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

11  
 12 CALIFORNIA RIFLE & PISTOL  
 ASSOCIATION, INCORPORATED;  
 13 THE SECOND AMENDMENT  
 FOUNDATION; GUN OWNERS OF  
 14 AMERICA, INC.; GUN OWNERS  
 FOUNDATION; GUN OWNERS OF  
 15 CALIFORNIA, INC.; ERICK  
 VELASQUEZ, an individual;  
 16 CHARLES MESSEL, an individual;  
 BRIAN WEIMER, an individual;  
 17 CLARENCE RIGALI, an individual;  
 KEITH REEVES, an individual;  
 18 CYNTHIA GABALDON, an individual;  
 and STEPHEN HOOVER, an  
 19 individual,

20 Plaintiffs,

21 v.

22 LOS ANGELES COUNTY SHERIFF'S  
 DEPARTMENT; SHERIFF ROBERT  
 23 LUNA, in his official capacity; LA  
 VERNE POLICE DEPARTMENT; LA  
 24 VERNE CHIEF OF POLICE  
 COLLEEN FLORES, in her official  
 25 capacity; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 26 the State of California; and DOES 1-10,

27 Defendants.  
 28

2:23-cv-10169

**DEFENDANT ROB BONTA'S  
 COMBINED RESPONSE TO  
 PLAINTIFFS' EVIDENTIARY  
 OBJECTIONS AND MOTIONS TO  
 STRIKE EXPERT  
 DECLARATIONS**

**[ECF Nos. 32-12, 32-13, 32-14]**

Date: April 10, 2024  
 Time: 1:30 p.m.  
 Courtroom: 5C  
 Judge: The Honorable Sherilyn  
 Peace Garnett

1 **INTRODUCTION**

2 Plaintiffs object to and move to strike portions of expert declarations filed in  
3 conjunction with Defendant Rob Bonta’s opposition to Plaintiffs’ motion for  
4 preliminary injunction. Plaintiffs’ motions should be denied in their entirety  
5 because the declarations provide proper expert testimony to aid the Court in  
6 deciding the motion.

7 Professors Brennan Rivas, Robert Spitzer, and Michael Vorenberg are  
8 historians who have long studied not only firearm regulation, but the historical  
9 context that surrounds it. Their expertise is plainly relevant to the text-and-history  
10 approach articulated in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S.  
11 1 (2022), and their experience provides solid foundation for the opinions expressed  
12 in the declarations. In any event, Plaintiffs’ objections are improper. In essence,  
13 Plaintiffs ask the Court to “gatekeep” itself<sup>1</sup> based on arguments that go to the  
14 merits of the case—all the while acknowledging that “the rules of evidence do not  
15 apply strictly to preliminary injunction proceedings.” ECF No. 32 (Reply) at 20 n.9  
16 (quoting *Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 n.5  
17 (9th Cir. 2013)).

18 The objections should be overruled and the motions to strike denied.

19 **ARGUMENT**

20 *Relevance.* Plaintiffs’ primary objection appears to be that certain testimony is  
21 not relevant to this case under *Bruen*.<sup>2</sup> *Bruen* announced a new standard for  
22 adjudicating Second Amendment claims “centered on constitutional text and  
23 history.” 597 U.S. at 22. The “history” portion focuses on whether the challenged  
24 regulation “is consistent with the Nation’s historical tradition of firearm

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26 <sup>1</sup> See *United States v. Flores*, 901 F.3d 1150, 1165 (9th Cir. 2018) (“When  
27 the district court sits as the finder of fact, there is less need for the gatekeeper to  
28 keep the gate when the gatekeeper is keeping the gate only for [it]self.” (quotation  
marks omitted)).

<sup>2</sup> See ECF No. 32-12 (Rivas Obj.), Obj. Nos. 1, 5, 7–9, 13; ECF No. 32-13  
(Spitzer Obj.), Obj. Nos. 2–8; ECF No. 32-14 (Vorenberg Obj.), Obj. Nos. 1, 4, 8.

1 regulation.” *Id.* at 24. *Bruen* set forth some “principles” that might inform the  
2 historical analysis, *id.* at 34–38, but “d[id] not [] provide an exhaustive survey of  
3 the features that render regulations relevantly similar under the Second  
4 Amendment,” *id.* at 29. As explained in Defendant’s opposition to the motion for  
5 preliminary injunction, the historical tradition of firearm regulation set forth in the  
6 expert declarations is relevantly similar to and supports the challenged laws here.  
7 ECF No. 25 at Parts I.B.2, I.C.3; *Elosu v. Middlefork Ranch Inc.*, 26 F.4th 1017,  
8 1024 (9th Cir. 2022) (“Expert opinion testimony is relevant if the knowledge  
9 underlying it has a valid connection to the pertinent inquiry.” (quotation marks  
10 omitted)).

11 Plaintiffs’ narrow view of the history that is relevant to *Bruen*’s text-and-  
12 history approach is wrong. But more importantly, Plaintiffs conflate “a dispute  
13 about expert testimony [with] a dispute about the applicable law.” *Rupp v. Bonta*,  
14 No. 8:17-cv-00746-JLS-JDE, 2023 WL 3693529, at \*3 (C.D. Cal. Apr. 26, 2023).  
15 The Court will inevitably determine how much weight to give the history presented  
16 by Defendant’s experts when it decides the preliminary injunction motion; there is  
17 no need to do so on a preemptive motion to strike. *Id.* (“The Court . . . will  
18 interpret and apply *Bruen* when it disposes of the parties’ [] motions for summary  
19 judgment. In that context, the Court will be able to determine whether the []  
20 experts’ challenged testimony is relevant and helpful and how much weight, if any,  
21 to give that testimony.”).

22 *Foundation.* Plaintiffs also object that certain parts of the expert declarations  
23 lack foundation because they do not cite or provide source material.<sup>3</sup> The objection  
24 is improper for at least three reasons.

25 First, each of the declarants amply explains the basis for their expertise.  
26 Although the experts often cite to other scholars’ work, their expertise alone

27 <sup>3</sup> See *Rivas Obj.*, Obj. Nos. 1–6, 8, 10–12; *Spitzer Obj.*, Obj. Nos. 1–2;  
28 *Vorenberg Obj.*, Obj. Nos. 2–3, 5–8.

1 provides sufficient foundation for their opinions. Each expert's complete  
 2 curriculum vitae was provided with their declaration.<sup>4</sup> Professor Rivas wrote a  
 3 Ph.D. dissertation on the development, evolution, and enforcement of gun and  
 4 weapon policy in Texas from the era of Mexican independence to the 1930s, and  
 5 she has since authored multiple publications and peer-reviewed articles on  
 6 historical weapon regulations in the United States.<sup>5</sup> Professor Spitzer has been  
 7 studying and writing about gun policy for nearly forty years; he has published six  
 8 books on the subject.<sup>6</sup> And Professor Vorenberg is a history professor who has  
 9 concentrated his research on the history of the Civil War and Reconstruction.<sup>7</sup>  
 10 Each has clearly set forth the bases for the opinions in their declarations.

11 Second, Plaintiffs are simply wrong in asserting that the expert declarations do  
 12 not cite to or provide source material. The declarations are rife with explanations of  
 13 the sources used, legal citations to analogous regulations, and scholarly citations to  
 14 the works of the expert and others.

15 Third, a number of the objections appear to refer to paragraphs where the  
 16 experts summarize their conclusions.<sup>8</sup> Plaintiffs misunderstand the purpose of these  
 17 paragraphs. To the extent such paragraphs do not cite other sources, that is because  
 18 they distill the numerous concepts and sources cited throughout the declarations  
 19 into an introductory or conclusory paragraph.

20 To the extent Plaintiffs contest the conclusions the experts draw from their  
 21 experience and the cited sources, they may explore as much during discovery on the  
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23 \_\_\_\_\_  
 24 <sup>4</sup> ECF No. 25-1 (Spitzer Decl.) Ex. A; ECF No. 25-2 (Vorenberg Decl.) Ex.  
 A; ECF No. 25-3 (Rivas Decl.) Ex. 1.

<sup>5</sup> Rivas Decl. ¶¶ 3–4.

<sup>6</sup> Spitzer Decl. ¶ 2.

25 <sup>7</sup> Vorenberg Decl. ¶¶ 2–3. This surely qualifies Professor Vorenberg to opine  
 26 that “the era [of the Fourteenth Amendment] is crucial for any consideration of the  
 history and tradition of firearms regulation” from a historian’s perspective. *Id.*  
 27 ¶ 15; *see also* Vorenberg Obj., Obj. No. 1.

28 <sup>8</sup> *See, e.g.*, Rivas Obj., Obj. Nos. 1, 11; Spitzer Obj., Obj. No. 1; Vorenberg  
 Obj., Obj. Nos. 6, 8.

1 merits. But there is no basis for concluding the opinions lack foundation at the  
2 preliminary injunction stage.

3 **CONCLUSION**

4 For the foregoing reasons, Plaintiffs' evidentiary objections to portions of the  
5 declarations of Professors Brennan Rivas, Robert Spitzer, and Michael Vorenberg  
6 should be overruled, and the motions to strike should be denied.

7  
8 Dated: March 5, 2024

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendant Rob Bonta, certifies that this brief contains 1,044 words, which complies with the word limit of L.R. 11-6.1.

Dated: March 5, 2024

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