b/a
23 CROSSROADS OF THE WEST;
24 GERALD CLARK; ERIC JOHNSON;
25 CHAD LITRELL; JAN STEVEN
26 MERSON; CALIFORNIA RIFLE &
27 PISTOAL ASSOCIATION,
28 INCORPORATED; ASIAN PACIFIC
AMERICAN GUN OWNERS
ASSOCIATION; SECOND
AMENDMENT LAW CENTER, INC.;
and SECOND AMENDMENT
FOUNDATION,

Plaintiffs,

v.

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

Defendants.

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

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: January 6, 2023
Hearing Time: 9:00 a.m.
Courtroom: 9D
Judge: John W. Holcomb

Action Filed: August 12, 2022

1 TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Under Federal Rule of Evidence 201, Plaintiffs B&L Productions, Inc.,
3 California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson,
4 Chad Littrell, Jan Steven Merson, Asian Pacific American Gun Owner Association,
5 Second Amendment Law Center, Inc., and Second Amendment Foundation
6 (collectively, “Plaintiffs”) respectfully request that the Court take judicial notice of
7 the following documents in support of Plaintiffs’ motion for preliminary injunction:

8 1. **Assembly Bill 893, 2019-2020 Reg. Sess. (Cal. 20219)**. A true and
9 correct copy of this document is attached as **Exhibit 1**. Exhibit 1 is a public record
10 of the California State Legislature that I accessed on or about November 11, 2022,
11 from <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
12 California Legislative Information website, which publishes official legal history
13 and government documents saved in a fully searchable, image-based format.

14 2. **Assembly Public Safety Comm., Bill Analysis Re: AB 893 (Gloria)**
15 **– As Introduced Feb. 20, 2019, 2019-2020 Reg. Sess. (Cal. 2019)**. A true and
16 correct copy of this document is attached as **Exhibit 2**. Exhibit 2 is a public record
17 of the California State Legislature that I accessed on or about November 11, 2022,
18 from <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
19 California Legislative Information website, which publishes official legal history
20 and government documents saved in a fully searchable, image-based format.

21 3. **Assembly, Assembly Floor Analysis Re: AB 893 (Gloria) – As**
22 **Introduced Feb. 20, 2019, 2019-2020 Reg. Sess. (Cal. 2019)**. A true and correct
23 copy of this document is attached as **Exhibit 3**. Exhibit 3 is a public record of the
24 California State Legislature that I accessed on or about November 11, 2022, from
25 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
26 California Legislative Information website, which publishes official legal history
27 and government documents saved in a fully searchable, image-based format.

28 4. **Senate Public Safety Comm., Bill Analysis Re: AB 893 (Gloria) –**

1 **2019-2020 Reg. Sess. (Cal. 2019)**. A true and correct copy of this document is
2 attached as **Exhibit 4**. Exhibit 4 is a public record of the California State
3 Legislature that I accessed on or about November 11, 2022, from
4 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
5 California Legislative Information website, which publishes official legal history
6 and government documents saved in a fully searchable, image-based format.

7 **5. Senate Appropriations Comm., Bill Analysis Re: AB 893 (Gloria)**
8 **2019-2020 Reg. Sess. (Cal. 2019)**. A true and correct copy of this document is
9 attached as **Exhibit 5**. Exhibit 5 is a public record of the California State
10 Legislature that I accessed on or about November 11, 2022, from
11 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
12 California Legislative Information website, which publishes official legal history
13 and government documents saved in a fully searchable, image-based format.

14 **6. Senate Rules Comm., Senate Floor Analysis Re: AB 893 (Gloria) –**
15 **As Amended Aug. 30, 2019, 2019-2020 Reg. Sess. (Cal. 2019)**. A true and correct
16 copy of this document is attached as **Exhibit 6**. Exhibit 6 is a public record of the
17 California State Legislature that I accessed on or about November 11, 2022, from
18 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
19 California Legislative Information website, which publishes official legal history
20 and government documents saved in a fully searchable, image-based format.

21 **7. Senate Rules Comm., Senate Floor Analysis Re: AB 893 (Gloria) –**
22 **As Amended Sept. 9, 2019, 2019-2020 Reg. Sess. (Cal. 2019)**. A true and correct
23 copy of this document is attached as **Exhibit 7**. Exhibit 7 is a public record of the
24 California State Legislature that I accessed on or about November 11, 2022, from
25 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
26 California Legislative Information website, which publishes official legal history
27 and government documents saved in a fully searchable, image-based format.

28 **8. Assembly, Assembly Floor Analysis Re: AB 893 (Gloria) – As**

1 **Amended Sept. 9, 2019, 2019-2020 Reg. Sess. (Cal. 2019).** A true and correct
2 copy of this document is attached as **Exhibit 8**. Exhibit 8 is a public record of the
3 California State Legislature that I accessed on or about November 11, 2022, from
4 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
5 California Legislative Information website, which publishes official legal history
6 and government documents saved in a fully searchable, image-based format.

7 9. **Senate Bill 264, 2021-2022 Reg. Sess. (Cal. 2021).** A true and correct
8 copy of this document is attached as **Exhibit 9**. Exhibit 9 is a public record of the
9 California State Legislature that I accessed on or about November 11, 2022, from
10 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
11 California Legislative Information website, which publishes official legal history
12 and government documents saved in a fully searchable, image-based format.

13 10. **Senate Public Safety Comm., Bill Analysis Re: SB 264 (Min) – As**
14 **Introduced Feb. 24, 2021, 2021-2022 Reg. Sess. (Cal. 2021).** A true and correct
15 copy of this document is attached as **Exhibit 10**. Exhibit 10 is a public record of the
16 California State Legislature that I accessed on or about November 11, 2022, from
17 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
18 California Legislative Information website, which publishes official legal history
19 and government documents saved in a fully searchable, image-based format.

20 11. **Senate Rules Comm., Senate Floor Analysis Re: SB 264 (Min) – As**
21 **Amended April 19, 2021, 2021-2022 Reg. Sess. (Cal. 2021).** A true and correct
22 copy of this document is attached as **Exhibit 11**. Exhibit 11 is a public record of the
23 California State Legislature that I accessed on or about November 11, 2022, from
24 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
25 California Legislative Information website, which publishes official legal history
26 and government documents saved in a fully searchable, image-based format.

27 12. **Assembly Public Safety Comm., Bill Analysis Re: SB 264 (Min) –**
28 **As Amended June 15, 2021, 2021-2022 Reg. Sess. (Cal. 2021).** A true and correct

1 copy of this document is attached as **Exhibit 12**. Exhibit 12 is a public record of the
2 California State Legislature that I accessed on or about November 11, 2022, from
3 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
4 California Legislative Information website, which publishes official legal history
5 and government documents saved in a fully searchable, image-based format.

6 **13. Assembly Appropriations Comm., Bill Analysis Re: SB 264 (Min)**
7 **– As Amended June 15, 2021, 2021-2022 Reg. Sess. (Cal. 2021)**. A true and
8 correct copy of this document is attached as **Exhibit 13**. Exhibit 13 is a public
9 record of the California State Legislature that I accessed on or about November 11,
10 2022, from <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the
11 official California Legislative Information website, which publishes official legal
12 history and government documents saved in a fully searchable, image-based format.

13 **14. Assembly, Assembly Floor Analysis Re: SB 264 (Min) – As**
14 **Amended Aug. 30, 2021, 2021-2022 Reg. Sess. (Cal. 2021)**. A true and correct
15 copy of this document is attached as **Exhibit 14**. Exhibit 14 is a public record of the
16 California State Legislature that I accessed on or about November 11, 2022, from
17 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
18 California Legislative Information website, which publishes official legal history
19 and government documents saved in a fully searchable, image-based format.

20 **15. Senate Rules Comm., Senate Floor Analysis Re: SB 264 (Min) – As**
21 **Amended Aug. 30, 2021, 2021-2022 Reg. Sess. (Cal. 2021)**. A true and correct
22 copy of this document is attached as **Exhibit 15**. Exhibit 15 is a public record of the
23 California State Legislature that I accessed on or about November 11, 2022, from
24 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
25 California Legislative Information website, which publishes official legal history
26 and government documents saved in a fully searchable, image-based format.

27 **16. Senate Bill 915, 2021-2022 Reg. Sess. (Cal. 2022)**. A true and correct
28 copy of this document is attached as **Exhibit 16**. Exhibit 16 is a public record of the

1 California State Legislature that I accessed on or about November 11, 2022, from
2 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
3 California Legislative Information website, which publishes official legal history
4 and government documents saved in a fully searchable, image-based format.

5 17. **Senate Public Safety Comm., Bill Analysis Re: SB 915 (Min) – As**
6 **Introduced Feb. 2, 2022, 2021-2022 Reg. Sess. (Cal. 2022).** A true and correct
7 copy of this document is attached as **Exhibit 17**. Exhibit 17 is a public record of the
8 California State Legislature that I accessed on or about November 11, 2022, from
9 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
10 California Legislative Information website, which publishes official legal history
11 and government documents saved in a fully searchable, image-based format.

12 18. **Senate Rules Comm., Senate Floor Analysis Re: SB 915 (Min) – As**
13 **Introduced Feb. 2, 2022, 2021-2022 Reg. Sess. (Cal. 2022).** A true and correct
14 copy of this document is attached as **Exhibit 18**. Exhibit 18 is a public record of the
15 California State Legislature that I accessed on or about November 11, 2022, from
16 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
17 California Legislative Information website, which publishes official legal history
18 and government documents saved in a fully searchable, image-based format.

19 19. **Assembly Public Safety Comm., Bill Analysis Re: SB 915 (Min) –**
20 **As Amended June 6, 2022, 2021-2022 Reg. Sess. (Cal. 2022).** A true and correct
21 copy of this document is attached as **Exhibit 19**. Exhibit 19 is a public record of the
22 California State Legislature that I accessed on or about November 11, 2022, from
23 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
24 California Legislative Information website, which publishes official legal history
25 and government documents saved in a fully searchable, image-based format.

26 20. **Assembly Appropriations Comm., Bill Analysis Re: SB 915 (Min)**
27 **– As Amended June 6, 2022, 2021-2022 Reg. Sess. (Cal. 2022).** A true and
28 correct copy of this document is attached as **Exhibit 20**. Exhibit 20 is a public

1 record of the California State Legislature that I accessed on or about November 11,
2 2022, from <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the
3 official California Legislative Information website, which publishes official legal
4 history and government documents saved in a fully searchable, image-based format.

5 **21. Assembly, Assembly Floor Analysis Re: SB 915 (Min) – As**
6 **Amended June 6, 2022, 2021-2022 Reg. Sess. (Cal. 2022).** A true and correct
7 copy of this document is attached as **Exhibit 21**. Exhibit 21 is a public record of the
8 California State Legislature that I accessed on or about November 11, 2022, from
9 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
10 California Legislative Information website, which publishes official legal history
11 and government documents saved in a fully searchable, image-based format.

12 **22. Senate Rules Comm., Senate Floor Analysis Re: SB 915 (Min) – As**
13 **Amended June 6, 2022, 2021-2022 Reg. Sess. (Cal. 2022).** A true and correct
14 copy of this document is attached as **Exhibit 22**. Exhibit 22 is a public record of the
15 California State Legislature that I accessed on or about November 11, 2022, from
16 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official
17 California Legislative Information website, which publishes official legal history
18 and government documents saved in a fully searchable, image-based format.

19 **23. United States Department of Justice, Office of Justice Programs,**
20 **Bureau of Statistics, *Bureau of Justice Statistics Report on Sources of Criminal***
21 ***Guns*.** A true and correct copy of this document is attached as **Exhibit 23**. Exhibit
22 23 is a public record of the United States Department of Justice that I accessed on
23 or about November 14, 2022, from <https://bjs.gov/content/pub/pdf/suficspi16.pdf>,
24 the official website of the Department of Justice, Bureau of Statistics.

25 **24. California Department of Justice, Office of the Attorney General,**
26 **“Gun Sales in California.”** A true and correct copy of this document is attached as
27 **Exhibit 24**. Exhibit 24 is a web-page containing data about gun transactions in
28 California, that was once published on <https://openjustice.doj.ca.gov/firearms/>

1 [overview](#), an official website of the California Department of Justice, Office of the
2 Attorney General. I was last able to access this web-page on April 17, 2019, when I
3 saved the web-page as a PDF document, saved it to my law firm’s electronic filing
4 system, and filed it as part of a Request for Judicial Notice in *B&L Productions,*
5 *Inc., v. 22nd District Agricultural District*, S.D. Cal. Case No. 3:19-cv-00134-
6 CAB-NLS.

7 25. **Centers for Disease Control and Prevention, National Center for**
8 **Health Statistics. Underlying Cause of Death 1999-2017.** A true and correct copy
9 of this document is attached as **Exhibit 25**. Exhibit 25 is a public record from the
10 CDC WONDER Online Database that I accessed on or about April 17, 2019, from
11 <https://wonder.cdc.gov/ucd-icd10.html>. Data are from the Multiple Cause of Death
12 Files, 1999-2017, as compiled from data provided by the 57 vital statistics
13 jurisdictions through Vital Statistics Cooperative Program.

14 A court shall take judicial notice of such a fact if requested by a party and
15 supplied with the necessary information. Fed. R. Evid. 201(d). Judicial notice of
16 Exhibits 1 through 25 is proper because the documents for which this request is
17 made are “capable of accurate and ready determination by resort to sources who
18 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Indeed, “[a]
19 trial court may presume that public records are authentic and trustworthy.”
20 *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999) (taking judicial
21 notice of agency report).

22 What’s more, “[l]egislative history is properly a subject of judicial notice.”
23 *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012); *Chaker v. Crogan*,
24 428 F.3d 1215, 1223 n.8 (9th Cir. 2005) (discussing legislative history of California
25 statute). Further, “a federal court must take judicial notice of state statutes ‘without
26 plea or proof.’” *Getty Petroleum Mktg., Inc. v. Capital Terminal Co.*, 391 F.3d 312,
27 323 (1st Cir. 2004) (citing *Lamar v. Micou*, 114 U.S. 218, 223 (1885)).

28 Here, the accuracy of all the public records subject to Plaintiffs’ Request for

1 Judicial Notice, consisting of enacted legislation and legislative history, as well as
2 the records of public agencies, cannot reasonably be questioned. Judicial notice of
3 these records is therefore appropriate.

4
5 Dated: November 16, 2022 MICHEL & ASSOCIATES, P.C.
6 /s/ Anna M. Barvir
7 Anna M. Barvir
8 Counsel for Plaintiffs B&L Productions, Inc.,
9 California Rifle & Pistol Association,
10 Incorporated, Gerald Clark, Eric Johnson,
11 Chad Littrell, Jan Steven Merson, Asian
12 Pacific American Gun Owner Association,
13 Second Amendment Law Center, Inc.

14
15 Dated: November 16, 2022 LAW OFFICES OF DONALD KILMER, APC
16 /s/ Donald Kilmer
17 Donald Kilmer
18 Counsel for Plaintiff Second Amendment
19 Foundation

20
21 **ATTESTATION OF E-FILED SIGNATURES**

22 I, Anna M. Barvir, am the ECF User whose ID and password are being used
23 to file this REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS’
24 MOTION FOR PRELIMINARY INJUNCTION. In compliance with Central
25 District of California L.R. 5-4.3.4, I attest that all signatories are registered
26 CM/ECF filers and have concurred in this filing.

27 Dated: November 16, 2022 /s/ Anna M. Barvir
28 Anna M. Barvir

EXHIBIT 2

Date of Hearing: March 26, 2019
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 893 (Gloria) – As Introduced February 20, 2019

SUMMARY: Prohibits, as of January 1, 2021, the sale of firearms and ammunitions at the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar and thereby creates a misdemeanor offense for a violation of that prohibition. Specifically, **this bill:**

- 1) Prohibits any officer, employee, operator, or lessee of the 22nd District Agricultural Association, as defined, from authorizing, or allowing the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar or any successor or additional property owned, leased, or otherwise occupied or operated by the district.
- 2) Provides that the term “ammunition” includes assembled ammunition for use in a firearm and components of ammunition, including smokeless and black powder, and any projectile capable of being fired from a firearm with deadly consequence.
- 3) Provides that the prohibition on firearms and ammunitions sales at the Del Mar Fairgrounds does not apply to gun buy-back events held by a law enforcement agency.
- 4) States that this section will become operative on January 1, 2021.

EXISTING LAW:

- 1) Divides the state in agricultural districts and designates District 22 as San Diego County. (Food and Agr., §§ 3851, 3873.)
- 2) Allows for the establishment of District Agricultural Associations within each agricultural district, for the purposes of holding fairs, expositions and exhibitions, and constructing, maintaining, and operating recreational and cultural facilities of general public interest. (Food & Agr. Code, § 3951.)
- 3) Provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)
- 4) Prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

- 5) Excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)
- 6) Permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)
- 7) States that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)
- 8) States that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)
- 9) Specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)
- 10) Specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "There is an ever apparent link between the gun violence we see virtually every week and the number of guns in our communities. Additionally, the State of California should not be profiting or benefitting from the sale of firearms. This bill demonstrates that we value people over guns and public safety above all

"Fundamentally, I believe it is wrong for the State of California to profit or to benefit from the sale of firearms and ammunition. I acknowledge that gun ownership is a Constitutional right in the United States, and I know that there are plenty of responsible gun owners out there. However, the fact remains that widespread accessibility to these deadly weapons produces a public safety threat that we must address."
- 2) **Gun Shows:** A "gun show" is a trade show for firearms. At gun shows, individuals may buy, sell, and trade firearms and firearms-related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend. (Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), *Gun Shows: Brady Checks and Crime Gun Traces*, January 1999, available at: <https://www.atf.gov/file/57506/download>, [as of March 18, 2019].)

According to the NRA's Institute for Legislative Action (NRA-ILA), less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.

(NRA-ILA, <https://www.nraila.org/get-the-facts/background-checks-nics>.) However, according to a report published by UC Davis, gun shows have been identified as a source for illegally trafficked firearms. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>, [as of March 20, 2019].) Though violent criminals do not appear to regularly purchase their guns directly from gun shows, gun shows have received criticism as being “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.” (Gerney, *The Gun Debate 1 Year After Newtown*, Center for American Progress, December 13, 2013, available at: <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>, [as of March 18, 2019].)

A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows. (<https://www.gao.gov/assets/680/674570.pdf>, [as of March 15].) 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border states. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>, [as of March 15].)

- 3) **Gun Show Regulations in California:** In 1999, California enacted the nation’s broadest legislation to increase oversight at gun shows. AB 295 (Corbett), Chapter 247, Statutes of 1999, the Gun Show Enforcement and Security Act of 2000, added a plethora of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1,000,000 of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor’s employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer’s willful failure to comply with the specified requirements.

In California, gun transactions at gun shows are treated no differently than any other private party transaction. This means that such transfers must be completed through a licensed California dealer. Such a transfer requires a background check and is subject to the mandatory ten day waiting period prior to delivering the firearm to the purchaser.

California’s strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., “In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries,” *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

4) **Current State of Gun Shows at the Del Mar Fairgrounds:** According to a Fairgrounds press release, last year the 22nd District Agricultural Association’s Board of Directors voted 8 to 1 to not consider any contracts with producers of gun shows beyond Dec. 31, 2018, until it has adopted a more thorough policy regarding the conduct of gun shows. (Available at: http://www.delmarfairgrounds.com/index.php?fuseaction=about.press_details&newsid=1396 [as of March 20, 2019].) The policy is to be presented to the Board no later than December, 2019 and would:

- Consider the feasibility of conducting gun shows for only educational and safety training purposes and bans the possession of guns and ammunition on state property,
- Align gun show contract language with recent changes in state and federal law
- Detail an enhanced security plan for the conduct of future shows
- Propose a safety plan
- Consider the age appropriateness of such an event
- Grant rights for the DAA to perform an audit to ensure full compliance with California Penal Code Sections 171b and 12071.1 and 12071.4. These audit rights may be delegated at the discretion of the 22nd DAA. (*Id.*)

According to local reporting, the operator of the Del Mar Fairgrounds gun show has filed a lawsuit challenging the Board of Directors’ decision on the grounds that it violates the U.S. Constitution’s First Amendment guarantee to free expression. (Williams, *Lawsuit to hang up Del Mar Fairgrounds gun show policy recommendations*, Del Mar Times, March 15, 2019, available at: <https://www.delmartimes.net/news/sd-cm-nc-gun-show-20190315-htmlstory.html>, [as of March 20, 2019].)

This bill would add a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill would effectively terminate the possibility for future gun shows at the Del Mar Fairgrounds.

5) **Veto Messages on Previous Attempts to Ban Gun Shows in Agricultural Districts:** There have been several legislative attempts to regulate gun shows in Agricultural District 1A in San Mateo and San Francisco Counties at a location commonly known as the “Cow Palace.” The Cow Palace is substantially similar to the Del Mar Fairgrounds inasmuch as it is a state-owned property located within the jurisdiction of a county. SB 221 (Wiener), of 2018, SB 475 (Leno) of 2013, SB 585 (Leno) of 2009, and others, all attempted to either ban gun shows at the Cow Palace altogether, or require prior approval from the county Board Supervisors prior to entering into a contract for holding a gun show there. All three attempts were vetoed by the Governor.

In regards to SB 221, Governor Brown stated: “This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow

Palace. This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger. The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.”

SB 475 was also vetoed by Governor Brown with the following message: “This bill requires the District Agricultural Association 1-A (Cow Palace) to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. I encourage all District Agricultural Associations to work with their local communities when determining their operations and events. This bill, however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.”

SB 585 was vetoed by Governor Schwarzenegger, who stated: “This bill would prohibit the sale of firearms and ammunition at the Cow Palace. This bill would set a confusing precedent at the state level by statutorily prohibiting one District Agricultural Association (DAA) from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, this bill would result in decreased state and local tax revenues by restricting events at the Cow Palace.”

- 6) **Argument in Support:** According to the *NeverAgainCA*: “NeverAgainCA organized large, peaceful protests at every gun show at the Del Mar Fairgrounds. attended and spoke at every meeting of the 22nd District Agricultural Association Board, and joined students protesting gun violence and gun shows at many area schools. NeverAgainCA presented resolutions calling for the elimination of the gun shows at the Del Mar Fairgrounds to the City Councils of the adjacent cities of Del Mar, Solana Beach and Encinitas; these resolutions were adopted and are part of the record of this hearing. Candidate and now Congressman Mike Levin addressed several of our rallies against the gun shows. At the request of NeverAGainCA, then Lt. Governor, now Governor, Gavin Newsom, called on the Fair Board to end gun shows and put an end to valuing the sale of firearms above the value of lives.

“NeverAgainCA is proud to support AB 893. The residents of the 78th AD and adjacent districts, and their elected representatives, have demonstrated the broad public support for ending gun shows at the Del Mar Fair Grounds on a permanent basis.”

- 7) **Argument in Opposition:** According to the *California Rifle and Pistol Association, Inc.*: “Promoters and operators of gun shows in California must comply with no less than twenty-six sections of the penal code. Gun sales are highly-regulated in California and the rules are no less stringent for those vendors at gun shows (Refer Exhibit #2 attached). Vendors that participate in gun shows may not do so unless all their licenses have been submitted to the California Department of Justice before the event for the purposes of determining whether the vendors possess the proper valid licenses. If they do not pass the review of the California DOJ, they are prohibited from participating.

...

“Gun shows are very much a family event. Many of them have training and education, guest speakers, lifestyle vendors, safety training, and more. Ever hear of a shooting spree at a gun

show? No, because people that attend gun shows are the law-abiding citizens that attend for the educational value and to stay up on new products that are available. It is no different than any other trade show that occurs in other industries across the state. Criminals would never subject themselves to this much scrutiny and regulation in the hopes of getting their hands on a firearm. These types of false and scare-tactic narratives have no place in modern discourse.”

- 8) **Related Legislation:** SB 281 (Wiener), among other things, would prohibit the sale of firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco County.
- 9) **Prior Legislation:**
 - a) SB 221 (Wiener) of the 2017-18 Legislative Session, would have prohibited the sale of firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco County. SB 221 was vetoed by Governor Brown.
 - b) SB 475 (Leno), of the 2013-14 Legislative Session, would have required gun shows at the Cow Palace to have prior approval of both the Board of Supervisors of the County of San Mateo and the City and County of San Francisco, as specified. SB 475 was vetoed by Governor Brown.
 - c) SB 585 (Leno), of the 2009-10 Legislative Session, would have prohibited events at which any firearm or ammunition is sold at the Cow Palace, as specified. SB 585 was vetoed by Governor Schwarzenegger.
 - d) AB 2948 (Leno), of the 2007-08 Legislative Session, would have prohibited the sale of firearms or ammunition at the Cow Palace. AB 2948 failed passage on the Senate Floor.
 - e) SB 1733 (Speier), of the 2003-04 Legislative Session, would have required gun shows at the Cow Palace to have prior approval of both the Board of Supervisors of the County of San Mateo and the City and County of San Francisco, as specified. SB 1733 failed passage on the Assembly Floor.
 - f) AB 295 (Corbett), Chapter 247, Statutes of 1999, established the Gun Show Enforcement and Security Act of 2000, which includes a number of requirements for producers that promote gun shows.
 - g) AB 1107 (Ortiz), of the 1997-98 Legislative Session, would have authorized any city, county or agricultural association to prohibit gun sales at gun shows or events. AB 1107 failed in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Student Activists
City of Del Mar
City of Encinitas

City of Solana Beach
NeverAgainCA

Oppose

B & L Productions, d.b.a. Crossroads of the West Gun Shows
California Rifle and Pistol Association, Inc.
California Sportsman's Lobby, Inc.
Gun Owners of California, Inc.
National Rifle Association - Institute For Legislative Action
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters
Western Fairs Association

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

EXHIBIT 4

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 893 **Hearing Date:** June 11, 2019
Author: Gloria
Version: May 15, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *22nd District Agricultural Association: Firearm and Ammunition Sales at the Del Mar Fairgrounds*

HISTORY

Source: NeverAgainCA

Prior Legislation: SB 221 (Wiener), 2017, vetoed
SB 475 (Leno), 2013, vetoed
SB 585 (Leno), 2009, vetoed
AB 2948 (Leno), 2008, failed passage on the Senate Floor
SB 1733 (Speier), 2004, failed passage on the Assembly Floor
AB 295 (Corbett), Ch. 247, Stats. of 1999
AB 1107 (Ortiz), 1997, failed passage in Assembly Appropriations

Support: Bay Area Student Activists; City of Del Mar; City of Encinitas; City of Solana Beach; League of Women Voters; San Diegans for Gun Violence Prevention

Opposition: California Rifle and Pistol Association; California Sportsman's Lobby; Crossroads of the West; Firearms Policy Coalition; Gun Owners of California; National Rifle Association; National Shooting Sports Foundation; Outdoor Sportsmen's Coalition of California; Safari Club International; Safari Club International Foundation; Western Fairs Association

Assembly Floor Vote: 52 - 22

PURPOSE

This bill prohibits, as of January 1, 2021, the sale of firearms and ammunitions at the Del Mar Fairgrounds in the County of San Diego, the City of Del Mar, the City of San Diego and thereby creates a misdemeanor offense for a violation of that prohibition.

Existing law divides the state in agricultural districts and designates District 22 as San Diego County. (Food and Agr., §§ 3851, 3873.)

Existing law allows for the establishment of District Agricultural Associations within each agricultural district, for the purposes of holding fairs, expositions and exhibitions, and constructing, maintaining, and operating recreational and cultural facilities of general public interest. (Food & Agr. Code, § 3951.)

Existing law provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)

Existing law prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

Existing law excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

Existing law permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

Existing law states that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

Existing law states that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)

Existing law specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)

Existing law specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

This bill prohibits any officer, employee, operator, or lessee of the 22nd District Agricultural Association, as defined, from authorizing, or allowing the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds in the County of San Diego the City of Del Mar, the City of San Diego; or any successor or additional property owned, leased, or otherwise occupied or operated by the district.

This bill provides that the term "ammunition" includes assembled ammunition for use in a firearm and components of ammunition, including smokeless and black powder, and any projectile capable of being fired from a firearm with deadly consequence.

This bill provides that the prohibition on firearms and ammunitions sales at the Del Mar Fairgrounds does not apply to gun buy-back events held by a law enforcement agency.

This bill states that this section will become operative on January 1, 2021.

COMMENTS

1. Need for This Bill

According to the author:

Gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.) Though violent criminals do not buy most of their guns directly from gun shows, gun shows are “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat regulated legal market to the shadowy, no-questions-asked illegal market.” (Center for American Progress, <http://www.americanprogress.org/issues/gunscime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.) A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows.

(<https://www.gao.gov/assets/680/674570.pdf>). 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border states. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>) In September, the 22nd District Agricultural Board of Directors (fair board), which oversees the fairgrounds, voted to temporarily stop the gun shows until staff members develop a policy that could ban the sale and possession of firearms on the property.

Crossroads of West holds its shows at more than a dozen large locations in four western states, all on public or city-owned property. It stages the two-day gun show at the Del Mar Fairgrounds five times annually.

In January, Crossroads filed a lawsuit against the fair board for its decision. This bill should provide additional legal protection to the fair board for taking this important action to protect public safety.

3. Gun Shows

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sale, and trade firearms and fire-arms related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend.¹

According to the NRA’s Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.² However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are “the critical

¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/file/57506/download>.

² NRA-ILA, <https://www.nraila.org/get-the-facts/background-checks-nics>.

moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.”³

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows.⁴ 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from DOJ’s Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border-states.⁵

4. Gun Show Regulations in California

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor’s employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer’s willful failure to comply with the specified requirements. California’s strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., “*In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries*,” *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county’s authority. “Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes.” (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as Cow Palace.

5. Prior Attempts to Ban Gun Shows at the Cow Palace in the San Francisco Bay Area

There have been several legislative attempts to regulate gun shows at Cow Palace—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

³ Center for American Progress, <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.

⁴ <https://www.gao.gov/assets/680/674570.pdf>.

⁵ <https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.

Like this bill, SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace DAA to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would “set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace.” Unlike SB 585, this bill will not impair any of Cow Palace’s ongoing contracts because, if chaptered, it will not become operative until January 1, 2020.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, “I encourage all [DAAs] to work with their local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.” Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

Last session, SB 221 (Wiener) contained very similar provisions to this bill. SB 221 would have prohibited any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County. Like this bill, SB 221 had an implementation date in 2020 and exempted law enforcement firearm buy-back events. Unlike this bill, SB 221 failed to exempt existing contracts to host firearms events. SB 221 was vetoed by Governor Brown with the following veto message:

This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow Palace.

This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger.

The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.

6. Current State of Gun Shows at the Del Mar Fairgrounds

According to a Fairgrounds press release, last year the 22nd District Agricultural Association’s Board of Directors voted 8 to 1 to not consider any contracts with producers of gun shows beyond Dec. 31, 2018, until it has adopted a more thorough policy regarding the conduct of gun

shows.⁶ The policy is to be presented to the Board no later than December, 2019 and would:

- Consider the feasibility of conducting gun shows for only educational and safety training purposes and bans the possession of guns and ammunition on state property,
- Align gun show contract language with recent changes in state and federal law
- Detail an enhanced security plan for the conduct of future shows
- Propose a safety plan
- Consider the age appropriateness of such an event
- Grant rights for the DAA to perform an audit to ensure full compliance with California Penal Code Sections 171b and 12071.1 and 12071.4. These audit rights may be delegated at the discretion of the 22nd DAA. (*Id.*)

According to local reporting, the operator of the Del Mar Fairgrounds gun show has filed a lawsuit challenging the Board of Directors' decision on the grounds that it violates the U.S. Constitution's First Amendment guarantee to free expression.⁷

This bill would add a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill would effectively terminate the possibility for future gun shows at the Del Mar Fairgrounds.

7. Argument in Support

According to the *NeverAgainCA*:

NeverAgainCA organized large, peaceful protests at every gun show at the Del Mar Fairgrounds. attended and spoke at every meeting of the 22nd District Agricultural Association Board, and joined students protesting gun violence and gun shows at many area schools. NeverAgainCA presented resolutions calling for the elimination of the gun shows at the Del Mar Fairgrounds to the City Councils of the adjacent cities of Del Mar, Solana Beach and Encinitas; these resolutions were adopted and are part of the record of this hearing. Candidate and now Congressman Mike Levin addressed several of our rallies against the gun shows. At the request of NeverAGainCA, then Lt. Governor, now Governor, Gavin Newsom, called on the Fair Board to end gun shows and put an end to valuing the sale of firearms above the value of lives.

⁶ (Available at: http://www.delmarfairgrounds.com/index.php?fuseaction=about.press_details&newsid=1396 [as of March 20, 2019].)

⁷ (Williams, *Lawsuit to hang up Del Mar Fairgrounds gun show policy recommendations*, Del Mar Times, March 15, 2019, available at: <https://www.delmartimes.net/news/sd-cm-nc-gun-show-20190315-htmlstory.html>, [as of March 20, 2019].)

NeverAgainCA is proud to support AB 893. The residents of the 78th AD and adjacent districts, and their elected representatives, have demonstrated the broad public support for ending gun shows at the Del Mar Fair Grounds on a permanent basis.

8. Argument in Opposition

According to the *California Rifle and Pistol Association, Inc.*:

Promoters and operators of gun shows in California must comply with no less than twenty-six sections of the penal code. Gun sales are highly-regulated in California and the rules are no less stringent for those vendors at gun shows (Refer Exhibit #2 attached). Vendors that participate in gun shows may not do so unless all their licenses have been submitted to the California Department of Justice before the event for the purposes of determining whether the vendors possess the proper valid licenses. If they do not pass the review of the California DOJ, they are prohibited from participating.

-- END --

EXHIBIT 10

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 264 **Hearing Date:** March 16, 2021
Author: Min
Version: February 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: state and county property*

HISTORY

Source: Author

Prior Legislation: AB 893 (Gloria), Ch. 731, Stats. of 2019
SB 221 (Wiener), 2017, vetoed
SB 475 (Leno), 2013, vetoed
SB 585 (Leno), 2009, vetoed
AB 2948 (Leno), 2008, failed passage on the Senate Floor
SB 1733 (Speier), 2004, failed passage on the Assembly Floor
AB 295 (Corbett), Ch. 247, Stats. of 1999
AB 1107 (Ortiz), 1997, failed passage in Assembly Appropriations

Support: American Academy of Pediatrics, California; Brady Orange County; Canyon Democrats; Democrats of Greater Irvine; HB Huddle; Laguna Beach Democratic Club; Laguna Woods Democratic Club; NeverAgainCA; Office of Chair Nathan Fletcher, San Diego County Board of Supervisors; San Diegans for Gun Violence Prevention; City of San Diego; Santa Barbara Women's Political Committee; Women for American Values and Ethics Action Fund; Women For: Orange County

Opposition: California Rifle and Pistol Association; California Sportsman's Lobby, Inc.; National Rifle Association – Institute for Legislative Action; National Shooting Sports Foundation, INC.; Outdoor Sportsman's Coalition of California; Safari Club International - California Chapter; Western Fairs Association

PURPOSE

The purpose of this legislation is to prohibit the sale of firearms on state or county property.

Existing law provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)

Existing law prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

Existing law excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

Existing law permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

Existing law states that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

Existing law states that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)

Existing law specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)

Existing law specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

This bill prohibits a state or county officer or employee, or operator, lessee, or licensee of any state or county property, from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on state or county property or in the buildings that sit on state or county property or property otherwise owned, leased, occupied, or operated by the state or county.

This bill makes the following findings and declarations:

- Some state properties, such as fairgrounds in District Agricultural Associations (DAAs), lease a portion of their fairgrounds to entities that sponsor marketplaces popularly known as "gun shows," at which firearms and ammunition and other items are sold to the public approximately five times a year on average among state fairgrounds.
- The United States has experienced many gun-related tragedies with increasing severity and frequency in the last 30 years, including mass murders at Columbine High School, Sandy Hook Elementary School, and Marjory Stoneman Douglas High School, and an increasing rate of suicide by gun among all levels of society.
- Various California cities, such as the Cities of Del Mar, Solana Beach, and Encinitas have adopted resolutions requesting that their local Del Mar Fairgrounds (DMFG) Board

discontinue leasing any portion of its property for use as a gun show. A committee appointed by the Board of Directors of the 22nd DAA to study gun shows conducted research, including inspection tours of the Del Mar Gun Show by members of the committee as well as by several other members of the DMFG Board.

- In direct response to this community concern, Assembly Member Todd Gloria passed AB 893 into law, banning gun shows from the DMFG, setting a precedent for gun show legislation in California.
- Gun shows bring grave danger to a community, and the following dangerous incidents, among others, have occurred at gun shows, including, but not limited to, an official vendor accused of trafficking illegal firearms, sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Armed Prohibited Persons System, and illegal importation of large-capacity magazines.
- Promoters maintain relationships with a core group of vendors, some selling guns and some selling other merchandise, who travel as the schedule dictates from city to city and state to state and in the west, for example, many of the same vendors can be seen at Crossroads of the West Gun Shows from San Francisco, California, to Tucson, Arizona.

COMMENTS

1. Need for This Bill

According to the author:

The urgency for common-sense gun safety remains prevalent during the COVID-19 pandemic, as 2020 saw a record high in gun-related deaths. Over 19,000 individuals died of gun violence in 2020, up nearly 25% from 2019.¹ According to the Giffords Law Center to Prevent Gun Violence, gun shows often create the opportunity to “circumvent gun safety laws” and are a common venue for straw purchases and illegal gun transfers.² Additionally, a Bureau of Alcohol, Tobacco, and Firearms report described gun shows as a “major trafficking channel” and found that gun shows were the second largest source of illegally trafficked firearms.³

SB 264 would prohibit the sale of firearms and ammunition on state and county property. The bill ensures California is not profiting of the sale of firearms and that taxpayer dollars are not being used to promote the distribution of firearms.

¹ Garcia-Navarro, L. (2021, January 3). 2020 Was A Record-Breaking Year For Gun-Related Deaths In The U.S. *NPR*. <https://www.npr.org/2021/01/03/952969760/2020-was-a-record-breaking-year-for-gun-related-deaths-in-the-u-s#:~:text=According%20to%20the%20Gun%20Violence,jump%20from%20the%20year%20before>

² Gun Shows. (2020, December 01). *Giffords Law Center*. <https://giffords.org/lawcenter/gun-laws/policy-areas/gun-sales/gun-shows/>

³ “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers,” Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, June 2000. <http://www.nfaoa.org/documents/ATF-%20Following%20the%20Gun,%20Enforcing%20Federal%20Laws%20Against%20Firearms%20Traffickers.pdf>

2. Gun Shows

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sell, and trade firearms and fire-arms related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend.⁴

According to the NRA's Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.⁵ However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are "the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market."⁶

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows.⁷ 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border-states.⁸

3. Gun Show Regulations in California

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements. California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries," *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county's authority. "Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince

⁴ Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/file/57506/download>.

⁵ NRA-ILA, <https://www.nraila.org/get-the-facts/background-checks-nics>.

⁶ Center for American Progress, <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.

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⁸ <https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.

intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes.” (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as Cow Palace.

4. Banning of Gun Shows on State Agricultural Land

There have been several legislative attempts to regulate gun shows on State Agricultural Land—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace DAA to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would “set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace.” Unlike SB 585, this bill will not impair any of Cow Palace’s ongoing contracts because, if chaptered, it will not become operative until January 1, 2020.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, “I encourage all [DAAs] to work with their local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.” Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

In 2018, SB 221 (Wiener) contained very similar provisions to this bill. SB 221 would have prohibited any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County. Like this bill, SB 221 had an implementation date in 2020 and exempted law enforcement firearm buy-back events. Unlike this bill, SB 221 failed to exempt existing contracts to host firearms events. SB 221 was vetoed by Governor Brown with the following veto message:

This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow Palace.

This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger.

The decision on what kind of shows occur at the Cow Palace rests with the local

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board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.

Then, in 2019 AB 893 (Gloria) added a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill would effectively terminate the possibility for future gun shows at the Del Mar Fairgrounds. This bill was signed into law by Governor Newsom and Chaptered as 731 in the Statutes of 2019.

This bill would add county and state property to the provisions of SB 893 (Gloria).

5. Argument in Support

According to the Santa Barbara Women's Political Committee:

We support legislation that promotes community safety and are aware that under current law gun shows have brought dangerous incidents to our community. These include but are not limited to the following: an official vendor being accused of trafficking illegal firearms, sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Prohibited Persons System, and illegal importation of large-capacity magazines. Recent years have seen an alarming increase of gun violence including mass murders that have devastated communities at large. By prohibiting gun shows on state properties, SB 264 would open these properties to more family-friendly venues and avoid the use of taxpayer dollars to facilitate placing more guns on our streets.

6. Argument in Opposition

According to the Western Fairs Association

SB 264 would prohibit all sales of firearms and ammunition at events held at all District Agricultural Associations and county fairgrounds beginning in 2022. This prohibition will not enhance public safety as current law already requires all firearm transactions at events hosted at fairgrounds to be subject to the same stringent standards as required in a dealer's store. All firearms transactions that take place on a fairground are subject to the ten-day waiting period while requiring the firearm to remain in the possession of the transacting dealer until that period ends and the Department of Justice has completed the required background check. District Agricultural Associations (DAAs) and county fairs receive minimal support annually from the State Budget. Fairs are expected to generate their own revenues from trade shows, livestock auctions, concerts, etc. Each fair hosts events of interest to the communities they serve. Prohibiting gun shows on state and county property not only eliminates a legal venue for the sale of firearms and ammunition under the watchful eye of law enforcement and in full compliance with state law, but it also harms the finances of California's Fair Network.

-- END --

EXHIBIT 17

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 915 **Hearing Date:** March 8, 2022
Author: Min
Version: February 2, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: state property*

HISTORY

Source: Author

Prior Legislation: SB 264 (Min), Ch. 684, Stats. of 2021
AB 893 (Gloria), Ch. 731, Stats. of 2019
SB 221 (Wiener), 2017, vetoed
SB 475 (Leno), 2013, vetoed
SB 585 (Leno), 2009, vetoed
AB 2948 (Leno), 2008, failed passage on the Senate Floor
SB 1733 (Speier), 2004, failed passage on the Assembly Floor
AB 295 (Corbett), Ch. 247, Stats. of 1999
AB 1107 (Ortiz), 1997, failed passage in Assembly Appropriations

Support: Brady Orange County; Brady United Against Gun Violence, Ventura County Chapter; Democratic Club of Cornejo Valley; Friends Committee on Legislation of California; Laguna Woods Democratic Club; NeverAgainCA; San Diego County Board of Supervisors; Santa Barbara Women’s Political Committee; Ventura County; Violence Prevention Coalition of Orange County

Opposition: Black Brant Group; Cal-ore Wetlands and Waterfowl Council; California Bowmen Hunters/State Archery Association; California Chapter Wild Sheep Foundation; California Deer Association; California Houndsmen for Conservation; California Rifle and Pistol Association; California Sportsman’s Lobby, INC.; California Waterfowl Association; Gun Owners of California; National Rifle Association – Institute for Legislative Action; Nor-cal Guides and Sportsmen's Association; Outdoor Sportsmen’s Coalition of California; Peace Officers Research Association of California; Rocky Mountain Elk Foundation; Safari Club International – California Chapters; San Diego County Wildlife Federation; San Francisco Bay Area Chapter - Safari Club International; Tulare Basin Wetlands Association

PURPOSE

The purpose of this legislation is to prohibit the sale of firearms, firearm precursor parts and ammunition on state property.

Existing law provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state

2-ER-236

prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)

Existing law prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

Existing law excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

Existing law permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

Existing law states that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

Existing law states that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)

Existing law specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)

Existing law provides that an officer, employee, operator, lessee or licensee of the 32nd District Agricultural Association shall not contract for, authorize, or allow the sale of any firearm, firearm precursor part, or ammunition on the property or in the buildings that comprise the Orange County (OC) Fair and Event Center, in the County of Orange, the City of Costa Mesa, or any successor or additional property owned, leased or otherwise occupied or operated by the district. (Pen. Code §27575(a).)

Existing law exempts the following from the prohibition in Penal Code § 27575(a):

- A gun buyback event held by a law enforcement agency.
- The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties
- The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2022.
- The purchase of ammunition on state property by a law enforcement agency in the course of its regular duties. (Pen. Code §27575(b).)

Existing law specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

This bill prohibits a state officer or employee, or operator, lessee, or licensee of any state property from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on state property or property otherwise owned, leased, occupied, or operated by the state.

This bill exempts the following from the prohibition above:

- A gun buyback event held by a law enforcement agency.
- The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties
- The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2023.
- The purchase of ammunition on state property by a law enforcement agency in the course of its regular duties.

COMMENTS

1. Need for This Bill

According to the author:

“County fairgrounds are meant to be a safe and welcome space for community gatherings. Instead, these tax-payer owned properties are used to facilitate the sales of guns and ammunition. According to the Giffords Law Center to Prevent Gun Violence, gun shows often create the opportunity to “circumvent gun safety laws” and are a common venue for straw purchases and illegal gun transfers.

Additionally, a Bureau of Alcohol, Tobacco, and Firearms report described gun shows as a “major trafficking channel” and found that gun shows were the second largest source of illegally trafficked firearms. The state should not play a role in facilitating or profiting off of the sales of these deadly weapons. Instead, the creation of statewide safeguards is necessary to ensure fairgrounds remain safe, family-friendly venues.”

2. Gun Shows Generally

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sale, and trade firearms and related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend.¹

According to the NRA’s Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.² However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.”³

¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/file/57506/download>.

² NRA-ILA, <https://www.nraila.org/get-the-facts/background-checks-nics>.

³ Center for American Progress, <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows.⁴ In fact, 87% of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border-states.⁵

3. Gun Show Regulations in California

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements. California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "*In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries*," *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county's authority. "Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes." (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as the Cow Palace in Daly City.

4. Banning of Gun Shows on State Agricultural Land

There have been several legislative attempts to regulate gun shows on State Agricultural Land—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace District Agricultural Association (DAA) to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would "set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated activity, while allowing

⁴ <https://www.gao.gov/assets/680/674570.pdf>.
⁵ <https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.

other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace.” This bill would apply to all DAAs equally.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, “I encourage all [DAAs] to work with their local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.” Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

In 2018, SB 221 (Wiener) contained very similar provisions to this bill. SB 221 would have prohibited any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County. Like this bill, SB 221 exempted law enforcement firearm buy-back events. Unlike this bill, SB 221 failed to exempt existing contracts to host firearms events. SB 221 was vetoed by Governor Brown with the following veto message:

This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow Palace.

This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger.

The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.

Then, in 2019 AB 893 (Gloria) added a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill effectively terminated the possibility for future gun shows at the Del Mar Fairgrounds. AB 893 was signed into law by Governor Newsom and Chaptered as 731 in the Statutes of 2019.

5. SB 264 (Min, 2021)

SB 264 (Min, Ch. 684, Stats. of 2021) as initially introduced was almost identical to this bill, and would have enacted a similar statewide ban on firearm and ammunition sales on state property. That measure was subsequently amended to include precursor parts – which can be assembled into so-called “ghost guns” – in the prohibition on sales, and to exempt several governmental

functions and contractual obligations from the prohibition. The scope of SB 264 was ultimately limited by amendments taken in Assembly Appropriations Committee, confining the measure's applicability to firearm, precursor part and ammunition sales in Orange County. This bill renews the author's efforts to enact a statewide ban, and retains the exemptions and ban on precursor part sales from the final version of SB 264.

6. Related Legislation

AB 1769 (Bennett) establishes a ban similar to that created by this bill, but limited to sales of firearms, precursor parts and ammunition in Ventura County. AB 1769 awaits a hearing in the Assembly Committee on Public Safety.

7. Argument in Support

According to the Santa Barbara Women's Political Committee:

"[...] Under current law gun shows have brought dangerous incidents to our community, including such incidents as sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Prohibited Persons System, illegal importation of large-capacity magazines, and more. Our nation continues to endure an alarming increase of gun violence including mass murders that have devastated communities. By prohibiting gun shows on state properties, SB 915 would help to restore these properties to more family-friendly venues. It would also curtail the use of taxpayer dollars to facilitate placing more guns on our streets."

8. Argument in Opposition

According to the National Rifle Association Institute for Legislative Action:

"In order for a person to purchase any firearm in California, they must possess a firearm safety certificate, pass a criminal background check and wait 10 days prior to receipt. The involvement of a licensed dealer is generally required for all firearms sales/transfers in addition to the sale or transfer of firearm precursor parts or ammunition, absent very narrow and limited circumstances. The restrictions on the sale and transfer of firearms, firearm precursor parts and ammunition applies to gun shows as well. Transactions at these events require strict adherence to the law and the process for completing the transfer is no different than if it had occurred at a nearby brick and mortar shop.

Studies have shown that firearms acquired at gun shows are not any more likely to be used in crime. This legislation fails to adequately balance the need to prohibit all gun shows at state controlled property versus the interests of the gun shows' promoters, vendors and attendees – individuals who will now be left with limited venues to convene to share in their mutual interest in the shooting sports in a commercial setting."

-- END --

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

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

21 Plaintiffs,
22

23 v.

24 GAVIN NEWSOM, in his official
capacity as Governor of the State of
California; ROB BONTA, in his official
25 capacity as Attorney General of the
State of California; KAREN ROSS, in
26 her official capacity as Secretary of
California Department of Food &
27 Agriculture and in his personal capacity;
TODD SPITZER, in his official capacity
28 as District Attorney of Orange County;

CASE NO: 8:22-cv-01518 JWH (JDEx)
**FIRST AMENDED COMPLAINT FOR
DECLARATORY & INJUNCTIVE
RELIEF**

- (1) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH - POLITICAL];
- (2) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH-MIXED POLITICAL/
COMMERCIAL];
- (3) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH-COMMERCIAL];
- (4) VIOLATION OF 42 U.S.C. § 1983
[PRIOR RESTRAINT ON SPEECH];
- (5) VIOLATION OF 42 U.S.C. § 1983
[RIGHT TO ASSEMBLY];
- (6) VIOLATION OF 42 U.S.C. § 1983
[EQUAL PROTECTION];
- (7) VIOLATION OF 42 U.S.C. § 1983
[SECOND AMENDMENT].

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32nd DISTRICT AGRICULTURAL
ASSOCIATION; DOES 1-10;

Defendants.

DEMAND FOR JURY TRIAL

**NOTICE OF
UNCONSTITUTIONALITY OF
STATE STATUTE**

NOTICE OF RELATED CASE

INTRODUCTION

1
2 1. Plaintiff B & L PRODUCTIONS, INC., d/b/a CROSSROADS OF THE
3 WEST (“Plaintiff Crossroads”) has operated popular, safe, heavily regulated, legal,
4 and family-friendly gun shows as a business in California for over 30 years,
5 including at the Orange County Fair & Event Center (“the Fairgrounds”).

6 2. Plaintiff Crossroads produces gun shows at the Fairgrounds where like-
7 minded individuals gather to engage in commerce related to, and necessary for, the
8 lawful and regulated exercise of Second Amendment rights for themselves, their
9 exhibitors, their patrons, their customers, and the general public. This safe and
10 regulated marketplace promotes public safety, even for people who do not attend
11 gun shows because it will tend to reduce the unregulated transfer of firearms within
12 Orange County. Furthermore, by providing a convenient forum for Californians to
13 exercise their right to acquire firearms locally, gun shows at the Fairgrounds will
14 have the tendency to discourage the sale and importation of firearms from other
15 states with less strict gun laws than California.

16 3. Plaintiffs Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson,
17 California Rifle & Pistol Association, Incorporated, Second Amendment Law
18 Center, Inc., Asian Pacific American Gun Owners Association, and Second
19 Amendment Foundation, Inc., attend and participate in Plaintiff Crossroads’ gun
20 show events at the Fairgrounds and elsewhere throughout California to engage in
21 First Amendment activities that are both necessary and essential to the open, robust,
22 and lawful exercise of their Second Amendment rights. Plaintiff CRPA also has
23 members who attend gun shows and sell ammunition, firearms, and precursor parts.

24 4. At the gun show, Plaintiffs associate with like-minded people,
25 participate in public discussions, attend informational forums, distribute and collect
26 information, provide training, make offers for sale, make offers to buy, and engage
27 in legal and political discussions related to the Second Amendment, which are all
28 forms of speech protected by the First Amendment. Discussions include, but are not

1 limited to, firearms and ammunition, firearm technology, firearm safety, and firearm
2 law and politics. Participants also exchange information about where to hunt and
3 where to practice shooting, where and from whom to receive training, gunsmithing,
4 gun repair, gun art, and many other topics that arise from the right to acquire, own,
5 possess, enjoy, and celebrate arms as a quintessentially American artifact with
6 constitutional significance.

7 5. Defendants are government actors who are responsible for the adoption
8 and enforcement of Senate Bill 264 (Min), codified at California Penal Code section
9 27575,¹ which prohibits the sale of firearms, ammunition, and “firearm precursor
10 parts” at the Fairgrounds, and Senate Bill 915 (Min), codified at California Penal
11 Code section 27573,² which prohibits the sale of firearms, ammunition, and “firearm
12 precursor parts” on *all* state-owned property with the intention and effect of
13 shuttering gun show events altogether.

14 6. Through their enforcement of SB 264 and SB 915, the government
15 Defendants have engaged in and will continue to engage in action that violates
16 Plaintiffs’ constitutional rights to free speech, assembly, and equal protection, as
17 well as their Second Amendment right to buy, sell, and acquire firearms and
18 ammunition at a gun show. Their actions also constitute an unconstitutional prior
19 restraint.

20 7. This action seeks declaratory and injunctive relief against Defendants
21 for violating the United States Constitution. It also seeks damages for lost profits,
22 lost opportunities, and diminished marketing value, and reimbursement for
23 reasonable attorney’s fees, costs, and other expenses in bringing this action.

24 **JURISDICTION AND VENUE**

25 8. The Court has original jurisdiction of this civil action under 28 U.S.C. §

26 _____
27 ¹ Plaintiffs refer to the challenged law, California Penal Code section 27575, as
28 SB 264 throughout this complaint.

² Plaintiffs refer to the challenged law, California Penal Code section 27573, as
SB 915 throughout this complaint.

1 1331 because the action arises under the Constitution and laws of the United States,
2 thus raising federal questions. The Court also has jurisdiction under 28 U.S.C. §
3 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the deprivation,
4 under color of the laws, statutes, ordinances, regulations, customs and usages of the
5 State of California and political subdivisions thereof, of rights, privileges or
6 immunities secured by the United States Constitution and by Acts of Congress

7 9. Plaintiffs’ claims for declaratory and injunctive relief are authorized by
8 28 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys’ fees is
9 authorized by 42 U.S.C. § 1988.

10 10. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because the
11 32nd District Agricultural Association is located within this district and a substantial
12 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this
13 district.

14 **PARTIES**

15 **[Plaintiffs]**

16 11. Plaintiff B&L PRODUCTIONS, INC., d/b/a CROSSROADS OF THE
17 WEST, is a for-profit event promoter operating in several western states. Crossroads
18 is in the business of promoting and organizing trade shows throughout the state of
19 California and other western states, including their long-running gun show events
20 held at the Orange County Fair & Event Center (“the Fairgrounds”) operated under
21 the d/b/a Crossroads of the West (“Plaintiff Crossroads”). Before the adoption and
22 enforcement of SB 264 and SB 915, Plaintiff Crossroads was the largest vendor of
23 gun show events in California and at the Fairgrounds. Typically, thousands of
24 people attend Plaintiff Crossroads’ gun shows on each of the weekends they are
25 held. Crossroads provides the space for these like-minded people to assemble. They
26 have successfully produced and operated multiple safe, legal, and family-friendly
27 gun show events in California and at the Fairgrounds every year for over 30 years.
28 But for Defendants’ adoption and enforcement of SB 264 and SB 915, Plaintiff

1 Crossroads would immediately resume producing and promoting gun show events at
2 the Fairgrounds and at other state-owned fairgrounds throughout California.

3 12. Plaintiff GERALD CLARK is a resident of Santa Ana, California, and
4 he is an NRA certified instructor. Before the implementation of SB 264 and SB 915,
5 he regularly attended Plaintiff Crossroads' gun show events at the Fairgrounds to
6 purchase firearms, ammunition, parts for firearms already owned, and materials to
7 help him with his training and as a gun owner to be more proficient. He has taught
8 gun safety and training courses for 12 years, and he has taught those courses at the
9 Crossroads gun show at the Fairgrounds as a Chief Range Safety Officer and
10 Certified Trainer. During the training courses, he talks to others about their rights,
11 the importance of membership in the CRPA, and the Second Amendment. SB 264
12 and SB 915 directly burden his right to engage in otherwise lawful commercial
13 speech in a public forum and restricts his ability to purchase ammunition, firearms,
14 and parts for lawful purposes. And because the ban is intended to make gun shows
15 less profitable and has in fact effectively banned them altogether, it also restricts his
16 right to engage in the unique types of political, educational, and commercial speech
17 that takes place at the gun show. But for Defendants' adoption and enforcement of
18 SB 264 and SB 915, Plaintiff Clark would continue attending and participating in
19 the Crossroads gun show events at the Fairgrounds.

20 13. Plaintiff ERIC JOHNSON is a resident of Whittier, California, and he
21 is a Certified Trainer, Range Safety Expert, retired coach, and Chief Range Safety
22 Officer. Before the implementation of SB 264 and SB 915, he regularly attended
23 Plaintiff Crossroads' gun show events at the Fairgrounds to purchase firearms,
24 ammunition reloading supplies, ammunition, parts for the firearms he owns,
25 materials for caring for his firearms, and much more. Plaintiff Johnson also attended
26 the Crossroads gun show at the Fairgrounds to engage in expressive activities with
27 like-minded people, including discussions related to firearms, ammunition, and
28 firearm accessories, the shooting sports, politics, and the Second Amendment. He

1 regularly sets up and works Plaintiff CRPA’s vendor booths at gun shows at the
2 Fairgrounds. SB 264 and SB 915 directly burden his right to engage in otherwise
3 lawful commercial speech in a public forum and restricts his ability to purchase
4 ammunition, firearms, and parts for lawful purposes. And because the ban is
5 intended to make gun shows less profitable and has in fact effectively banned them
6 altogether, it also restricts his right to engage in the unique types of political,
7 educational, and commercial speech that takes place at the gun show. But for
8 Defendants’ adoption and enforcement of SB 264 and SB 915, Plaintiff Johnson
9 would continue attending and participating in the Crossroads gun show events at the
10 Fairgrounds.

11 14. Plaintiff CHAD LITTRELL is a resident of La Habra, California, and
12 owns Vytamenc 22 Tactical. Before the implementation of SB 264 and SB 915, his
13 company was a regular vendor at Plaintiff Crossroads’ gun show events at the
14 Fairgrounds. At these events, he would lawfully sell “uppers,” precursor parts, and
15 AR-15 rifles and discuss issues regarding firearms, ammunition, and gun safety with
16 customers of the gun show. Plaintiff Littrell also attended the Crossroads gun show
17 at the Fairgrounds to engage in expressive activities with like-minded people,
18 including discussions related to firearms, ammunition, and firearm accessories, the
19 shooting sports, politics, and the Second Amendment. SB 264 and SB 915 directly
20 burden his right to engage in otherwise lawful commercial speech in a public forum
21 and restricts his ability to sell and purchase ammunition, firearms, and parts for
22 lawful purposes. And because the ban is intended to make gun shows less profitable
23 and has in fact effectively banned them altogether, it also restricts his right to engage
24 in the unique types of political, educational, and commercial speech that takes place
25 at the gun show. Because of the essential shutting down of gun shows at the
26 Fairgrounds, Plaintiff Littrell had to close his business. But for Defendants’ adoption
27 and enforcement of SB 264 and SB 915, Plaintiff Clark would re-open his business
28 and continue attending and participating in the Crossroads gun show events at the

1 Fairgrounds.

2 15. Plaintiff JAN STEVEN MERSON is a resident of Fullerton, California,
3 and he owns Merson’s Machining Tool Making and Gunsmithing. Before the
4 implementation of SB 264 and SB 915, his company (then known as Merson’s
5 Custom Tooling & Gunsmith) was a regular vendor at Plaintiff Crossroads’ gun
6 show events at the Fairgrounds. At these events, he would lawfully sell “firearm
7 precursor parts”—which are legal products in California and are not considered
8 firearms by legal definition. Plaintiff Merson also attended the Crossroads gun show
9 at the Fairgrounds to engage in expressive activities with like-minded people,
10 including discussions related to firearms, ammunition, and firearm accessories, the
11 shooting sports, politics, and the Second Amendment. SB 264 and SB 915 directly
12 burden his right to engage in otherwise lawful commercial speech in a public forum
13 and restricts his ability to sell and purchase ammunition, firearms, and parts for
14 lawful purposes. And because the ban is intended to make gun shows less profitable
15 and has in fact effectively banned them altogether, it also restricts his right to engage
16 in the unique types of political, educational, and commercial speech that takes place
17 at the gun show. But for Defendants’ adoption and enforcement of SB 264 and SB
18 915, Plaintiff Merson would continue attending and participating in the Crossroads
19 gun show events at the Fairgrounds.

20 16. Plaintiff ASIAN PACIFIC AMERICAN GUN OWNERS
21 ASSOCIATION (“APAGOA”) is a nonprofit organization incorporated under the
22 laws of Texas and registered with the California Secretary of State to do business in
23 the state of California. APAGOA is a community of gun owners with an Asian
24 Pacific American (“APA”) heritage. Its core focus is to promote safe and
25 responsible gun ownership within the APA community by providing educational
26 materials and other resources to its members and other interested parties. APAGOA
27 advocates for firearm safety, education, and community-building initiatives. And it
28 strives to educate and empower the APA gun owner community so they can use

1 their firearms safely and responsibly. It brings this action on behalf of its
2 approximately 270 members and supporters who reside in California and, but for the
3 implementation of SB 264 and SB 915, would attend and participate in the
4 Crossroads gun show events at the Fairgrounds.

5 17. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION,
6 INCORPORATED (“CRPA”) is a nonprofit membership organization incorporated
7 under the laws of California, with headquarters in Fullerton, California. Among its
8 other activities, CRPA works to preserve and expand constitutional and statutory
9 rights of gun ownership, including the right to self-defense and the right to keep and
10 bear arms. CRPA accomplishes this through its educational offerings, publications,
11 member engagement events, and legislative advocacy and initiatives. CRPA has
12 individual members and business affiliates that attend gun shows. Before the
13 implementation of SB 264 and SB 915, CRPA and many of its members were
14 regular vendors at Plaintiff Crossroads’ gun show events at the Fairgrounds, where
15 they engaged the public in discussions about the organization and its purposes, the
16 shooting sports, firearms and firearm safety, and the Second Amendment and other
17 political issues. CRPA and its members also attended gun shows at the Fairgrounds
18 to sell organization memberships, advertise its events, distribute its publications, and
19 sell its merchandise, some of which includes expressly pro-gun messaging.
20 Members of CRPA would attend to advertise events, distribute publications, sell
21 merchandise, ammunition, and firearms, some of which includes expressly pro-gun
22 messaging. CRPA has also hosted political rallies, educational seminars, and range
23 safety officer training at gun shows throughout the state, including those at the
24 Fairgrounds. CRPA members and other gun enthusiasts attended these political
25 rallies. CRPA has tens of thousands of members and supporters, many of whom
26 attended the Crossroads gun shows at the Fairgrounds to engage in expressive
27 activities with like-minded people, including discussions related to firearms,
28 ammunition, and firearm accessories, the shooting sports, politics, and the Second

1 Amendment. SB 264 and SB 915 directly burden the right of CRPA, its officers,
2 employees, volunteers, members, and supporters, to engage in otherwise lawful
3 commercial speech in a public forum and to buy and sell firearms, ammunition, and
4 parts for lawful purposes. And because the ban on sales of firearms, ammunition,
5 and parts is intended to make gun shows less profitable and has in fact effectively
6 banned them altogether, it restricts the right of CRPA, its officers, employees,
7 volunteers, members, and supporters, to engage in the unique types of political,
8 educational, and commercial speech that takes place at the gun show. But for
9 Defendants’ adoption and enforcement of SB 264 and SB 915, Plaintiff CRPA, its
10 members, and supporters would continue attending and participating in the
11 Crossroads gun show events at the Fairgrounds. Through this lawsuit, CRPA
12 represents not only its own interests as a gun show vendor, but also the interests of
13 its members as gun show vendors and attendees and supporters of the right to keep
14 and bear arms for lawful purposes.

15 18. Plaintiff SECOND AMENDMENT LAW CENTER, INC. (“2ALC”),
16 is a nonprofit organization, incorporated under the laws of Nevada with headquarters
17 in Henderson, Nevada, and registered with the California Secretary of State to do
18 business in the state of California. 2ALC works to advance Second Amendment
19 jurisprudence across the country while educating the public, participating in
20 scholarly research, and providing thought-provoking writings and content to help
21 advance the Second Amendment. 2LC works to support and protect Second
22 Amendment rights across the country, and they distribute materials at gun shows in
23 California to inform the public about their work. Because the ban on sales of
24 firearms and ammunition at the Fairgrounds is intended to make gun shows less
25 profitable and has in fact effectively banned them altogether, it restricts the rights of
26 2ALC to share education and training materials with gun owners and those that
27 attend gun show events. In this lawsuit, 2ALC represents its interests as a gun show
28 attendee and purveyor of educational materials.

1 19. Plaintiff SECOND AMENDMENT FOUNDATION, INC. (“SAF”) is a
2 non-profit membership organization. It is incorporated under the laws of the state of
3 Washington and was founded in 1974. SAF has over 700,000 members and
4 supporters nationwide, including thousands of members in California. The purposes
5 of SAF include education, research, publishing, and litigation. It is critical to the
6 success of SAF that its promotional material, publications, and messages about the
7 “right to keep and bear arms” reach demographic groups that are saturated with gun
8 owners, gun buyers, and people of the “gun culture.” Gun Shows like the one
9 threatened by the Defendants’ actions interfere with this effort. SAF is dedicated to
10 promoting a better understanding about our constitutional heritage to privately own
11 and possess firearms through educational and legal action programs designed to
12 better inform the public about gun control issues. SAF has been a pioneer in
13 innovative defense of the right to keep and bear arms, through its publications and
14 public education programs like the Gun Rights Policy Conference. Those
15 publications and other SAF materials and information are offered at gun show
16 events. Second Amendment Foundation also expends significant sums of money
17 sponsoring public interest litigation to defend its own interests to disseminate
18 information to like-minded individuals, in an individualized setting like a gun show,
19 but SAF also seeks to defend the interests of its member in lawsuits like this present
20 effort.

21 **[Defendants]**

22 20. Defendant GAVIN NEWSOM is the Governor of the State of
23 California. As Governor, he is vested with “the supreme executive power” of the
24 state and “shall see that the law is faithfully executed.” Cal. Const. art. 5, §1.
25 Defendant Newsom has more than an incidental relationship with the enforcement
26 of SB 264 and SB 915. In fact, Defendant Newsom has pressured fairgrounds boards
27 in California to ban safe and lawful gun show events on those properties. And,
28 because he alone is vested with the authority to appoint and terminate fair board

1 members, Defendant Newsom has a unique ability to coerce fair boards responsible
2 for managing state fairgrounds to *not* enter contracts with gun show promoters for
3 use of these public venues—even if those events otherwise comply with the law.
4 Defendant Newsom is sued in his official capacity.

5 21. Defendant ROB BONTA is the Attorney General of the State of
6 California. He is the “chief law officer” of the state and has the duty to ‘see that the
7 laws of the State are uniformly and adequately enforced.” Cal. Const. art. 5, § 1.
8 Additionally, Defendant Bonta has “direct supervision over every district attorney”
9 within the State. *Id.* If, at any point a district attorney of the State fails to enforce
10 adequately “any law of the State,” Defendant Bonta must “prosecute any violations
11 of the law.” *Id.* Finally, Defendant Bonta, as Attorney General of the State of
12 California, “shall assist any district attorney in the discharge” of duties when
13 “required by the public interest or directed by the Governor. . . .” *Id.* He is thus
14 responsible for the enforcement of SB 264 and SB 915 and for prosecuting
15 violations of these laws. Defendant Bonta is sued in his official capacity.

16 22. Defendant TODD SPITZER is the District Attorney responsible for
17 enforcing the law within the county of Orange. Under the California Government
18 Code, the district attorney must prosecute “all actions for the recovery” of fines and
19 penalties. Cal. Gov’t Code § 26521. He is thus responsible for the enforcement of
20 SB 264 and SB 915 and for prosecuting violations of these laws. Defendant Spitzer
21 is sued in his official capacity.

22 23. Defendant KAREN ROSS is the Secretary of the California Department
23 of Food & Agriculture—the entity responsible for the policy oversight of the
24 network of California fair venues, which includes the Orange County Fair & Event
25 Center. Through the Department, Defendant Ross issues guidance for governance
26 and contracting to all agricultural districts throughout California (including
27 Defendant District) and requires reporting from the districts on operational issues.
28 Because of her direct supervision of all fair boards responsible for managing state

1 fairgrounds, Defendant Ross has the ability to direct fair boards to *not* enter
2 contracts with gun show promoters for use of these public venues—even if those
3 events otherwise comply with the law. The Department maintains an office of legal
4 counsel for any actions brought against Agricultural Association Districts in the
5 state. Defendant Ross is sued in her official capacity.

6 24. Defendant 32nd DISTRICT AGRICULTURAL ASSOCIATION
7 (“District”) is a Governor-appointed Board of Directors that manages the state-
8 owned Orange County Fair & Event Center public venue. The District is governed
9 by a nine-member board, each member serving a four-year term. The District Board
10 of Directors appoints a CEO charged with the daily operations of the facilities but
11 maintains control over activities not delegated to the CEO, including contracting
12 with those seeking to host events, including gun shows, at the Fairgrounds. It is
13 responsible for ensuring that all state laws governing gun shows at the Fairgrounds,
14 including SB 264 and SB 915, are faithfully enforced. Defendant District refused to
15 consider contracts for the gun show by refusing to place the question of contract
16 approval on monthly meeting agendas when considering other similar contracts.

17 25. The true names and capacities of Defendants named as DOES 1
18 through 10, inclusive, are individual, corporate, associate or otherwise, and are
19 unknown to Plaintiffs. They are, however, believed to be responsible in some way
20 for Plaintiffs’ loss and damages. Each Doe Defendant is, and at all times mentioned
21 here was, a partner, agent, principal, co-conspirator, or are otherwise vicariously or
22 directly responsible for the acts or omissions of the other defendants or themselves.
23 They are each sued individually and are joined as party defendants. Plaintiffs thus
24 sue each Doe Defendant under rules 15 and 21 of the Federal Rules of Civil
25 Procedure. Plaintiffs are informed and believed that the Doe Defendants are all
26 California residents. Plaintiffs will amend this complaint to show such true names
27 and capacities of Doe Defendants when they have been ascertained.

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FACTUAL ALLEGATIONS

[The First Amendment Rights to Free Speech, Association, & Assembly]

26. The First Amendment provides, in part, that “Congress shall make no law . . . abridging the freedom of speech,” U.S. Const. amend. I. It is incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 1983.

27. Political and ideological speech—including speech concerning “politics, nationalism, religion, or other matters of opinion”—has long been considered the core of the First Amendment. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

28. Public property made available for lease by community groups to engage in expressive activity must thus be available without regard to the viewpoint sought to be expressed *Cinevision Corp. v. City of Burbank*, 745 F.2d 560 (9th Cir. 1984). Such venues cannot be opened to some and closed to others, suppressing protected expression, absent a compelling government interest. *Id.* at 571.

29. The First Amendment does not tolerate the suppression of speech based on what some may label an unpopular viewpoint of the speaker. *John J. Hurley and S. Boston Allied War Vets. Council v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995). Indeed, “*above all else*, the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Mosley*, 408 U.S. at 95 (emphasis added); *see also Ashcroft*, 535 U.S. at 573.

30. A content-based restriction that implicates political or ideological speech must generally survive “strict scrutiny,” where the government must show that the law is narrowly tailored to achieve a compelling government interest. *See Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *see also Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001) (holding that tobacco marketing restrictions – even those purported to protecting minors -- must be the narrowest means of achieving an

1 asserted state interest); *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786 (2011)
2 (overturing California law banning sale or rental of “violent video games” to
3 minors); *see also Tracy Rifle & Pistol LLC v. Harris*, 339 F. Supp. 3d 1007, 1018
4 (E.D. Cal. 2018) (holding that a California law prohibiting the display of a handgun,
5 an imitation handgun, or a placard advertising the sale of a handgun in a manner that
6 is visible from the outside of a gun dealer’s premises is unconstitutional).

7 31. Even purely commercial speech—speech that “does no more than
8 propose a commercial transaction” or relates solely to the economic interests of the
9 speaker and audience—receives First Amendment protection if it is not misleading
10 and concerns a lawful activity. *Cent. Hudson Gas & Elec. Corp. v. Public Serv.*
11 *Comm’n*, 447 U.S. 557 (1980).

12 32. “An offer to sell firearms or ammunition” is constitutionally protected
13 commercial speech. *Nordyke v. Santa Clara*, 110 F.3d 707, 710 (9th Cir. 2009).

14 33. Government restrictions on protected commercial speech are
15 constitutional *only* if they directly advance a substantial government interest and are
16 not broader than necessary to serve that interest. *Cent. Hudson*, 447 U.S. 557.³

17 34. The First Amendment protects not only the right of free speech, but
18 also “the right of the people peaceably to assemble.” U.S. Const., amend. I. The
19 right to assemble often merges with the right to free expression. For “[e]ffective
20 advocacy of both public and private points of view, particularly controversial ones,
21

22 ³ Though this is currently the controlling test for so-called “commercial speech,”
23 modern case law is trending toward extending *full* First Amendment protection to all
24 speech, including “commercial speech.” *See Sorrell v. IMS Health, Inc.*, 564 U.S.
25 552 (moving toward providing commercial speech the same level of heightened
26 protection long accorded to political speech); *see also 44 Liquormart, Inc. v. Rhode*
Island, 517 U.S. 484, 523 (1996) (Thomas, J., concurring in part and concurring in
27 judgment) (“I do not see a philosophical or historical basis for asserting that
28 ‘commercial’ speech is of ‘lower value’ than ‘noncommercial’ speech. Indeed, some
historical materials suggest to the contrary.”).

Furthermore, *Bruen*’s command that courts conduct an historical/categorical
analysis when evaluating the constitutionality of laws that impact Second
Amendment rights (the right to buy, sell, and acquire at a gun show at issue here)
means that the Defendants bear a heavy burden to produce relevant (non-racist) laws
(circa. 1868) that forbid offers to buy and sell firearms on public property.

1 is undeniably enhanced by group association.” *NAACP v. Patterson*, 357 U.S. 449,
2 462 (1958). “Governmental action which may have the effect of curtailing the
3 freedom to associate is subject to the *closest* scrutiny.” *Id.* at 461-62.

4 **[The Second Amendment Right to Keep and Bear Arms Under the Law]**

5 35. The Second Amendment to the United States Constitution declares that
6 “the right of the people to keep and bear arms shall not be infringed.” U.S. Const.
7 amend. II.

8 36. The Second Amendment protects a fundamental, individual right that
9 applies against both the federal government and the states. *District of Columbia v.*
10 *Heller*, 554 U.S. 570, 592 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 750
11 (2010).

12 37. The Supreme Court recently confirmed that Second Amendment
13 questions are to be analyzed in light of “text, history, tradition.” “When the Second
14 Amendment’s plain text covers an individual’s conduct, the Constitution
15 presumptively protects that conduct. The government must then justify its regulation
16 by demonstrating that it is consistent with the Nation’s historical tradition of firearm
17 regulation.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, --U.S.--, 142 S. Ct. 2111, 2126
18 (2022) (citing *Heller*, 554 U.S. at 634).

19 38. The Second Amendment protects the right to possess and use arms that
20 are “typically possessed by law-abiding citizens for lawful purposes.” *See, e.g.,*
21 *Heller*, 554 U.S. at 624-25; *See also Caetano v. Massachusetts*, 577 U.S. 411, 136 S.
22 Ct. 1027, 1027-28 (2016). That protection “extends, *prima facie*, to all instruments
23 that constitute bearable arms, even those that were not in existence at the time of the
24 founding.” *Heller*, 544 U.S. at 582. It also includes the ammunition necessary to use
25 firearms for their core lawful purposes. *See Jackson v. City & Cnty. of San*
26 *Francisco*, 746 F.3d at 967-68 (recognizing that “without bullets, the right to bear
27 arms would be meaningless.”).

28 39. Finally, the Second Amendment protects the corresponding right to

1 obtain protected firearms and ammunition. *See id.* at 967 (“[T]he right to possess
2 firearms for protection implies a corresponding right’ to obtain bullets necessary to
3 use them.”); *see also Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)
4 (holding that the right to possess firearms implies a corresponding right to access
5 firing ranges to train to be proficient with such firearms).

6 **[The Fourteenth Amendment Right to Equal Protection Under the Law]**

7 40. The Fourteenth Amendment to the United States Constitution,
8 enforceable under 42 U.S.C. § 1983, provides that no state shall deny to any person
9 within its jurisdiction the equal protection of the laws.

10 41. Singling out speakers because of the content of their speech also
11 violates their fundamental rights under the Equal Protection Clause. U.S. Const.
12 amend. XIV.

13 42. If unequal treatment occurs in the context of exercising a fundamental
14 right, or the government is motivated by animus toward a disfavored group, courts
15 apply heightened scrutiny. *See Loving v. Virginia*, 388 U.S. 1, 11 (1967); *see also*
16 *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985); *Romer v. Evans*, 517
17 U.S. 620 (1996). Indeed, “[b]ecause the right to engage in political expression is
18 fundamental to our constitutional system, statutory classifications impinging upon
19 that right must be narrowly tailored to serve a compelling governmental interest.”
20 *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 666 (1990), *rev’d on other*
21 *grounds, Citizs. United v. Fed. Elec. Comm’n*, 558 U.S. 310, 130 S. Ct. 876 (2010).

22 **[Regulation of Gun Show Events in California]**

23 43. The state of California has the most rigorous regulatory regime for
24 commerce in firearms and ammunition in the United States. That regulatory regime
25 applies to the operation of gun show events throughout California. The laws related
26 to the acquisition and sale of firearms are arguably stricter at gun shows than at
27 brick-and-mortar stores or internet sales.

28 44. Only state-approved, licensed gun show producers may operate gun

1 shows in California.

2 45. All gun show producers, including Plaintiff Crossroads, must have an
3 individual (the “promoter”) who holds a valid Certificate of Eligibility issued by the
4 California Department of Justice.

5 46. Gun show producers must also, among other things:

- 6 a. Certify that they are familiar with all California laws regarding
7 gun shows, Cal. Penal Code § 27200;
8 b. Possess a minimum of \$1,000,000 liability insurance, *id.*;
9 c. Provide an annual list of shows or events to be held to the
10 California Department of Justice, *id.*; and
11 d. Notify the California Department of Justice no later than 30 days
12 prior to the gun show or event of any changes to the above, *id.*
13 e. Make available to law enforcement a complete and accurate list
14 of all vendors that will participate in the show to sell, lease, or
15 transfer firearms. Cal. Penal Code § 27205.

16 47. Gun show producers must submit an annual event and security plan and
17 schedule to the California Department of Justice and any local law enforcement
18 agency. The plan must include:

- 19 a. Type of show or event;
20 b. Estimated number of vendors offering for sale or display
21 firearms;
22 c. Estimated number of attendees;
23 d. Number of entrances and exits at the event;
24 e. Location, dates, and times of the event;
25 f. Contact person and telephone number for both promoter and
26 facility;
27 g. Number of sworn peace officers employed by the producer or
28 facility who will be present at the event;

- 1 h. Number of non-sworn security personnel employed by the
- 2 producer or the facility who will be present at the event; and
- 3 i. Promoters must inform all prospective vendors of all California
- 4 laws regarding gun shows.

5 Cal. Penal Code §§ 27210, 27215.

6 48. Gun show producers must also provide a list of all prospective vendors
7 and designated firearm transfer agents who are licensed firearm dealers to the
8 California Department of Justice no later than seven days before the event so that the
9 Department of Justice may determine whether each vendor possesses a valid license
10 and is thus eligible to participate in the event. Cal. Penal Code § 27220.

11 49. If a vendor is not approved by the California Department of Justice or
12 fails to comply with all applicable California laws, they cannot participate in the gun
13 show event. Cal. Penal Code § 27220.

14 50. If a gun show producer fails to inform all prospective vendors of
15 California’s state laws or fails to submit a list of all prospective vendors to the
16 California Department of Justice, the event cannot commence. Cal. Penal Code §
17 27230.

18 51. Gun show producers must have written contracts with each vendor
19 selling firearms at the event. Cal. Penal Code § 27235.

20 52. Gun show producers must post signs in a readily visible location at
21 each public entrance to the event that includes all of the following notices:

- 22 • “This gun show follows all federal, state, and local firearms and
- 23 weapons laws, without exception.”
- 24 • “Any firearm carried onto the premises by any member of the public
- 25 will be checked, cleared of any ammunition, and secured in a manner
- 26 that prevents it from being operated, and an identification tag or sticker
- 27 will be attached to the firearm before the person is allowed admittance
- 28 to the show.”

- 1 • “No member of the public under the age of 18 years shall be admitted
- 2 to the show unless accompanied by a parent, grandparent, or legal
- 3 guardian.”
- 4 • “All firearm transfers between private parties at the show shall be
- 5 conducted through a licensed dealer in accordance with applicable state
- 6 and federal laws.”
- 7 • “Persons possessing firearms in this facility must have in their
- 8 immediate possession government-issued photo identification and
- 9 display it upon the request to any security officer or any peace officer,
- 10 as defined in Section 830.”

11 Cal. Penal Code § 27240(a).

12 53. Gun show producers must also post signs in a readily visible location at
13 each entrance to the parking lot stating: “The transfer of firearms on the parking lot
14 of this facility is a crime.” Cal. Penal Code § 27240(b).

15 54. A willful failure of a producer to comply with any of California’s
16 applicable laws is a misdemeanor punishable with a fine of up to \$2,000 dollars and
17 would render the producer ineligible for a gun show producer license for up to one
18 year, which could cost a producer hundreds of thousands of dollars in lost revenue
19 for a willful infraction. Cal. Penal Code § 272459(c).

20 55. Except in very limited exceptions applicable only to law enforcement,
21 actual firearm transfers are already prohibited from taking place at any gun show in
22 California.⁴ The firearm sale can be started through an on-site licensed “transfer
23 dealer,” but it cannot be completed on site. Instead, purchasers must pick up their
24

25 ⁴ Cal. Penal Code § 27310 (requiring all firearm transfers at gun shows to comply
26 with state and federal law); *id.* § 26805 (prohibiting the sale and transfer of a firearm
27 by a licensed dealer at any location other than the dealer’s premises as listed on their
28 license but allowing dealer to prepare documents at a gun show in preparation for
completion of the sale at the dealer’s premises); *id.* § 27545 (requiring all firearm
transactions to be processed through a licensed dealer when neither party is a
licensed firearm dealer).

1 purchase at a licensed firearm retailer at a different licensed location—but only after
2 a 10-day waiting period and background check. There is no “Gun Show Loophole”
3 at gun shows operated in accordance with California Law.

4 56. The Gun Show Act of 2000, California Penal Code sections 27200-
5 27245, places even more restrictions on the operation of a gun show in California by
6 requiring that:

- 7 a. Vendors do not display, possess, or offer for sale any firearms,
8 knives, or weapons for which possession or sale is prohibited;
- 9 b. Vendors acknowledge that they are responsible for knowing and
10 complying with all applicable federal, state, and local laws
11 dealing with the possession and transfer of firearms;
- 12 c. Vendors will not engage in activities that incite or encourage hate
13 crimes;
- 14 d. Vendors will process all transfers of firearms through licensed
15 firearms dealers as required by state law;
- 16 e. Vendors will verify that all firearms in their possession will be
17 unloaded and that the firearms will be secured in a manner that
18 prevents them from being operated except for brief periods, when
19 the mechanical condition of the firearm is being demonstrated to
20 prospective buyer;
- 21 f. Vendors provide all required information under Penal Code §
22 27320;
- 23 g. Vendors will not display or possess black powder or offer it for
24 sale;
- 25 h. Ammunition only be displayed in closed original factory boxes
26 or other closed containers, with the only exception for showing
27 the ammunition to a prospective buyer. On July 1, 2019,
28 additional state-law restrictions on the sale of ammunition will

1 63. Gun shows, in general, and the Crossroads show at the Fairgrounds, in
2 particular, are a First Amendment forum where literature and information are
3 shared, speakers provide valuable lectures, classes are conducted, political forums
4 are held where gun rights discussions take place, and candidates for political office
5 can meet to discuss political issues, the government, and the constitution with
6 constituents who are part of the California gun culture.

7 64. Thousands of people attend gun shows on the weekends they are held at
8 the Fairgrounds. Many attend as new gun owners seeking information and
9 instruction. With over 1 million new gun owners in California in the past year, gun
10 shows offer the opportunity for these new gun owners to learn about firearms,
11 safety, and speak to expert firearm enthusiasts.

12 65. Gun shows place a huge emphasis on safety as citizens come together.
13 Gun shows are designed to offer a communal atmosphere of like-minded people that
14 one does not find in a store where people are running in to pick up one or two items.
15 Gun shows are designed so that people will congregate, take their time, engage each
16 other and the vendors, and learn in a way that they do not otherwise engage.

17 66. Gun shows also happen to include the exchange of products and ideas,
18 knowledge, services, education, entertainment, and recreation related to the lawful
19 uses of firearms. Those lawful uses include (but are not limited to): firearm safety
20 training; defense of self and others; defense community, state, and nation; hunting;
21 target shooting; gunsmithing; admiration of guns as art; appreciation of guns as
22 technological artifacts; and the study of guns as historical objects.

23 67. Gun shows, in general, and the Crossroads show at the Fairgrounds, in
24 particular, are cultural marketplaces for those members of the “gun culture” who
25 attend to celebrate their constitutional rights and to pass their beliefs in patriotism
26 and the rights of the individual on to the next generation. It is a place where parents
27 take their children and grandparents take their grandchildren to share with them,
28 among other things, a love of historic firearms, stories of American war heroes, and

1 their love of hunting.

2 68. Gun shows, in general, and the Crossroads show at the Fairgrounds, in
3 particular, are places where parents can learn to protect their families and their
4 homes, and how to stay in compliance with California’s ever-changing gun laws.

5 69. Gun shows, in general, and the Crossroads show at the Fairgrounds, in
6 particular, are places where people can discuss the positions of political candidates
7 and whether those values line up with their own beliefs in protecting the Second
8 Amendment.

9 70. Gun shows, in general, and the Crossroads show at the Fairgrounds, in
10 particular, are held and promoted, and considerable investment is made, precisely to
11 promote and “normalize” the “gun culture” and the constitutional principles that gun
12 show participants hold dear.

13 71. This forum is vitally important especially in California where
14 government actors at all levels of government (federal, state, and local) are openly
15 hostile to the cultural values of the Second Amendment and where supporters of
16 those cultural values are not considered “mainstream.”

17 72. Participating in “gun culture” is an important reason people attend
18 Crossroads gun shows as vendors, exhibitors, customers, and guests (even if
19 particular vendors or attendees are not in the firearm business or in the market to
20 buy a gun at a particular event).

21 73. While less than 40% of vendors at Crossroads’ events offer firearms or
22 ammunition for sale (the remaining vendors offer accessories, collectibles, home
23 goods, lifestyle products, educational information, food, and other refreshments), the
24 principle draw of gun shows is the availability of firearms, ammunition, and firearm
25 parts and accessories for sale, as well as the ability to handle and inspect firearms
26 while in the presence of knowledgeable vendors.

27 74. Indeed, many people attend gun shows to learn about the technology
28 and use of various firearms and ammunition when they are considering whether to

1 buy or sell a firearm and to exchange knowledge with experienced dealers and
2 firearm enthusiasts that they cannot get anywhere else. *Teixeira v. County of*
3 *Alameda*, No. 13-17132 (9th Cir. 2017).⁵

4 75. Without the ability to buy and sell firearms, ammunition, and parts at
5 gun shows at the Fairgrounds, the events will no longer be able to draw many of its
6 vendors and attendees, making the events unprofitable and economically infeasible.
7 When events are no longer profitable, producers and vendors cannot afford to attend
8 and host the shows or maintain the speech components of gun show.

9 76. The complete economic infeasibility of gun shows is a “feature” of SB
10 264 and SB 915, not a “bug.” Indeed, Defendants wish to end this celebration of
11 “gun culture” and Second Amendment rights because they do not understand the
12 culture or the people. To that end, Defendants have attempted, through SB 264 and
13 SB 915’s bans on sales of firearms, ammunition, and “firearm precursor parts” at the
14 Fairgrounds, to permanently deprive Plaintiffs of their right to engage in
15 constitutionally protected conduct at the Fairgrounds.

16 **[The Orange County Fair & Event Center]**

17 77. The Fairgrounds is owned by the state of California and managed by
18 the Board of Directors of Defendant District, which must regularly report its
19 activities to the California Department of Food & Agriculture.

20 78. Among other things, Defendant District is charged with maintaining the
21 Fairgrounds and ensuring that is used for public purposes.

22 79. Defendant Ross, as the Secretary of the California Department of Food
23 & Agriculture, oversees the operation of the various agricultural districts in the state,
24 including Defendant District.

25 80. The California Department of Food & Agriculture, under Secretary

26 _____
27 ⁵ The *Teixeira* court did not answer whether the Second Amendment includes a
28 right to purchase a firearm. Plaintiffs allege, in good faith, that the right to keep and
bear arms *necessarily* includes the rights to purchase and sell them. Indeed, those
rights are a necessary predicate to the exercise of the Second Amendment.

1 Ross, provides policies and guidance for the operation of all agricultural districts in
2 the state, including the use of facilities as directed by Department policy.

3 81. The California Department of Food & Agriculture maintains a *CDFA*
4 *Contracts Manual for Agricultural Districts* (“Manual”). Section 6.25 of the Manual
5 states that “[w]hether or not a fair rents out their facilities for gun shows is a policy
6 decision to be made by the fair board and their community.” That said, Defendant
7 Ross has used her position to influence fair boards’ decisions about renting their
8 facilities for gun show events.

9 82. Similarly, Defendant Ross, as Secretary of the California Department of
10 Food & Agriculture, prohibits the individual fair boards from taking any position on
11 legislation that would effect the ability of fair boards to make decisions about the
12 use of their facilities for gun shows, including SB 264 and SB 915 which restrict
13 their ability to contract to hold events where firearms, ammunition, or precursor
14 parts are sold.

15 83. The Fairgrounds is a state-owned property maintained and opened for
16 use by the public. By virtue of being opened by the state for use by the public, it is a
17 “public forum,” from which the government may not generally exclude expressive
18 activity. *Cinevision*, 745 F.2d at 569 (quoting *Perry Educ. Ass’n v. Perry Local*
19 *Educators’ Assn*, 460 U.S. 37, 45-46 (1983)).

20 84. The Fairgrounds is used by many different groups and is a major event
21 venue for large gatherings of people to engage in expressive activities, including
22 concerts, festivals, and industry shows. Indeed, “OC Fair & Event Center is a 150-
23 acre event venue that hosts over 150 events and attracts approximately 4.3 million
24 visitors annually. [Its] versatile multi-use property can be transformed to fit a variety
25 of events from small private events to large-scale trade shows and festivals.” OC
26 Fair & Event Center, Event Space Sales, [https://ocfair.com/venue-rentals/venue-](https://ocfair.com/venue-rentals/venue-options/rental-property-brochure/)
27 [options/rental-property-brochure/](https://ocfair.com/venue-rentals/venue-options/rental-property-brochure/) (last visited Aug. 4, 2022) (attached as Exhibit 1).

28 85. The Fairgrounds actively promotes the use of the property by the public

1 through contracting for available space at the Fairgrounds. *Id.*; *see also* OC Fair &
2 Event Center, Venue Rentals, <https://ocfair.com/venue-rentals/> (last visited Aug. 4,
3 2022).

4 86. The Fairgrounds’ Board of Directors Governing Manual states that
5 Defendant District’s purpose is “(1) to hold fairs, expositions and exhibitions in
6 Orange County to exhibit the industries and industrial enterprises, resources, and
7 products of every kind or nature of the state, with a view toward improving,
8 exploiting, encouraging, and stimulating them; and (2) to construct, maintain, and
9 operate recreational and cultural facilities of general public interest in Orange
10 County.

11 87. Defendant District has adopted a mission statement to effectuate these
12 purposes, which is the celebration of Orange County’s communities, interests,
13 agriculture and heritage.” 32nd District Agricultural District, *Board of Directors*
14 *Governing Manual*, Introduction at 1, available at [https://s3.us-west-](https://s3.us-west-1.amazonaws.com/ocfair.com/wp-content/uploads/2021/02/02141413/Policy-Combo-All.pdf)
15 [1.amazonaws.com/ocfair.com/wp-content/uploads/2021/02/02141413/Policy-](https://s3.us-west-1.amazonaws.com/ocfair.com/wp-content/uploads/2021/02/02141413/Policy-Combo-All.pdf)
16 [Combo-All.pdf](https://s3.us-west-1.amazonaws.com/ocfair.com/wp-content/uploads/2021/02/02141413/Policy-Combo-All.pdf) (last visited Aug. 4, 2022).

17 88. The Fairgrounds has held non-gun-show events in which criminal
18 activity has taken place. These criminal incidents are no more likely to happen at a
19 gun show than at other types of events, but the Defendants have not banned these
20 promoters or their events.

21 **[Contracting for Use of the Fairgrounds]**

22 89. Defendant District has a process, as do most of the state’s fairgrounds,
23 for securing returning contractors who would like to secure specific dates into future
24 years before the contracts can be drafted and executed.

25 90. Each year, returning and regular contractors, including Plaintiff
26 Crossroads, submit preferred dates for the next calendar year, so Defendant District
27 can confirm availability and so that Plaintiff Crossroads can begin to reserve
28 vendors and materials for the show weekends.

1 91. Due to the size and extensive planning that goes into producing gun
2 show events, Defendant District has—for decades—provided and held preferred
3 dates for Plaintiff Crossroads, a long-time contractor, until the contracts can fully be
4 executed.

5 92. Defendant District’s “hold” system essentially operates as a right of
6 first refusal to the benefit of returning contractors. For example, if another contractor
7 wanted the same preferred dates as Plaintiff Crossroads, Defendant District would
8 not allow another vendor to come in and take those dates from Plaintiff Crossroads
9 even though there is no official contract in place yet.

10 93. The “hold” system also provides Defendant District with the security of
11 knowing its venue is booked with experienced and knowledgeable repeat contractors
12 that have a demonstrated record of running safe and profitable events at the
13 Fairgrounds.

14 94. The “hold” system also permits the promoter to spend advertising
15 dollars to promote its events, but when governments announce plans to ban gun
16 shows at particular venues, vendors and patrons rationally make plans to attend gun
17 show events at other venues or seek other states to conduct their commerce.

18 95. Defendant District also considers the “hold” dates and shows during
19 budget discussions which are typically held in the year before the contracts are
20 commenced.

21 96. Upon information and belief, Plaintiffs allege that the “hold” system is
22 widely used by similar state fair board venues and is standard industry practice.

23 **Plaintiff Crossroads, after doing business in this customary manner for more**
24 **than 30 years, had no reason to doubt that Defendant District would continue**
25 **to honor such relationship with Plaintiff Crossroads. [Ban on Gun Shows at**
26 **Other Fairgrounds & Resulting Litigation]**

27 97. Despite the long history that Plaintiff Crossroads has had in California,
28 operating safe and legal events, the political environment has become hostile toward

1 gun show events and (more generally) toward the “gun culture” in recent years.

2 98. Indeed, gun-show-banning activists are at work throughout the state
3 and the country to ban *all* gun shows *everywhere*, not because they are “dangerous
4 for the community,” but because they do not subscribe to the same values as gun
5 show promoters, vendors, and participants.

6 99. With increasing regularity, the same activists are making appearances
7 on Zoom board meetings held by fair boards across the state, and during each
8 appearance, they make the same claims in order to shut down lawful gun shows.

9 100. These activists rely on unfounded fears about the security of gun show
10 events, false claims that gun shows are inherently dangerous because they normalize
11 the “gun culture,” and peddle in false stereotypes about the people that attend gun
12 shows. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (striking
13 an ordinance requiring a special permit for a group home for the intellectually
14 disabled and citing direct evidence of negative attitudes toward persons with
15 disabilities expressed by community members and recorded in the legislative
16 history).

17 101. In 2017, gun-show-banning activists using the same tactics described
18 above began pressuring the 22nd District Agricultural Association (“22nd DAA”),
19 which manages the Del Mar Fairgrounds in San Diego, to prohibit gun show events
20 at the Del Mar Fairgrounds. In response, the 22nd DAA began a series of meetings
21 and comment periods to determine whether it would continue to contract with
22 Plaintiff Crossroads or other gun show producers for the use of the Del Mar
23 Fairgrounds to host gun show events.

24 102. The 22nd DAA also engaged in communications with other
25 government agencies and with Crossroads to determine whether gun shows at the
26 Fairgrounds were operated in full compliance with state and federal law, and if the
27 events pose any real danger to the community.

28 103. On April 23, 2018, Defendant Newsom sent a letter to the 22nd DAA,

1 urging the Board to ban gun shows at the Fairgrounds, citing his concerns that
2 “[p]ermitting the sale of firearms and ammunition on state-owned property only
3 perpetuates America’s gun culture.” Letter from Governor Gavin Newsom to Board
4 Members of 22nd District Agricultural Association (April 23, 2018) (attached as
5 Exhibit 2).

6 104. On September 10, 2018, Assemblymember Todd Gloria (D) sent a
7 letter to the 22nd DAA, stating his “firm belief that the State of California should in
8 no way help to facilitate the sale of firearms.” He also expressed his support for the
9 22nd DAA “willingness to consider options for limiting or eliminating these gun
10 shows” and vowed to “act by way of legislation should the 22nd DAA Board be
11 unable to take meaningful action.” Letter from Assemblymember Todd Gloria to
12 Board Members of 22nd District Agricultural Association (Sept. 10, 2018) (attached
13 as Exhibit 3).

14 105. At a public hearing on September 11, 2018, a fair board ad hoc
15 “Contracts Committee” recommended that the 22nd DAA “not consider any
16 contracts with the producers of gun shows beyond December 31st, 2018, until such
17 time as the [22nd DAA] has put into place a more thorough policy regarding the
18 conduct of gun shows.”

19 106. In testimony before the 22nd DAA at the September 11, 2018 hearing,
20 Patrick Kerins, who was then the Public Safety Director for the 22nd DAA, reported
21 on the laws that apply to gun shows in California, as well as Plaintiff Crossroads
22 history of events at the Fairgrounds.

23 107. During his comments at the September 11, 2018 hearing, Mr. Kerins
24 referenced a memorandum that he prepared for the 22nd DAA’s Board of Directors
25 in 2016. In that memorandum, he reported that:

26 As Chief of Security for the 22nd DAA, I routinely inspect the
27 gun show and on a regular basis communicate with the San Diego
28 Sheriff’s Department re: compliance with all the applicable laws and
regulations and the Security Plan required by the California
Department of Justice Firearms Division. I recently spoke to

1 Detective Jaime Rodriguez of the Sheriff’s North Coastal Station
2 who supervises the four Deputies assigned to the gun show security
3 detail and Detective Stacey Smith who is assigned to the Sheriff’s
4 Licensing Division. Both Detectives said the Crossroads of the West
5 Gun Show is in complete compliance with all the local, State and
6 Federal laws that govern gun shows and that there have not been any
7 violations of law. Both Detectives had high praise for the show
8 promoters and the 22 DAA staff.

9 Memorandum of Patrick Kerins, Public Safety Director, 22nd District Agricultural
10 Association, to Board of Directors, 22nd District Agricultural Association, at 17
11 (2016) (attached as Exhibit 4).

12 108. Mr. Kerins’ 2016 memorandum continued:

13 In my considered opinion, as Chief of Security for the 22 DAA for
14 the last 17 years, the CROSSROADS OF THE WEST GUN
15 SHOWS (5 per year) are in compliance with all the local, state and
16 federal regulatory statutes and have operated without any violations
17 of those laws Under the laws of the State of California you must
18 comply with all the laws of purchasing, selling and/or transferring of
19 firearms at a gun show as you would at licensed gun dealer’s store
20 Due to the strict California gun show regulations there are no so
21 called loop holes that you so often hear about in the media.

22 Ex. 4 at 17.

23 109. Ultimately, the lengthy process of meetings, public comment, and
24 communications with stakeholders resulted in **no finding** that allowing the (already
25 heavily regulated) gun show events to continue at the Del Mar Fairgrounds posed a
26 definite or unique risk to public safety. Indeed, the 22nd DAA presented *no*
27 evidence of any safety concerns within the community that could be linked to the
28 over-30-year-old gun show at the Del Mar Fairgrounds.

109. Nonetheless, relying on contrived possibilities of unknown dangers and
unfounded claims that prohibiting gun shows might prevent suicide and violent
crime because the “gun culture” would be censored, the 22nd DAA voted to impose
a one-year moratorium on gun show events at the Del Mar Fairgrounds.

110. Plaintiffs Crossroads, CRPA, SAF, and others sued the 22nd DAA,
Defendant Ross, and others in federal court to enjoin the enforcement of the
moratorium, alleging violations of various constitutional rights, including the rights

1 to free speech, assembly, and equal protection. *See B&L Prods. v. 22nd Dist. Agric.*
2 *Ass’n*, 394 F. Supp. 3d 1226 (S.D. Cal. 2019) (“*B&L I*”) (attached as Exhibit 5).

3 112. Denying the 22nd DAA’s motion to dismiss and granting plaintiffs a
4 preliminary injunction—*sua sponte*—on the ground that plaintiffs were exceedingly
5 likely to succeed on the merits of their *constitutional* claims, the court in *B&L*
6 *Productions* temporarily enjoined the enforcement of the 22nd DAA’s gun show
7 moratorium and ordered the 22nd DAA to contract with Crossroads as it would any
8 other similar event promoter at the Fairgrounds. *Id.*

9 113. Shortly thereafter, the *B&L Productions* plaintiffs negotiated a
10 settlement with the 22nd DAA, represented by attorneys for the California
11 Department of Justice, permanently terminating the gun show moratorium,
12 reinstating Crossroads’ right to promote gun show events at the Fairgrounds, and
13 permanently barring the 22nd DAA from unilaterally halting B&L’s gun show
14 events at the Del mar Fairgrounds.

15 **[California’s Assembly Bill 893 (Gloria)]**

16 114. Making good on previous threats, and fully aware of the court’s
17 decision in *B&L I*, Assemblymember Gloria introduced Assembly Bill 893 (“AB
18 893”) on or about February 20, 2019. Assem. Bill 893, 2019-2020 Reg. Sess. (Cal.
19 2019) (attached as Exhibit 6).

20 115. AB 893, which added section 4158 to the California Food &
21 Agricultural Code, bars any “officer, employee, operator, lessee, or licensee of the
22 [District]” from “contract[ing] for, authoriz[ing], or allow[ing] the sale of any
23 firearm or ammunition on the property or in the buildings that comprise the Del Mar
24 Fairgrounds.” Violation of the law is a misdemeanor. *Id.*

25 116. AB 893 does not bar the possession of firearms or ammunition on the
26 property or in the buildings that comprise the Del Mar Fairgrounds. *Id.*

27 117. The text of AB 893 expressly identifies the ongoing presence at the Del
28 Mar Fairgrounds of “marketplaces popularly known as ‘gun shows,’ at which

1 firearms and ammunition and other items are sold to the public approximately five
2 times a year.” *Id.*

3 118. AB 893 also clearly recognizes that “[p]romoters maintain relationships
4 with a core group of vendors, some selling guns and some selling other
5 merchandise, who travel as the schedule dictates from city to city and state to state
6 and in the West, for example, many of the same vendors can be seen at Crossroads
7 of the West Gun Shows from San Francisco, California, to Tucson, Arizona.” *Id.*

8 119. AB 893 failed to identify, however, any real public safety or security
9 concern *specifically* related to the existence of gun show events at the Fairgrounds.

10 120. To be sure, AB 893 claims, without support, that “[g]un shows bring
11 grave danger to a community” and that “dangerous incidents” have taken place at
12 guns shows at the Fairgrounds, including “an official vendor accused of trafficking
13 illegal firearms, sales of firearms to individuals registered in the Department of
14 Justice Bureau of Firearms Armed Prohibited Persons System, and illegal
15 importation of large-capacity magazines.” But AB 893 makes no effort to show that
16 these incidents are any more likely to occur at gun shows in California, which are
17 regulated at least as heavily as retailers operating out of brick-and-mortar stores.

18 121. Instead, AB 893’s legislative history reveals only general concerns
19 about gun violence occurring all over the country and legislators’ beliefs that the
20 state should not profit from sales of firearms and ammunition. *See* Matthew
21 Fleming, Assem. Comm. Pub. Safety, Bill Analysis Re: AB 893 (Gloria), 2019-2020
22 Reg. Sess., at 3 (Cal. 2019) (attached as Exhibit 7).

23 122. Indeed, AB 893 opens with a list of tragedies, including the horrific
24 mass murders that took place at Columbine High School, Sandy Hook Elementary
25 School, and Marjory Stoneman Douglas High School—none of which were carried
26 out with firearms traced to gun show events at the Fairgrounds. Ex. 6.

27 123. What’s more, a March 26, 2019, analysis of AB 893 presented to the
28 Assembly Committee on Public Safety quoted claims by Assemblymember Gloria,

1 the bill’s sponsor, that “[t]here is an ever-apparent link between the gun violence we
2 see virtually every week and the number of guns in our communities.” These
3 statements, however, made no attempt to link gun violence to gun shows, generally,
4 or to gun shows at the Fairgrounds, specifically. Ex. 7 at 2.

5 124. The Public Safety Committee’s March 26, 2019, analysis also quoted
6 Gloria as lamenting that “the State of California should not be profiting or
7 benefitting from the sale of firearms.” He continued, “[f]undamentally, I believe it is
8 wrong for the state of California to profit or to benefit from the sale of firearms and
9 ammunition.” Ex. 7 at 2.

10 125. The Public Safety Committee’s March 26, 2019, analysis also cited a
11 decade-old report from the Violence Prevention Research Program (VPRP) at the
12 UC Davis School of Medicine, identifying gun shows as a source of illegally
13 trafficked firearms. Ex. 7 at 3.

14 126. But neither the VPRP report nor AB 893’s legislative history links any
15 illegally trafficked firearm or gun used in crime to gun shows at the Del Mar
16 Fairgrounds (or even to gun shows in California). *See* Garen Wintemute, MD, *Inside*
17 *Gun Shows: What Goes on When Everybody Thinks Nobody’s Watching*, ch. 1
18 (2009) (attached as Exhibit 8). This is unsurprising because, as the study states,
19 “[m]uch of the concern about gun shows as a source of crime guns focuses on
20 private party gun sales, *since no background checks are conducted and no records*
21 *are kept.*” *Id.* at 32. But such concerns are simply irrelevant in California where
22 private party transfers—even those initiated at gun shows—must be processed by a
23 licensed firearm dealer and are subject to background checks, 10-day waiting
24 periods, and registration under state law.

25 127. The VPRP report cited by the Public Safety Committee’s analysis of
26 AB 893 also attempts to implicate licensed firearm retailers operating at gun shows
27 as sources of crime guns in America, claiming that “30% of dealers with gun show
28 sales, but 22% of all dealers, had previously had a crime gun traced to them.” But it

1 expressly recognizes that “in California, where both gun shows themselves and gun
2 commerce generally are regulated, *sales at gun shows are not a risk factor among*
3 *licensed retailers for disproportionate sales of crime guns.*” Ex. 8 at 33 (emphasis
4 added).

5 128. The Public Safety Committee’s March 26, 2019, analysis also cited a
6 report from the Government Accountability Office, claiming that a GAO report
7 “regarding gun trafficking to Mexico confirmed that many traffickers buy guns at
8 gun shows.” Ex. 7 at 3. But again, neither the BATFE report nor AB 893’s
9 legislative history links any illegally trafficked firearm to gun shows at the Del Mar
10 Fairgrounds (or even to gun shows in California). *See* U.S. Gov’t Accountability
11 Off., GAO-16-223, *Firearms Trafficking: U.S. Efforts to Combat Firearms*
12 *Trafficking to Mexico Have Improved, but Some Collaboration Challenges Remain*
13 (2016) (attached as Exhibit 9). To be sure, the GAO report identifies U.S. Southwest
14 border states, including Texas (41%), California (19%), and Arizona (15%), as the
15 largest sources of firearms illegally trafficked into Mexico from the United States.
16 Ex. 9 at 14. But it does not trace these illegally trafficked guns to licensed dealers,
17 generally, or to those operating at gun shows, specifically. Rather, it says only that
18 “there were about 10,134 licensed dealers and pawnbrokers in the four Southwest
19 border states, many of them along the border,” and that “these licensed dealers and
20 pawnbrokers can operate in locations such as gun shops, pawn shops, their own
21 homes, or gun shows.” *Id.*

22 129. The Public Safety Committee’s March 26, 2019, analysis did concede
23 that “less than one percent of inmates incarcerated in state prisons for gun crimes
24 acquired their firearms at a gun show”—though it transparently tries to diminish that
25 fact by citing only a website of the National Rifle Association as the source of the
26 statistic, instead of the U.S. Department of Justice, Bureau of Justice Statistics
27 reports from which the NRA drew it. Ex. 7 at 2-3 (citing NRA-ILA, *Background*
28 *Checks/NICS*, <https://www.nraila.org/get-the-facts/background-checks-nics> (last

1 visited Sept. 29, 2021)); *but see* Caroline Wolf Harlow, Ph.D., Bureau of Justice
2 Statistics, *Firearm Use by Offenders* (Nov. 2001) attached as Exhibit 10.

3 130. While the Public Safety Committee’s March 26, 2019, analysis also
4 concedes that “violent criminals do not appear to regularly purchase their guns
5 directly from gun shows,” the analysis immediately shifts to “criticism” (from the
6 partisan Center for American Progress) that gun shows are somehow “the critical
7 moment in the chain of custody for many guns, the point at which they move from
8 the somewhat-regulated legal market to the shadowy, no-questions-asked illegal
9 market.” Ex. 7 at 3 (citing Arkadi Gerney, Center for American Progress, *The Gun*
10 *Debate 1 Year After Newtown: Assessing Six Key Claims About Gun Background*
11 *Checks* (Dec. 2013), available at [https://www.americanprogress.org/issues/guns-](https://www.americanprogress.org/issues/guns-crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/)
12 [crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/](https://www.americanprogress.org/issues/guns-crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/) (last visited
13 Sept. 29, 2021). Neither the Center for American Progress editorial nor AB 893’s
14 bill analysis show how, in California where sales at gun shows are regulated *at least*
15 as heavily as sales at brick-and-mortar retailers, guns originating at gun shows are
16 any more likely to enter the “shadowy, no-questions-asked illegal market” than
17 those sold at gun stores.

18 **[California’s Senate Bill 264 (Min)]**

19 131. Not to be outdone and following the encouragement from both
20 Defendant Newsom and Assemblymember Gloria, Senator Dave Min sought early
21 on to rid the state of gun shows on all state fairground properties. Indeed, Senator
22 Min promised “in my first 100 days in office, I promise to author legislation for a
23 *ban* on these gun shows at the OC Fair and Events Center once and for all.”
24 Anthony Pignataro, *SD-37 Candidate Min: Ban Gun Shows from OC Fair & Event*
25 *Center*, OC Weekly (Aug. 6, 2019), [https://www.ocweekly.com/sd-37-candidate-](https://www.ocweekly.com/sd-37-candidate-min-ban-gun-shows-from-oc-fair-event-center/)
26 [min-ban-gun-shows-from-oc-fair-event-center/](https://www.ocweekly.com/sd-37-candidate-min-ban-gun-shows-from-oc-fair-event-center/) (emphasis added). And he called on
27 the “governing board of the OC Fair to *end its contract* with Crossroads of the West
28 and other gun show marketers.” *Id.*

1 132. In response, Board Member Ashleigh Aitken, advocating for the known
2 safety of the Fairgrounds, noted that “[t]he gun show loophole does not exist in
3 California. No citizen can purchase a firearm at the gun show and walk off property
4 with it. The purchases are subject to the same background checks and waiting
5 periods as any other store purchase.” Aitken went on to note that “California’s legal
6 gun shows are not a priority as our state has the strictest gun laws in the country.”
7 Anthony Pignataro, *OC Fair Board Member Responds to Min’s Gun Show Ban Idea*
8 (Aug. 7, 2019), available at [https://www.ocweekly.com/oc-fair-board-member-
9 responds-to-mins-gun-show-ban-idea/](https://www.ocweekly.com/oc-fair-board-member-responds-to-mins-gun-show-ban-idea/).

10 133. Nevertheless, Senator Min introduced Senate Bill 264 (“SB 264”) on
11 January 27, 2021. Sen. B. 264, 2019-2020Reg. Sess. (Cal. 2020) (attached as Exhibit
12 11). SB 264, which added section 27575 to the California Penal Code, bars any
13 “officer, employee, operator, lessee, or licensee of the [District]” from “contract[ing]
14 for, authoriz[ing], or allow[ing] the sale of any firearm, firearm precursor part, or
15 ammunition on the property or in the buildings that comprise the OC Fair and
16 Events Center.” Violation of the law is a misdemeanor. *Id.*

17 134. SB 264 does not bar the possession of firearms, ammunition, or firearm
18 precursor parts on the property or in the buildings that comprise the Orange County
19 Fairgrounds. Ex. 10. And it provides exceptions for (1) gun buyback events held by
20 law enforcement, (2) the sale of a firearm by a public administrator, public
21 conservator, or public guardian in the course of their duties, (3) the sale of a firearm,
22 firearm precursor part, or ammunition on state property that occurs pursuant to a
23 contract that was entered into before January 1, 2022, and (4) the purchase of
24 ammunition on state property by a law enforcement agency in the course of its
25 regular duties. *Id.*

26 135. Like AB 893, SB 264 clearly recognizes that “[p]romoters maintain
27 relationships with a core group of vendors, some selling guns and some selling other
28 merchandise, who travel as the schedule dictates from city to city and state to state

1 and in the West, for example, many of the same vendors can be seen at Crossroads
2 of the West Gun Shows from San Francisco, California, to Tucson, Arizona.” *Id.*

3 136. SB 264 failed to identify, however, any real public safety or security
4 concern specifically related to the existence of gun show events at the Fairgrounds.
5 Indeed, without citing specific safety concerns related to the *Orange County*
6 Fairgrounds, the authors of SB 264 literally copied and pasted the same vague
7 “security concerns” related to the *Del Mar* Fairgrounds from the language of AB
8 893 to label the Orange County events a threat to the local community. *Id.*

9 137. To be sure, SB 264 claims that “[g]un shows bring grave danger to a
10 community” and that “dangerous incidents” have taken place at guns shows at the
11 Fairgrounds, including “*an official vendor accused of trafficking illegal firearms,*
12 *sales of firearms to individuals registered in the Department of Justice Bureau of*
13 *Firearms Armed Prohibited Persons System, and illegal importation of large-*
14 *capacity magazines.*” *Id.* But SB 264 makes no effort to show that these incidents
15 are any more likely to occur at the Orange County gun show or gun shows in
16 California in general, which are regulated at least as heavily as retailers operating
17 out of brick-and-mortar stores. What’s more, these incidents are identical to the
18 crimes alleged to have taken place at the Del Mar Fairgrounds—an odd coincidence
19 to be sure.

20 138. Instead, SB 264’s legislative history reveals only general concerns
21 about gun violence occurring all over the country, unrelated to California gun
22 shows, and legislators’ beliefs that the state should not profit from sales of firearms
23 and ammunition.

24 139. Indeed, SB 264 opens with a list of tragedies, including the horrific
25 mass murders that took place at Columbine High School, Sandy Hook Elementary
26 School, and Marjory Stoneman Douglas High School—none of which were carried
27 out with firearms traced to gun show events at the Fairgrounds. *Id.*

28 140. The Senate Committee on Public Safety’s March 15, 2021, analysis

1 cited a report from the Government Accountability Office, claiming that a GAO
2 report “regarding gun trafficking to Mexico confirmed that many traffickers buy
3 guns at gun shows.” Sen. Comm. Pub. Safety, Bill Analysis Re: SB 264 (Min),
4 2019-2020 Reg. Sess., at 4 (Cal. 2021) (attached as Exhibit 12). But again, neither
5 the BATFE report nor SB 264’s legislative history links any illegally trafficked
6 firearm to gun shows at the Fairgrounds (or even to gun shows in California). *See*
7 Ex. 9.

8 141. In comments to the Senate Public Safety Committee on March 16,
9 2021, Senator Min claimed that “SB 264 will ensure that the state is not profiting
10 from the sale of firearms and ammunition on state property or facilitating gun shows
11 that would undermine California’s strong firearm regulations.” Sen. Pub. Safety
12 Committee Hrg., Mar. 16, 2021, at 3:20:18, *available at*
13 [https://www.senate.ca.gov/media-archive/default?title=Public+Safety&startdate=](https://www.senate.ca.gov/media-archive/default?title=Public+Safety&startdate=03%2F16%2F2021&enddate=03%2F17%2F2021)
14 [03%2F16%2F2021&enddate=03%2F17%2F2021](https://www.senate.ca.gov/media-archive/default?title=Public+Safety&startdate=03%2F16%2F2021&enddate=03%2F17%2F2021) (last accessed Aug. 4, 2022).

15 142. In his remarks to the Senate Public Safety Committee, Senator Min
16 claimed that the carnival-like atmosphere of gun shows lends itself to “lots of gun
17 sales in the parking lot or by Venmo where the gun is delivered later.” No data was
18 presented to support these claims even when asked by Senator Bogh. Senator Min
19 ultimately conceded that he does not know how many firearms from gun shows
20 actually move into the stream of illegal commerce. *Id.* at 4:05:36. He went on to
21 state that even if there have zero unlawful acts at guns shows, “there is a principal
22 that taxpayers should not be utilized, and taxpayer venues should not be utilized to
23 promulgate the distribution of more guns in our communities.” *Id.* at 4:09:40.

24 143. Senator Min’s closing remarks to the Senate Public Safety Committee
25 recognized that SB 264 is “symbolic” and makes a statement that the state does not
26 want to give an endorsement of “our taxpayer venues being used to sell more guns
27 in our communities. *Id.* at 4:12:59.

28 144. Similarly, in his remarks to the Assembly Committee on Public Safety

1 on July 13, 2021, Senator Min said that ending gun shows and banning the sale of
2 firearms, ammunition, and precursor parts at state-owned properties is a value
3 statement that the state of California must make. *See* Assem. Pub. Safety Committee
4 Hrg., Mar. 16, 2021, at 4:01:22, *available at*
5 [https://www.assembly.ca.gov/media/assembly-public-safety-committee-](https://www.assembly.ca.gov/media/assembly-public-safety-committee-20210713/video)
6 [20210713/video](https://www.assembly.ca.gov/media/assembly-public-safety-committee-20210713/video) (last accessed Aug. 4, 2022). “Value statements” are made about
7 likes and dislikes, not about issues of public safety. Min’s candid remarks about the
8 intention of SB 264 clearly illustrate a commitment to end gun shows not for safety
9 reasons, but to restrict the lawful speech and activities of a culture that he does not
10 understand and does not support.

11 **[California’s Senate Bill 915 (Min)]**

12 145. Having failed in 2021 to made good on his campaign promise to pass
13 legislation that would ban gun shows from all state property, an undeterred Senator
14 Min introduced Senate Bill 915 (“SB 915”) on February 2, 2022. Sen. B. 915, 2021-
15 2022 Reg. Sess. (Cal. 2022) (attached as Exhibit 15).

16 146. SB 915, which added section 27573 to the California Penal Code, bars
17 any “state officer or employee, or operator, lessee, or licensee of any state property”
18 from “contract[ing] for, authoriz[ing], or allow[ing] the sale of any firearm, firearm
19 precursor part, or ammunition on state property or in the buildings that sit on state
20 property or property otherwise owned, leased, occupied, or operated by the state.”
21 *Id.*

22 147. Just like SB 264, Min’s SB 915 does not bar the possession of firearms,
23 ammunition, or firearm precursor parts on state property or in the buildings that sit
24 on that property. *Id.* And it provides exceptions for (1) gun buyback events held by
25 law enforcement, (2) the sale of a firearm by a public administrator, public
26 conservator, or public guardian in the course of their duties, (3) the sale of a firearm,
27 firearm precursor part, or ammunition on state property that occurs pursuant to a
28 contract that was entered into before January 1, 2023, (4) the purchase of

1 ammunition on state property by a law enforcement agency in the course of its
2 regular duties, and (5) sale or purchase of a firearm pursuant to subdivision (b) or (c)
3 of Section 10334 of the Public Contract Code. *Id.*

4 148. SB 915 takes effect on January 1, 2023, but officials have already
5 stopped entering into contracts with gun show promoters, like Plaintiff Crossroads,
6 for events in 2022 and beyond. And while there is an exemption allowing events to
7 take place if contracts for those events were entered into before January 1, 2023, it
8 has not been the practice of state venues to grant these contracts for gun show events
9 in anticipation of the law’s effective date.

10 149. The bill’s purpose was—and its actual effect is—to banish gun shows
11 from state-owned properties—properties that are otherwise open to the public for
12 gathering and expressive activities—throughout California. Indeed, Senator Min, the
13 author of SB 915, has made very clear that banning the events was the bill’s intent:
14 “Last year we laid the foundation for this moment with a ban on gun shows at the
15 Orange County Fairgrounds. Today, I am proud to announce that California will
16 become the first nation to enact a total ban statewide.” Press Release, *California*
17 *Becomes the First State to Ban Gun Shows on State Property, Builds on Orange*
18 *County Fairgrounds Ban* (July 21, 2022), available at
19 [https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-](https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-property-builds-orange-county-fairgrounds)
20 [property-builds-orange-county-fairgrounds](https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-property-builds-orange-county-fairgrounds) (last accessed Nov. 7, 2022).

21 150. Notably, SB 915 identifies no real public safety concern related to the
22 existence of gun show events at any of the state venues in California. To the
23 contrary, when giving testimony about SB 915, Senator Min only noted issues with
24 criminal activity from outside of California.

25 151. Instead, SB 915’s legislative history reveals only general concerns
26 about gun violence occurring all over the country, unrelated to California gun
27 shows, and legislators’ beliefs that the state should not profit from sales of firearms
28 and ammunition.

1 152. In describing the need for the bill, the legislative history of SB 915 cites
2 little more than a 1999 BATFE report that identified “gun shows as a ‘major
3 trafficking channel’” and found “that gun shows were the second largest source of
4 illegally trafficked firearms.” *See* Sen. Comm. Pub. Safety, Bill Analysis Re: SB
5 915 (Min), 2021-2022 Reg. Sess., at 3 (Cal. 2022) (attached as Exhibit 16). Setting
6 aside the fact that the report is nearly a quarter-of-a-century old, the legislature made
7 no effort to link such concerns to gun shows in California, where state law governs
8 sales at gun shows at least as strictly as it governs sales at “brick-and-mortar” stores.
9 Nor did it make any effort to show that gun shows remain “the second largest source
10 of illegally trafficked firearms” 23 years after the BATFE report published its
11 findings.

12 **[The Impact of SB 264 and SB 915 on the Orange County Gun Show]**

13 153. The sale of firearms and ammunition is an essential function of gun
14 shows, and it is one of the main reasons people attend these events; if gun shows are
15 not economically viable because they have been stripped of an essential function,
16 they will cease to exist.

17 154. SB 264 and SB 915 thus have the same practical effect as Del Mar’s
18 unconstitutional gun show moratorium which was enjoined by federal court—that is,
19 by permanently banning the commercial sale of firearms, ammunition, and firearm
20 parts at the Fairgrounds, it has the effect of banning gun shows at the Fairgrounds.

21 155. The Legislature was well-aware when it passed SB 264 and SB 915 that
22 a “gunless” gun show would not survive financially. Indeed, the intended purpose of
23 SB 264 and SB 915 was to end gun shows at the Fairgrounds as noted by bill
24 sponsor Senator Min in numerous committee testimonies and public comments.

25 156. The July 12, 2021, Assembly Committee on Public Safety’s bill
26 analysis references other similar legislative attempts to ban gun shows on state
27 agricultural land. Assem. Comm. Pub. Safety, Bill Analysis Re: SB 264 (Min),
28 2021-2022 Reg. Sess., at 3 (Cal. 2021) (attached as Exhibit 13). The analysis notes

1 that:

2 AB 893 (Gloria) Chapter 731, Statutes of 2019, added a section to the
3 Food and Agricultural Code that prohibits the sale of firearms and
4 ammunition at the Del Mar Fairgrounds, effectively terminating the
5 possibility for future gun shows at the Del Mar Fairgrounds. AB 893
6 was signed into law by Governor Newsom. This bill would expand the
7 provisions of AB 893 by including all state property within the
8 prohibition on the sale or transfer of firearms and ammunition.⁶

9 157. Senator Min knew that the intended and practical effect of SB 264 (and
10 later SB 915) was to end gun shows. His official Senate press release notes that “[i]f
11 signed into law, SB 264 would effectively put a stop to most gun shows on county
12 fairgrounds. Press Release, *Senator Dave Min’s Gun Violence Prevention Bill
13 Advances from Assembly Public Safety Committee* (July 13, 2021), available at
14 [https://sd37.senate.ca.gov/news/senator-dave-mins-gun-violence-prevention-bill-
15 advances-assembly-public-safety-committee](https://sd37.senate.ca.gov/news/senator-dave-mins-gun-violence-prevention-bill-advances-assembly-public-safety-committee) (last accessed Aug. 4, 2022).

16 158. On July 21, 2022, Senator Min reiterated the intent of his gun show
17 bills: “Last year we laid the foundation for this moment with a ban on gun shows at
18 the Orange County Fairgrounds. Today I am proud to announce that California will
19 become the first in the nation to enact a total ban statewide.” Press Release, *Senator
20 Dave Min’s California Becomes the First State To Ban Gun Shows on State
21 Property, Builds on Orange County Fairgrounds Ban* (July 21, 2022), available at
22 [https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-
23 property-builds-orange-county-fairgrounds](https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-property-builds-orange-county-fairgrounds) (last accessed Nov. 7, 2022).

24 159. And further evidencing the Legislature’s intended effect of SB 264 and
25 SB 915, Senator Min wrote to Defendant District, warning members not to stand in
26 the way of his bill that would ban sales of firearms, ammunition, and firearm
27 precursor parts at the Fairgrounds. Letter from Senator Dave Min to Board Members
28 of 32nd District Agricultural Association (on or about September 13, 2021)

⁶ SB 264 was initially introduced as a bill to end sales of firearms, ammunition, and firearm precursor parts on *all* state-owned property. But Min failed to garner enough support for such a ban and agreed to limit the scope of SB 264 to the OC Fair & Event Center.

1 (attached as Exhibit 14).

2 160. In his letter dated on or about September 13, 2021, letter, Min
3 addressed the District’s concerns that its venue was being unfairly and exclusively
4 targeted, responding that SB 264 was no different from earlier attempts to ban gun
5 shows at a single fairground:

6 While Item 6A expresses a concern that SB 264 “exclusively targets
7 the 32nd DAA,” such action to ban gun shows at a single fairground
8 site has recent precedent. In 2019, Gov. Newsom signed Assembly
9 Bill 893 (Gloria) into law, ending the sale of firearms and
ammunition at the Del Mar Fairgrounds, operated by the 22nd
District Agricultural Association.

10 *Id.* (emphasis added).

11 161. In that same letter, Senator Min also threatened the District’s board
12 members with individual liability lawsuits should they move to approve contracts
13 for the gun shows even before Governor Newsom had signed SB 264 into law. *Id.*

14 162. Nonetheless, Plaintiff Crossroads has repeatedly reached out to
15 Defendant District to request dates for events at the Fairground in 2021, 2022, and
16 beyond. But Defendant District refused to place the contracts for gun shows on the
17 agenda for October, November, or December 2021, stating instead that they would
18 revisit the issue again in January 2022 after SB 264 would go into effect.

19 163. Defendant District’s refusal to enter into contracts with Plaintiff
20 Crossroads before the implementation of AB 264 and SB 915 may have satisfied
21 Senator Min’s threats towards individual board members, but in doing so, the
22 District failed in their duty to bring profitable and family-friendly events to the
23 Fairgrounds and caused great losses to Plaintiffs.

24 164. Plaintiff Crossroads was unable to secure dates and enter into new
25 contracts for events at the Fairgrounds in 2022 and beyond due to the Defendants’
26 intentional act of adopting and enforcing SB 264 and refusing to consider their
27 contracts in the same way they would any other member of the public seeking to
28 rent the Fairgrounds venue.

1 165. Indeed, in compliance with SB 264 and SB 915, Defendant District
2 cannot and will not enter into contracts for gun shows at the Fairgrounds if firearms,
3 ammunition, or firearm precursor parts will be sold during the shows.

4 166. Even though Plaintiff Crossroads has offered to attempt to hold events
5 without sales of firearms, ammunition, or firearm precursor parts to preserve its
6 longstanding relationship with the District, mitigate damages, and continue planning
7 and promoting its family-friendly events until its claims can be heard, Defendant
8 District dragged its feet and refused to provide dates for events for 2022 and beyond.
9 Plaintiffs are also unable to enter into new contracts for shows at other state venues
10 before the implementation of SB 915 because those venues also refuse to provide
11 dates before January 1, 2023.

12 167. Because of the time and resources needed to plan and implement its
13 gun show events, Plaintiff Crossroads must plan its shows about one year in
14 advance, but Defendant District has not allowed Plaintiff Crossroads to secure dates
15 in 2023 either.

16 168. What’s more, Defendant District seems to have stripped Plaintiff
17 Crossroads of its effective right of first refusal under the District’s “hold” system
18 described above. Indeed, it failed to give Crossroads first (or any) choice of its dates
19 in 2021 or 2022.

20 169. Defendants’ adoption and enforcement of SB 264 and SB 915, which
21 have the intended and practical effect of banning gun shows at the Fairgrounds and
22 other state fairgrounds, has caused and will continue to cause Plaintiff Crossroads
23 significant economic damages, including loss of event revenue, breakdown of
24 relationships and agreements with long-time event vendors and companies used as
25 suppliers for gun show events, relinquishment of future show dates, and loss of
26 business reputation and goodwill that has been built by Plaintiff Crossroads for more
27 than 30 years.

28 170. Plaintiff Crossroads has already lost revenue for gun show events at the

1 Fairgrounds in December 2021 and all of 2022 because Defendant District will not
2 finalize event dates, citing SB 264 as the reason along with the threats from Senator
3 Min for personal liability should they act. If shows do not return to the Fairgrounds
4 in 2022, Plaintiff Crossroads will lose all revenue for gun show events at the
5 Fairgrounds in 2022 and possibly 2023 because of the amount of time it takes to
6 plan large-scale events like the gun shows.

7 171. Even if Plaintiff Crossroads could secure dates, plan, promote, and host
8 gun shows in 2022 or 2023, SB 264 and SB 915 stand in the way of Crossroads
9 generating the profits the events typically generate because the ban on firearm and
10 ammunition sales will significantly impact paid event attendance and the types and
11 numbers of paid vendors who will do business with Crossroads at the Orange
12 County gun show.

13 172. Plaintiff Crossroads has and will continue to suffer loss of business
14 goodwill resulting from Defendants' adoption and enforcement of SB 264 and SB
15 915 under the (unsupported) pretense that gun shows, generally, and Crossroads'
16 shows, in particular, threaten public safety. The message this sends to other venues,
17 attendees, and vendors that do business with Crossroads will no doubt affect
18 Crossroads for years.

19 173. Defendants' adoption and enforcement of SB 264 and SB 915, which
20 have the intended and practical effect of banning gun shows at the Fairgrounds and
21 other state fairgrounds, prohibits Plaintiffs and all those similarly situated from
22 making use of a state-owned "public assembly facility" to host gun show events, a
23 lawful business activity, in violation of Plaintiffs' rights to engage in free speech and
24 peaceful assembly, and their right to equal protection under the law.

25 174. Specifically, Defendants' conduct complained of here strips Plaintiffs
26 Clark, Johnson, Littrell, and Merson, as well as the organizational plaintiffs, CRPA,
27 APAGOA, 2ALC, and SAF, of a vital opportunity to assemble and engage in pure
28 speech about, among other things, the rights and responsibilities of gun owners, the

1 Second Amendment, patriotism, and political activism with like-minded individuals.

2 175. Defendants’ conduct complained of here also strips Plaintiff Crossroads
3 of the right to promote gun show events, acting as a “clearinghouse” for both
4 political speech and commercial speech.

5 176. Defendants’ conduct complained of here also strips Plaintiffs Littrell,
6 and Merson, of a vital opportunity to assemble and engage in lawful commercial
7 speech, including the offer and acceptance of sales of firearms, ammunition, and
8 related accessories.

9 177. Furthermore, even if the Court grants injunctive relief, Plaintiff
10 Crossroads will have incurred damages in having to devote extraordinary advertising
11 dollars to inform the public that gun shows will continue to be held and have not
12 been banned at the Fairgrounds.

13 178. The economic and non-economic harms and injuries to Plaintiffs are of
14 a continuing nature; they continue to compound everyday SB 264 and SB 915
15 remain the law.

16

17

**FIRST CAUSE OF ACTION
Violation of Right to Free Speech Under U.S. Const., amend. I
42 U.S.C. § 1983**

18

19

(By Plaintiffs Clark, Johnson, Littrell, Merson, CRPA, APAGOA, 2ALC, SAF
Against All Defendants)

20

21

179. Plaintiffs incorporate by reference paragraphs 1 through 178 of this
Complaint as though fully set forth herein in their entirety.

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180. The state of California owns the Fairgrounds, a public venue. It is
rented to the public, including community-based organizations and businesses, for
its use and enjoyment, including for concerts, festivals, and industry shows.

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181. Plaintiffs Clark, Johnson, Littrell, Merson, CRPA, APAGOA, 2ALC,
and SAF have attended in the past and wish to again attend Crossroads gun shows at
the Fairgrounds so they may exchange ideas, information, and knowledge, as well
discuss political issues and the importance of protecting and defending the Second

1 Amendment.

2 182. Plaintiffs Clark, Johnson, Littrell, Merson, CRPA, APAGOA, 2ALC,
3 and SAF have a right under the First Amendment to use the Fairgrounds for their
4 expressive activity on the same basis as other members of the public without regard
5 to the viewpoints they seek to express.

6 183. Defendants Newsom, Bonta, and Spitzer, acting under color of state
7 law, are the state and local actors responsible for enforcing SB 264 and SB 915,
8 which deprive Plaintiffs of free speech rights secured by the First Amendment of the
9 United States Constitution in violation of 42 U.S.C. § 1983.

10 184. Defendants Ross and District interpret, implement, and enforce state
11 laws and policies in regard to the Fairgrounds, including SB 264 and SB 915, which
12 deprive Plaintiffs of free speech rights secured by the First Amendment of the
13 United States Constitution in violation of 42 U.S.C. § 1983.

14 185. Defendants' enforcement of SB 264 and SB 915, which prohibit the
15 sale of firearms, ammunition, and "firearm precursor parts" at the Fairgrounds with
16 the purpose, intention, and effect of banning gun show events at the Fairgrounds and
17 all other state-owned properties, is an impermissible content-based restriction of
18 speech. Such enforcement constitutes a direct violation of the free speech rights of
19 Plaintiffs Clark, Johnson, Littrell, Merson, CRPA, APAGOA, 2ALC, and SAF.

20 186. Defendants have no compelling (or even legitimate) governmental
21 interest in banning the otherwise lawful (and constitutionally protected) sale of
22 lawful firearms, ammunition, and "firearm precursor parts" at the Fairgrounds and
23 all other state-owned properties, or in banning gun show events and the unique
24 expression and exchange of ideas related to promoting and preserving the "gun
25 culture" that takes place at those events. Any purported interest in "public safety" is
26 betrayed by the fact that SB 264 and SB 915 do not ban the *possession* of firearms,
27 ammunition, or firearms precursor parts on Fairgrounds property and state law
28 already governs sales at gun shows *at least* as strictly as it governs sales at "brick-

1 and-mortar” stores.

2 187. Further, SB 264 and SB 915 are neither narrowly tailored to nor the
3 least restrictive means of achieving the state’s dubious interests. Indeed, by
4 intentionally and effectively banning gun shows at the Fairgrounds and all other
5 state-owned properties, it sweeps up *all* forms of speech and expressive conduct that
6 occurs at such events and banishes it from a public venue.

7 188. Similarly, SB 264 and SB 915 are unconstitutionally overbroad
8 because, in an effort to restrict the commercial sale of firearms, ammunition, and
9 firearm precursor parts, the laws effectively and intentionally ban gun shows events
10 altogether, seriously and deliberately burdening a vast amount of speech that does
11 not constitute commercial speech and is fully protected by the First Amendment.

12 189. As a direct and proximate result of Defendants’ conduct, Plaintiffs
13 Clark, Johnson, Littrell, Merson, CRPA, APAGOA, 2ALC, and SAF have suffered
14 irreparable harm, including the violation of their constitutional right to free speech,
15 entitling them to declaratory and injunctive relief. Absent intervention by this Court,
16 through declaratory and injunctive relief, Plaintiffs will continue to suffer this
17 irreparable harm.

18

19

SECOND CAUSE OF ACTION
Violation of Right to Free Speech Under U.S. Const., amend. I
Mixed Political - Commercial
42 U.S.C. § 1983
(By Plaintiff Crossroads Against All Defendants)

20

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190. Plaintiffs incorporate by reference paragraphs 1 through 189 of this
Complaint as though fully set forth herein in their entirety.

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191. The state of California owns the Fairgrounds, a public venue. It is
rented to the public, including community-based organizations and businesses, for
its use and enjoyment, including for concerts, festivals, and industry shows.

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192. Plaintiff Crossroads seeks to engage in protected speech at the
Fairgrounds, a noted “public assembly facility,” through the promotion and

1 production of events for lawful expressive activity, including events that bring
2 together like-minded individuals to engage in pure political and educational speech,
3 as well as commercial speech of vendor and individual participants to communicate
4 offer and acceptance for the sale of legal goods and services.

5 193. Event promoters, though they generally promote events for profit, “still
6 enjoy the protections of the First Amendment.” *Id.* at 567. For “[t]he role of a
7 promoter in ensuring access to the public is at least as critical as the role of a
8 bookseller or theater owner and . . . is in a far better position than a concert goer or
9 individual performers to vindicate First Amendment rights and ensure public
10 access.” *Id.* at 568. The conduct they engage in is protected expression.

11 194. Plaintiff Crossroads has a right under the First Amendment to use the
12 Fairgrounds for its expressive activity on the same basis as other members of the
13 public without regard to the content or viewpoint it seeks to express and promote.

14 195. Defendants Newsom, Bonta, and Spitzer, acting under color of state
15 law, are the state and local actors responsible for enforcing SB 264 and SB 915,
16 which deprive Plaintiffs of free speech rights secured by the First Amendment of the
17 United States Constitution in violation of 42 U.S.C. § 1983.

18 196. Defendants Ross and District interpret, implement, and enforce state
19 laws and policies in regard to the Fairgrounds, including SB 264 and SB 915, which
20 deprive Plaintiffs of free speech rights secured by the First Amendment of the
21 United States Constitution in violation of 42 U.S.C. § 1983.

22 197. Due to the passage of SB 264 and SB 915, Defendant District has not
23 and will not enter into new contracts with Plaintiff Crossroads to hold gun show
24 events at the Fairgrounds, even though Plaintiff Crossroads has safely and legally
25 held such events at the Fairgrounds for decades.

26 198. Defendants’ enforcement of SB 264 and SB 915, which prohibit the
27 sale of firearms, ammunition, and “firearm precursor parts” at the Fairgrounds with
28 the purpose, intention, and effect of banning gun show events at the Fairgrounds and

1 all other state-owned properties, is an impermissible content-based restriction of
2 speech. Such enforcement constitutes a direct violation of the free speech rights of
3 Plaintiff Crossroads.

4 199. Defendants have no compelling (or even legitimate) governmental
5 interest in banning the otherwise lawful (and constitutionally protected) sale of
6 lawful firearms, ammunition, and “firearm precursor parts” at the Fairgrounds and
7 all other state-owned properties, or in banning gun show events and the unique
8 expression and exchange of ideas related to promoting and preserving the “gun
9 culture” that takes place at those events. Any purported interest in “public safety” is
10 betrayed by the fact that SB 264 and SB 915 do not ban the possession of firearms,
11 ammunition, or firearms precursor parts on Fairgrounds property and state law
12 already governs sales at gun shows *at least* as strictly as it governs sales at “brick-
13 and-mortar” stores.

14 200. Further, SB 264 and SB 915 are neither narrowly tailored to nor the
15 least restrictive means of achieving the state’s dubious interests. Indeed, by
16 intentionally and effectively banning gun shows at the Fairgrounds and all other
17 state-owned properties, it sweeps up *all* forms of speech and expressive conduct that
18 occurs at such events and banishes it from a public venue.

19 201. Similarly, SB 264 and SB 915 are unconstitutionally overbroad
20 because, in an effort to restrict the commercial sale of firearms, ammunition, and
21 “firearm precursor parts,” the law effectively and intentionally bans gun shows
22 events altogether, seriously and deliberately burdening a vast amount of speech that
23 does not constitute commercial speech and is fully protected by the First
24 Amendment.

25 202. As a direct and proximate result of Defendants’ conduct, Plaintiff
26 Crossroads has suffered irreparable harm, including the violation of its constitutional
27 right to free speech, entitling Crossroads to declaratory and injunctive relief. Absent
28 intervention by this Court, through declaratory and injunctive relief, Plaintiffs will

1 continue to suffer this irreparable harm.

2

3

**THIRD CAUSE OF ACTION
Violation of Right to Commercial Speech Under U.S. Const., amend. I
42 U.S.C. § 1983**

4

5

(By Plaintiffs Littrell, Merson, and CRPA Against All Defendants)

6

7

203. Plaintiffs incorporate by reference paragraphs 1 through 202 of this Complaint as though fully set forth herein in their entirety.

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204. The state of California owns the Fairgrounds, a public venue. It is rented to the public, including community-based organizations and businesses, for its use and enjoyment, including for concerts, festivals, and industry shows.

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205. Plaintiffs Littrell, Merson, and CRPA have attended in the past, or represent members who have attended in the past, and wish to again attend Crossroads gun shows at the Fairgrounds to engage in lawful commercial speech with individual attendees.

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206. Plaintiffs Littrell, Merson, and CRPA members have a right under the First Amendment to use the Fairgrounds for expressive activity on the same basis as other members of the public without regard to the viewpoints they seek to express and promote.

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207. Defendants Newsom, Bonta, and Spitzer, acting under color of state law, are the state and local actors responsible for enforcing SB 264 and SB 915, which deprive Plaintiffs of free speech rights secured by the First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

23

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208. Defendants Ross and District interpret, implement, and enforce state laws and policies in regard to the Fairgrounds, including SB 264 and SB 915, which deprive Plaintiffs of free speech rights secured by the First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

27

28

209. Defendants' enforcement of SB 264 and SB 915, which prohibit the sale of firearms, ammunition, and "firearm precursor parts" at the Fairgrounds with

1 the purpose, intention, and effect of banning gun show events at the Fairgrounds and
2 all other state-owned properties, is an impermissible content-based restriction of
3 speech. Such enforcement constitutes a direct violation of the First Amendment
4 commercial speech rights of the Plaintiffs.

5 210. Further, by directly barring the rights of vendors, like Plaintiffs Littrell,
6 Merson, and CRPA members, to sell firearms, ammunition, and “firearm precursor
7 parts” (which necessarily involves commercial speech), SB 264 and SB 915 defies
8 existing case law in the Ninth Circuit protecting the commercial speech associated
9 with firearm sales on public property. *See Nordyke v. Santa Clara Cty.*, 110 F. 3d
10 707 (9th Cir. 1997).

11 211. Defendants have no substantial (or even legitimate) governmental
12 interest in banning the otherwise lawful (and constitutionally protected) sale of
13 lawful firearms, ammunition, and firearm precursor parts at the Fairgrounds and all
14 other state-owned properties, or in banning gun show events and the unique
15 expression and exchange of ideas related to promoting and preserving the “gun
16 culture” that takes place at those events. Any purported interest in “public safety” is
17 betrayed by the fact that SB 264 and SB 915 do not ban the possession of firearms,
18 ammunition, or firearms precursor parts on Fairgrounds property and state law
19 already governs sales at gun shows *at least* as strictly as it governs sales at “brick-
20 and-mortar” stores.

21 212. Even if there were a substantial governmental interest in restricting gun
22 shows and the commercial speech that occurs at such events, it would not be directly
23 served by a ban on sales of firearms, ammunition, and “firearm precursor parts” at
24 the Fairgrounds and all other state-owned properties.

25 213. Even if there were a substantial governmental interest in restricting gun
26 shows and the commercial speech that occurs at such events, flatly banning
27 commercial speech about firearms, ammunition, and “firearm precursor parts” at the
28 Fairgrounds and all other state-owned properties is more extensive than necessary to

1 serve any such interest. *See Nordyke*, 110 F.3d 707 (holding that a ban on the sale of
2 firearms on county-owned land was overbroad as abridging commercial speech
3 associated with the sale of lawful products).

4 214. As a direct and proximate result of Defendants’ conduct, Plaintiffs
5 Littrell, Merson, and CRPA have suffered irreparable harm, including the violation
6 of their constitutional right to free speech, entitling them to declaratory and
7 injunctive relief. Absent intervention by this Court, through declaratory and
8 injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

9
10 **FOURTH CAUSE OF ACTION**
11 **Prior Restraint on Right to Free Speech Under U.S. Const., amend. I**
12 **42 U.S.C. § 1983**
13 (By All Plaintiffs Against All Defendants)

14 215. Plaintiffs incorporate by reference paragraphs 1 through 214 of this
15 Complaint as though fully set forth herein in their entirety.

16 216. The First Amendment affords special protection against policies or
17 orders that impose a previous or prior restraint on speech. “[P]rior restraints on
18 speech and publication are the most serious and least tolerable infringement on First
19 Amendment Rights.” *Ass’n for L.A. Deputy Sheriffs*, 239 Cal. App. 4th at 811 (citing
20 *Neb. Press Ass’n*, 427 U.S. at 559. A prior restraint is particularly egregious when it
21 falls upon the communication of news, commentary, current events, political speech,
22 and association. *N.Y. Times Co.*, 403 U.S. at 715.

23 217. Prior restraint also involves the “unbridled discretion doctrine” where a
24 policy, or lack thereof, allows for a single person or body to act at their sole
25 discretion, without regard for any constitutional rights possessed by the person upon
26 which the action is taken, and where there is no remedy for challenging the
27 discretion of the decision makers. *Lakewood*, 486 U.S. at 757.

28 218. The Defendants are the state and local actors responsible for enforcing
SB 264 and SB 915, which are content-based restrictions of speech that will have a
chilling effect on Plaintiffs’ First Amendment rights, thus acting de facto prior

1 restraints on Plaintiffs’ rights (including a refusal to place contract approval on
2 board agendas or to offer available dates to begin the process of renting the venue).

3 219. Under SB 264 and SB 915, Defendant District has unfettered discretion
4 to determine what constitutes a “sale” under the law and is thereby prohibited at the
5 Fairgrounds. For instance, some fair boards or their employees may determine that a
6 gun raffle does not constitute a sale and allow fundraising events with such raffles to
7 take place on the property, while others might determine that it does constitute a sale
8 and thus ban such events from the property.

9 220. Defendants’ policies and practices complained of here impose an
10 unconstitutional prior restraint because they vest the District with unbridled
11 discretion to permit or refuse protected expression by members of the public,
12 including Plaintiffs.

13 221. Defendants’ policies and practices complained of here give unbridled
14 discretion to local agricultural district boards, board members, and their employees
15 to decide what forms of expression members of the public may engage in on at the
16 Fairgrounds and to ban any other expression at the whim of those boards and board
17 members in violation of the First Amendment.

18 222. As a direct and proximate result of Defendants’ conduct, Plaintiffs have
19 suffered and will continue to suffer irreparable harm, including the violation of their
20 constitutional right to freedom of expression, entitling them to declaratory and
21 injunctive relief and nominal damages.

22
23 **FIFTH CAUSE OF ACTION**
24 **Violation of Right to Assembly and Association Under U.S. Const., amend. I**
25 **42 U.S.C. § 1983**
26 (By All Plaintiffs Against All Defendants)

27 223. Plaintiffs incorporate by reference paragraphs 1 through 222 of this
28 Complaint as though fully set forth herein in their entirety.

224. The state of California owns the Fairgrounds, a public venue. It is
rented to the public, including community-based organizations and businesses, for

1 its use and enjoyment, including for concerts, festivals, and industry shows.

2 225. Plaintiffs have promoted and/or attended in the past and wish to again
3 promote and/or attend Crossroads gun shows at the Fairgrounds so they may
4 assemble and associate with one another to engage in lawful commerce, fellowship,
5 and expressive activities, including political and educational speech regarding the
6 lawful ownership, possession, and use of firearms and related products.

7 226. Plaintiffs have a right under the First Amendment to use the
8 Fairgrounds to assemble and associate on the same basis as other members of the
9 public without regard to the content or viewpoint it seeks to express and promote.

10 227. Defendants Newsom, Bonta, and Spitzer, acting under color of state
11 law, are the state and local actors responsible for enforcing SB 264 and SB 915,
12 which deprive Plaintiffs of free speech rights secured by the First Amendment of the
13 United States Constitution in violation of 42 U.S.C. § 1983.

14 228. Defendants Ross and District interpret, implement, and enforce state
15 laws and policies in regard to the Fairgrounds, including SB 264 and SB 915, which
16 deprive Plaintiffs of free speech rights secured by the First Amendment of the
17 United States Constitution in violation of 42 U.S.C. § 1983.

18 229. Defendants' enforcement of SB 264 and SB 915, which prohibit the
19 sale of firearms, ammunition, and "firearm precursor parts" at the Fairgrounds with
20 the purpose, intention, and effect of banning gun show events at the Fairgrounds and
21 all other state-owned properties, violates Plaintiffs' rights to assembly and
22 association by denying them the right to use the Fairgrounds and all other state-
23 owned properties otherwise open to the public for expressive uses, "public assembly
24 facilities," to assemble and engage in political and other types of expression—a right
25 Defendants extend to other members of the public so long as they are not meeting
26 for the purposes of holding a gun show event.

27 230. Defendants have no compelling (or even legitimate) governmental
28 interest in banning the otherwise lawful (and constitutionally protected) sale of

1 lawful firearms, ammunition, and “firearm precursor parts” at the Fairgrounds and
2 all other state-owned properties, or in banning gun show events and, by extension,
3 the rights of Plaintiffs to assemble and associate at the Fairgrounds and other state-
4 owned properties otherwise open to the public. Any purported interest in “public
5 safety” is betrayed by the fact that SB 264 and SB 915 do not ban the possession of
6 firearms, ammunition, or firearms precursor parts on Fairgrounds property and state
7 law already governs sales at gun shows *at least* as strictly as it governs sales at
8 “brick-and-mortar” stores.

9 231. Even if SB 264 and SB 915 served some sufficient government
10 purpose, they are neither narrowly tailored nor the least restrictive means to serve
11 that end.

12 232. As a direct and proximate result of Defendants’ conduct, all Plaintiffs
13 have suffered irreparable harm, including the violation of their constitutional right to
14 free association and assembly, entitling them to declaratory and injunctive relief.
15 Absent intervention by this Court, through declaratory and injunctive relief,
16 Plaintiffs will continue to suffer this irreparable harm.

17
18 **SIXTH CAUSE OF ACTION**
Violation of the Right to Equal Protection Under U.S. Const., amend. XIV
42 U.S.C. § 1983
19 (By All Plaintiffs Against All Defendants)

20 233. Plaintiffs incorporate by reference paragraphs 1 through 232 of this
21 Complaint as if fully set forth herein in their entirety.

22 234. Defendants, acting under color of state law, are enforcing SB 264 and
23 SB 915, which deprive Plaintiffs of right to equal protection under the law secured
24 by the Fourteenth Amendment of the United States Constitution in violation of 42
25 U.S.C. § 1983.

26 235. On their face and as applied, SB 264 and SB 915 are unconstitutional
27 abridgements of Plaintiffs’ right to equal protection under the law guaranteed by the
28 Fourteenth Amendment because they are viewpoint-discriminatory and/or animus-

1 based restrictions on Plaintiffs’ protected speech that serve no compelling
2 governmental interest.

3 236. On their face and as evidenced by the legislative history of both AB
4 264 and SB 915, it is clear that the laws’ purpose and intention are to make a
5 “symbolic” gesture and a “value statement” about the otherwise lawful sale of
6 firearms and related products and of the proliferation of the “gun culture” in
7 California and elsewhere.

8 237. Defendants have no compelling (or even legitimate) governmental
9 interest in banning Plaintiffs’ speech. Indeed, any purported interest in “public
10 safety” is betrayed by the fact that SB 264 and SB 915 do not ban the possession of
11 firearms, ammunition, or firearms precursor parts on Fairgrounds property and state
12 law already governs sales at gun shows *at least* as strictly as it governs sales at
13 “brick-and-mortar” stores.

14 238. Defendants’ refusal to allow Plaintiffs equal use of the public facilities
15 while continuing to allow contracts for the use of these facilities with other similarly
16 situated legal and legitimate businesses is a violation of Plaintiffs’ right to equal
17 protection under the law because it is based on a “bare desire to harm a politically
18 unpopular group.” *Moreno*, 413 U.S. at 534.

19 239. Further, SB 264 and SB 915 are not narrowly tailored to achieving the
20 state’s dubious interests.

21 232. As a direct and proximate result of Defendants’ conduct, all Plaintiffs
22 have suffered irreparable harm, including the violation of their constitutional right to
23 equal protection under the law, entitling them to declaratory and injunctive relief.
24 Absent intervention by this Court, through declaratory and injunctive relief, Plaintiffs
25 will continue to suffer this irreparable harm.

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SEVENTH CAUSE OF ACTION
Violation of Right to Keep and Bear Arms Under U.S. Const., amend. II
42 U.S.C. § 1983

(By All Plaintiffs Against All Defendants)

233. Plaintiffs incorporate by reference paragraphs 1 through 232 of this Complaint as if fully set forth herein in their entirety.

234. Plaintiffs Clark, Johnson, Littrell, Merson, Crossroads, and members and supporters of Plaintiffs CRPA, 2ALC, APAGOA, and SAF, have sold or bought firearms, ammunition, and/or “firearm precursor parts” at gun show events at the Fairgrounds in the past and, but for the adoption and enforcement of SB 264 and SB 915, they would do so again.

235. Plaintiffs have a right, under the Second Amendment, to buy and sell firearms and the ammunition and parts necessary for the effective operation of those firearms.

236. Defendants Bonta and Spitzer, acting under color of state law, are the government actors responsible for enforcing and prosecuting violations of SB 264 and SB 915, which deprive Plaintiffs of their right to access firearms and ammunition secured by the Second Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

237. Defendants District and Ross interpret, implement, and enforce state laws and policies in regard to the Fairgrounds, including SB 264 and SB 915, which deprive Plaintiffs of their right to access firearms, ammunition, and firearm parts secured by the Second Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

238. Defendants’ enforcement of SB 264 and SB 915, which prohibit the sale of firearms, ammunition, and “firearm precursor parts” at the Fairgrounds and all other state-owned venues with the purpose, intention, and effect of banning gun show events at the Fairgrounds and all state-owned fairgrounds, violates Plaintiffs’

1 Second Amendment right to buy and sell firearms and the ammunition and parts
2 necessary to the effective operation of those firearms.

3 239. Defendants cannot satisfy their burden to justify their ban on the sale of
4 firearms and ammunition at the Fairgrounds under the history- and tradition-based
5 test applied in *Heller* and recently confirmed in *Bruen*.

6 240. As a direct and proximate result of Defendants' conduct, all Plaintiffs
7 have suffered irreparable harm, including the violation of their constitutional right to
8 buy and sell firearms and ammunition, entitling them to declaratory and injunctive
9 relief. Without intervention by this Court, through declaratory and injunctive relief,
10 Plaintiffs will continue to suffer this irreparable harm.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for:

13 1. A declaration that SB 264, codified at California Penal Code section
14 27575, violates the free speech rights of Plaintiffs Clark, Johnson, Littrell, Merson,
15 CRPA, APAGOA, 2ALC, and SAF under the First Amendment to the United States
16 Constitution, on its face and as applied;

17 2. A declaration that SB 915, codified at California Penal Code section
18 27573, violates the free speech rights of Plaintiffs Clark, Johnson, Littrell, Merson,
19 CRPA, APAGOA, 2ALC, and SAF under the First Amendment to the United States
20 Constitution, on its face and as applied;

21 3. A declaration that SB 264, codified at California Penal Code section
22 27575, violates the free speech rights of Plaintiff Crossroads under the First
23 Amendment to the United States Constitution, on its face and as applied;

24 4. A declaration that SB 915, codified at California Penal Code section
25 27573, violates the free speech rights of Plaintiff Crossroads under the First
26 Amendment to the United States Constitution, on its face and as applied;

27 5. A declaration that SB 264, codified at California Penal Code section
28 27575, violates the commercial speech rights of Plaintiffs Littrell, Merson, and

1 CRPA under the First Amendment to the United States Constitution, on its face and
2 as applied;

3 6. A declaration that SB 915, codified at California Penal Code section
4 27573, violates the commercial speech rights of Plaintiffs Littrell, Merson, and
5 CRPA under the First Amendment to the United States Constitution, on its face and
6 as applied;

7 7. A declaration that SB 264, codified at California Penal Code section
8 27575, violates the free speech rights of all Plaintiffs under the First Amendment to
9 the United States Constitution because it imposes a prior restraint on their speech;

10 8. A declaration that SB 915, codified at California Penal Code section
11 27573, violates the free speech rights of all Plaintiffs under the First Amendment to
12 the United States Constitution because it imposes a prior restraint on their speech;

13 9. A declaration that SB 264, codified at California Penal Code section
14 27575, violates Plaintiffs' rights of assembly and association under the First
15 Amendment to the United States Constitution, on its face and as applied;

16 10. A declaration that SB 915, codified at California Penal Code section
17 27573, violates Plaintiffs' rights of assembly and association under the First
18 Amendment to the United States Constitution, on its face and as applied;

19 11. A declaration that SB 264, codified at California Penal Code section
20 27575, violates the rights of all Plaintiffs to equal protection under the law per the
21 Fourteenth Amendment to the United States Constitution, on its face and as applied;

22 12. A declaration that SB 915, codified at California Penal Code section
23 27573, violates the rights of all Plaintiffs to equal protection under the law per the
24 Fourteenth Amendment to the United States Constitution, on its face and as applied;

25 13. A declaration that SB 264, codified at California Penal Code section
26 27575, violates the rights of all Plaintiffs to keep and bear arms under the Second
27 Amendment to the United States Constitution, on its face and as applied;

28 14. A declaration that SB 915, codified at California Penal Code section

1 27573, violates the rights of all Plaintiffs to keep and bear arms under the Second
2 Amendment to the United States Constitution, on its face and as applied;

3 15. A preliminary and permanent injunction enjoining Defendants, their
4 employees, agents, successors in office, and all District Attorneys, County Counsel,
5 and City Attorneys holding office in the state of California, as well as their
6 successors in office, from enforcing SB 264, codified at California Penal Code
7 section 27575;

8 16. A preliminary and permanent injunction enjoining Defendants, their
9 employees, agents, successors in office, and all District Attorneys, County Counsel,
10 and City Attorneys holding office in the state of California, as well as their
11 successors in office, from enforcing SB 915, codified at California Penal Code
12 section 27573;

13 17. An order for damages, including nominal damages, according to proof;

14 18. An award of costs and expenses, including attorney’s fees, pursuant to
15 42 U.S.C. § 1988 or other appropriate state or federal law; and

16 19. Any such other relief the Court deems just and equitable.

17
18 Dated: November 11, 2022

MICHEL & ASSOCIATES, P.C.

19 *s/ Anna M. Barvir*

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

24 Dated: November 11, 2022

LAW OFFICES OF DONALD KILMER, APC

25 *s/ Donald Kilmer*

26 Donald Kilmer
27 Counsel for Plaintiff Second Amendment
28 Foundation

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 Attorney General Rob Bonta, Secretary Karen Ross,
 8 and 32nd District Agricultural Association*

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

13
 14 **B&L PRODUCTIONS, INC., d/b/a**
 15 **CROSSROADS OF THE WEST, et**
 16 **al.,**

17 Plaintiffs,

18 v.

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

20 Defendants.

8:22-cv-01518 JWH (JDEx)

**NOTICE OF PRELIMINARY
 INJUNCTION APPEAL**

Judge: The Honorable John W.
 Holcomb

Action Filed: August 12, 2022

21
 22 **PLEASE TAKE NOTICE** that Defendants Governor Gavin Newsom,
 23 Attorney General Rob Bonta, Secretary Karen Ross of the California Department of
 24 Food and Agriculture, and the 32nd District Agricultural Association (collectively,
 25 State Defendants), hereby appeal to the United States Court of Appeals for the
 26 Ninth Circuit from this Court’s Order Granting Plaintiffs’ Motion for Preliminary
 27 Injunction, issued on October 30, 2023 (ECF No. 43).
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Attached to this Notice is the Representation Statement, pursuant to Federal Rule of Appellate Procedure 12(b) and Ninth Circuit Rule 3-2(b).

Dated: November 27, 2023

Respectfully submitted,
ROB BONTA
Attorney General of California
R. MATTHEW WISE
Supervising Deputy Attorney General

/s/ NICOLE J. KAU
NICOLE J. KAU
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Rob Bonta, Secretary Karen Ross,
and 32nd District Agricultural
Association*

SA2022303648

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

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (List *each* party filing the appeal, do not use “*et al.*” or other abbreviations.)

Name(s) of party/parties:

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Is counsel registered for Electronic Filing in the 9th Circuit? Yes No

Appellee(s) (List *only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.*)

Name(s) of party/parties:

B&L Prod., Inc.; Gerald Clark; Eric Johnson; Chad Littrell; Jan Steven Merson; California Rifle & Pistol Ass'n, Inc., Asian Pacific American Gun Owners Ass'n., Second Amendment Law Center, Inc., Second Amendment Foundation

Name(s) of counsel (if any):

C.D. Michel, Anna M. Barvir, Tiffany D. Chevront, Donald Kilmer
(The contact information for Donald Kilmer is on the next page.)

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To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

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Is counsel registered for Electronic Filing in the 9th Circuit? Yes No

Appellees

Name(s) of party/parties:

Same as above.

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Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

CERTIFICATE OF SERVICE

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

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

NOTICE OF PRELIMINARY INJUNCTION APPEAL

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

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

Kevin Carballo

Declarant

Kevin Carballo

Signature

SA2022303648
POS.docx

ACCO,(JDEx),APPEAL,CLOSED,DISCOVERY,MANADR,STAYED

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Southern Division - Santa Ana)
CIVIL DOCKET FOR CASE #: 8:22-cv-01518-JWH-JDE**

B & L Productions, Inc. et al v. Gavin Newsom et al
Assigned to: Judge John W. Holcomb
Referred to: Magistrate Judge John D. Early
Case in other court: 9th CCA, 23-03793
Cause: 42:1983 Civil Rights Act

Date Filed: 08/12/2022
Date Terminated: 01/02/2024
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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Plaintiff

**California Rifle & Pistol Association,
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TERMINATED: 11/14/2022

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2-ER-310

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Defendant**Gavin Newsom***in his official capacity as Governor of the State of California*represented by **Nicole Juliet Kau**CAAG - Office of the Attorney General
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*ATTORNEY TO BE NOTICED***Defendant****Karen Ross***in her official capacity as Secretary of California Department of Food & Agriculture and in his personal capacity*represented by **Nicole Juliet Kau**(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Todd Spitzer***in his official capacity as District Attorney of Orange County*represented by **Nicole Juliet Kau**(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****32nd District Agricultural Association**represented by **Nicole Juliet Kau**(See above for address)
*ATTORNEY TO BE NOTICED***Defendant****Does***1-10*represented by **Nicole Juliet Kau**(See above for address)
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/12/2022	<u>1</u>	COMPLAINT Receipt No: ACACDC-33806351 - Fee: \$402, filed by Plaintiffs Jan Steven Merson, Gerald Clark, Asian Pacific American Gun Owner Association, California Rifle & Pistol Association, Incorporated, Second Amendment Law Center, Inc., B & L Productions, Inc., Eric Johnson, Chad Littrell. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14) (Attorney Anna M Barvir added to party Asian Pacific American Gun Owner Association(pty:pla), Attorney Anna M Barvir added to party B & L Productions, Inc. (pty:pla), Attorney Anna M Barvir added to party California Rifle & Pistol Association, Incorporated(pty:pla), Attorney Anna M Barvir added to party Gerald Clark(pty:pla), Attorney Anna M Barvir added to party Eric Johnson(pty:pla), Attorney Anna M Barvir added to party Chad Littrell(pty:pla), Attorney Anna M Barvir added to party Jan Steven

		Merson(pty:pla), Attorney Anna M Barvir added to party Second Amendment Law Center, Inc.(pty:pla))(Barvir, Anna) (Entered: 08/12/2022)
08/12/2022	<u>2</u>	CIVIL COVER SHEET filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Barvir, Anna) (Entered: 08/12/2022)
08/12/2022	<u>3</u>	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening),,,, <u>1</u> filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Barvir, Anna) (Entered: 08/12/2022)
08/12/2022	<u>4</u>	Notice of Interested Parties filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Barvir, Anna) (Entered: 08/12/2022)
08/16/2022	<u>5</u>	NOTICE OF ASSIGNMENT to District Judge John W. Holcomb and Magistrate Judge John D. Early. (sh) (Entered: 08/16/2022)
08/16/2022	<u>6</u>	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (sh) (Entered: 08/16/2022)
08/16/2022	<u>7</u>	Notice to Counsel Re Consent to Proceed Before a United States Magistrate Judge. (sh) (Entered: 08/16/2022)
08/16/2022	<u>8</u>	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening),,,, <u>1</u> as to Defendants 32nd District Agricultural Association, Rob Bonta, Gavin Newsom, Karen Ross, Todd Spitzer. (sh) (Entered: 08/16/2022)
08/17/2022	<u>9</u>	STANDING ORDER by Judge John W. Holcomb. PLEASE READ THIS ORDER CAREFULLY. IT CONTROLS THIS CASE AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES. (lom) (Entered: 08/18/2022)
09/07/2022	<u>10</u>	PROOF OF SERVICE Executed by Plaintiff Jan Steven Merson, Gerald Clark, Asian Pacific American Gun Owner Association, California Rifle & Pistol Association, Incorporated, Second Amendment Law Center, Inc., B & L Productions, Inc., Eric Johnson, Chad Littrell, upon Defendant Rob Bonta served on 8/30/2022, answer due 9/20/2022. Service of the Summons and Complaint were executed upon Officer Silkwood, Person Authorized to Accept in compliance with Federal Rules of Civil Procedure by personal service.Original Summons NOT returned. (Michel, Carl) (Entered: 09/07/2022)
09/07/2022	<u>11</u>	PROOF OF SERVICE Executed by Plaintiff Jan Steven Merson, Gerald Clark, Asian Pacific American Gun Owner Association, California Rifle & Pistol Association, Incorporated, Second Amendment Law Center, Inc., B & L Productions, Inc., Eric Johnson, Chad Littrell, upon Defendant Karen Ross served on 8/31/2022, answer due 9/21/2022. Service of the Summons and Complaint were executed upon Winnie Bell, Person Authorized to Accept in compliance with Federal Rules of Civil Procedure by personal service.Original Summons NOT returned. (Michel, Carl) (Entered: 09/07/2022)
09/07/2022	<u>12</u>	PROOF OF SERVICE Executed by Plaintiff Jan Steven Merson, Gerald Clark, Asian Pacific American Gun Owner Association, California Rifle & Pistol Association, Incorporated, Second Amendment Law Center, Inc., B & L Productions, Inc., Eric Johnson, Chad Littrell, upon Defendant Todd Spitzer served on 8/29/2022, answer due 9/19/2022. Service of the Summons and Complaint were executed upon John Hurley,

		Person Authorized to Accept in compliance with Federal Rules of Civil Procedure by personal service.Original Summons NOT returned. (Michel, Carl) (Entered: 09/07/2022)
09/07/2022	<u>13</u>	PROOF OF SERVICE Executed by Plaintiff Jan Steven Merson, Gerald Clark, Asian Pacific American Gun Owner Association, California Rifle & Pistol Association, Incorporated, Second Amendment Law Center, Inc., B & L Productions, Inc., Eric Johnson, Chad Littrell, upon Defendant 32nd District Agricultural Association served on 8/29/2022, answer due 9/19/2022. Service of the Summons and Complaint were executed upon Jesus Lara, Human Resources Specialist, Person Authorized to Accept in compliance with Federal Rules of Civil Procedure by personal service.Original Summons NOT returned. (Michel, Carl) (Entered: 09/07/2022)
09/16/2022	<u>14</u>	STIPULATION for Extension of Time to File Answer to November 14, 2022 re Complaint (Attorney Civil Case Opening),,,, <u>1</u> , STIPULATION for Extension of Time to File Response to Complaint filed by Defendants 32nd District Agricultural Association, Rob Bonta, Gavin Newsom, Karen Ross, Todd Spitzer. (Attachments: # <u>1</u> Proposed Order Proposed Order to Extend Time to Respond to the Complaint)(Attorney Nicole Juliet Kau added to party 32nd District Agricultural Association(pty:dft), Attorney Nicole Juliet Kau added to party Rob Bonta(pty:dft), Attorney Nicole Juliet Kau added to party Gavin Newsom(pty:dft), Attorney Nicole Juliet Kau added to party Karen Ross(pty:dft), Attorney Nicole Juliet Kau added to party Todd Spitzer(pty:dft))(Kau, Nicole) (Entered: 09/16/2022)
09/19/2022	<u>15</u>	ORDER TO EXTEND TIME TO RESPOND TO THE COMPLAINT <u>14</u> by Judge John W. Holcomb. The Court hereby GRANTS the motion and orders as follows; The time to answer, move to dismiss, or otherwise respond to the Complaint for the Stipulating Defendants is extended to 11/14/2022. IT IS SO ORDERED. (See document for further details) (yl) (Entered: 09/19/2022)
11/08/2022	<u>16</u>	STIPULATION for Extension of Time to File Answer filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Attachments: # <u>1</u> Proposed Order)(Barvir, Anna) (Entered: 11/08/2022)
11/11/2022	<u>17</u>	FIRST AMENDED COMPLAINT against Defendants All Defendants amending Complaint (Attorney Civil Case Opening),,,, <u>1</u> , filed by Plaintiffs Jan Steven Merson, Gerald Clark, Asian Pacific American Gun Owner Association, California Rifle & Pistol Association, Incorporated, Second Amendment Law Center, Inc., B & L Productions, Inc., Eric Johnson, Chad Littrell (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Redlined Version)(Barvir, Anna) (Entered: 11/11/2022)
11/14/2022	<u>18</u>	Notice of Errata re: First Amended Complaint filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Barvir, Anna) (Entered: 11/14/2022)
11/14/2022	<u>19</u>	FIRST AMENDED COMPLAINT against Defendants All Defendants amending Complaint (Attorney Civil Case Opening),,,, <u>1</u> , filed by Plaintiffs Jan Steven Merson, Gerald Clark, Asian Pacific American Gun Owner Association, California Rifle & Pistol Association, Incorporated, Second Amendment Law Center, Inc., B & L Productions, Inc., Eric Johnson, Chad Littrell (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Redlined Version)(Barvir, Anna) (Entered: 11/14/2022)

11/14/2022	<u>20</u>	ORDER On Stipulation and Joint Motion to Extend Time to Respond to the Complaint By More Than 30 Days and Request for Scheduling Order <u>16</u> by Judge John W. Holcomb. See document for further information. (jp) (Entered: 11/15/2022)
11/16/2022	<u>21</u>	NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistoal Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. Motion set for hearing on 1/6/2023 at 09:00 AM before Judge John W. Holcomb. (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Request for Judicial Notice, # <u>3</u> Declaration of Anna M. Barvir, # <u>4</u> Declaration of Carl Dawson Michel, # <u>5</u> Declaration of Tracy Olcott, # <u>6</u> Declaration of Gerald Clark, # <u>7</u> Declaration of Eric Johnson, # <u>8</u> Declaration of Chad Littrell, # <u>9</u> Declaration of Jan Steven Merson, # <u>10</u> Declaration of Richard Minnich, # <u>11</u> Declaration of Patrick Lopez, # <u>12</u> Declaration of Alan Gottlieb, # <u>13</u> Proposed Order) (Barvir, Anna) (Entered: 11/16/2022)
12/09/2022	<u>22</u>	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action <u>21</u> filed by Defendants 32nd District Agricultural Association, Rob Bonta, Does, Gavin Newsom, Karen Ross. (Attachments: # <u>1</u> DECLARATION OF JENNIFER OLVERA IN SUPPORT OF STATE DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION, # <u>2</u> STATE DEFENDANTS REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION, # <u>3</u> [PROPOSED] ORDER GRANTING REQUEST FOR JUDICIAL NOTICE)(Attorney Nicole Juliet Kau added to party Does(pty:dft))(Kau, Nicole) (Entered: 12/09/2022)
12/16/2022	<u>23</u>	REPLY in support of NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action <u>21</u> filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Barvir, Anna) (Entered: 12/16/2022)
12/28/2022	24	SCHEDULING NOTICE AND ORDER by Judge John W. Holcomb: On its own motion, the Court CONTINUES Plaintiff's Motion for Preliminary Injunction [ECF No. 21] from January 6, 2023 at 9:00 a.m. to January 13, 2023 at 9:00 a.m. The parties are DIRECTED to appear in person in Courtroom 9D, on the 9th Floor of the Ronald Reagan Federal Building and United States Courthouse at 411 W. Fourth Street Santa Ana, CA 92701. IT IS SO ORDERED.THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (cla) TEXT ONLY ENTRY (Entered: 12/28/2022)
01/06/2023	<u>25</u>	ORDER FOR SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (IN CHAMBERS) by Judge John W. Holcomb. For the foregoing reasons, the Court hereby ORDERS as follows: The parties are DIRECTED to file simultaneous supplemental briefs, not to exceed 25 pages, no later than January 27, 2023, providing an analysis of the issues discussed above. The hearing on the Motion is CONTINUED to February 10, 2023, at 9:00 a.m. in Courtroom 9D of the Ronald Reagan Federal Building and U.S. Courthouse, 411 W. 4th Street, Santa Ana, California. IT IS SO ORDERED. (See document for further details) (yl) (Entered: 01/06/2023)
01/27/2023	<u>26</u>	OPPOSITION re: NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action <u>21</u> filed by Defendants 32nd District Agricultural Association, Rob Bonta,

		Does, Gavin Newsom, Karen Ross. (Attachments: # <u>1</u> Declaration)(Kau, Nicole) (Entered: 01/27/2023)
01/27/2023	<u>27</u>	SUPPLEMENT to NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action <u>21</u> filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistoal Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Barvir, Anna) (Entered: 01/27/2023)
02/01/2023	<u>28</u>	ORDER FOR ADDITIONAL SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION [ECF NO. <u>21</u>] (IN CHAMBERS) by Judge John W. Holcomb. For the foregoing reasons, the Court hereby ORDERS as follows: Defendants are DIRECTED to file a supplemental brief, not to exceed 25 pages, no later than February 24, 2023, providing an analysis of the issues discussed above. Plaintiffs are DIRECTED to file a supplemental brief, not to exceed 25 pages, no later than March 10, 2023, responding to Defendants' supplemental brief regarding the issues discussed above. Defendants are DIRECTED to file a reply brief, not to exceed 10 pages, no later than March 24, 2023, replying to Plaintiffs' supplemental brief regarding the issues discussed above. The hearing on the Motion is CONTINUED to Thursday, April 6, 2023, at 10:00 a.m. in Courtroom 9D of the Ronald Reagan Federal Building and U.S. Courthouse, 411 W. 4th Street, Santa Ana, California. IT IS SO ORDERED. (yl) (Entered: 02/01/2023)
02/01/2023	<u>29</u>	First STIPULATION for Extension of Time to File Answer re Amended Complaint/Petition,, <u>19</u> filed by Defendants 32nd District Agricultural Association, Rob Bonta, Does, Gavin Newsom, Karen Ross. (Attachments: # <u>1</u> Proposed Order)(Kau, Nicole) (Entered: 02/01/2023)
02/02/2023	<u>30</u>	ORDER <u>29</u> by Judge John W. Holcomb. Before the Court is the Stipulation and Joint Motion to Extend Time to Respond to the First Amended Complaint by More Than 30 Days. Having reviewed the motion, and good cause appearing, the Court hereby ORDERS as follows: The motion is GRANTED. The Stipulating Defendants are DIRECTED to file their response to the First Amended Complaint 21 days after the Court issues its ruling on Plaintiffs' motion for preliminary injunction. IT IS SO ORDERED. (yl) (Entered: 02/03/2023)
02/24/2023	<u>31</u>	OPPOSITION to NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action <u>21</u> filed by Defendants 32nd District Agricultural Association, Rob Bonta, Does, Gavin Newsom, Karen Ross. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration)(Kau, Nicole) (Entered: 02/24/2023)
03/10/2023	<u>32</u>	PLAINTIFFS RESPONSE TO STATE DEFENDANTS SECOND SUPPLEMENTAL BRIEF re NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action <u>21</u> filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistoal Association, Incorporated, California Rifle & Pistol Association, Incorporated, Gerald Clark. (Barvir, Anna) (Entered: 03/10/2023)
03/10/2023	<u>33</u>	OBJECTIONS <i>to the State Defendants' Expert Declarations; Motion to Strike or Exclude the State Defendants' Expert Declarations</i> filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistoal Association, Incorporated, Gerald Clark, Eric Johnson. (Barvir, Anna) (Entered: 03/10/2023)
03/24/2023	<u>34</u>	REPLY <i>IN SUPPORT OF SUPPLEMENTAL BRIEF IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION</i> filed by Defendants 32nd District Agricultural Association,

		Rob Bonta, Does, Gavin Newsom, Karen Ross. (Kau, Nicole) (Entered: 03/24/2023)
03/24/2023	<u>35</u>	RESPONSE filed by Defendants 32nd District Agricultural Association, Rob Bonta, Does, Gavin Newsom, Karen Rossto Objection, <u>33</u> <i>TO PLAINTIFFS OBJECTIONS AND MOTION TO STRIKE EXPERT DECLARATIONS</i> (Kau, Nicole) (Entered: 03/24/2023)
04/04/2023	<u>36</u>	SUPPLEMENT to NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action <u>21</u> filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Barvir, Anna) (Entered: 04/04/2023)
04/06/2023	<u>38</u>	HEARING RE: PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION [ECF NO. 21] hearing held before Judge John W. Holcomb. Counsel state their appearances. The Court confers with counsel and hears oral argument. The Court takes the motion [ECF No. 21] under submission. IT IS SO ORDERED. Court Reporter: Debbie Hino-Span. (yl) (Entered: 04/07/2023)
04/07/2023	<u>37</u>	TRANSCRIPT ORDER as to Defendant 32nd District Agricultural Association, Rob Bonta, Does, Gavin Newsom, Karen Ross for Court Reporter. (Kau, Nicole) (Entered: 04/07/2023)
04/11/2023	<u>39</u>	TRANSCRIPT ORDER as to Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc. for Court Reporter. (Barvir, Anna) (Entered: 04/11/2023)
05/14/2023	<u>40</u>	TRANSCRIPT for proceedings held on 4/6/2023 at 10:05 a.m. ****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 6/5/2023. Redacted Transcript Deadline set for 6/14/2023. Release of Transcript Restriction set for 8/14/2023. (dhs) (Entered: 05/14/2023)
05/14/2023	41	NOTICE OF FILING TRANSCRIPT filed for proceedings 4/6/2023 at 10:05 a.m. re Transcript <u>40</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (dhs) TEXT ONLY ENTRY (Entered: 05/14/2023)
09/20/2023	<u>42</u>	SUPPLEMENT to NOTICE OF MOTION AND MOTION for Preliminary Injunction re the enforcement of California Penal Code sections 27573 and 27575 during the pendency of this action <u>21</u> filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistoal Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Foundation, Second Amendment Law Center, Inc.. (Attorney Anna M Barvir added to party Second Amendment Foundation(pty:pla))(Barvir, Anna) (Entered: 09/20/2023)
10/30/2023	<u>43</u>	ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION [ECF No. 21] by Judge John W. Holcomb. For the foregoing reasons, the Court hereby ORDERS as follows: Defendants, their employees, agents, successors in office, and all District Attorney, County Counsel, and City Attorneys holding office in the State of California, as well as their successors in office, are preliminary ENJOINED and RESTRAINED from engaging in, committing, or performing, directly or indirectly, by any means whatsoever, any enforcement of California Penal Code sections 27573 or 27575. Upon request by Plaintiffs, Defendant 32nd DAA must make available the next available

		date for a gun show and must allow Plaintiff Crossroads to reserve dates for gun show events at the Orange County Fairgrounds. Defendant's request to stay this Order pending appeal is DENIED. IT IS SO ORDERED. (See document for further details) (yl) (Entered: 10/30/2023)
11/01/2023	<u>44</u>	ORDER SETTING SCHEDULING CONFERENCE by Judge John W. Holcomb. Scheduling Conference set for 1/12/2024 at 11:00 AM before Judge John W. Holcomb. (cla) (Entered: 11/01/2023)
11/13/2023	<u>45</u>	NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction,,, <u>43</u> filed by Defendants 32nd District Agricultural Association, Rob Bonta, Gavin Newsom, Karen Ross. Motion set for hearing on 12/15/2023 at 09:00 AM before Judge John W. Holcomb. (Attachments: # <u>1</u> State Defendants' Request for Judicial Notice in Support of Motion for Reconsideration of Stay of Injunction Pending Appeal, # <u>2</u> Declaration of Michele Richards in Support of State Defendants' Motion for Reconsideration of Stay of Injunction Pending Appeal) (Kau, Nicole) (Entered: 11/13/2023)
11/14/2023	<u>46</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Document RE: NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction <u>43</u> <u>45</u> . The following error(s) was/were found: Proposed document was not submitted or was not submitted as a separate attachment. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (yl) Modified on 11/15/2023 (yl). (Entered: 11/14/2023)
11/14/2023	<u>47</u>	RESPONSE BY THE COURT TO NOTICE TO FILER OF DEFICIENCIES IN FILED DOCUMENT RE: NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction <u>45</u> by Judge John W. Holcomb. Plaintiff shall consult the Notice of Deficiency and lodge a proposed order. (yl) (Entered: 11/15/2023)
11/15/2023	<u>48</u>	NOTICE OF LODGING filed re NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction,,, <u>43</u> <u>45</u> (Attachments: # <u>1</u> Proposed Order)(Kau, Nicole) (Entered: 11/15/2023)
11/20/2023	<u>49</u>	ANSWER to Amended Complaint/Petition,, <u>19</u> filed by Defendants 32nd District Agricultural Association, Rob Bonta, Gavin Newsom, Karen Ross.(Kau, Nicole) (Entered: 11/20/2023)
11/22/2023	<u>50</u>	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction,,, <u>43</u> <u>45</u> filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistoal Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Foundation, Second Amendment Law Center, Inc.. (Attachments: # <u>1</u> Objection to Defendants Request for Judicial Notice, # <u>2</u> Proposed Order)(Barvir, Anna) (Entered: 11/22/2023)
11/27/2023	<u>51</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Defendants 32nd District Agricultural Association, Rob Bonta, Gavin Newsom, Karen Ross. Appeal of Order on Motion for Preliminary Injunction,,, <u>43</u> . (Appeal Fee - \$505 Fee Paid, Receipt No. ACACDC-36466383.) (Kau, Nicole) (Entered: 11/27/2023)
11/28/2023	<u>52</u>	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 23-3793 assigned to Notice of Appeal to 9th Circuit Court of Appeals, <u>51</u> as to Defendants 32nd District Agricultural Association, Rob Bonta, Gavin Newsom, Karen Ross. (car) (Entered: 11/30/2023)

12/01/2023	<u>53</u>	REPLY In Support of <i>Motion for Reconsideration of Stay of Injunction Pending Appeal</i> filed by Defendants 32nd District Agricultural Association, Rob Bonta, Gavin Newsom, Karen Ross. (Kau, Nicole) (Entered: 12/01/2023)
12/06/2023	<u>54</u>	ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION [ECF No. <u>45</u>] by Judge John W. Holcomb. For the foregoing reasons, the Court hereby ORDERS as follows: The Motion to DENIED. The hearing set for December 15, 2023, is VACATED. (See document for further details) (yl) (Entered: 12/08/2023)
12/15/2023	<u>55</u>	DESIGNATION of Record on Appeal by Defendant Gavin Newsom (Kau, Nicole) (Entered: 12/15/2023)
12/28/2023	<u>56</u>	JOINT RULE 26(f) REPORT filed by Plaintiffs Asian Pacific American Gun Owner Association, B & L Productions, Inc., California Rifle & Pistol Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, Second Amendment Law Center, Inc.. (Barvir, Anna) (Entered: 12/28/2023)
12/28/2023	<u>57</u>	STIPULATION to Stay Case pending Appeal filed by Defendants 32nd District Agricultural Association, Rob Bonta, Gavin Newsom, Karen Ross. (Attachments: # <u>1</u> Proposed Order Proposed Order)(Kau, Nicole) (Entered: 12/28/2023)
01/02/2024	<u>58</u>	ORDER STAYING PROCEEDINGS PENDING APPEAL <u>57</u> by Judge John W. Holcomb. All proceedings before this Court are STAYED until further order of this Court. Any party may move at any time to modify or vacate the stay, for good cause shown. The parties are DIRECTED to file a Joint Report no later than April 5, 2024, and every 90 days thereafter, advising the Court regarding the status of the pending appeal of this Courts Preliminary Injunction Order [ECF No. <u>43</u>]. The scheduling conference currently set for January 12, 2024, is VACATED. The Clerk is DIRECTED to close this case administratively. IT IS SO ORDERED. (Made JS-6. Case Terminated.) (yl) (Entered: 01/03/2024)

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01/12/2024 13:25:45			
PACER Login:	njkau292026	Client Code:	
Description:	Docket Report	Search Criteria:	8:22-cv-01518-JWH-JDE End date: 1/12/2024
Billable Pages:	14	Cost:	1.40