

Case No. 25-693

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In the United States Court of Appeals  
for the Ninth Circuit

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ADAM RICHARDS, et al.,  
*Plaintiffs-Appellants,*

v.

GAVIN NEWSOM,  
in his official capacity as Governor of the State of California,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Central District of California  
Case No. 8:23-cv-02413 JVS (KESx)

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**APPELLANTS' EXCERPTS OF RECORD  
VOLUME 4 OF 4**

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May 27, 2025

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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
 JEFFREY VANDERMEULEN, an  
 individual; GERALD CLARK, an  
 individual; JESSE HARRIS, an  
 individual; ON TARGET INDOOR  
 SHOOTING RANGE, LLC;  
 GAALSWYK ENTERPRISES, INC.  
 (D/B/A/ SMOKIN' BARREL  
 FIREARMS); GUN OWNERS OF  
 CALIFORNIA, INC.; GUN OWNERS OF  
 AMERICA, INC.; GUN OWNERS  
 FOUNDATION; CALIFORNIA RIFLE &  
 PISTOL ASSOCIATION,  
 INCORPORATED; and SECOND  
 AMENDMENT FOUNDATION, a  
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY  
 & INJUNCTIVE RELIEF**

**(1) VIOLATION OF 42 U.S.C. § 1983  
 [FREE SPEECH];**

**(2) VIOLATION OF 42 U.S.C. § 1983  
 [Fourteenth Amendment Equal  
 Protection];**

**(3) VIOLATION OF 42 U.S.C. § 1983  
 [Second Amendment];**

**(4) VIOLATION OF 42 U.S.C. § 1983  
 [Fifth Amendment-Government  
 Taking];**

**(5) VIOLATION OF 42 U.S.C. § 1983  
 [Fourth Amendment-Privacy]**

**DEMAND FOR JURY TRIAL**

**NOTICE OF  
 UNCONSTITUTIONALITY OF  
 STATE STATUTE**

1 NOW COME Plaintiffs Adam Richards, Jeffrey Vandermeulen, Gerald Clark,  
2 Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc.  
3 (D/B/A/ Smokin' Barrel Firearms), Gun Owners of California, Inc., Gun Owners of  
4 America, Inc., Gun Owners Foundation, California Rifle & Pistol Association,  
5 Incorporated and Second Amendment Foundation (collectively "Plaintiffs"), and  
6 through their respective counsel, bring this action against Defendant Attorney General  
7 Robert Bonta and Governor Gavin Newsom, in their official capacities, and make the  
8 following allegations.

### 9 INTRODUCTION

10 1. Constitutionally enumerated rights are secured to all Americans. The First  
11 Amendment, Second Amendment, Fourth Amendment, Fifth Amendment, and  
12 Fourteenth Amendment outline some of the most foundational rights. None is to be  
13 treated as a second-class right.

14 2. In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. \_\_\_, 142 S. Ct.  
15 2111 (2022), the Supreme Court provided its third statement in recent memory  
16 affirming that the Second Amendment is not a second-class right and reiterating that  
17 firearm regulations must comport with the original meaning of the amendment's text,  
18 as understood in the Founding era.

19 3. Plaintiffs bring this suit to challenge the constitutionality of California Penal  
20 Code Section 26806 (also known as "SB 1384" or "Section 26806"), which violates  
21 the constitutional rights of Plaintiffs by imposing Orwellian tactics by the state to view  
22 and overhear the private and confidential communications of anyone who enters a gun  
23 shop, gun show property, or home of a home-based Federal Firearm Licensee ("FFL").

24 4. Not only does Section 26806 violate the individual rights of those patrons,  
25 customers, family members, friends, clients, and the FFLs themselves, but also it chills  
26 the desire to exercise those rights for fear of being video and audio recorded in  
27 communications and situations that are confidential in nature.

28 5. The First Amendment fully protects pure political, ideological, and

1 educational speech. Content and viewpoint-based restrictions on such speech are  
2 especially repugnant to the People's rights. Indeed, "above all else, the First  
3 Amendment means that the government has no power to restrict expression because of  
4 its message, its ideas, its subject matter, or its content." *Police Dep't v. Mosley*, 408  
5 U.S. 92, 95 (1972); *see also Ashcroft v. Am. Civil Libs. Union*, 535 U.S. 564, 573  
6 (2002) (the Constitution "demands that content-based restrictions on speech be  
7 presumed invalid... and that the Government bear the burden of showing their  
8 constitutionality.").

9       6. Section 26806 imposes content and speaker-based restrictions on speech and  
10 assembly, unlike any restrictions current imposed on other industries in the state. To  
11 the knowledge of Plaintiffs, there are no other industries or government licensees that  
12 are subject to the type of targeted restrictions and mandates found in Section 26806, as  
13 a condition of conducting a commercial transaction.

14       7. Section 26806 imposes a content- and speaker-based restriction on protected  
15 speech that is viewpoint discriminatory, that serves no legitimate government interest  
16 (directly or indirectly), and that is both facially overbroad and far more extensive than  
17 necessary to achieve any purported interest. It thus violates Plaintiffs' First  
18 Amendment rights.

19       8. The First Amendment also protects the right to peaceably assemble and  
20 associate. The right to assemble often merges with the right to free expression. For  
21 "[e]ffective advocacy of both public and private points of view, particularly  
22 controversial ones, is undeniably enhanced by group association." *NAACP v. Alabama*  
23 *ex rel. Patterson*, 357 U.S. 449, 460 (1959). "Governmental action which may have the  
24 effect of curtailing the freedom to associate is subject to the closest scrutiny." *Id.* at  
25 461-62 (emphasis added).

26       9. Section 26806 works to discourage persons who may not wish to abdicate  
27 their First Amendment, Second Amendment, Fourth Amendment, Fifth Amendment,  
28 and Fourteenth Amendment rights simply because they enter a FFL shop, gun show, or

1 private at-home FFL dealer space.

2 10. California has set up a scheme where the only way to purchase a firearm  
3 (except in very limited circumstances) is through an FFL. Under Section 26806, this  
4 would mean that customers, clients, patrons, and family members would be forced to  
5 give up their rights to privacy, speech, assembly, and anonymity in purchasing a  
6 firearm, other gun-related item, or otherwise going about their daily lives in a location  
7 where an FFL may do business. Section 26806, therefore, violates the right to  
8 peaceably assemble and associate without intrusion from the government.

9 11. Section 26806 also curtails speech and assembly because anything that is  
10 recorded under this section can be used against persons in legal actions (civil or  
11 criminal), divorce or child custody battles, business litigation, and the like. The  
12 recordings can be subpoenaed for any of these uses, which places the FFL and anyone  
13 who enters their space in danger of future prosecution.

14 12. For many of the same reasons that Section 26806 violates Plaintiffs' First  
15 Amendment rights, it also violates their right to equal protection under the law.

16 *Section 26806 also violates Plaintiffs rights under the Second Amendment.*

17 13. The Second Amendment provides that "[a] well regulated Militia, being  
18 necessary to the security of a free State, the right of the people to keep and bear Arms,  
19 shall not be infringed."

20 14. Indeed, "[t]he very enumeration of the right takes out of the hands of  
21 government – even the Third Branch of Government – the power to decide on a case-  
22 by-case basis whether the right is really worth insisting upon. A constitutional  
23 guarantee subject to future judges' assessments of its usefulness is no constitutional  
24 guarantee at all." *Heller*, 554 U.S. at 634.

25 15. Although it seems to go without saying, inherent in the Second Amendment's  
26 protection of the right to "keep and bear" firearms is the right to acquire  
27 them. Numerous courts across the country have observed that the Second Amendment  
28 protects the manufacture, purchase, and sale of firearms, ammunition, and related

1 items.

2 16. Section 26806 infringes on the Second Amendment rights of Plaintiffs, and a  
3 prime example of this is FFLs at a gun show<sup>1</sup>. Gun shows are held in various venues  
4 that are not owned by the FFLs. FFLs are vendors in those shows. If the properties that  
5 are rented by the promoters of the gun shows do not agree to put up permanent  
6 cameras to record 24 hours per day and store those records according to the law, there  
7 is a big possibility that gun shows will no longer be allowed to occur in these  
8 facilities.<sup>2</sup>

9 17. On its face, it is clear that Section 26806's purpose and intention are to make  
10 a "symbolic" gesture and a "value statement" about the otherwise lawful sale of  
11 firearms and related products and of the proliferation of the "gun culture" in California  
12 and elsewhere. We know this because there is no evidence that having expensive  
13 cameras and audio recordings in a retail location acts as a deterrent to crime. There is  
14 even less evidence of this in a home-based business, that is generally only open to pre-  
15 screened customers who have already ordered and paid for a firearm. The government  
16 making this type of value statement about one segment of the population that they find  
17 unfavorable in ideology is a violation of Equal Protection. California's targeting of  
18 gun owners on the basis of their exercise of constitutional rights, makes the violation  
19 even more nefarious.

20 18. Section 26806 mandates a government taking without just compensation by  
21 commandeering space within the FFL businesses or homes for the use of government  
22 tracking, and by forcing FFLs to purchase equipment that is unwanted to carry out the  
23 government's bidding.

24  
25 <sup>1</sup> Since there is no special exemption for FFLs doing business at a gun show,  
26 Plaintiffs assume that Section 26806 also applies to all transactions occurring there as  
27 well. An impossibility, since the surveillance devices required by Section 26806 must  
be "permanently mounted in a fixed location."

28 <sup>2</sup> Federal Judges have already ruled numerous times that gun shows, the speech and  
activities that occur there, are protected constitutional activities. *See, e.g., B&L Prods.,  
Inc. v. Newsom*, 2023 WL 7132054, at \*17 (C.D. Cal. Oct. 30, 2023).

1 19. Finally, Section 26806 violates the privacy of individuals in gun shops, gun  
2 shows, and in the private homes of FFLs who conduct business in their home.

3 20. Because Section 26806 violates rights protected by the First Amendment,  
4 Fourteenth Amendment, Second Amendment, Fifth Amendment, and Fourth  
5 Amendment and because it violates California's dual consent to be recorded laws,  
6 Plaintiffs seek equitable relief in declaring the law invalid and enjoining its  
7 enforcement by Defendants, their employees, agents, successors in office, and all local  
8 law and state law enforcement, District Attorneys, County Counsel, and City Attorneys  
9 holding office in the state of California, as well as their successors in office.

#### 10 **JURISDICTION AND VENUE**

11 21. The Court has original jurisdiction of this civil action under 28 U.S.C. §1331  
12 because the action arises under the Constitution and laws of the United States, thus  
13 raising federal questions. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3)  
14 and 42 U.S.C. § 1983 since this action seeks to redress the deprivation, under color of  
15 the laws, statutes, ordinances, regulations, customs and usages of the State of  
16 California and political subdivisions thereof, of rights, privileges or immunities  
17 secured by the United States Constitution and by Acts of Congress. Plaintiffs' claims  
18 for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202,  
19 respectively, and their claim for attorneys' fees is authorized by 42 U.S.C. § 1988.

20 22. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a  
21 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in  
22 this district. Further, the state of California maintains an office for service of process  
23 on the Attorney General in Los Angeles County at 300 South Spring Street, Los  
24 Angeles, California 90013-1230.

#### 25 **PARTIES**

##### 26 **[Plaintiffs]**

27 23. Plaintiff ADAM RICHARDS is a resident of El Dorado County, CA. Mr.  
28 Richards is a home-based FFL and an attorney that keeps a home office at the same



1 location where he conducts his FFL business. He was forced to become a home-based  
2 FFL when the City of Sacramento (where his office is located) made the permitting  
3 process so expensive that he could not afford to have the FFL located in the same  
4 space as his law firm. Rather than waste thousands of dollars on permitting, Mr.  
5 Richards chose to operate his FFL out of a separate structure at his residence. He has  
6 been an FFL since approximately 2021. The separate structure where the FFL business  
7 is conducted is also his home office where he works approximately 50% of his time on  
8 his legal practice. This work includes telephone calls with clients, opposing counsel,  
9 law enforcement and others. His family also frequently visits him in the mornings and  
10 evening in this office/FFL space and having his young children recorded in potentially  
11 a partial state of dress before bed and recording private conversations with his children  
12 or spouse are greatly concerning to Mr. Richards. Should Section 26806 be allowed to  
13 continue, Mr. Richards will have to either stop being an FFL or risk exposing his  
14 clients and family to privacy violations because of the constant recording. Plaintiff  
15 Richards would continue his FFL business and his legal business out of his home were  
16 it not for the intrusiveness of SB 1384 which will force him to remove the FFL  
17 business from his home.

18 24. Plaintiff JEFFREY VANDERMEULEN is a resident of Amador County, CA.  
19 Mr. Vandermeulen is a retired police officer in good standing and an FFL. Mr.  
20 Vandermeulen operates a retail sales firearm business and online firearm business,  
21 named MountainHouse Firearms, where he sells firearms to customers both inside and  
22 outside of California. MountainHouse Firearms is a locally owned business  
23 specializing in the sale of new and used consignment handguns, rifles, shotguns and  
24 accessories. Mr. Vandermeulen also operates a small aerial ash dispersal business out  
25 of his home. Through the operation of his multiple enterprises, Mr. Vandermeulen  
26 often has private conversations either with customers asking questions about firearm  
27 ownership, firearm collections from their families, or conversations with those who are  
28 seeking his services to have a loved one's ashes scattered. If Mr. Vandermeulen is



1 forced to record all these private conversations in his home office, his customers would  
2 find this offensive, and he may lose business because of the requirement. He would be  
3 forced to place a sign where these customers could see it stating that they are being  
4 recorded, and he would have the expense of purchasing a commercial security system  
5 for his small at-home business. Mr. Vandermeulen would also have additional liability  
6 for recording people who have not given their consent to be recorded. Mr.  
7 Vandermeulen would also be forced to focus a recording device directly at his  
8 computer screen to capture online sales with his out-of-California customers, thus  
9 sharing information directly and placing those customers in a situation where the state  
10 of California is now monitoring their actions outside of the state as well and to which  
11 they did not consent. The cost of implementing SB 1384 along with the added liability  
12 and customer disapproval may force Plaintiff Vandermeulen to have to give up his  
13 home FFL business.

14 25. Plaintiff GERALD CLARK is a resident of Orange County, California, and he  
15 is an NRA-certified and CRPA-certified instructor. Mr. Clark is the Training and  
16 Shooting Sports Director for CRPA. Mr. Clark regularly attends gun shows and gun  
17 ranges and frequents gun shops. During Mr. Clark's visits to gun shows, ranges, and  
18 gun shops where he purchases lawful firearms and ammunition, has discussions with  
19 the FFLs regarding the purchases, his personal information, and discusses politics  
20 surrounding the requirements of those purchases. Mr. Clark updates the FFLs on  
21 litigation and legislative issues the CRPA is championing. He has political  
22 conversations with the FFLS that are private discussions about the current state of gun  
23 control in California and what they can do to help protect the rights of the people. Mr.  
24 Clark has taught gun safety and training courses for 12 years and teaches those courses  
25 at gun show, ranges, and gun shops. During the training courses, Mr. Clark talks to  
26 others about their rights, the importance of membership in the CRPA, and the Second  
27 Amendment and other constitutional rights. SB 1384 burdens Mr. Clark's right to  
28 engage in otherwise lawful speech in places (FFL counters, closed classes, gun shows,

1 etc.) where he is discussing sensitive issues where he may now be constantly  
2 monitored. SB 1384 also prevents Plaintiff Clark from freely communicating with  
3 FFLs as to ongoing legal and legislative initiatives for fear of being recorded by the  
4 government. The use of recording devices with 24-hour monitoring will chill his ability  
5 to speak freely for fear of retribution by the government. But for Defendants' adoption  
6 and enforcement of SB 1384, Plaintiff Clark would continue attending, informing,  
7 teaching, and participating in gun shows and gun shop events.

8 26. Plaintiff JESSE HARRIS lives in Siskiyou County, CA and is an FFL that  
9 operates out of his uncle's tire and tackle shop where he leases a small space to  
10 conduct firearm transfers. Mr. Harris is also a firearms trainer and a field representative  
11 for the CRPA. The requirement of SB 1384 would impact Mr. Harris by driving away  
12 customers who do not wish to have their exchanges with Mr. Harris recorded. Mr.  
13 Harris has confidential conversations with his customers and discusses many issues  
14 affecting gun owners in California. Mr. Harris also works for CRPA as a Field  
15 Representative in Northern California and Mr. Harris is running for office in 2024. Mr.  
16 Harris feels that his speech about gun control, his campaign, and the current politics of  
17 California may be chilled because he will constantly have to wonder if the DOJ is  
18 listening in. Mr. Harris also knows that the owner of the shop has confidential  
19 conversations with his attorney in the shop and has non-gun customers that frequent  
20 the premises. All of the attorney conversations and the tire and tackle customers who  
21 are not buying firearms would be subject to recording 24 hours per day just because  
22 Mr. Harris has a small section of the store that he leases. The requirements under SB  
23 1384 are cost prohibitive to Mr. Harris and since it is a leased space, he does not have  
24 the ability to transform his uncle's store so that he can meet the requirements in SB  
25 1384. If SB 1384 is implemented, it would ruin Mr. Harris' small business (both  
26 financially and because customers will not want to be recorded) and would cause him  
27 to have to stop being an FFL.  
28

1       27. Plaintiff ON TARGET INDOOR RANGE (“On Target”) is a for-profit  
2 brick-and-mortar gun shop and indoor shooting range located in Orange, County,  
3 California. On Target specializes in firearms sales (in-store and e-sales), firearms  
4 transfers, ammunition sales, and training classes. As an FFL, On Target has  
5 confidential conversations with customers regarding their firearm and safety needs,  
6 about what type of training they need for their individualized situation, state and  
7 federal laws and how they can be a part of changing those laws by joining groups like  
8 CRPA. On Target offers many training opportunities for new gun owners and is  
9 specially geared towards women and their unique shooting needs. Twice per month,  
10 On Target hosts interesting and informative discussion sessions with gun owners which  
11 would be completely recorded under SB 1384. The recording of these sessions would  
12 make gun owners less open to asking questions and less likely to attend for fear of the  
13 government watching and listening. SB 1384 would also open up Plaintiff On Target to  
14 additional liability for recording people who enter the premises without giving their  
15 consent to the recording. Plaintiff On Target would also be harmed by being forced to  
16 purchase costly commercial recording equipment to meet the requirements and to store  
17 the recordings for one full year.

18       28. Plaintiff GAALSWYK ENTERPRISES, INC (DBA “SMOKIN’ BARREL  
19 FIREARMS”) is a brick-and-mortar FFL shop in Tulare County, California. Smokin’  
20 Barrel Firearms operates a 1300 square foot location which would require 5 cameras  
21 plus the hardware to record 24 hours per day (even when they are not open and  
22 transacting). Smokin’ Barrel Firearms is a family-based business and the estimated  
23 \$5,000 to \$12,000 in order to comply with SB 1384 would be very challenging for  
24 them. Smokin’ Barrel Firearms handles the sale of firearms, transfers of firearms,  
25 layaways, consignment and e-transfers. Smokin’ Barrel Firearms has confidential  
26 conversations with customers regarding their self-defense needs as well as collecting  
27 confidential and personal information in the transactions they conduct. Smokin’ Barrel  
28 Firearms would also be forced to place a recording device directly at his computer

1 screen to capture online sales with his out-of-California customers, thus sharing  
2 information directly and placing those customers in a situation where the state of  
3 California is now monitoring their actions outside of the state as well and to which they  
4 did not consent. This would also create a “gun registry” that the DOJ could access any  
5 time they wanted to do so. They and their customers and students would be harmed by  
6 being forced to produce those recordings to DOJ on demand as well as harmed by the  
7 fact that those recordings could be open to subpoena in civil and criminal matters.  
8 Plaintiff Smokin’ Barrel Firearms would also have additional liability for recording  
9 persons who have not given their consent to be recorded. SB 1384 is too large of a  
10 burden for Plaintiff Smokin’ Barrel Firearms and its customers.

11 29. Plaintiff GUN OWNERS OF CALIFORNIA, INC. (“GOC”) is a nonprofit  
12 organization incorporated under the laws of the state of California, with headquarters  
13 in El Dorado Hills, California. GOC is dedicated to the restoration of the Second  
14 Amendment in California. To that end, GOC and its members frequent FFL shops and  
15 gun shows and discuss issues pertaining to legal and political issues with the FFLs to  
16 make sure they are aware of compliance issues and upcoming legislative changes.  
17 These conversations are not meant for the general public or the prying ear of the  
18 government. GOC members often discuss these issues along with protection measures  
19 for their homes, families, and businesses with FFLs and those conversations are meant  
20 to be confidential and not public. GOC makes its publications and other materials  
21 available for prospective members and the general public in gun stores across  
22 California. Through this lawsuit, GOC represents not only its own interests as an entity  
23 that may discuss topics meant to be between GOC and gun dealers and their customers,  
24 but also the interests of its members as those who enter and transact business and  
25 conversations in a store or gun show where recording of those confidential  
26 conversations would take place. GOC and its members are supporters of the right to  
27 keep and bear arms for lawful purposes.  
28

1       30. Plaintiff GUN OWNERS OF AMERICA (“GOA”) is a California non-  
2 stock corporation and a not-for-profit membership organization with its principal place  
3 of business in Springfield, Virginia, and is organized and operated as a non-profit  
4 membership organization that is exempt from federal income taxes under Section  
5 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1976 to preserve  
6 and defend the Second Amendment rights of gun owners. GOA has more than 2  
7 million members and supporters across the country, including residents within this  
8 judicial district and throughout the State of California. GOA members and supporters  
9 who patronize gun shops and gun shows are damaged by SB 1384 because of the  
10 numerous infringements on their constitutional rights. GOA makes its publications  
11 and educational materials available for prospective members and the general public in  
12 gun stores across California. GOA members and the general public seek out these  
13 materials and engage with gun stores and GOA about the information that is provided.  
14 GOA thus brings this challenge not only on behalf of itself as an organization (as  
15 Section 26806 harms GOA’s ability to spread its message, reach new members, and  
16 raise funds to perform its critical mission), but also on behalf of its members and  
17 supporters including gun stores, home-based dealers, and customers of the same, all of  
18 whom are directly harmed by Section 26806’s provisions.

19       31. Plaintiff GUN OWNERS FOUNDATION (“GOF”) is a Virginia non-stock  
20 corporation with its principal place of business in Springfield, Virginia. GOF was  
21 formed in 1983 and is organized and operated as a nonprofit legal defense and  
22 educational foundation that is exempt from federal income taxes under Section  
23 501(c)(3) of the U.S. Internal Revenue Code. GOF is supported by gun owners across  
24 the country and within this district. GOF’s supporters include those that shop at  
25 California’s gun stores.

26       32. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION,  
27 INCORPORATED (“CRPA”) is a nonprofit membership organization incorporated  
28 under the laws of California, with headquarters in Fullerton, California. Among its

1 other activities, CRPA works to preserve and expand constitutional and statutory rights  
2 of gun ownership, including the right to self-defense and the right to keep and bear  
3 arms. CRPA accomplishes this through its educational offerings, publications, member  
4 engagement events, and legislative advocacy and initiatives. CRPA has over 500  
5 business affiliates that they work with across the state, many of which are Federal  
6 Firearms Licensees. CRPA enters these Business Affiliate premises to conduct  
7 business, update the businesses on news and information, and to discuss important  
8 political and legal challenges in the state. CRPA also has trainers in some of these  
9 locations that host classes for members and non-member gun owners. CRPA trainers,  
10 members, and class participants would be open to privacy violations of having their  
11 discussions recorded that have nothing to do with a gun purchase just because they are  
12 having them in a store where firearms transactions occur. What's more, CRPA has tens  
13 of thousands of members and supporters, many of whom (including Plaintiffs Gerald  
14 Clark, Jesse Harris, and Adam Richards) frequent gun stores and gun shows to engage  
15 in lawful purchases, expressive activities with like-minded people, including  
16 discussions related to firearms, ammunition, accessories, the shooting sports, politics,  
17 and the Second Amendment. Recording conversations that are private and confidential  
18 and deal with the protection of self and family may be a deterrent to some walking into  
19 a store to conduct these activities. Through this lawsuit, CRPA represents not only its  
20 own interests as an entity that may discuss other topics meant to be between CRPA and  
21 its Business Affiliate only but also the interests of its members as those who enter and  
22 transact business and conversations in a store or gun show where recording of those  
23 confidential conversations would take place. CRPA and its members are supporters of  
24 the right to keep and bear arms for lawful purposes.

25 33. Plaintiff SECOND AMENDMENT FOUNDATION, INC. ("SAF") is a  
26 non-profit membership organization. It is incorporated under the laws of the state of  
27 Washington and was founded in 1974. SAF has over 720,000 members and supporters  
28 nationwide, including thousands of members in California. SAF is dedicated to

1 promoting a better understanding about our constitutional heritage to privately own and  
2 possess firearms through educational and legal action programs designed to better  
3 inform the public about gun control issues. SAF has been a pioneer and an innovator in  
4 the defense of the right to keep and bear arms, through its publications and public  
5 education programs like the Gun Rights Policy Conference. SAF also expends  
6 significant sums of money sponsoring public interest litigation to defend its own  
7 interests and the interests of its members and supporters. It is critical to the success of  
8 SAF that its promotional material, publications, and messages about the “right to keep  
9 and bear arms” reach demographic groups that are saturated with gun owners, gun  
10 buyers, and people of the “gun culture.” It is also crucial that SAF be able to  
11 communicate with gun owners in gun stores or at gun shows about political issues,  
12 legal cases, firearms and ammunition purchases, etc., without the fear of having every  
13 word collected by the government. SAF brings this action on behalf of itself and its  
14 members and supporters in California, including Federal Firearms Licensees (those  
15 with a storefront and those who operate from their homes) and customers of the same.

16 **[Defendants]**

17 34. Defendant GAVIN NEWSOM is the Governor of the State of California. As  
18 Governor, he is vested with “the supreme executive power” of the state and “shall see  
19 that the law is faithfully executed.” Cal. Const. art. 5, §1. The injunctive and  
20 declaratory relief portions of this suit are brought against Defendant Newsom in his  
21 official capacity.

22 35. Defendant ROBERT BONTA is the Attorney General of the State of  
23 California. He is the “chief law officer” of the state and has the duty to “see that the  
24 laws of the State are uniformly and adequately enforced.” Cal. Const. art. 5, § 1.

25 36. Additionally, Defendant Bonta has “direct supervision over every district  
26 attorney” within the State. *Id.* If, at any point a district attorney of the State fails to  
27 enforce adequately “any law of the State,” Defendant Bonta must “prosecute any  
28 violations of the law.” *Id.* Finally, Defendant Bonta, as Attorney General of the State



1 of California, “shall assist any district attorney in the discharge” of duties when  
 2 “required by the public interest or directed by the Governor. . . .” *Id.*

3 37. The injunctive and declaratory relief portions of this suit are brought  
 4 against Defendant Bonta in his official capacity.

5 38. The true names and capacities of Defendants named as DOES 1 through 10,  
 6 inclusive, are individual, corporate, associate or otherwise, and are unknown to  
 7 Plaintiffs. They are, however, believed to be responsible in some way for Plaintiffs’  
 8 loss and damages. Each Doe Defendant is, and at all times mentioned here was, a  
 9 partner, agent, principal, co-conspirator, or are otherwise vicariously or directly  
 10 responsible for the acts or omissions of the other defendants or themselves.  
 11 They are each sued individually and are joined as party defendants. Plaintiffs thus sue  
 12 each Doe Defendant under rules 15 and 21 of the Federal Rules of Civil Procedure.  
 13 Plaintiffs are informed and believed that the Doe Defendants are all California  
 14 residents. Plaintiffs will amend this complaint to show such true names and capacities  
 15 of Doe Defendants when they have been ascertained.

## 16 **FACTUAL ALLEGATIONS**

### 17 **[Regulations of Brick-and-Mortar Gun Shops in California]**

18 39. California law requires that essentially all transfers of firearms be done  
 19 through a Federal Firearms Licensees retailer (“FFL”), including transfers between  
 20 private parties, gun show sales, gifts, loans, and pawned or consigned weapon  
 21 redemptions.<sup>3</sup> Prospective firearm purchasers must submit an application to the FFL,  
 22 who provides purchaser information to CADOJ through electronic transfer. CADOJ  
 23

24 <sup>3</sup> There were more than three times as many handgun purchases in California in  
 25 2020 as compared to 2010 (666,168 vs. 217,836); handgun purchasing was down in  
 26 2021 (519,806) but still up by 140% from 2010. The Federal Bureau of Investigation’s  
 27 (FBI) National Instant Criminal Background Check System (NICS), a commonly used  
 28 proxy for firearm sales, shows a similar national rise in purchasing over the last decade  
 and spike in purchasing in 2020. In 2010, there were close to 15 million NICS checks;  
 there were over 28 million in 2019 and almost 40 million in 2020. NICS Firearm  
 Background Checks. [https://www.fbi.gov/file-repository/nics\\_firearm\\_checks\\_-\\_month\\_year.pdf](https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf).

1 then checks state and federal records to determine whether the applicant is legally  
2 disqualified from purchasing or possessing firearms under state or federal law. The  
3 DROS records include the prospective purchaser information (name, date of birth, sex,  
4 race/ethnicity, address); date and time of transaction; the type of transaction (e.g., sale,  
5 denial, transfer, pawn); and identifiers for the seller.

6 40. Federal law requires all persons who intend to engage in a business  
7 involving the sale, manufacture, or importation of firearms to apply for and obtain a  
8 federal firearms license (“FFL”). 18 U.S.C. § 922(a). To obtain an FFL, a person must  
9 be at least 21 years of age, not be prohibited from owning or possessing firearms, not  
10 have willfully violated the federal Gun Control Act (“GCA”) or its regulations, not  
11 willfully failed to disclose material information or make any false statements on their  
12 application and have a premises for conducting business. 18 U.S.C. § 923(d)(1); 27  
13 C.F.R. § 478.47(b).

14 41. FFL applicants must also certify their business will not be prohibited by  
15 state or local law where the premises are located, will comply with all state and local  
16 laws applicable to the conduct of the business, that no business will be conducted until  
17 all applicable state and local laws have been met, that they have notified their local law  
18 enforcement of their intent to apply for a license, and if seeking to operate as a dealer  
19 that secure gun storage or safety devices will be available at any place where firearms  
20 are sold. *Id.*

21 42. In California, no person may sell, lease, or transfer firearms unless they  
22 obtain a state-issued license. Cal. Pen. Code § 26500. To obtain such a license, a  
23 person must have a valid FFL, have a regulatory or business license required by local  
24 government, have a valid seller’s permit issued by the State Board of Equalization,  
25 have a certificate of eligibility issued by the California Department of Justice (“CA  
26 DOJ”), have any required local business license that states on its face “Valid for Retail  
27 Sales of Firearms” and is endorsed by the signature of the issuing authority, and be  
28 listed in DOJ’s centralized list of firearm dealers in the state. Cal. Pen. Code § 26700.

1       43. California Cities and Counties are generally free to impose additional  
2 licensing requirements beyond that required under state and federal law. See Cal. Pen.  
3 Code § 26705(a) (stating “duly constituted licensing authority of a city [or] county . . .  
4 shall accept applications for, and may grant licenses . . .”). For example, the City of  
5 San Jose prohibits persons from selling, leasing, or otherwise transferring firearms  
6 without first having obtained a Firearm Business License from the Chief of Police. San  
7 Jose Muni. Code § 6.90.090.

8       44. Any individual applying for a license with the City of San Jose must also  
9 complete a personal history questionnaire, be fingerprinted at a location approved by  
10 the San Jose Police Department, be photographed and interviewed, sign an  
11 authorization for release of records and information that the Chief of Police considers  
12 necessary for a complete investigation, and be at least 21 years of age. San Jose Muni.  
13 Code § 6.90.210(B).

14       45. Federal law requires all firearm acquisition and disposition (“A&D”) records  
15 to be recorded in a logbook, commonly referred to as a “bound book,” which is  
16 an orderly arrangement of loose-leaf pages maintained at the business premises in a  
17 format prescribed in federal regulations and numbered consecutively. 18 U.S.C. §  
18 923(g)(1)(A); 27 C.F.R. §§ 478.121, 478.125.

19       46. Licensed dealers are required to record the acquisitions of a firearm in their  
20 bound book no later than the close of next business day, and no later than 7 days for  
21 dispositions. 18 U.S.C. § 923(g)(1)(A); 27 C.F.R. § 478.125.

22       47. The sale or transfer of any firearm by a licensed dealer to an individual  
23 requires both the FFL and individual to jointly complete ATF Form 4473. 27 C.F.C. §  
24 478.124. The information contained in ATF Form 4473 is used by the FFL to ensure  
25 the individual’s eligibility and to process the required federal background check  
26 through the National Instant Criminal Background Check System (“NICS”). 18 U.S.C.  
27 922(t); 27 C.F.R. § 478.102. Generally, completed 4473 forms are retained by the FFL  
28

1 at its business premises indefinitely while the business remains in operation. 18 U.S.C.  
2 § 923(g)(1)(A); 27 C.F.R. § 478.129(b).

3 48. California is one of 13 full point of contact (“POC”) states, meaning CA  
4 DOJ is designated to conduct firearm background checks for FFLs in California in lieu  
5 of the FFL transmitting the information contained in ATF Form 4473 to NICS directly.  
6 To process the required background check, California FFLs are instead required to  
7 submit a Dealer Record of Sale (“DROS”) through a web-based application known as  
8 the DROS Entry System (“DES”). Regardless, California FFLs must still complete and  
9 maintain ATF Form 4473 for all firearm transactions. California FFLs are then  
10 required to print and retain a copy of the DROS paperwork in consecutive order with  
11 the required ATF Form 4473. Cal. Pen. Code § 28215.

12 49. Local jurisdictions in California may also impose additional recordkeeping  
13 requirements.

14 50. To ensure compliance with all licensing and recordkeeping requirements,  
15 federal law requires FFLs to allow ATF officers to enter during business hours,  
16 including places of storage, for purposes of inspecting or examining the records,  
17 documents, ammunition, and firearms. 27 C.F.R. § 478.23(b). ATF officers may  
18 conduct such inspections for insuring compliance with the recordkeeping requirements  
19 every 12 months, during a reasonable inquiry, during a criminal investigation of a  
20 person or persons other than the FFL, or when such inspections may be required for  
21 determining the disposition of one or more firearms during a bona fide criminal  
22 investigation. *Id.*

23 51. Similarly, California law allows CA DOJ to conduct inspections of FFLs at  
24 least once every three years to ensure compliance with California firearm laws. Cal.  
25 Pen. Code §§ 26720, 28480. During such inspections, the FFLs bound book, DROS  
26 verification numbers, and any other records requested by CA DOJ must be made  
27 available for review. Cal. Pen. Code § 26480(c). CA DOJ is required to audit a  
28 sampling of at least 25 percent but no more than 50 percent of each record type. Cal.

1 Pen. Code § 26720(a)(2). FFLs are also required to pay an annual fee to cover the cost  
2 of this inspection (\$115). Cal. Pen. Code § 26720(b).

3 52. Local jurisdictions are free to adopt their own inspection program to ensure  
4 compliance with firearms laws. As noted above, the City of San Jose requires imposes  
5 its own local ordinances regarding FFL inspections. San Jose Muni. Code § 6.90.340.  
6 In addition, San Jose requires FFLs to conduct a physical inventory check and report  
7 its findings to the Chief of Police in the form of a signed affidavit under penalty of  
8 perjury. San Jose Muni. Code § 6.90.350.

9 53. FFL dealers who do not comply with these requirements are in violation  
10 and may be fined or, worse, not allowed to continue conducting business (or even  
11 criminally charged). Most FFLs take these requirements very seriously, as this is their  
12 livelihood.

#### 13 **[Regulations of Gun Show Events in California]**

14 54. FFLs who operate at a gun show are also subject to Section 26806's  
15 recording requirements because, under their licenses, the only two places they are  
16 allowed to do business are at the address listed on their licenses or at a gun show. The  
17 Gun show is a "de facto" place of business. 27 CFR Part 478.100. This means that  
18 every facility that hosts a gun show will have to "permanently affix" recording  
19 equipment and record 24 hours per day. Cal. Pen. Code § 26806(a)(2)-(4). Many  
20 religious, political, youth groups or private groups such as weddings and class  
21 reunions, use the same facilities that gun shows. Given that there are no exceptions to  
22 the requirements in Section 26806, it would stand to reason that all of those  
23 unsuspecting, non-consenting people would be recorded on the permanently placed/24-  
24 hour recording devices that would have to become an integral part of those facilities  
25 that host gun shows. If the venue refuses to install the expensive equipment, it will lead  
26 to yet another swipe by Senator Min and Governor Newson at venues hosting gun  
27 shows, in an effort to end those shows. *See B&L Prods., Inc.*, 2023 WL 7132054.  
28

1       55.       The state of California has, hands down, the most rigorous regulatory  
2 regime for commerce in firearms and ammunition in the United States. That regulatory  
3 regime applies to the operation of gun show events throughout California. The laws  
4 related to the acquisition and sale of firearms is arguably stricter at a gun show than at  
5 brick-and-mortar stores or internet sales.

6       56.       Only state-approved, licensed gun show “producers” may operate gun  
7 shows in California.

8       57.       All gun show producers must have an individual (the “promoter”) who  
9 holds a valid “Certificate of Eligibility” issued by the California Department of Justice.

10       58.       Gun show producers must, among other things:

- 11           a. Certify that they are familiar with all California laws regarding gun shows,  
12           Cal. Penal Code § 27200;  
13           b. Possess a minimum of \$1,000,000 liability insurance, *id.*;  
14           c. Provide an annual list of shows or events to be held to the California  
15           Department of Justice, *id.*; and  
16           d. Notify the California Department of Justice no later than 30 days prior to  
17           the gun show or event of any changes to the above, *id.*  
18           e. Make available to law enforcement a complete and accurate list of all  
19           vendors that will participate in the show to sell, lease, or transfer firearms.

20 Cal. Penal Code § 27205.

21       59.       Gun show promoters must submit an annual event and security plan and  
22 schedule to the California Department of Justice and any local law enforcement  
23 agency. The plan must include:

- 24           a. Type of show or event;  
25           b. Estimated number of vendors offering for sale or display firearms;  
26           c. Estimated number of attendees;  
27           d. Number of entrances and exits at the event;  
28           e. Location, dates, and times of the event

- 1 f. Contact person and telephone number for both promoter and facility;
- 2 g. Number of sworn peace officers employed by the producer or facility who
- 3 will be present at the event;
- 4 h. Number of non-sworn security personnel employed by the producer or the
- 5 facility who will be present at the event; and
- 6 i. Promoters must inform all prospective vendors of all California laws
- 7 regarding gun shows.

8 Cal. Penal Code §§ 27210, 27215.

9 60. Promoters must also provide a list of all prospective vendors and designated  
10 firearm transfer agents who are licensed firearm dealers to the California Department  
11 of Justice no later than seven days prior to the event for the purpose of determining  
12 whether the vendor possess a valid license and are thus eligible to participate in the  
13 event. Cal. Penal Code § 27220.

14 61. If a vendor is not approved by the California Department of Justice or fails  
15 to comply with all applicable California laws, they cannot participate. Cal. Penal Code  
16 § 27220.

17 62. Except in very limited exceptions applicable only to law enforcement,  
18 actual firearm transfers are prohibited from taking place at any gun show in California.  
19 *See* Cal. Penal Code § 26805.

20 63. The firearm sale can be started through an on-site licensed “transfer  
21 dealer,” but it cannot be completed on-site. Instead, purchasers must pick up their  
22 purchase at a licensed firearm retailer at a different licensed location--after a 10-day  
23 waiting period and background check. There is no exception for transfers to occur at  
24 gun shows operated in accordance with California Law.

25 64. Just because someone starts the process to purchase a firearm, does not  
26 mean that they will pass the background check and be able to actually take possession  
27 of a firearm. Section 26806 will collect information on everyone regardless of whether  
28 they actually complete the transaction and take possession of a firearm or not.



1       65.       The Gun Show Act of 2000, California Penal Code sections 27200-27245,  
2 places even more restrictions on the operation of a gun show in California by requiring  
3 that:

- 4           a. Vendors not display, possess, or offer for sale any firearms, knives, or  
5           weapons for which possession or sale is prohibited;  
6           b. Vendors acknowledge that they are responsible for knowing and complying  
7           with all applicable federal, state, and local laws dealing with the possession  
8           and transfer of firearms;  
9           c. Vendors will not engage in activities that incite or encourage hate crimes;  
10          d. Vendors will process all transfers of firearms through licensed firearms  
11          dealers as required by state law;  
12          e. Vendors will verify that all firearms in their possession will be unloaded  
13          and that the firearms will be secured in a manner that prevents them from  
14          being operated except for brief periods, when the mechanical condition of  
15          the firearm is being demonstrated to prospective buyer;  
16          f. Vendors provide all required information under Penal Code §27320;  
17          g. Vendors will not display or possess black powder or offer it for sale;  
18          h. Ammunition only be displayed in closed original factory boxes or other  
19          closed containers, with the only exception for showing the ammunition to a  
20          prospective buyer. .On July 1, 2019, additional state-law restrictions on the  
21          sale of ammunition will become effective and gun shows must comply;  
22          i. No member of the public under 18 years old may enter a gun show unless  
23          accompanied by a parent or legal guardian;  
24          j. No person other than security personnel or law enforcement possess both a  
25          firearm and ammunition for that firearm at the same time, with the  
26          exception of vendors who are selling both.

27       66.       Vendors at gun shows, like Plaintiffs Adam Richards and Jesse Harris are  
28 some of the same licensed vendors that have brick-and-mortar stores in the community

1 or operate legally over the Internet and are registered with the state as lawful  
2 businesses.

3 **[Gun Shops and Gun Shows Are a Cultural Experience]**

4 67. Gun shows are a modern bazaar—a convention of like-minded individuals  
5 who meet in this unique public forum that has been set aside by state and local  
6 governments for all manner of commerce. This convention-like setting is of  
7 incalculable benefit to the gun-buying consumer and promotes public safety.

8 68. Gun Shops mirror this same connection amongst like-minded individuals  
9 who come to the shop – in addition to acquire Second Amendment protected “arms” –  
10 to discuss their rights and their needs for protection, the current laws of California, and  
11 political issues that may limit what they are able to acquire.

12 69. Gun shows and gun shops, in general, are a celebration of America’s “gun  
13 culture” that is a natural and essential outgrowth of the constitutional rights that flow  
14 from the Second Amendment to the United States Constitution.

15 70. Gun shows and gun shops are places where parents can learn to protect  
16 their families and their homes, and how to stay in compliance with California’s ever-  
17 changing gun laws.

18 71. Gun shows, in particular, are held and promoted, and considerable  
19 investment is made, precisely to promote and “normalize” the “gun culture” and the  
20 constitutional principles that gun show participants hold dear.

21 72. Gun show venues are used by many different public groups and constitute  
22 major event venues for large gatherings of people to engage in expressive activities,  
23 including concerts, festivals, and industry shows. Affixing permanent cameras that  
24 record 24 hours per day would be a violation of not just gun owners’ rights to not have  
25 the government spy on personal conversations but would broadly affect any other  
26 groups using the venues.

27 73. The government spying on people, especially in a place where expressive  
28 activity occurs so frequently, is wholly inconsistent with our country’s founding

1 principles.

2 **[California's Senate Bill 1384(Min)]**

3 **[Impacts of SB 1384 on FFLs in California and the Ineffectiveness on Crime]**

4 *Impacts of SB 1384 Implementation on FFL Businesses*

5 74. The California Legislature, and particularly SB 1384 sponsor Senator Min,  
6 have made a big business of anti-gun legislation that they say will stop gun violence in  
7 California, sponsoring and passing multiple gun control laws each legislative session  
8 that are repeatedly challenged and overturned in the courts.

9 75. SB 1384, which added Section 26806 to the California Penal Code would  
10 require "a licensed firearm dealer to have a digital video surveillance system on their  
11 business premises."

12 "(a) Commencing January 1, 2024, a licensee shall ensure that its business  
13 premises are monitored by a digital video surveillance system that meets all of  
14 the following requirements:

- 15 (1) The system shall clearly record images and, for systems located inside the  
16 premises, audio, of the area under surveillance.
- 17 (2) Each camera shall be permanently mounted in a fixed location. Cameras  
18 shall be placed in locations that allow the camera to clearly record  
19 activity occurring in all areas described in paragraph (3) and reasonably  
20 produce recordings that allow for the clear identification of any person.
- 21 (3) The areas recorded shall include, without limitation, all of the following:
- 22 (A) Interior views of all entries or exits to the premises.
- 23 (B) All areas where firearms are displayed.
- 24 (C) All points of sale, sufficient to identify the parties involved in the  
25 transaction.
- 26 (4) The system shall continuously record 24 hours per day at a frame rate no  
27 less than 15 frames per second.
- 28

- 1 (5) The media or device on which recordings are stored shall be secured in a  
2 manner to protect the recording from tampering, unauthorized access or  
3 use, or theft.  
4 (6) Recordings shall be maintained for a minimum of one year.  
5 (7) Recorded images shall clearly and accurately display the date and time.  
6 (8) The system shall be equipped with a failure notification system that  
7 provides notification to the licensee of any interruption or failure of the  
8 system or storage device.

9 Cal. Penal Code § 26806(a).

10 76. The information collected by the FFL shall not be used, shared, or accessed  
11 except as specified as follows:

- 12 (1) A licensee shall allow access to the system to an agent of the department  
13 or a licensing authority conducting an inspection of the licensee's  
14 premises, for the purpose of inspecting the system for compliance with  
15 this section, and only if a warrant or court order would not generally be  
16 required for that access.  
17 (2) A licensee shall allow access to the system or release recordings to any  
18 person pursuant to search warrant or other court order.  
19 (3) A licensee may allow access to the system or release recordings to any  
20 person in response to an insurance claim or as part of the civil discovery  
21 process, including, but not limited to, in response to subpoenas, request  
22 for production or inspection, or other court order.

23 Cal. Penal Code § 26806(b).

24 77. The FFL "shall post a sign in a conspicuous place at each entrance to the  
25 premises that states in block letters not less than one inch in height" the following:  
26 "THESE PREMISES ARE UNDER VIDEO AND AUDIO SURVEILLANCE. YOUR  
27 IMAGE AND CONVERSATIONS MAY BE RECORDED."  
28

1 Cal. Penal Code § 26806(c).

2 78. A licensee shall, on an annual basis, provide certification to the department,  
3 in a manner prescribed by the department, that its video surveillance system is in  
4 proper working order. Cal. Penal Code § 26806(d).

5 79. Recently, the Bureau of Alcohol, Tobacco, Firearms, and Explosives  
6 promulgated a Notice of Proposed Rulemaking designed to vastly increase the number  
7 of federally licensed gun dealers, who are also regulated by California, including under  
8 Section 26806. *See* Definition 8, 2023) (to be codified at 27 C.F.R. pt. 478). ATF  
9 estimates that the net effect of its proposed rule will be that a minimum of *hundreds of*  
10 *thousands* of Americans must become licensed dealers, even if only to sell a few  
11 personally owned firearms. *Id.* at 62009. ATF further estimates that most of these  
12 new “dealers” will operate out of their homes. *See id.* Thus, the sum total of Section  
13 26806 and this proposed federal rulemaking will be that many thousands more gun-  
14 owning households will be under 24/7 audiovisual surveillance by California.

15 *Section 26806 has no impact on Preventing Crime*

16 80. One of the purpose of Section 26806 was to stop criminal activity that  
17 supposedly takes place in gun stores such as stolen firearms and straw purchases.

18 81. Admittedly, many gun shops already have some form of security camera to  
19 help deal with break ins and the like that may occur in stores. Just like every other  
20 retail store in California, the incidence of retail theft is real. And just like every other  
21 type of retail store in California that has video security, crime is not deterred by these  
22 security systems or by even having security personnel in the stores. Most security  
23 cameras are there for loss and insurance purposes, not to catch criminals.

24 82. The authors of SB 1386 note that “the rate of gun store thefts seems to have  
25 tapered slightly in recent years”<sup>4</sup> while retail theft across the board has increased in  
26

27 <sup>4</sup> Senate Committee on Public Safety, April 19, 2021 hearing on SB 1384, p.7  
28 [file:///C:/Users/tcheuvront/Downloads/202120220SB1384\\_Senate%20Public%20Safet](file:///C:/Users/tcheuvront/Downloads/202120220SB1384_Senate%20Public%20Safety.pdf)  
[y.pdf](file:///C:/Users/tcheuvront/Downloads/202120220SB1384_Senate%20Public%20Safety.pdf) (last visited Dec. 18, 2023).

1 California.<sup>5,6</sup>

2 83. Yet, with all of the retail crime on the rise in California, FFLs are the only  
3 ones being forced to set up costly government surveillance systems while  
4 simultaneously being the industry experiencing less crime in recent years according to  
5 SB 1384's author.

6 **[The First Amendment Right to Free Speech, Association, Anonymity &**  
7 **Assembly]**

8 84. The First Amendment to the U.S. Constitution provides that "Congress  
9 shall make no law respecting an establishment of religion or prohibiting the free  
10 exercise thereof; or abridging the freedom of speech, or of the press; or the right of the  
11 people peaceably to assemble, and to petition the government for a redress of  
12 grievances." The Fourteenth Amendment incorporates these protections against the  
13 states through its Due Process Clause.

14 *Section 26806 violates virtually every one of these enumerated rights.*

15 85. First, Section 26806 mounts a malicious attack on the freedom of  
16 association and second, violates the right to remain anonymous. *Antonyuk v.*  
17 *Chiumento*, 2023 WL 8518003, at \*37 (2d Cir. Dec. 8, 2023) ("It is uncontroversial  
18 that the First Amendment protects the right to speak anonymously.").

19 86. When engaging in protected speech—imposing a dystopian surveillance  
20 mandate that chills not just speech that is favorable of the Second Amendment but also  
21 quintessential political speech that is critical of California's draconian gun control  
22 regime, arguably the most severe outlier of any state in the nation.

24  
25 <sup>5</sup> Retail Theft and Robbery Rates Have Risen across California, Public Policy  
26 Institute of California, <https://www.ppic.org/blog/retail-theft-and-robbery-rates-have-risen-across-california/#:~:text=In%20sum%2C%20the%202022%20data,where%20it%20was%20in%202017>. (Last visited Dec. 18, 2023).

27 <sup>6</sup> Why Shoplifting is Now De Facto Legal in California, Hoover Institution, Aug. 3,  
28 2021 <https://www.hoover.org/research/why-shoplifting-now-de-facto-legal-california>  
(Last visited Dec. 19, 2023).

1       87.       Third, Section 26806 impermissibly compels speech by requiring business  
2 owners, and many homeowners with an at-home business, to display a government-  
3 mandated message that will discourage customers, and non-customer visitors, from  
4 even entering the premises.

5       88.       Fourth, in something of a *pièce de résistance*, residential FFLs who lawfully  
6 sell firearms out of their homes face an Orwellian-level “telescreen” invasion of their  
7 privacy and *elimination of virtually all First Amendment freedoms in their own homes*  
8 with the “all knowing eye” of the government peering in.

9       89.       Fifth and finally, Section 26806 also is not content-neutral, but rather  
10 constitutes a blatant viewpoint discrimination as only those supporters of the Second  
11 Amendment (i.e., gun owners and gun dealers) are subjected to Section 26806’s  
12 onerous restrictions. No other industry in California is mandated to record video and  
13 audio of all activities, for all people coming and going, and all conversations 24 hours  
14 a day.

15       90.       Section 26806 is patently violative of the First Amendment for any one of  
16 these reasons. But taken together, these compounded issues expose a grotesquely  
17 unconstitutional law that warrants the swiftest and most emphatic corrective action.

18                   *Section 26806 Decimates the Freedom of Association.*

19       91.       Contrary to Section 26806’s unprecedented surveillance mandate, the  
20 Supreme Court has long held that “the right of individuals to associate for the  
21 advancement of political beliefs” ranks “among our most precious freedoms” and “is  
22 protected by the First Amendment.” *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

23       92.       Attacks on constitutional rights are, unfortunately, nothing new in this  
24 country. But the Second Amendment right to keep and bear arms has been subject to  
25 an assault perhaps unparalleled in scope and duration.

26  
27 ///

28 ///



1        93. As then-Arkansas Attorney General Leslie Rutledge noted in 2020, the  
 2 Second Amendment is constantly “under assault.”<sup>7</sup> Others have observed that “[t]he  
 3 Second Amendment is the most attacked right,”<sup>8</sup> so much so that the Supreme Court  
 4 has had to warn openly hostile lower courts that the Second Amendment “is not ‘a  
 5 second-class right, subject to an entirely different body of rules than the other Bill of  
 6 Rights guarantees.’” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2156  
 7 (2022). And yet, retired Supreme Court Justice John Paul Stevens has even called for a  
 8 total repeal of the Second Amendment<sup>9</sup>.

9        94. The volume and duration of the attacks on this right have, of course, also  
 10 engendered the creation of Second Amendment associations, such as Plaintiff Gun  
 11 Owners of America which, in addition to providing educational materials to the public  
 12 and litigating to preserve constitutional rights, also engages in lobbying, advocacy, and  
 13 even endorsement of candidates for political office who support the Second  
 14 Amendment.

15        95. But attacks on the constitutional right to keep and bear arms inevitably  
 16 involve attacks on other constitutional rights as well. For example, Plaintiff GOA has  
 17 filed briefs in numerous Fourth Amendment cases,<sup>10</sup> because the freedom from  
 18 unreasonable searches and seizures often results in confluence with Second  
 19 Amendment-protected keeping and bearing of arms. Similarly, firearms-related  
 20 activities have long engendered First Amendment-protected free associations of  
 21 citizens for related (and unrelated) purposes, such as during hunting, target shooting,  
 22 self-defense training, and gun collecting.  
 23

24  
 25 <sup>7</sup> Leslie Rutledge, *Guns, the NRA and the Second Amendment Are Under Assault from the Left*, NBC News (Aug. 21, 2020), <https://tinyurl.com/2kx6bt26>.

26 <sup>8</sup> Heather Smith, *Second Amendment: What Are the Facts?*, Jews for the Pres. of Firearms Ownership (Oct. 19, 2020), <https://tinyurl.com/2wbs22hf>.

27 <sup>9</sup> Ellis Kim, *How Difficult Would It Be to Repeal the Second Amendment?*, PBS (Mar. 27, 2018), <https://tinyurl.com/mr4a2v2h>.

28 <sup>10</sup> See, e.g., <https://www.lawandfreedom.com/wordpress/wp-content/uploads/2022/07/Torcivia-Amicus-Brief.pdf>.

1       96. Inextricably linked to the right to keep and bear arms is the First  
2 Amendment's protection of the freedom of association, which Section 26806 chills  
3 severely.

4       97. California has made no secret of its open declaration of war on the Second  
5 Amendment and the right to keep and bear arms. In an echo of former Justice Stevens,  
6 Governor Gavin Newsom has issued a press release calling for a "28th Amendment" to  
7 ban millions of commonly owned semiautomatic rifles.<sup>11</sup> Joining this initiative, State  
8 Senator Aisha Wahab called support of the Second Amendment a "gun fetish culture."  
9 *Id.* And if California's hostility to the Bill of Rights was not yet clear, the Governor  
10 has even proposed to double taxes on firearms and ammunition, comparing such a  
11 measure to a "sin tax."<sup>12</sup>

12       98. In California's political climate, given the outward animus towards gun  
13 owners, it is probable (if not certain) that, in stores where customers gather to purchase  
14 firearms and ammunition, one will hear statements and conversations among like-  
15 minded individuals criticizing the Governor and the Attorney General or other  
16 powerful California politicians who openly oppose the right to keep and bear arms.

17       99. Yet should Section 26806 be permitted to take effect, those conversations  
18 will now be recorded and accessible to government investigators (by the same  
19 department that makes determinations as to who may carry a firearm). Such intrusive  
20 surveillance into the realm of political discourse invariably will have a chilling effect  
21 on the associational rights of those who wish to gather and discuss the Second  
22 Amendment or criticize the politicians who oppose it.

23  
24  
25       <sup>11</sup> *Governor Newsom Proposes Historic 28th Amendment to the United States*  
26 *Constitution to End America's Gun Violence Crisis*, Off. of Governor Gavin Newsom  
(June 8, 2023), <https://tinyurl.com/4y82tmve>.

27       <sup>12</sup> Emma Colton, *NRA Slams Newsom's 'Sin Tax' Comments on Gun Law amid*  
28 *Spiraling Crime: 'Ignoring Criminals,' Fox News* (Sept. 27, 2023),  
<https://tinyurl.com/4x4k5fsx>.

1       100. Unfortunately, this chilling effect on association is not speculative. Eight  
2 years ago, High Bridge Arms, the last gun store in San Francisco, closed its doors,  
3 strong-armed out of business by city ordinances nearly identical to Section 26806:  
4 “The store announced on Facebook that it would close for ‘a variety of reasons’ –  
5 among them, gun regulations in San Francisco. Specifically, new measures the city is  
6 currently considering would require the store to videotape gun purchases and report  
7 ammunition sales to the police ... regulations[] which have already upset customers.  
8 ‘We’re getting phone calls: So, if I buy a box of bullets from you, are you going to  
9 report us to the police department?’”<sup>13</sup>

10       101. It is no coincidence that the Supreme Court recently has had to remind  
11 California that “implicit in the right to engage in activities protected by the First  
12 Amendment [is] a corresponding right to associate with others.” *Ams. for Prosperity*  
13 *Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021). That “[p]rotected association furthers  
14 ‘a wide variety of political, social, economic, educational, religious, and cultural ends,’  
15 and ‘is especially important in preserving political and cultural diversity and in  
16 shielding dissident expression from suppression by the majority.’” *Id.* (emphasis  
17 added).

18       102. Moreover, the “compelled disclosure of affiliation with groups engaged in  
19 advocacy may constitute as effective a restraint on freedom of association as [other]  
20 forms of governmental action.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449,  
21 462 (1958).

22       103. For example, as discussed in the declaration of Sam Paredes and Richard  
23 Minnich, Plaintiffs GOC and CRPA distribute the organization’s literature, including  
24 fliers, newsletters, and membership applications, to hundreds of gun stores across  
25 California. The dealers typically are thankful to receive the material, because patrons  
26 frequently visit their stores not only to purchase firearms, but also to discuss firearms-

27  
28 <sup>13</sup> Sam Harnett, *San Francisco’s Last Gun Shop Calls It Quits*, *NPR* (Oct. 27,  
2015), <https://tinyurl.com/79pc2kf8> (cleaned up).

1 related issues. The GOC and CRPA materials thus provide a convenient way for gun  
2 stores to provide relevant literature to inquiring customers. Oftentimes, this  
3 distribution leads to discussion about Second Amendment issues and to new GOC and  
4 CRPA members joining at their local gun store. Many GOC and CRPA members  
5 report having initially obtained information about GOC and CRPA from their local gun  
6 store. Plaintiffs Clark and Harris often times leave this literature and talk to the FFLs in  
7 the stores about the politics of gun control in the state.

8 104. Similarly, as discussed in the declaration of Erich Pratt, Plaintiff GOA  
9 maintains a “Caliber Club,” a “partnership program” comprised of more than five  
10 thousand gun stores and shooting ranges across the country, many of which are in  
11 California. GOA distributes various literature, brochures, patches, stickers,  
12 newsletters, and other items to its Caliber Club members, who make those items  
13 available for interested customers. This distribution leads to literature about events of  
14 concern to GOA and its members being disseminated widely, and also leads to the  
15 acquisition of new members and supporters. CRPA and SAF have similar programs  
16 working closely with FFLs across the state.

17 105. Section 26806 would surveil, monitor, and record all of this quintessential  
18 First Amendment speech about Second Amendment rights, which is generally  
19 politically unpopular in California. Knowing they are under constant government  
20 surveillance, gun store patrons will be less likely to speak their minds and to seek out  
21 information about pro-gun groups like Plaintiffs GOA, GOC, CRPA, and SAF. This  
22 will harm Plaintiffs’ ability to disseminate their message and communicate with gun  
23 owners.

24 106. Also, as Section 26806 will inevitably result in less political speech  
25 involving the organizational Plaintiffs, this will result in fewer members signing up and  
26 fewer donations received, directly harming GOA, GOC, CRPA, and SAF as  
27 organizations and impeding their ability to perform their nonprofit mission to secure  
28 and preserve the right to keep and bear arms in California.

1       107. Finally, Section 26806 quite literally will result in California’s creation of a  
2 partial list of members of GOA, GOC, CRPA and SAF as everyone who signs up as a  
3 member of either organization will be monitored and surveilled by the state, clearly  
4 violating the First Amendment’s prohibition against such government activity. *See*  
5 *NAACP*, 357 U.S. at 462; *see also Shelton v. Tucker*, 364 U.S. 479 (1960) (prohibiting  
6 forcing schoolteachers to list their political affiliations); *Bates v. City of Little Rock*,  
7 361 U.S. 516 (1960) (prohibiting forced disclosure of membership list through  
8 regulatory scheme).

9       108. Of course, “disclosure requirements can chill association ‘[e]ven if there  
10 [is] no disclosure to the general public,’” as is the case here, where FFLs must record  
11 at the government’s behest—but generally not publish—identities and interactions of  
12 gun owners. *Ams. for Prosperity Found.*, 141 S. Ct. at 2388.

13       109. In other words, Section 26806 goes far beyond requiring the  
14 constitutionally repugnant disclosure of mere names on lists, requiring instead the  
15 images, likenesses, and utterances of all who may seek to purchase a firearm or even  
16 just explore the options of firearms within the state.

17       110. To illustrate just how seriously federal courts have treated the freedom of  
18 association, even otherwise proper civil discovery obligations to the government risk  
19 running afoul of the First Amendment: “In cases pitting the government against a  
20 private association, the Supreme Court has required that the government’s interest be  
21 demonstrated to be ‘compelling’ and bear a ‘substantial relation’ to the disclosure  
22 sought. Additionally, the government must show that the sought-after disclosure  
23 represents the ‘least restrictive means’ for accomplishing its objectives and will not  
24 unnecessarily sweep constitutional rights aside. Finally, the Court charges us to weigh  
25 against the government’s interest in disclosure the likelihood of injury to an  
26 association, or its members, if the desired information is released.” *Adolph Coors Co.*  
27 *v. Wallace*, 570 F. Supp. 202, 208 (N.D. Cal. 1983).

28       111. California can meet none of these requirements. In particular, the state

1 could never show that the 24/7 audiovisual recording of a business engaged in  
2 constitutionally protected conduct and commerce is the *least restrictive* means of  
3 accomplishing Section 26806's alleged goal of "public safety and education."

4 112. Section 26806 offends the "vital relationship between freedom to associate  
5 and privacy in one's associations." *Ams. for Prosperity Found.*, 141 S. Ct. at 2382. It  
6 is an attack not only on the Second Amendment but on the First Amendment freedom  
7 of association as well.

8 113. Because Section 26806 abridges the freedom of association, it is  
9 unconstitutional as violative of the First Amendment.

10 *Section 26806 Abridges the Right to Speak Anonymously, Including to Criticize the*  
11 *Government*

12 114. As noted, Section 26806 requires ubiquitous audio and video surveillance  
13 and recording of every bit of speech that occurs within California's thousands of gun  
14 stores. In other words, there is no possibility that a customer or visitor can speak  
15 anonymously with others in such locations, on any topic. Rather, all private  
16 conversations will be swept up and monitored by the government.

17 115. In stark contrast to Section 26806's provisions, this nation's Founders  
18 placed great value on the *anonymous* exercise of constitutional rights. In accordance  
19 with this rich historical tradition, the Supreme Court has explained that "an author's  
20 decision to remain anonymous, like other decisions concerning omissions or additions  
21 to the content of a publication, is an aspect of the freedom of speech protected by the  
22 First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 343 (1995).

23 116. Indeed, "[a]nonymity is a shield from ... tyranny [which] exemplifies the  
24 purpose behind the Bill of Rights, and of the First Amendment in particular: to protect  
25 unpopular individuals from retaliation—and their ideas from suppression—at the hand  
26 of an intolerant society." *Id.* at 357 (citation omitted). Naturally, "[t]he decision in  
27 favor of anonymity may be motivated by fear of ... official retaliation, by concern  
28 about social ostracism, or merely by a desire to preserve as much of one's privacy as

1 possible. Whatever the motivation may be ... the interest in having anonymous works  
2 enter the marketplace of ideas unquestionably outweighs any public interest in  
3 requiring disclosure as a condition of entry.” *Id.* at 341-42.

4 117. Other federal courts have elaborated on the importance of this  
5 constitutional protection for anonymous speech: “The right to speak anonymously was  
6 of fundamental importance to the establishment of our Constitution. Throughout the  
7 revolutionary and early federal period in American history, anonymous speech and the  
8 use of pseudonyms were powerful tools of political debate. The Federalist Papers  
9 (authored by Madison, Hamilton, and Jay) were written anonymously under the name  
10 ‘Publius.’ ... Anonymous speech is a great tradition that is woven into the fabric of this  
11 nation’s history.” *Doe v. 2thmart.com Inc.*, 140 F. Supp. 2d 1088, 1092 (W.D. Wash.  
12 2001).

13 118. Foreshadowing the Panopticon-like risks Section 26806’s attack on  
14 anonymity would bring, the Supreme Court has cautioned that “the fear of public  
15 disclosure of private conversations might well have a chilling effect on private speech.  
16 In a democratic society, the privacy of communication is essential if citizens are to  
17 think and act creatively and constructively. Fear or suspicion that one’s speech is  
18 being monitored by a stranger, even without the reality of such activity, can have a  
19 seriously inhibiting effect upon the willingness to voice critical and constructive  
20 ideas.” *Bartnicki v. Vopper*, 532 U.S. 514, 533 (2001).

21 119. Section 26806, however, replaces the “stranger” intentionally monitoring  
22 the conversation with the State’s executive branch, controlled by the powerful  
23 Governor of California, a sworn political enemy of the very constitutional right a gun  
24 store customer is attempting to exercise. The First Amendment chilling effect thus is  
25 at its zenith. Section 26806’s effect on speech related to Second Amendment rights is  
26 equivalent to a law mandating audio and video recording of services and parishioner  
27 prayers in every California church, mosque, and synagogue.  
28



1       120.     Unsurprisingly, customers at gun stores (gun owners) likely are motivated  
2 to engage in speech which is critical of Governor Newsom and other California  
3 politicians who advocate for, enact, and enforce laws, regulations, and policies that  
4 target gun owners. Indeed, the Executive Branch contains the very officials enforcing  
5 the very laws that gun store customers engage in protected political speech to criticize.  
6 If such speakers know their comments will be heard only by a sympathetic gun store  
7 owner and other like-minded patrons, they are likely to feel free to speak their minds.  
8 Conversely, if the government wishes to squelch “political debate” and enable “official  
9 retaliation” against critics, what better way than requiring 24/7 facial and voice  
10 recording at locations where citizens, exercising a disfavored but enumerated  
11 constitutional right, are likely to assemble?

12       121.     For example, Plaintiffs Harris, Vandermeulen, Smokin’ Barrel Firearms,  
13 and On Target declarations explain that local gun stores provide a vital First  
14 Amendment platform in their communities, in addition to being a place where  
15 Californians can exercise their Second Amendment right to acquire firearms. On a  
16 typical weekend morning, there are numerous customers and visitors in these stores at  
17 any given time, representing people from all walks of life and from all over the area,  
18 but who are generally united in their enjoyment of firearms, their desire to provide for  
19 their own self-defense, and their motivation to protect and preserve their Second  
20 Amendment rights. (See Declaration of Jesse Harris (“Harris Decl.”) ¶¶ 4-7;  
21 Declaration of Jeffrey Vandermeulen (“Vandermeulen Decl.”) ¶ 6; Declaration of  
22 Robert Gaalswyk (“Gaalswyk Decl.”) ¶¶ 7, 9; and Declaration of Gregg Bouslog  
23 (“Bouslog Decl.”) ¶¶ 5-8, filed concurrently herewith.)

24       122.     Such persons, like Plaintiffs Harris, Richards, GOC, GOA, CRPA, SAF,  
25 and Gerald Clark use these local gun stores and gun shows to engage in First  
26 Amendment speech about Second Amendment rights including, for example, potential  
27 government legislation, executive actions related to firearms, current events, firearms  
28

1 activities such as firearms training and target shooting, and other firearms-related news  
2 and issues (not to mention topics dealing with the firearms themselves).

3 123. In other words, today, gun stores serve the same purpose as once served by  
4 19th- and early 20th-century General Stores, where Americans gathered to discuss  
5 local and national issues.<sup>14</sup> (See Harris Decl. ¶¶ 4-7; Vandermeulen Decl. ¶ 6;  
6 Gaalswyk Decl. ¶¶ 7, 9; Bouslog Decl. ¶¶ 5-8.)

7 124. Section 26806 puts a torch to this important channel for Plaintiffs to meet  
8 others and exercise First Amendment speech and association rights on Second  
9 Amendment issues.

10 125. Section 26806 is California's latest effort to target, marginalize, and drive  
11 from the market dissenters wishing to exercise the right to keep and bear arms.  
12 Stripping gun owners (and those seeking to become gun owners) of their rights to  
13 anonymous discourse about political matters, Section 26806 permits the very  
14 government officials being criticized to monitor the speech and identify the individuals  
15 speaking critically of them. It would be hard to conceive of a more tyrannical system  
16 than Section 26806 imposes. Section 26806 clearly violates the First Amendment right  
17 to engage in anonymous speech and must be enjoined.

18 *Section 26806 Violates the First Amendment's Prohibition of Compelled Speech*

19 126. The First Amendment "includes both the right to speak freely and the right  
20 to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

21 127. While penalizing speech is odious to our Constitution, so is penalizing  
22 silence. Accordingly, the Supreme Court's "leading First Amendment precedents have  
23 established the principle that freedom of speech prohibits the government from telling  
24 people what they must say." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547  
25 U.S. 47, 61 (2006).

26  
27 <sup>14</sup> See, e.g., Ronald Taylor, *The Old-Time General Store Was a Symbol of American*  
28 *Enterprise*, Allegany Cnty. Hist. Soc'y, <https://tinyurl.com/muvp2te8> (last visited Dec. 8, 2023).

1       128. Yet this is precisely what Section 26806(c) does. This provision goes well  
2 beyond compelling conduct (government-mandated 24/7 recording of customers and  
3 visitors) by also compelling government-approved speech: “The licensee shall post a  
4 sign in a conspicuous place at each entrance to the premises that states in block letters  
5 not less than one inch in height: ‘THESE PREMISES ARE UNDER VIDEO AND  
6 AUDIO SURVEILLANCE. YOUR IMAGE AND CONVERSATIONS MAY BE  
7 RECORDED.’”

8       129. Thus, dealers not only are commanded as to what they must do in recording  
9 all patrons, whether they wish to do so or not, but also they are required to convey the  
10 government’s chosen message about that surveillance to all visitors.

11       130. Interestingly enough, nowhere in this government-mandated statement is  
12 any indication provided that it is *the government* that is the entity mandating the  
13 surveillance, making it appear as if the dealer, not the government, is responsible for  
14 the eavesdropping and monitoring.

15       131. On the contrary, the Supreme Court has rejected soundly the notion that the  
16 First Amendment permits the government to compel its favored speech. In a decades-  
17 old decision, the Court declared that “[t]he very purpose of a Bill of Rights was to  
18 withdraw certain subjects from the vicissitudes of political controversy, to place them  
19 beyond the reach of majorities and officials and to establish them as legal principles to  
20 be applied by the courts. One’s right to ... free speech ... and other fundamental rights  
21 may not be submitted to vote; they depend on the outcome of no elections.” *W. Va.*  
22 *State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943).

23       132. The Court continued, “[a]s governmental pressure toward unity becomes  
24 greater, so strife becomes more bitter as to whose unity it shall be.... Ultimate futility  
25 of such attempts to compel coherence is the lesson of ... the fast-failing efforts of our  
26 present totalitarian enemies. Those who begin coercive elimination of dissent soon  
27 find themselves exterminating dissenters. Compulsory unification of opinion achieves  
28 only the unanimity of the graveyard.” *Id.* at 641.

1       133.     The *Barnette* Court’s reference to our “totalitarian enemies” was no  
2 invitation to become one ourselves. Compelled speech has no place in a state bound  
3 by the First Amendment’s protections.

4       134.     In 2018, the Court recognized the continuing vitality of the compelled  
5 speech doctrine. In striking down a California state law requiring pro-life pregnancy  
6 centers to inform all clients that California also offers abortion services, the Court  
7 warned that “California cannot co-opt the licensed [crisis pregnancy centers] to deliver  
8 its message for it.” *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361,  
9 2376 (2018).

10       135.     Nor does it matter that California’s compelled message may not be opinion,  
11 as the Supreme Court held, “compelled statements of fact ... like compelled statements  
12 of opinion, are subject to First Amendment scrutiny.” *Rumsfeld*, 547 U.S. at 62.

13       136.     The Second Circuit has held that “compelled speech presents a unique  
14 affront to personal dignity. The decision to withhold speech depends on views and  
15 calculations known only to the individual” and, “between compelled silence and  
16 compelled speech, compelled speech is the more serious incursion on the First  
17 Amendment....” *Burns v. Martuscello*, 890 F.3d 77, 85 (2d Cir. 2018).

18       137.     Likewise, “[b]ecause the statute at issue requires [plaintiffs] to make an  
19 involuntary statement” at their place of business, “the statute causes [them] irreparable  
20 harm.” *Int’l Dairy Foods Ass’n v. Amestoy*, 92 F.3d 67, 71 (2d Cir. 1996). “The wrong  
21 done” by a statute to the “constitutional right not to speak is a serious one,” and it must  
22 be “given proper weight by [a] district court.” *Id.*

23       138.     Striking down New York’s similar mandate that pro-gun property owners  
24 post conspicuous signage containing a government-required message when firearms  
25 are allowed on the property, a federal court explained that, “[s]ince *Barnette*, the  
26 Supreme Court has consistently ‘prohibit[ed] the government from telling people what  
27 they must say.’ This prohibition is not limited to ideological messages; it extends  
28 equally to compelled statements of fact.” *Antonyuk v. Hochul*, 639 F. Supp. 3d 232,

1 344 (N.D.N.Y. 2022) (citation omitted). As that Court put it, New York’s law  
 2 “compel[s] Plaintiffs’ speech ... by *coercing* them, as busy store owners, to  
 3 conspicuously speak the state’s controversial message (visible to neighbors and  
 4 passersby on the sidewalk or street) if ... they want to welcome [gun owners] onto  
 5 their property.” *Id.* at 345.

6 139. California may believe that 24/7 Orwellian monitoring of citizens in the act  
 7 of exercising Second Amendment rights is laudable public policy. But California  
 8 cannot require firearm sellers to publish the state’s preferred statements to inform their  
 9 customers that the state is violating everyone’s constitutional rights. Such a  
 10 requirement compels speech in violation of the First Amendment.

11 **[Section 26806 Imposes a Pervasive and Dystopian Surveillance Regime on**  
 12 **Home-Based Licensees.]**

13 140. In his dystopian work “1984,” George Orwell described an unthinkable  
 14 world dominated by constant government surveillance of the most private affairs of its  
 15 citizens: “The telescreen received and transmitted simultaneously. Any sound that  
 16 Winston made, above the level of a very low whisper, would be picked up by it,  
 17 moreover, so long as he remained within the field of vision ... he could be seen as well  
 18 as heard. There was of course no way of knowing whether you were being watched at  
 19 any given moment.... It was even conceivable that they watched everybody all the  
 20 time. You had to live ... in the assumption that every sound you made was overheard,  
 21 and, except in darkness, every movement scrutinized.”<sup>15</sup>

22 141. Beginning in 2024, Section 26806 brings this dystopian fiction to life.

23 142. Section 26806 requires 24/7 audiovisual recording, sufficient to “identify  
 24 [all] parties” and “activit[ies],” at all “[i]nterior views of all entries or exits to the  
 25 premises, [a]ll areas where firearms are displayed, [and a]ll points of sale, sufficient to  
 26 identify the parties involved in the transaction.”

27  
 28 <sup>15</sup> George Orwell, 1984, at 3-4 (1949).

1       143. Yet even as tyrannical as these requirements are when applied to traditional  
2 brick-and-mortar gun stores, the stark reality is that more than 60 percent of gun  
3 dealers use their home as their business premises.<sup>16</sup>

4       144. Section 26806’s requirements will destroy the entire spectrum of First  
5 Amendment rights exercised by home-based sellers. For numerous such dealers, being  
6 home-based makes their business affordable: “Selling firearms is a fairly low-margin  
7 business. Depending on the model you’re selling, you can expect to charge 12-20  
8 percent more than your wholesale cost on a new gun. These low margins make it  
9 difficult to run a retail gun store profitably. However, a home-based FFL business has  
10 much lower maintenance and labor costs....” *Id.*

11       145. Section 26806 would consign home-based FFLs to the unenviable  
12 Hobson’s choice of either losing their business or giving up their most basic First  
13 Amendment rights in the (former) privacy of their own homes. To require 24/7  
14 surveillance of the interior of one’s home is Orwellian, to say the least.

15       146. The pervasiveness of this surveillance cannot be understated. Many  
16 American homes contain multiple “entries or exits,” including a front door, rear door,  
17 garage door, basement door, etc. Under Section 26806, “the “interior view[.]” of each  
18 would require constant surveillance, regardless of whether the dealer is currently using  
19 his home for business purposes. Section 26806 also requires surveillance in “all areas  
20 where firearms are displayed,” without limitation to only business firearms inventory.  
21 Thus, even personally owned firearms housed in a glass display case in a living room,  
22 or hunting rifles secured in a rack hung on an office wall, would require additional  
23 cameras and audio recording. Finally, Section 26806 requires surveillance at “all  
24 points of sale.” For home-based dealers, colloquially known as “kitchen table FFLs,”  
25 this would mean 24-hour surveillance of, for example, a person’s kitchen table, as well.

26  
27  
28 <sup>16</sup> Katherine Anderson, *Home-Based FFL Requirements*, Zenti,  
<https://tinyurl.com/2s3fm75f> (Apr. 11, 2023).

1       147.     Section 26806 would impose great harm to at-home FFL dealers such as  
2 Adam Richards who not only operates as an FFL out of his home, but also works as an  
3 attorney and has multiple confidential conversation per day that would be fully  
4 recorded and break his duty of confidentiality with clients. Section 26806 also impacts  
5 Plaintiff Richards' personal life by placing every small detail of his family into the lens  
6 a camera like being on a reality show that they did not sign up for. (See Declaration of  
7 Adam Richards ("Richards Decl.") ¶¶ 3-5, 9, 10.)

8       148.     It thus is hardly inconceivable to estimate that a home-based dealer will be  
9 required to install government surveillance systems in virtually every corner of the  
10 home, perhaps aside from a bedroom or bathroom (the only private places left to  
11 escape California's prying eye).

12       149.     Sweeping up virtually all activity that takes place within the home (on a 24-  
13 hour basis), Section 26806's surveillance mandate thus strikes at the heart of several  
14 important First Amendment protections.

15       150.     For example, the Supreme Court has long recognized the importance of  
16 confidential marital communications, to the point that disclosure of such speech cannot  
17 be compelled by the government, even in criminal cases: "the protection of marital  
18 confidences [is] regarded as so essential to the preservation of the marriage  
19 relationship as to outweigh the disadvantages to the administration of justice which the  
20 privilege entails." *Wolfe v. United States*, 291 U.S. 7, 14 (1934). Section 26806  
21 eviscerates that privilege, even in one's own home, mandating the recording of  
22 conversations between spouses, on the most private of topics, including health, sex,  
23 religion, political beliefs, personal finances, the rearing of children, and the list goes  
24 on.

25       151.     Section 26806's application to home-based business also strikes at the free  
26 exercise of religion. The chilling effect of 24/7 government monitoring inside the  
27 homes of spiritual citizens should be too obvious for argument. For example, Plaintiffs  
28 who regularly pray in thanks before meals at the kitchen table may be captured because



1 it is done at the same place he conducts firearms transfers. People may feel that they  
 2 lack privacy in their own homes and be forced to change rooms, change their habits,  
 3 alter their religious practices, etc. because of the constant surveillance by the  
 4 government.

5 152. Plaintiffs' concerns about Section 26806's violation of religious freedom  
 6 are more than theoretical. In 2014, Houston, Texas mayor Annise Parker, the city's  
 7 first lesbian mayor, issued subpoenas to a group of pastors opposed to her "equal rights  
 8 ordinance," demanding that they turn over copies of any sermons or communications  
 9 with parishioners dealing with homosexuality, gender identity, or Parker herself, for  
 10 review by city attorneys.<sup>17</sup> The move sparked a massive national outcry, and resulted  
 11 in a motion to quash filed by Alliance Defending Freedom on behalf of the pastors. As  
 12 ADF noted, "[t]hese requests, if allowed, will have a chilling effect on future  
 13 citizens."<sup>18</sup> Eventually, and unsurprisingly, Parker and the city backed down.<sup>19</sup>

14 153. Yet Section 26806 will accomplish the same ends, and through more  
 15 nefarious means. Personal religious conversations between spouses, parents and  
 16 children, and homeowners and houseguests will be subject to monitoring by the state.  
 17 Free exercise of religion in Californians' own homes doubtlessly will be chilled by  
 18 such monitoring, as will political comments in opposition to politicians such as  
 19 Governor Newsom, and state policies attacking the right to bear arms.

20 154. Indeed, the more one thinks about Section 26806, the worse it gets.  
 21 Besides the obvious chilling effects its surveillance will have on political speech and  
 22 the rights to anonymity and free association, Section 26806 will eviscerate free  
 23 expression almost entirely.

24  
 25 <sup>17</sup> Todd Starnes, *City of Houston Demands Pastors Turn Over Sermons*, Fox News,  
 26 <https://tinyurl.com/y9h72yt8> (May 7, 2015).

27 <sup>18</sup> Memorandum in Support of Nonparty Pastors' Amended Motion to Quash  
 Subpoenas at 5, *Woodfill v. Parker*, No. 2014-44974 (Tex. Dist. Ct. Harris Cnty. Oct.  
 9, 2014), <https://tinyurl.com/ms9sas9>.

28 <sup>19</sup> Todd Starnes, *Houston Mayor Drops Bid to Subpoena Pastors' Sermons*, Fox  
 News, <https://tinyurl.com/34w5hhbj> (May 7, 2015).

1       155.     Section 26806(a)(1) requires surveillance equipment to “clearly record  
2 images and ... audio.” The phrase “clearly record” modifies a conjunctive  
3 requirement; therefore, such equipment must also “clearly record ... audio.”  
4 Moreover, under Section 26806(a)(2), cameras providing such “clear[] record[ing]” of  
5 audio must “reasonably produce recordings that allow for the clear identification of  
6 any person.” A person’s voice is just one way they may be clearly identified.

7       156.     Taken together, these provisions require a practically sterile audio  
8 environment in order for surveillance recordings to comply with the law. Were it  
9 otherwise, gun dealers could simply install “white noise” machines next to all audio  
10 surveillance devices, which would still capture a “clear[] record[ing]” of “audio”  
11 within the store, just not anything helpful to the government. What is more realistic is  
12 that a fan in the shop or other noises in the course of business would make it difficult  
13 for the recording to pick up anything useful and therefore Section 26806 is asking  
14 FFLs to record their lives which may be completely unusable.

15       157.     Indeed, if cameras must clearly record audio such that persons are clearly  
16 identifiable, then Section 26806 effectively prohibits ambient audio interference. That  
17 means a store clerk cannot listen to a TV show, for fear of its audio garbling the  
18 surveillance recording. Christmas music—or any music, for that matter—is similarly  
19 verboten. But for home-based FFLs, the implications get worse and worse. Section  
20 26806 does not lift its “clear[] record[ing]” mandate outside of business hours; indeed,  
21 household occupants will find themselves actors on the set of a 24/7 reality TV show,  
22 ensuring the microphones “clearly record” the contents of conversations such that  
23 everyone remains identifiable at all times. Of course, the political debate broadcast on  
24 the radio will be off-limits, as will be the televised religious sermon, because Section  
25 26806 requires ambient sterility.

26       158.     As discussed above, Section 26806 *compels speech*, telling gun stores what  
27 they must say. But in requiring a quiet environment so that conversations with  
28 customers can be recorded, Section 26806 also *compels silence*.

1        159. California no doubt will demur that the surveillance recordings under  
 2 Section 26806 are for limited purposes and promise that they will be used only for  
 3 firearms-related purposes, such as providing evidence of criminal transfers, or tracking  
 4 down thieves who rob gun stores. But that misses the whole point about a “chilling  
 5 effect” on protected speech – the government’s ultimate actions are not the only  
 6 concern, but rather the effect the restrictions have on persons’ willingness and freedom  
 7 to speak their minds in the first place. As Winston quipped, “[t]here was of course no  
 8 way of knowing whether you were being watched. ... You had to live ... in the  
 9 assumption that ... every movement [was] scrutinized.”

10        160. As applied to home-based FFLs, Section 26806 imposes a dystopian  
 11 panopticon that will eviscerate constitutional rights and destroy small business,  
 12 because no home-based FFL could possibly be expected to comply with such  
 13 tyrannical demands by the government. To prevent these irreparable harms, Section  
 14 26806 must be enjoined.

15                    **[Section 26806 Is Presumptively Unconstitutional Because It Subjects**  
 16                    **Disfavored Viewpoints to Discriminatory Treatment.]**

17        161. Section 26806 constitutes nefarious viewpoint discrimination in violation of  
 18 the First Amendment. It targets only stores engaged in the exercise of Second  
 19 Amendment rights to possess and transfer firearms. And it punishes only those  
 20 individuals exercising the right—those with a favorable view of the Second  
 21 Amendment—with 24/7 surveillance, and not those who disagree with, criticize, or  
 22 decline to exercise the right themselves.

23        162. Section 26806’s discriminatory nature is clear on its face: “The test for  
 24 viewpoint discrimination is whether—within the relevant subject category—the  
 25 government has singled out a subset of messages for disfavor based on the views  
 26 expressed.” *Matal v. Tam*, 582 U.S. 218, 248 (2017) (Kennedy, J., concurring).

27        163. Although this Court need not proceed beyond Section 26806’s plain text  
 28 and real-world effects, the government’s discriminatory intent bears emphasis. Indeed,

1 the hostility of Governor Newsom and the California legislature to the right to keep  
 2 and bear arms is well-documented. Governor Newsom “has for years crusaded against  
 3 the gun industry and reaped the political benefits.”<sup>20</sup> From the Governor on down,  
 4 California has made crystal-clear its opposition to the Second Amendment and its  
 5 intention to burden, and where possible shut down, those who attempt to exercise the  
 6 right.

7 164. Of course, a law that “reflects the Government’s disapproval of a subset of  
 8 messages it finds offensive ... is the essence of viewpoint discrimination.” *Tam*, 582  
 9 U.S. at 249 (Kennedy, J., concurring).

10 165. Accordingly, the Supreme Court has emphasized that, “[w]hen the  
 11 government targets not subject matter, but particular views taken by speakers on a  
 12 subject, the violation of the First Amendment is all the more blatant.... The  
 13 government **must** abstain from regulating speech when the specific motivating  
 14 ideology or the opinion or perspective of the speaker is the rationale for the  
 15 restriction.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829  
 16 (1995) (emphasis added).

17 166. Consequently, “viewpoint discrimination is an ‘egregious form of content  
 18 discrimination’ and is ‘presumptively unconstitutional,’” subject to strict scrutiny.  
 19 *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019). The commercial context of Section  
 20 26806’s discrimination is inapposite. *See Tam*, 582 U.S. at 251 (Kennedy, J.,  
 21 concurring) (“[D]iscrimination based on viewpoint, including a regulation that targets  
 22 speech for its offensiveness, remains of serious concern in the commercial context.”).

23 167. Defendants bear the burden of justifying their novel surveillance scheme,  
 24 and they cannot. Section 26806 therefore violates the First Amendment’s prohibition  
 25 of viewpoint discrimination as well.

26  
 27 <sup>20</sup> Christopher Cadelago & Jeremy B. White, *Gavin Newsom Wants 28th*  
 28 *Amendment for Guns in U.S. Constitution*, *Politico* (June 8, 2023),  
<https://tinyurl.com/5n6krbkn>.

1           **[The Fourteenth Amendment Right to Equal Protection Under the Law]**

2           168.     The Fourteenth Amendment to the United States Constitution, enforceable  
3 under 42 U.S.C. § 1983, provides that no state shall deny to any person within its  
4 jurisdiction the equal protection of the laws.

5           169.     Singling out speakers because of the content of their speech also violates  
6 their fundamental rights under the Equal Protection Clause. U.S. Const. amend. XIV.

7           170.     If unequal treatment occurs in the context of exercising a fundamental right,  
8 or the government is motivated by animus toward a disfavored group, courts apply  
9 heightened scrutiny. *See Loving v. Virginia*, 388 U.S. 1, 11 (1967); *see also Cleburne v.*  
10 *Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985); *Romer v. Evans*, 517 U.S. 620 (1996).  
11 Indeed, “[b]ecause the right to engage in political expression is fundamental to our  
12 constitutional system, statutory classifications impinging upon that right must be  
13 narrowly tailored to serve a compelling governmental interest.” *Austin v. Mich.*  
14 *Chamber of Com.*, 494 U.S. 652, 666 (1990), *rev’d on other grounds, Citizens United*  
15 *v. FEC*, 558 U.S. 310 (2010).

16           171.     No other industry, known to Plaintiffs, in the state of California is required  
17 to audio and video record their locations, comings and goings, conversations, business  
18 practices, and the like 24 hours a day and keep those recordings for one year.

19           172.     On its face and as applied, Section 26806 is an unconstitutional  
20 abridgement of Plaintiffs’ right to equal protection under the law guaranteed by the  
21 Fourteenth Amendment because it is a viewpoint-discriminatory and/or animus-based  
22 restriction on Plaintiffs’ protected political and ideological speech that serves no  
23 compelling governmental interest.

24           173.     On its face, Section 26806 does not apply to similar or opposing speech  
25 made by businesses, organizations, or people who are not considered FFLs.

26           174.     Defendants have no compelling (or even legitimate) governmental interest  
27 in recording Plaintiffs’ pure speech (regardless of whether dealing with a firearm  
28 transaction or something entirely outside that area). Indeed, the State’s purported

1 interests in “ensuring gun owners are more educated” and stopping criminals are  
2 betrayed by the fact that no other retail stores can say that having surveillance educates  
3 their customers on their products or stops criminals from conducting retail theft.

4 175. Nor is there any legitimate interest in singling out politically disfavored  
5 firearm industry members, gun owners, and FFLs under Section 26806 while leaving  
6 members of other industries free to engage in protected speech without government  
7 intrusion. Rather, Section 26806 is steeped in and motivated by animus for “gun  
8 culture” and those who participate in it.

9 176. Further, Section 26806 is not narrowly tailored to achieving the state’s  
10 dubious interests.

11 **[Right to Keep and Bear Arms Under U.S. Const. amend. II]**

12 177. The Second Amendment provides that “[a] well regulated Militia, being  
13 necessary to the security of a free State, the right of the people to keep and bear Arms,  
14 shall not be infringed.”

15 178. The Fourteenth Amendment incorporates the Second Amendment’s  
16 protections against the states. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

17 179. The Second Amendment’s absolutist language contains no qualification or  
18 limitation constraining which members of “the people” enjoy the pre-existing  
19 individual right, which “Arms” are protected, or the purposes for which individuals  
20 may use such arms. Accordingly, the right presumptively belongs to “all Americans,”  
21 presumptively protects “all instruments that constitute bearable arms,” and  
22 presumptively covers all “lawful purposes.” *District of Columbia v. Heller*, 554 U.S.  
23 570, 581, 582, 624 (2008).

24 180. As the Supreme Court explained last year in *N.Y. State Rifle & Pistol Ass’n*  
25 *v. Bruen*, 142 S. Ct. 2111 (2022), consistent with the Second Amendment’s unyielding  
26 text, any government regulation implicating the right to keep and bear arms must  
27 comport with the original public understanding of the text adopted by its Framers, as  
28 evidenced by our “Nation’s historical tradition of firearm regulation.” *Id.* at 2126.



1       181. In other words, the government must conclusively demonstrate that the  
2 Framers never considered certain persons, arms, or activities to be within the  
3 protections of the Second Amendment in the first place. Otherwise, that which the  
4 Second Amendment protects, it protects absolutely.

5       182. Consistent with its textual focus on original meaning, *Bruen* categorically  
6 rejected the “‘two-step’ framework for analyzing Second Amendment challenges,”  
7 around which “the Courts of Appeals ha[d] coalesced,” a framework which improperly  
8 employed “means-end scrutiny.” 142 S. Ct. at 2125.

9       183. Of course, even before *Bruen*, the Supreme Court had consistently and  
10 “expressly rejected the application of any ‘judge-empowering “interest-balancing  
11 inquiry” that “asks whether the statute burdens a protected interest in a way or to an  
12 extent that is out of proportion to the statute’s salutary effects upon other important  
13 governmental interests”” for Second Amendment challenges. *Bruen*, 142 S. Ct. at  
14 2129; *see also McDonald*, 561 U.S. 742; *Caetano v. Massachusetts*, 577 U.S. 411  
15 (2016) (per curiam).

16       184. The Court’s categorical rejection of judicial interest balancing reflects the  
17 Framers’ understanding that the pre-existing right to keep and bear arms “‘is the very  
18 *product* of an interest balancing by the people’ and it ‘surely elevates above all other  
19 interests the right of law-abiding, responsible citizens to use arms’ for self-  
20 defense.” *Bruen*, 142 S. Ct. at 2131. Indeed, “[t]he very enumeration of the right takes  
21 out of the hands of government – even the Third Branch of Government – the power to  
22 decide on a case-by-case basis whether the right is *really worth* insisting upon. A  
23 constitutional guarantee subject to future judges’ assessments of its usefulness is no  
24 constitutional guarantee at all.” *Heller*, 554 U.S. at 634.

25       185. Accordingly, when the Constitution’s “plain text covers an individual’s  
26 conduct, the Constitution presumptively protects that conduct. The government must  
27 then justify its regulation by demonstrating that it is consistent with the Nation’s  
28 historical tradition of firearm regulation. Only then may a court conclude that the



1 individual’s conduct falls outside the Second Amendment’s ‘unqualified  
2 command.’” *Bruen*, 142 S. Ct. at 2129-30.

3 *Bruen’s Methodology*

4 186. Several analytical considerations from *Bruen* bear emphasis in analyzing  
5 SB 1384. First, the relevant time period for historical inquiry is a narrow one. Only  
6 historical evidence contemporaneous with the Founding can shed light on the Second  
7 Amendment’s original public understanding because “[c]onstitutional rights are  
8 enshrined with the scope they were understood to have *when the people adopted*  
9 *them*.” *Bruen*, 142 S. Ct. at 2136.

10 187. To the extent governments seek to justify infringements by proffering  
11 historical evidence from beyond the Founding era, such evidence may be used, if at all,  
12 only to confirm a tradition that already existed at the Founding. Even prior to *Bruen*,  
13 the Court made clear that post-Founding history cannot fabricate a tradition, piecemeal,  
14 that was unknown to the Founding generation. *See Bruen*, 142 S. Ct. at 2136 (“[W]e  
15 must ... guard against giving post enactment history more weight than it can rightly  
16 bear.”); *id.* at 2137 (“[T]o the extent later history contradicts what the text says, the  
17 text controls.”); *id.* (“[P]ostratification adoption or acceptance of laws that are  
18 *inconsistent* with the original meaning of the constitutional text obviously cannot  
19 overcome or alter that text.”); *id.* (“[B]ecause post-Civil War discussions of the right to  
20 keep and bear arms ‘took place 75 years after the ratification of the Second  
21 Amendment, they do not provide as much insight into its original meaning as earlier  
22 sources.’”); *id.* (treating 19th-century evidence “as mere confirmation of what the  
23 Court thought had already been established”); *id.* (“[W]e have generally assumed that  
24 the scope of the protection applicable to the Federal Government and States is pegged  
25 to the public understanding of the right when the Bill of Rights was adopted in 1791.”);  
26 *id.* at 2154 n.28 (“We will not address any of the 20th-century historical evidence  
27 brought to bear.... As with ... late-19th-century evidence, the 20th-century evidence ...  
28 does not provide insight into the meaning of the Second Amendment when it

contradicts earlier evidence.”); *see also Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246, 2258-59 (2020) (rejecting examples of 19th century-era laws from “more than 30 States” as failing to “establish an early American tradition”); *Ramos v. Louisiana*, 140 S. Ct. 1390, 1396 (2020) (emphasis added) (“Influential, postadoption treatises *confirm* this understanding.”).

188. Second, it is Defendants’ burden—and theirs alone—to affirmatively prove that Section 26806’s modern regulation comports with the original public understanding of the Second Amendment. *Bruen*, 142 S. Ct. at 2150 (“Of course, we are not obliged to sift the historical materials for evidence to sustain [the] statute. That is respondents’ burden.”). If Defendants fail to do so, Plaintiffs are entitled to injunctive relief. *See id.* at 2130 (emphasis added) (announcing that “*only*” when the government carries its burden “may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command’”).

189. Third, in proffering historical evidence, Defendants must establish a broad and enduring Founding-era tradition. *Bruen*, 142 S. Ct. at 2130 (emphasis added) (contemplating a “historical *tradition* of firearm regulation”); *id.* at 2153 (rejecting historical evidence from even several states as “outliers”). While the *Bruen* Court did not articulate just how much historical evidence constitutes a “tradition,” this Court need not address that question because, as discussed below, there is *no* relevant evidence to support Section 26806.

190. And fourth, the widespread Founding-era firearm regulations Defendants must proffer must be analogous to Section 26806’s surveillance requirement in mechanisms and motivations. *Bruen*, 142 S. Ct. at 2133 (identifying “how and why the regulations burden a law-abiding citizen’s right to armed self-defense” as “‘*central*’ considerations” in analogical reasoning).

191. Under this framework, Section 26806 cannot possibly be justified as consistent with the Second Amendment’s guarantee.

1                                    *The Second Amendment Right to Acquire “Arms”*

2            192.     Although it seems to go without saying, inherent in the Second  
3 Amendment’s protection of the right to “keep and bear” firearms is the right to acquire  
4 them. As numerous courts across the country have observed, the Second Amendment  
5 protects the manufacture, purchase, and sale of firearms, ammunition, and related  
6 items. *See, e.g., Luis v United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in  
7 the judgment) (constitutional rights “implicitly protect those closely related acts  
8 necessary to their exercise.”); *Teixeira v. County of Alameda*, 873 F.3d 670, 677 (9th  
9 Cir. 2017) (“the core Second Amendment right to keep and bear arms for self-defense  
10 ‘wouldn’t mean much’ without the ability to acquire arms.”); *Duncan v. Bonta*, 2023  
11 WL 6180472, at \*8 (S.D. Cal. Sept. 22, 2023) (“[n]either magazines, nor rounds of  
12 ammunition, nor triggers, nor barrels are specifically mentioned in the Second  
13 Amendment ... But without a right to keep and bear triggers, or barrels, or ammunition  
14 and the magazines that hold ammunition, the Second Amendment right would be  
15 meaningless.”); *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) (“The right  
16 to possess firearms for protection implies a corresponding right to acquire....”); *United*  
17 *States v. Hicks*, 2023 U.S. Dist. LEXIS 35485, at \*5 (W.D. Tex. Jan. 9, 2023) (“The  
18 clear answer is that ‘keep and bear arms’ includes receipt.”); *Bezot v. United States*,  
19 276 F. Supp. 3d 576, 605 (E.D. La. 2017) (emphasis added) (“the rights of law-  
20 abiding, responsible citizens ... *to acquire*” firearms), *aff’d*, 714 F. App’x 336 (5th Cir.  
21 2017); *Andrews v. State*, 50 Tenn. 165, 178 (1871) (“The right to keep arms,  
22 necessarily involves the right to purchase them ... and to purchase and provide  
23 ammunition suitable for such arms....”).

24            193.     A contrary finding – *i.e.*, that there is a right to possess arms but not to  
25 manufacture or sell them – is akin to a finding that there is a right to *have* the  
26 assistance of criminal defense counsel but no right to retain or obligation to appoint an  
27 attorney.  
28

1       194. As noted, “when the Second Amendment’s plain text covers an individual’s  
2 conduct, the Constitution presumptively protects that conduct.” *Bruen*, 142 S. Ct. at  
3 2126. In other words, any regulation that “covers” an individual’s “proposed course of  
4 conduct” must comport with our early “historical tradition of firearm regulation,”  
5 whose burden of proof the government must bear. *Id.* at 2126, 2134. Here, Section  
6 26806 regulates the acquisition of “arms” by members of “the people,” conditioning  
7 the exercise of their right to acquire on giving up numerous First, Fourth, and Fifth  
8 Amendment rights and requiring a detailed audiovisual record of every Second  
9 Amendment-related transaction.

10                   *Second Amendment Right to Engage in Firearm Commerce*

11       195. On the flip side of the clear Second Amendment right to acquire a firearm,  
12 the Second Amendment also protects the right to engage in the commerce and/or the  
13 business of being a gun dealer, gun manufacturer, and/or operating a gun range.

14       196. In order to ensure that “the people” actually have the “right to keep and  
15 bear Arms,” the Second Amendment must protect the methods and mechanisms by  
16 which firearms come into existence and are distributed. Indeed, the right to “keep and  
17 bear” arms becomes meaningless if there is no right to acquire them in the first place,  
18 and the right to acquire arms becomes meaningless if California is able to control,  
19 manipulate, and discourage its citizens’ access to firearms by imposing the onerous  
20 surveillance that Section 26806 mandates.

21       197. To suggest the contrary would eviscerate the Second Amendment entirely:  
22 “the Government argues[] receiving a firearm falls outside the Second Amendment  
23 right to ‘keep and bear arms.’ ... [W]hat the Government is suggesting is absurd in  
24 practice. If receiving a firearm were illegal, but possessing or carrying one remained a  
25 constitutional right, one would first need to break the law to exercise that right. And if  
26 buying (receiving) a gun is not covered by the Second Amendment’s plain text, neither  
27 would selling one. So according to the Government, Congress could throttle gun  
28 ownership without implicating Second Amendment scrutiny by just banning the

1 buying and selling of firearms. What a marvelous, Second Amendment loophole!”  
 2 *United States v. Hicks*, 649 F. Supp. 3d 357, 359-60 (W.D. Tex. 2023); *see also*  
 3 *Lynchburg Range & Training, LLC v. Northam*, 105 Va. Cir. 159, 162 (Lynchburg  
 4 2020) (alteration in original) (observing that “the right to keep and bear arms  
 5 ‘includ[es] the otherwise lawful ... sale[] or transfer of firearms’”); *Kole v. Village of*  
 6 *Norridge*, 2017 U.S. Dist. LEXIS 178248, at \*29 (N.D. Ill. Oct. 27, 2017) (quoting  
 7 Thomas Jefferson) (“Our citizens have always been free to make, vend, and export  
 8 arms.”).<sup>21</sup>

9 198. Early Founding traditions presuppose and confirm this broad right to  
 10 firearm commerce: “in order ‘[t]o sustain themselves against a large and well-supplied  
 11 British military throughout the [Revolutionary] war, the Americans relied on  
 12 gunsmiths, individuals with knowhow from working on their *own arms*, and  
 13 Americans who were willing to *learn the art of arms manufacturing*.”” *Mock v.*  
 14 *Garland*, 2023 U.S. Dist. LEXIS 178809, at \*31 (N.D. Tex. Oct. 2, 2023) (alterations  
 15 in original). Were it not the case that the Second Amendment protects the  
 16 manufacturing and distributing of firearms, the only constitutionally guaranteed way to  
 17 acquire a firearm would be to make one for oneself—a high bar, to say the least,  
 18 considering the equipment required, the tolerances involved, and the machining  
 19 knowledge necessary.

20 199. Under federal and state law, there can be no commercial manufacture of  
 21 firearms without licensure. And for those firearms that are manufactured  
 22 commercially (*i.e.*, probably 99.9% of them), they cannot be distributed to the  
 23

24 <sup>21</sup> *But see United States v. Kazmende*, 2023 WL 3872209, at \*5 (N.D. Ga. May 17,  
 25 2023) (plain text of Second Amendment does not cover commercial sales); *United*  
 26 *States v. Flores*, 2023 WL 361868, at \*2-6 (S.D. Tex. Jan. 23, 2023) (the Second  
 27 Amendment does not protect the right to commercially deal firearms). But these  
 28 unpersuasive opinions are flat wrong. If there is no right to sell a firearm, and/or no  
 right to buy one, then there can be no right to keep and bear arms (since there can be  
 no arms to keep and bear in the first place). In other words, the government cannot  
 demur that a person has a right to post a Tweet, but Twitter can be prohibited from  
 providing the forum in which to do so.

1 California public but through licensed dealers. Thus, through Section 26806,  
 2 California almost entirely controls Californians' access to firearms<sup>22</sup> through a  
 3 surveillance scheme deliberately and intentionally designed to discourage and penalize  
 4 the constitutionally protected and guaranteed Second Amendment pipeline.

5 200. A plaintiff business is able to bring claims on behalf of its  
 6 customers. *Craig v. Boren*, 429 U.S. 190, 195 (1976). But even so, at least one  
 7 prospective customer of a Plaintiffs On Target, Smokin' Barrel Firearms, and Jesse  
 8 Harris would purchase firearms from a plaintiff business but for Section 26806's  
 9 requirement that Plaintiffs constantly monitor customers and transactions via  
 10 audiovisual surveillance. Because of this surveillance mandate and the violations to  
 11 constitutional rights it imposes, Plaintiffs Customers will refrain from purchasing  
 12 firearms at licensed California gun dealers. (See Vandermeulen Decl. ¶ 7; Gaalswyk  
 13 Decl. ¶ 13.)

14 201. Expectedly, California will latch on to the dicta in *Heller* about "laws  
 15 imposing conditions and qualifications on the commercial sale of arms" being  
 16 "presumptively lawful." 554 U.S. at 626-27, 627 n.26. But this is not the magic  
 17 incantation that California expectedly will represent it to be.

18 202. First, any nebulous class of restrictions that purportedly constitute  
 19 commercial regulations suffers from total ambiguity. Rather, not every law that  
 20 involves the transfer of a firearm is a "regulation on the commercial sale of  
 21 arms." And, "[o]f course, not every regulation on the commercial sale of arms is  
 22 presumptively lawful." *Rigby v. Jennings*, 630 F. Supp. 3d 602, 613 (D. Del. 2022).

23 203. Without any limiting principle, a federal law imposing a 100,000% tax on  
 24 each commercial firearm sale would be a "condition" on firearm sales and remain  
 25 "presumptively constitutional"—thereby avoiding the *Bruen* framework entirely,  
 26 despite its obvious unconstitutionality. Similarly, a requirement that a person be seven  
 27

28 <sup>22</sup> This is especially true because California's AB 1621 criminalizes the self-  
 manufacture of firearms from common commercial "unfinished" kits.



1 feet tall in order to buy a gun could be deemed a “qualification” on the commercial  
2 sale of arms, and thus exempt from *Bruen*.

3 204. Without any further exposition as to which sorts of laws the Supreme Court  
4 presumed would have historical support when challenged, no court can label a given  
5 restriction definitively “commercial” in nature and thus definitively exempt from the  
6 *Bruen* framework.

7 205. But even if the opposite were true, simply being labeled as a “condition[]  
8 [or] qualification[] on the commercial sale of arms” does not exempt governmental  
9 regulation from a historical analysis under *Bruen*. The Supreme Court has explicitly  
10 said as much. As the Court observed, “there will be time enough to expound upon the  
11 historical justifications for the exceptions we have mentioned if and when those  
12 exceptions come before us.” *Heller*, 554 U.S. at 635 (inviting future challenges to  
13 firearm regulations whose historical traditions the Court merely assumed, *arguendo*,  
14 without deciding).

15 206. The *Bruen* Court was similarly explicit that, in *every* case where the Second  
16 Amendment presumptively protects conduct, the “government must ... justify its  
17 regulation by demonstrating that it is consistent with the Nation’s historical tradition of  
18 firearm regulation. ***Only then*** may a court conclude that the individual’s conduct falls  
19 outside the Second Amendment’s ‘unqualified command.’” *Bruen*, 142 S. Ct. at 2130  
20 (emphasis added). This absolutist language left no room for reliance on ambiguous  
21 dicta as a way around *Bruen*’s historical framework. Rather, “[o]nly” after the  
22 government carries its burden and proves a relevant historical tradition may a court  
23 rule the regulation does not violate the Second Amendment.

24 207. Other federal courts have held as much. See *United States v. Marzzarella*,  
25 614 F.3d 85, 92 n.8 (3d Cir. 2010) (“Commercial regulations on the sale of firearms do  
26 not fall outside the scope of the Second Amendment.... In order to uphold the  
27 constitutionality of a law imposing a condition on the commercial sale of firearms, a  
28 court necessarily must examine the nature and extent of the imposed condition. If



1 there were somehow a categorical exception for these restrictions, it would follow that  
 2 there would be no constitutional defect in prohibiting the commercial sale of firearms.  
 3 Such a result would be untenable under *Heller*.”); *United States v. Price*, 635 F. Supp.  
 4 3d 455, 459 (S.D. W. Va. 2022) (rejecting the government’s call for an expansive  
 5 reading of *Heller*’s “commercial sale” dicta).

#### 6 [Section 26806 Violates the Second Amendment]

7 208. Section 26806’s invasive surveillance of prospective firearm purchasers  
 8 discourages protected firearm purchases from ever occurring.

9 209. To be sure, the exercise of Second Amendment rights may be  
 10 controversial. *See McDonald*, 561 U.S. at 783 (“The right to keep and bear arms ... is  
 11 not the only constitutional right that has controversial public safety implications.”).

12 210. This is especially true in California, where politicians express an open  
 13 hostility to the enumerated right<sup>23</sup> and government officials display a shocking  
 14 carelessness with gun owners’ personal information.<sup>24</sup>

15 211. Unsurprisingly, existing and prospective California gun owners value their  
 16 privacy in a state where controversial viewpoints and arms risk social ostracism and  
 17 reprisal. *See, e.g., NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) (“It  
 18 is hardly a novel perception that compelled disclosure of affiliation with groups  
 19 engaged in advocacy may constitute as effective a restraint on freedom of association  
 20 as [other] forms of governmental action....”); *Ams. for Prosperity Found. v. Bonta*, 141

21  
 22 <sup>23</sup> California Governor Gavin Newsom, *Governor Newsom Speaks on SCOTUS*  
 23 *Conceal Carry Decision*, YouTube, at 0:44 (June 23, 2022),  
 24 <https://youtu.be/iK1xKGMrPIE> (calling *Bruen* “a radical decision”). At a press  
 25 conference on February 1, 2023, Governor Newsom used air quotes when discussing  
 26 the “right” to carry firearms outside the home, making his contempt for the  
 27 Constitution clear. <https://twitter.com/i/broadcasts/1vAxRAXgXRVJl> (at 41 minutes,  
 28 23 seconds in) (last accessed December 15, 2023).

<sup>24</sup> Dani Anguiano, *Leak of California Gun Owners’ Private Data Far Wider than*  
 26 *Originally Reported*, *Guardian* (June 30, 2022), <https://tinyurl.com/4nw2w9r8> (“The  
 27 California department of justice admitted it had exposed the personal information of as  
 28 many as hundreds of thousands of gun owners in the state.... The data breach  
 temporarily made public the names, birthdates, gender, race, driver’s license numbers,  
 addresses and criminal histories of people who were granted or denied permits to carry  
 concealed weapons between 2011 and 2021.”).

1 S. Ct. 2373, 2382 (2021) (observing that “NAACP members faced a risk of reprisals if  
2 their affiliation with the organization became known”).

3 212. The prospect of having one’s face, name, and conversations captured and  
4 stored “for a minimum of one year,” Cal. Penal Code § 26806(a)(6), subject to  
5 government exposure, will chill the purchase of firearms in California in much the  
6 same way that the compelled disclosure of association members or charity donors  
7 would chill First Amendment rights. *See NAACP*, 357 U.S. at 462; *Ams. for Prosperity*  
8 *Found.*, 141 S. Ct. at 2389.

9 213. But in addition to Section 26806 intimidating and discouraging law-abiding  
10 Americans from exercising their enumerated right to keep and bear arms, Section  
11 26806 regulates “conduct” that is clearly “presumptively protected” by the Second  
12 Amendment. Thus, California must show a broad and enduring historical tradition of  
13 similar regulation. California cannot hope to do so.

14 **[There Is No Historical Tradition of Electronically Surveilling Gun Sales]**

15 214. Of course, photography did not exist at the Founding—let alone video  
16 cameras.<sup>25</sup> Yet the Founders knew how to record the likenesses of individuals and the  
17 contents of conversations when they wanted to – through the use of sketches, drawings,  
18 written descriptions, and transcriptions.<sup>26</sup> Certainly, if the Founders understood  
19 invasive surveillance of prospective firearm purchasers to comport with the original  
20 meaning of the Second Amendment, then one would expect to find widespread  
21 Founding-era regulations requiring every gunsmith to employ a sketch artist to  
22 reproduce or otherwise describe each patron’s appearance, and a reporter to write down  
23 the conversations that took place during those transactions.

24 215. Obviously, no such tradition of regulation ever existed.  
25

26 <sup>25</sup> Jacob Livesay, *When Was the Camera Invented? Here’s Who Created the First*  
27 *Camera in 1816.*, *USA Today*, <https://tinyurl.com/46pepc3a> (Aug. 23, 2023) (tracing  
the advent of photography to the early 19th century).

28 <sup>26</sup> *See, e.g., Life Portraits of George Washington, Mount Vernon*,  
<https://tinyurl.com/2krve9fm> (last visited Dec. 8, 2023).



1 physical appropriation of that property, and a governmental surveillance easement of  
2 the private property.

3 222. Such surveillance itself, in addition to at-will entry onto Plaintiffs’  
4 property, constitutes a permanent physical occupation of their property.

5 223. Such at-will surveillance, entry, and viewing are neither intermittent nor of  
6 a temporary nature.

7 224. Such at-will surveillance, entry, and viewing impair Plaintiffs’ right to  
8 exclude other persons from their property.

9 225. Such at-will surveillance, entry, and viewing impair Plaintiffs’ right to  
10 freely use their property, free from the prying eyes of the government.

11 226. Such at-will surveillance, entry, and viewing impair Plaintiffs’ right to  
12 transact business.

13 227. Such at-will surveillance, entry, and viewing authorize the government to  
14 possess and use Plaintiffs’ own property as it pleases, and impair Plaintiffs’ right to  
15 possess, use, and dispose of their own property as they please, in violation of the Fifth  
16 and the Fourteenth Amendments.

17 228. Defendants have failed to compensate Plaintiffs for the permanent physical  
18 taking or the permanent easement imposed upon Plaintiffs’ property.

19 229. Section 26806 commandeers private property owners and lessees to  
20 implement and then accommodate a sweeping and perpetual government surveillance  
21 scheme without any form of compensation for the significant costs incurred or the  
22 severe limitations on property rights suffered. What is more, once California has its  
23 Section 26806 recording regime in place (with private industry having done all the  
24 legwork), California reserves the right to insert itself into gun dealers’ stores and  
25 homes for compliance inspections as often as it pleases – at the dealers’ cost.<sup>27</sup>

26  
27 <sup>27</sup> California has granted itself the right to inspect gun dealers “at least once every  
28 three years,” language that contains no upper limit to inspection frequency. Cal. Penal  
Code § 26720(a)(1). Indeed, weekly inspections occur “at least once every three  
years.” Moreover, California compels gun dealers to cover the costs of their own

1       230. In other words, Section 26806 represents a 21st-century digital “quartering”  
2 of troops in Plaintiff licensee’s private homes and businesses.<sup>28</sup>

3       231. California’s message to businesses engaged in constitutionally protected  
4 conduct and commerce is clear: “First, you will spy on your patrons’ lawful conduct  
5 for us. Second, you are to bear the costs of our surveillance. Third, you will give us  
6 access, on demand, to what you have recorded. Fourth, *you* will pay *us* for *your*  
7 trouble.”

8       232. Designed to curtail such egregious abuses of power, the Takings Clause of  
9 the Fifth Amendment provides: “nor shall private property be taken for public use,  
10 without just compensation.” The protections of the Takings Clause are incorporated  
11 against the states via the Fourteenth Amendment Due Process Clause. *Chi., Burlington*  
12 *& Quincy R.R. v. Chicago*, 166 U.S. 226 (1897).

13       233. After *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), Plaintiffs need  
14 not exhaust state-court remedies prior to filing a Takings claim in federal court,  
15 because such a requirement would have preclusive effect on any subsequent federal  
16 claims under *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323  
17 (2005). Accordingly, “[a] property owner may bring a takings claim under § 1983  
18 upon the taking of his property without just compensation....” *Knick*, 139 S. Ct. at  
19 2179.

20  
21  
22  
23 regulatory oversight. Cal. Penal Code § 26720(b) (“The department may assess an  
annual fee ... including the cost of inspections.”).

24 <sup>28</sup> Although Plaintiffs do not bring a Third Amendment claim on behalf of home-  
25 based gun dealers, one of the Founders’ motivations in proscribing the quartering of  
26 soldiers in homes was ending the practice of surveilling citizens and stifling local  
27 dissent through shows of force. *See Engblom v. Carey*, 677 F.2d 957, 966-67 (2d Cir.  
1982) (Kaufman, J., dissenting) (“the Third Amendment of the United States  
28 Constitution embodies a fundamental value the Founders of our Republic sought to  
insure after casting off the yoke of colonial rule: the sanctity of the home from  
oppressive governmental intrusion.”). Of course, technology has progressed since the  
1770s, and the government need not quarter soldiers in homes to achieve the same  
degree of odious supervision and suppression. A “telescreen” will suffice, à la 1984.

1       234. As the Founders recognized uniformly, “the protection of private property  
2 is indispensable to the promotion of individual freedom.” *Cedar Point Nursery v.*  
3 *Hassid*, 141 S. Ct. 2063, 2071 (2021).

4       235. Among the most vital rights of property ownership is the right to exclude  
5 others, from private individuals to the government itself. *Cedar Point*, 141 S. Ct. at  
6 2072. Indeed, without the right to decide who may enter upon your property and what  
7 they may do while there, the right to property does not exist. *See Loretto v.*  
8 *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) (“the power to  
9 exclude has traditionally been considered one of the most treasured strands in an  
10 owner’s bundle....”); *id.* (“Property rights in a physical thing have been described as  
11 the rights ‘to possess, use and dispose of it.’ To the extent that the government  
12 permanently occupies physical property, it effectively destroys each of these rights.”).

13       236. Accordingly, several types of governmental interference with property rise  
14 to the level of “takings” within the meaning of the Fifth Amendment, for which the  
15 government must pay “just compensation.”

16       237. While the formal condemnation or physical possession of property by  
17 government clearly suffice as “takings,” so too do physical intrusions and use  
18 restrictions. Indeed, “[g]overnment action that physically appropriates property is no  
19 less a physical taking because it arises from a regulation,” *Cedar Point*, 141 S. Ct. at  
20 2072, and the “essential question is not ... whether the government action at issue  
21 comes garbed as a regulation (or statute, or ordinance, or miscellaneous decree),” but  
22 rather “whether the government has physically taken property for itself or someone  
23 else—*by whatever means*—or has instead restricted a property owner’s ability to use  
24 his own property.” *Id.* (emphasis added).

25       238. In 2020, a minority of eight dissenting Ninth Circuit judges wrote that  
26 “[t]he right to enter onto the land of another to take some action is the epitome of an  
27 easement in gross. ... The Access Regulation gives multiple union organizers the right  
28 to enter onto employers’ private property to ‘meet[ ] and talk[ ] with employees and



1 solicit[ ] their support’ for three hours a day, 120 days a year. ... Accordingly, we have  
2 the ‘classic taking’ ... Because California has ‘appropriate[d] private property for its  
3 own use,’ there has been ‘a per se taking that requires compensation.’” *Cedar Point*  
4 *Nursery v. Shiroma*, 956 F.3d 1162, 1171-72 (9th Cir. 2020) (Ikuta, J., dissenting). Of  
5 course, their minority view was vindicated by the Supreme Court the following year.

6 239. Worse even than California’s “Access Regulation,” Section 26806 makes  
7 the Plaintiff licensees Adam Richards, Jesse Harris, Jeffrey Vandermeulen, On Target,  
8 and Smokin’ Barrel Firearms set aside their property for the state’s exclusive use,  
9 purchase the state’s electronic equipment on their own dime (in essence install their  
10 own wiretap in their private space), and then stand aside while state officials enter  
11 upon said property to access the system at their pleasure. *See Boise Cascade Corp. v.*  
12 *United States*, 296 F.3d 1339, 1355 (Fed. Cir. 2002) (permanent physical taking when  
13 the government “sunk concrete wells on ... property to monitor groundwater pollution  
14 from a nearby superfund site,” and thereafter government “workers ... entered to ...  
15 maintain[] and monitor them.... The permanency of the wells and the quasi-permanent  
16 right of entry provided to the government workers who monitored and maintained  
17 them led us to apply the *per se* takings theory of *Loretto*.”).

18 *Section 26806 Constitutes an Uncompensated Per Se Physical Intrusion.*

19 240. Applying the above principles, the Supreme Court time and again has  
20 made clear that, “[w]henver a regulation results in a physical appropriation of  
21 property, a *per se* taking has occurred” and just compensation must be paid. *Cedar*  
22 *Point*, 141 S. Ct. at 2072.

23 241. A finding of a *per se* physical taking is dispositive; “a permanent physical  
24 occupation constitutes a *per se* taking regardless whether it results in only a trivial  
25 economic loss” and “without regard to whether the action achieves an important public  
26 benefit or has only minimal economic impact on the owner.” *Cedar Point*, 141 S. Ct.  
27 at 2073 (quoting *Loretto*, 458 U.S. at 434-35).



1       242. In other words, when a *per se* physical taking has occurred, the only  
2 question is *how much* compensation must be paid, not *whether* it should be paid. *See*,  
3 *e.g.*, *Cedar Point*, 141 S. Ct. at 2074 (citation omitted) (“The duration of an  
4 appropriation—just like the size of an appropriation—bears only on the amount of  
5 compensation.”); *id.* at 2075 (recognizing that “physical invasions constitute takings  
6 even if they are intermittent as opposed to continuous”); *id.* (“What matters is not that  
7 [a taking] notionally ran round the clock, but that the government had taken a right to  
8 physically invade....”); *id.* (“The fact that a right to take access is exercised only from  
9 time to time does not make it any less a physical taking.”).

10       243. The regulatory imposition of a right to invade property will constitute a *per*  
11 *se* physical taking, *Cedar Point*, 141 S. Ct. at 2074, as will the regulatory imposition of  
12 a permanent physical occupation, however minor. *Loretto*, 458 U.S. at 426.

13       244. Section 26806’s provisions meet this standard and thus constitute a *per se*  
14 physical taking because Section 26806 compels the installation of government  
15 surveillance equipment (video cameras, audio recording devices, etc.) at various  
16 locations throughout commercial businesses and private homes across California. *See*  
17 *Otay Mesa Prop. L.P. v. United States*, 86 Fed. Cl. 774, 790-91 (2009), *aff’d*, 670 F.3d  
18 1358 (Fed. Cir. 2012) (Border Patrol installation of “seismic sensors ... to detect illegal  
19 aliens on the subject property” constituted “the physical taking of an  
20 easement.”). Video and audio surveillance are many standard deviations more invasive  
21 than mere “seismic sensors.”

22       245. Section 26806 is fairly specific about where such government monitoring  
23 devices must be placed – so as to capture “interior views of all entries or exits,” at “all  
24 places where firearms are displayed,” and at “all points of sale.”

25       246. Section 26806 removes any discretion from Plaintiff licensees Jesse Harris,  
26 Adam Richards, Jeffrey Vandermeulen, On Target, and Smokin’ Barrel Firearms how  
27 or where to install the government’s surveillance devices and, under Section 26806,  
28 such devices may not be removed (“[e]ach camera shall be permanently mounted in a

1 fixed location”). *See Loretto*, 458 U.S. at 440 n.19 (explaining that “the statute might  
2 present a different question” if “the landlord [had] rights to the placement, manner,  
3 use, and possibly the disposition of the installation”). Under Section 26806, gun  
4 dealers have control over none of those factors.

5 247. The fact that modern surveillance equipment often is relatively small does  
6 not change the analysis. *See Loretto*, 458 U.S. at 437 (“constitutional protection for  
7 the rights of private property cannot be made to depend on the size of the area  
8 permanently occupied.”); *id.* at 438 n.16 (rejecting the notion that a taking of “about  
9 one-eighth of a cubic foot of spaces is not of constitutional significance.”).

10 248. In a typical business, Section 26806’s mandates likely would mean cameras  
11 near the front and rear doors, along with at the gun counter, capturing all handguns in  
12 display cases, all long guns on wall racks, and at the cash register and/or computer  
13 where background checks are performed. It also means a “sign in a conspicuous place  
14 at each entrance to the premises” providing government-mandated warnings that  
15 government-mandated surveillance is in progress.

16 249. Section 26806’s mandates take priority over a shop owner’s other uses for  
17 the real estate of his walls, ceilings, etc. For example, if there is a clock on the wall  
18 above the front door, the clock must move. If there are gun racks and long guns  
19 hanging on walls where a video camera must be placed, the guns must be moved. If  
20 there is no adequate spot in which to install certain monitoring devices to “identify the  
21 parties” and “clearly record ... audio,” then infrastructure must be constructed. If  
22 shelves or racks block the view of a camera, the inventory must be removed. And  
23 finally, as noted above with respect to Section 26806’s First Amendment violations, a  
24 gun store owner cannot play the radio, TV, or Christmas music, because he must make  
25 sure California’s surveillance system is able to capture not only “images” but also  
26 “audio” of transactions – unless, of course, California would like to stipulate that gun  
27 stores may install “white noise” generators next to all cameras in their stores. *See*  
28 *United States v. Causby*, 328 U.S. 256, 266-67 (1946) (taking where the noise of

1 “frequent, low-level flights” of aircraft ... direct and immediate interference with the  
2 enjoyment and use of the land”).

3 250. Section 26806 thus constitutes a permanent,<sup>29</sup> physical, government  
4 occupation of numerous portions of (and uses of) Plaintiffs’ property where  
5 government surveillance equipment must be installed, and additionally for all space  
6 upon the property where cameras and audio equipment are pointed and recording.

7 251. For gun shops, the effect that this law will have on their business is almost  
8 indescribable. Tens of thousands of dollars spent on purchasing recording and storage  
9 equipment so the government can track them and their customers. Losses in revenue  
10 because customers refuse to give up their bundle of other rights in order to exercise a  
11 few. Limits to the conversations that would normally happen around gun safety,  
12 security needs of the individual and constitutional rights of the gun owner quashed  
13 because people are too afraid to have these conversations while under the microscope  
14 of a government lens.

15 252. For home-based gun dealers, the physical intrusion is even greater, as  
16 surveillance equipment must be installed within one’s own home. Mom’s ornamental  
17 plates on the wall of the dining room must give way to a sterile-looking video camera  
18 with a flashing light. Dad’s deer antlers on the living room wall must be moved so that  
19 more government eavesdropping devices can be affixed to the studs. The most intimate  
20 of situations may be recorded and even used against the homeowners in civil or  
21 criminal litigation.

22 253. All of the surveillance equipment mandated by Section 26806 is permanent  
23 (“shall be permanently mounted”). It must record 24 hours a day, 7 days a week. It  
24 cannot be removed for special occasions (Christmas dinner), and it may not be turned  
25 off or covered while the premises are not open to the public for business. *See Loretto*,

26  
27 <sup>29</sup> Even if Section 26806 did not blatantly use the word “permanent,” a taking does  
28 not become “temporary” merely because “the government can always change its mind  
at a later time....” *Hendler v. United States*, 952 F.2d 1364, 1376-77 (Fed. Cir. 1991).

1 458 U.S. at 426 (“a permanent physical occupation authorized by government is a  
 2 taking without regard to the public interests that it may serve.”); *id.* at 427 (“[w]hen  
 3 faced with a ... permanent physical occupation of real property, this Court has  
 4 invariably found a taking.”).

5 254. Indeed, Section 26806 is on all fours with the facts of *Loretto*, where the  
 6 owner of an apartment building objected to installation of electronic devices (cable TV  
 7 antennas and boxes) on the *exterior* roof of her building. Here, Section 26806  
 8 mandates installation of electronic devices (cameras, microphones, computers) on the  
 9 *interior* of Plaintiffs’ businesses, and “literally adds insult to injury” because it makes  
 10 Plaintiffs pay to be surveilled. *See Loretto*, 458 U.S. at 436.

11 255. Nor is Section 26806 permissible under “the State’s power to require  
 12 landlords to comply with building codes and provide utility connections, mailboxes,  
 13 smoke detectors, fire extinguishers, and the like in the common area of a building,”  
 14 with no “physical occupation of a portion of his building by a third party.” *Loretto*,  
 15 458 U.S. at 440. The government surveillance equipment required by Section 26806 in  
 16 no way relates to devices the government requires be installed for the benefit of those  
 17 within the property.<sup>30</sup> Rather, Section 26806’s mandated surveillance equipment is *for*  
 18 *the benefit of the government alone*. *See Cedar Point*, 141 S. Ct. at 2072 (“Whenever a  
 19 regulation results in a physical appropriation of property, a *per se* taking has occurred,  
 20 and *Penn Central* has no place.”).

21 256. Indeed, Section 26806 explicitly provides that the gun store “shall not use  
 22 ... recordings” but “shall allow access” to the government at any time. **Under the**  
 23 **plain language of Section 26806, a gun store could not even examine video and**  
 24 **audio recordings after a burglary to attempt to identify the perpetrators.** In other  
 25

26 <sup>30</sup> But even if California’s surveillance system somehow benefited the gun store,  
 27 that does not mean that Section 26806 does not constitute a taking. *See Loretto*, 458  
 28 U.S. at 422, 438 (concluding, with respect to the installation of “a ‘noncrossover’  
 line—*i.e.*, one that provided CATV service to appellant’s own tenants,” that there is  
 “no constitutional difference between a crossover and a noncrossover installation”).

1 words, Section 26806 clearly mandates an “occupation” by the government, forcing  
2 gun stores to purchase and install government property, for the sole use and benefit of  
3 the government. *See Loretto*, 458 U.S. at 440. And Section 26806 permits  
4 government agents to come a-knocking at any time, to inspect the system or download  
5 its surveillance recordings.<sup>31</sup>

6 257. Section 26806 thus could be compared to a law requiring Plaintiff licensees  
7 to appropriate physical space behind the counter for a government agent to sit in every  
8 day and monitor the goings on.<sup>32</sup> No reasonable argument could be made that such a  
9 law did not effect a taking.

10 258. Nor does it matter that Section 26806 does not provide for government or  
11 utility installation of its devices, but instead requires licensees to purchase and install  
12 the system by which the government will then tyrannize them. If it were otherwise,  
13 any Takings claim could be avoided by simply making the violation worse, and  
14 requiring the property owner to harm himself (for example, in *Loretto*, requiring the  
15 apartment building owner install the utility’s cable lines on its behalf).

16 259. Rather, what matters is that Section 26806 mandates installation of  
17 surveillance equipment for the government’s use and benefit alone, subject to the  
18 government’s inspection and review at any time, depriving the property owner not only  
19 of a certain amount of physical space, but also of use and enjoyment of the entire  
20 premises.

21  
22  
23 <sup>31</sup> Similarly, a requirement that property owners allow non-governmental private  
24 parties a right of access on their land is a physical taking under the Fifth Amendment.  
*Cedar Point*, 141 S. Ct. at 2080.

25 <sup>32</sup> Section 26806 is completely unlike federal law, which requires firearms dealers  
26 to keep certain records in a certain form (18 U.S.C. § 923(g)(1)(A)), but does not say  
27 where they must be kept—indeed, ATF allows for paper or electronic storage of  
28 records (27 C.F.R. § 478.129(b)). Nor is Section 26806 like an ATF administrative  
inspection of a dealer, which is temporary in nature and occurs infrequently (at *most*  
once per year). *Compare* 18 U.S.C. § 923(g)(1)(B)(ii)(I) (“not more than once during  
any 12-month period”), with Cal. Penal Code § 26720(a)(1) (“at least once every three  
years”).

1       260. Although the *Cedar Point* Court noted that “[l]imitations on how a business  
2 generally open to the public may treat individuals on the premises are readily  
3 distinguishable from regulations granting a right to invade property closed to the  
4 public,” 141 S. Ct. at 2077, the issue here is that California’s physical occupation  
5 extends indefinitely, on a 24/7 basis, and even at times when businesses are in fact  
6 closed to the public.

7       261. Compounded by the sheer costs of complying with Section 26806’s novel  
8 surveillance scheme, this intrusive digital dragnet plainly constitutes a physical taking  
9 for which just compensation must be paid.

10               *Section 26806 Constitutes an Uncompensated Regulatory Taking.*

11       262. In the alternative, Section 26806 is a restriction on the use of property that  
12 goes “too far” and therefore amounts to a “regulatory taking.” *Cedar Point*, 141 S. Ct.  
13 at 2072.

14       263. Whether a use restriction rises to the level of compensable “regulatory  
15 taking” requires analysis of the factors identified in *Penn Cent. Transp. Co. v. New*  
16 *York City*, 438 U.S. 104 (1978).

17       264. This factual inquiry entails “[t]he economic impact of the regulation on the  
18 [property owner],’ (2) ‘the extent to which the regulation has interfered with distinct  
19 investment-backed expectations,’ and (3) ‘the character of the governmental  
20 action.’” *CDK Glob. LLC v. Brnovich*, 16 F.4th 1266, 1282 (9th Cir. 2021) (alterations  
21 in original) (quoting *Penn Central*, 438 U.S. at 124). Elaborating on the “character”  
22 factor, the *Penn Central* Court observed that a regulatory “‘taking’ may more readily  
23 be found when the interference with property can be characterized as a physical  
24 invasion by government.” *Penn Central*, 438 U.S. at 124.

25       265. Of course, the case at bar is nothing like *Penn Central*, which simply  
26 maintained the status quo by denying Penn Central’s ability to construct an office  
27 building above Grand Central Terminal, a historic landmark. *Penn Central*, 438 U.S.  
28



1 at 136 (noting that “the New York City law does not interfere in any way with the  
2 present uses of the Terminal”).

3 266. In stark contrast, Section 26806 upends the status quo entirely, imposing  
4 onerous new surveillance requirements at a significant (and for some, altogether  
5 prohibitive) cost. Businessowners and affected homeowners alike will have to change  
6 how they use their own properties, as the installation of a Bentham’s Panopticon  
7 invariably alters how people under observation behave: “‘The fact that you *won’t* do  
8 things, that you will self-censor, are the worst effects of pervasive surveillance,’  
9 reiterates security expert Bruce Schneier, a fellow at the Berkman and in the  
10 cybersecurity program of the Kennedy School’s Belfer Center for Government and  
11 International Affairs. ‘Governments, of course, know this. China bases its  
12 surveillance on this fact. It *wants* people to self-censor....’”<sup>33</sup> Thus, the “character of  
13 the governmental action” here is as tyrannical as it gets.

14 267. Egregious as these effects are, the *Penn Central* factors make all the more  
15 clear that Section 26806 effectuates a regulatory taking. Indeed, Section 26806  
16 entirely upends dealers’ “investment-backed expectations,” especially those who are  
17 homeowners. In its surveillance-state zeal, Section 26806 imposes prohibitively  
18 expensive regulatory burdens that will price countless small-scale gun dealers out of  
19 existence. These unprecedented costs naturally interfere with Plaintiffs’ expectations  
20 as to the uses of their property and the profit (and indeed livelihood) potential of  
21 operating a gun store in California.

22 268. In the context of a home-based dealer, such regulatory limitation amounts  
23 to a complete taking because no meaningful domestic use remains if occupants are to  
24 be surveilled within their own homes. Indeed, Plaintiffs Richardson and  
25 Vandermeulen would rather move out of their homes or quit their businesses than star  
26 in Section 26806’s version of “The Truman Show.” In addition to the weighty cost of  
27

28 <sup>33</sup> Jonathan Shaw, *The Watchers: Assaults on Privacy in America*, *Harv. Mag.* (Jan.-  
Feb. 2017), <https://tinyurl.com/4jfrmcbbk>.



1 purchasing, installing, and maintaining Section 26806's surveillance system, the  
2 economic impacts caused by loss of use of a property (especially a home) are crippling.

3 269. Thus, even if the Court finds that Section 26806 is not a *per se* physical  
4 taking of property for government use, it still constitutes an overbearing regulatory  
5 taking for which compensation is due.

6 *Unconstitutionally Compelled Waiver of Fifth Amendment-Protected Privileges*

7 270. By mandating both visual and audio recording 24/7 inside Plaintiffs'  
8 premises, including the homes of home-based dealers, Section 26806 forcibly intrudes  
9 into areas where many privileged communications occur.

10 271. First, with respect to home-based gun dealers, the recording mandate treads  
11 into an area which the courts have recognized is essential to protect—spousal  
12 communications.

13 272. The Supreme Court has articulated this protection by explaining that “the  
14 basis of the immunity given to communications between husband and wife is the  
15 protection of marital confidences, regarded as so essential to the preservation of the  
16 marriage relationship as to outweigh the disadvantages to the administration of justice  
17 which the privilege entails.” *Wolfle v. United States*, 291 U.S. 7, 14 (1934).

18 273. While case law supports the concept that spousal communications made in  
19 public, or where the spouses know that the communication is not in confidence, fall  
20 outside the protection, it appears implicit in these decisions that courts differentiate  
21 such communications *because* they occur outside the home. *See, e.g., United States v.*  
22 *Tartaglione*, 228 F. Supp. 3d 402 (E.D. Pa. 2017) (holding that phone communications  
23 between spouses, where one of them is incarcerated, is not protected due to the “well-  
24 known need for correctional institutions to monitor inmate conversations”); *Pursley v.*  
25 *City of Rockford*, 2020 U.S. Dist. LEXIS 50513, at \*8 (N.D. Ill. Mar. 24, 2020)  
26 (explaining that inmates’ “privacy interests were less than a private citizen making  
27 calls at home because they knew that their calls were recorded”).  
28

1       274.     Indeed, various courts have recognized that the home is different, as the  
2     very “purpose of the spousal privilege is to protect the sanctity of the *marriage*  
3     *and home.*” *In re Marriage of Sarsfield*, 671 P.2d 595, 600 (Mont. 1983) (emphasis  
4     added). The entire concept of waiver of privilege is that one who gives up the  
5     privilege could have retreated to a safe space, such as the home, in order to make the  
6     communication. Here, the government effectively removes the ability to retreat by  
7     requiring recording *within* the sanctity of the home.

8       275.     Especially for home-based dealers, Section 26806 pays no concern as to  
9     other privileges which it might obliterate, such as the doctor/patient privilege.

10      276.     The doctor/patient privilege “reflects ‘the imperative need for confidence  
11     and trust’ inherent in the doctor-patient relationship and recognizes that ‘a physician  
12     must know all that a patient can articulate in order to identify and to treat disease;  
13     barriers to full disclosure would impair diagnosis and treatment.’” *Conant v. Walters*,  
14     309 F.3d. 629, 636 (9th Cir. 2002) (quoting *Trammel v. United States*, 445 U.S. 40, 51  
15     (1980)).

16      277.     And while modern medicine has progressed to allow treatment inside the  
17     home via offerings such as telehealth, these offerings for Plaintiffs require a Hobson’s  
18     choice of either refusing such modern treatment options or, alternatively, being forced  
19     to disclose their otherwise privileged medical issues to California’s ever-present big  
20     brother recording device.

21      278.     Plaintiffs Richards and Harris express concerns over legal conversations  
22     that happen in their home office or shop to which Defendants would be made a party  
23     should Section 26806 be implemented. (See Richards Decl. ¶ 4, 7, 8; Harris Decl. 5, 9.)  
24     These conversations are confidential. Should the owner of a shop or owners of a home  
25     business have to go outside to find a private place to have a conversation?

26      279.     Likewise, the priest-penitent or clergy privilege may also be implicated for  
27     individuals who choose to, for example, receive counseling or therapy, or otherwise  
28     contact a pastor or priest for guidance on spiritual issues while under government

1 surveillance at home. *See, e.g., Stevens v. Brigham Young University-Idaho*, 2018 U.S.  
 2 Dist. LEXIS 100491, at \*19 (D. Idaho June 11, 2018) (“[t]he privilege applies to  
 3 protect communications made (1) to a clergyperson, (2) in his or her spiritual  
 4 professional capacity (3) with a reasonable expectation of confidentiality.”).

5 280. Finally, Section 26806 egregiously invades the attorney-client privilege.  
 6 For example, due to the complex regulatory nature of the firearms business, many gun  
 7 stores frequently communicate with counsel to receive guidance on complex  
 8 compliance needs. However, given the nonstop nature of the recording under Section  
 9 26806, and the demand for audio recording in particular, proprietors looking for  
 10 counsel must *leave* their licensed premises to ensure that their communications with  
 11 their lawyer are not captured and recorded, which would waive their privilege.

12 281. Of course, leaving the premises (which is now recorded) to call counsel is  
 13 not feasible in many cases, as gun stores may require guidance *about their records*,  
 14 which they are statutorily forbidden from removing from the licensed premises. *See* 27  
 15 C.F.R. § 478.129.

16 282. Indeed, many gun stores have retained counsel via programs to conduct  
 17 mock audits and provide them advice at the licensed premises.<sup>34</sup>

18 283. These privileged interactions would now be recorded under Section 26806.

19 284. Section 26806 thus invades and violates all of the most fundamental  
 20 privileges against disclosure of conversations. By mandating that every gun store  
 21 owner and home-based dealer record all of their conversations for review by the State,  
 22 Section 26806 invades the Fifth Amendment’s privileges against disclosure of many  
 23 conversations.

24 **[Right to Privacy Under U.S. Const. amend. IV.]**

25 285. The Fourth Amendment provides that “[t]he right of the people to be secure  
 26 in their persons, houses, papers, and effects, against unreasonable searches and  
 27

28 <sup>34</sup> *See, e.g., FFL DealerShield, U.S. LawShield*, <https://tinyurl.com/4r6mdpnx> (last visited Dec. 8, 2023).

1 seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,  
 2 supported by Oath or affirmation, and particularly describing the place to be searched,  
 3 and the persons or things to be seized.”

4 286. The Fourth Amendment’s protections have been incorporated against the  
 5 states via the Due Process Clause of the Fourteenth Amendment. *See Mapp v. Ohio*,  
 6 367 U.S. 643 (1961); *Ker v. California*, 374 U.S. 23 (1963); *Aguilar v. Texas*, 378 U.S.  
 7 108 (1964).

8 287. The Fourth Amendment was a direct repudiation of the oppressive writs of  
 9 assistance and general search warrants that colonial merchants suffered under British  
 10 rule. These writs operated without expiration and granted officials wide latitude in  
 11 searches because they did not enumerate specific items, places, persons, or timeframes  
 12 for governmental intrusion. *Payton v. New York*, 445 U.S. 573, 583-84 (1980).

13 288. Indeed, one of the Fourth Amendment’s primary purposes was to protect  
 14 the people’s *businesses*, which had been subject to open-ended rummaging at the hands  
 15 of British customs officials. *See Boyd v. United States*, 116 U.S. 616, 625 (1886)  
 16 (“The practice had obtained in the colonies of issuing writs of assistance to the revenue  
 17 officers, empowering them, in their discretion, to search suspected places for smuggled  
 18 goods....”).

19 289. These writs of assistance famously saw use in oppressing Boston  
 20 merchants, whose plight inspired James Otis, the Advocate-General tasked with  
 21 defending the British regime in court, to desert his post and proclaim in the merchants’  
 22 defense: “It appears to me the worst instrument of arbitrary power, the most destructive  
 23 of English liberty and the fundamental principles of law, that ever was found in an  
 24 English law-book.”<sup>35</sup>

25 290. As the colonists knew and Plaintiffs are painfully aware, such extensive  
 26 intrusions into the people’s private affairs are no hallmarks of a free society. Rather,  
 27

28 <sup>35</sup> *James Otis: Against Writs of Assistance*, *Nat’l Humans. Inst.* (Feb. 1761),  
<https://tinyurl.com/39t2h9ra>.

1 “[a]mong deprivations of rights, none is so effective in cowing a population, crushing  
2 the spirit of the individual and putting terror in every heart. Uncontrolled search and  
3 seizure is one of the first and most effective weapons in the arsenal of every arbitrary  
4 government. And one need only briefly to have dwelt and worked among a people  
5 possessed of many admirable qualities but deprived of these rights to know that the  
6 human personality deteriorates, and dignity and self-reliance disappear where homes,  
7 persons and possessions are subject at any hour to unheralded search and seizure by the  
8 police.” *Brinegar v. United States*, 338 U.S. 160, 180-81 (1949) (Jackson, J.,  
9 dissenting).

10 291. Rejecting these open-ended, perpetual searches, the Founders sought to  
11 protect the people from unreasonable governmental intrusions. Consequently, “the  
12 principles reflected in the Amendment ‘reached farther than the concrete form’ of the  
13 specific cases that gave it birth, and ‘apply to all invasions on the part of the  
14 government and its employes of the sanctity of a man’s home and the privacies of  
15 life.’” *Payton*, 445 U.S. at 585 (quoting *Boyd*, 116 U.S. at 630).

16 292. Based on the Fourth Amendment’s historical underpinnings in commercial  
17 activity, the protection against unreasonable searches and seizures naturally “extends to  
18 commercial premises.” *De La O v. Arnold-Williams*, 2006 U.S. Dist. LEXIS 91919, at  
19 \*15 (E.D. Wash. Dec. 20, 2006).

20 293. Accordingly, the Fourth Amendment applies with equal force in civil and  
21 criminal contexts, because unreasonable governmental intrusions are odious no matter  
22 the form they take or the penalty they impose. *Safaie v. City of Los Angeles*, 2020 U.S.  
23 Dist. LEXIS 87227, at \*6 (C.D. Cal. Mar. 23, 2020) (“Whether the search is conducted  
24 pursuant to a civil or criminal investigation, *i.e.*, whether the potential penalty is an  
25 arrest or citation, is irrelevant for Fourth Amendment purposes.”).

26 294. In order “[t]o state a Fourth Amendment claim based upon an unreasonable  
27 search, [a] plaintiff must allege (1) government conduct that constitutes a search within  
28 the meaning of the Fourth Amendment; and (2) that the search was

1 unreasonable. *Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2019) (‘To  
2 determine whether a Fourth Amendment violation has occurred, we ask two primary  
3 questions: first, whether the alleged government conduct constitutes a search within the  
4 meaning of the Fourth Amendment and second, whether the search was  
5 reasonable.’).” *Safaie*, 2020 U.S. Dist. LEXIS 87227, at \*4.

6 295. As the Supreme Court has observed, “[w]hen ‘the Government obtains  
7 information by physically intruding’ on persons, houses, papers, or effects, ‘a “search”  
8 within the original meaning of the Fourth Amendment has ‘undoubtedly  
9 occurred.’” *Florida v. Jardines*, 569 U.S. 1, 5 (2013); *see also id.* at 6 (“entering and  
10 occupying the area to engage in conduct not explicitly or implicitly permitted by the  
11 homeowner”).

12 296. Departing from the Fourth Amendment’s property-rights foundation in the  
13 20th century, the Supreme Court alternatively has found “official intrusion[s] into th[e]  
14 private sphere” to qualify as “searches” when an individual has a “reasonable  
15 expectation of privacy.” *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018)  
16 (explaining doctrinal history); *see also United States v. Jones*, 565 U.S. 400, 406-07  
17 (2012) (“‘reasonable expectation of privacy’ ... did not repudiate” the property focus).

18 297. Under either conception (property or privacy), Section 26806 mandates an  
19 unreasonable Fourth Amendment “search.”

20 298. The compelled installation of audiovisual surveillance on private property  
21 undoubtedly is a Fourth Amendment search because such surveillance is a physical  
22 intrusion on and occupation of private property for the purpose of collecting  
23 information.

24 299. Section 26806 mandates the installation of surveillance equipment in  
25 private homes and businesses for the collection and long-term retention of information  
26 to which California will then have the right to access. In other words, California will  
27 physically intrude upon these locations and permanently install its “eyes” and “ears” to  
28 observe all that goes on.

1       300.     Yet Plaintiffs expect their private homes and businesses to remain private,  
2 free from perpetual government surveillance.

3       301.     Moreover, society undoubtedly recognizes this expectation as reasonable;  
4 never before has California law imposed such a surveillance requirement on the  
5 constitutionally protected firearms industry or private homes, for that matter.

6       302.     However, at the outset, the Fourth Amendment forecloses Section 26806  
7 without resort to property or privacy analysis because the law operates as a general  
8 warrant, contrary to the Fourth Amendment’s “precise and clear” command that “no  
9 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and  
10 particularly describing the place to be searched, and the persons or things to be  
11 seized.” *Stanford v. Texas*, 379 U.S. 476, 481 (1965).

12                   *Section 26806 Operates as a Forbidden General Warrant*

13       303.     Section 26806 installs the “eyes” and “ears” of government directly into the  
14 homes and businesses of some of California’s most disfavored subjects (gun  
15 owners). Unlike the eyes and ears of the Redcoats who quartered among the colonists,  
16 these new eyes never close and these new ears never stop listening. Such pervasive,  
17 unparticularized surveillance constitutes a general warrant that is repugnant to the  
18 Fourth Amendment.

19       304.     A general warrant allows government officials to “rummage ... in an  
20 unrestrained search for evidence of criminal activity,” *Riley v. California*, 573 U.S.  
21 373, 403 (2014), and therefore is *per se* unreasonable without further analysis. *Weeks*  
22 *v. United States*, 232 U.S. 383, 390 (1914) (describing “unreasonable searches and  
23 seizures, such as were permitted under the general warrants” of British rule).

24       305.     Among the most oppressive historical general warrants were writs of  
25 assistance. These “hated writs of assistance had given customs officials blanket  
26 authority to search where they pleased for goods imported in violation of the British  
27 tax laws.” *Stanford*, 379 U.S. at 481.



1       306. Denouncing these writs before the Superior Court of Massachusetts in  
2 1761, James Otis described the writ as “perpetual; there is no return. A man is  
3 accountable to no person for his doings. Every man may reign secure in his petty  
4 tyranny.... [A] person with this writ, in the daytime, may enter all houses, shops, etc.,  
5 at will....”<sup>36</sup>

6       307. The similarities between these flatly banned general warrants and Section  
7 26806 are too clear. In a flagrant display of “petty tyranny,” California has granted  
8 itself a general warrant that would have left the King’s customs officials green with  
9 envy.

10       308. Indeed, California’s general warrant reaches far beyond wooden barrels in  
11 colonial shipyards, instead authorizing a “permanent[]” and “continuous[]”  
12 examination of all homes and all private properties engaging in firearm  
13 commerce. Cal. Penal Code § 26806(a)(2), (4).

14       309. Like the repudiated general warrant, Section 26806 grants enforcement  
15 officials blanket authority to examine **all locations** identified in the statute without any  
16 particularized suspicion of criminal activity. *Cf. Stanford*, 379 U.S. at 481 (“blanket  
17 authority to search where they pleased”).

18       310. Like the general warrant, Section 26806 operates without expiration,  
19 remaining in effect on a permanent basis. *Cf. James Otis: Against Writs of Assistance*,  
20 *supra* note 32 (“perpetual; there is no return”).

21       311. Like the general warrant, Section 26806 fails to interpose between the  
22 property owner and the executive officer a neutral judicial officer who first must be  
23 satisfied that the places and people to be searched have been described with  
24 particularity. *Cf. James Otis: Against Writs of Assistance*, *supra* note 32 (“A man is  
25 accountable to no person for his doings.”); *Weeks*, 232 U.S. at 390 (“there had been  
26 invasions of the home and privacy of the citizens and the seizure of their private papers  
27

28       <sup>36</sup> *James Otis: Against Writs of Assistance*, *supra* note 32.

1 in support of charges, real or imaginary, made against them”); *see also California v.*  
2 *Acevedo*, 500 U.S. 565, 586 (1991) (Stevens, J., dissenting) (describing the Fourth  
3 Amendment “as a bulwark against police practices that prevail in totalitarian  
4 regimes”).

5 312. And like the general warrant, Section 26806 authorizes intrusions into  
6 *homes and businesses* engaged in California’s disfavored sort of commerce. *Cf. James*  
7 *Otis: Against Writs of Assistance*, *supra* note 32 (“a person with this writ, in the  
8 daytime, may enter all houses, shops, etc., at will”).

9 313. And as mentioned, while the King’s eyes and ears needed to rest and could  
10 not be in all places of general interest at once, California’s eyes and ears are much  
11 more pervasive. Indeed, while “a person with th[e] writ, in the daytime, may enter all  
12 houses, shops, etc.,”<sup>37</sup> California’s watchful gaze continues throughout the night,  
13 indefinitely, observing all activity captured under this mass-surveillance regime.

14 314. Case law makes clear that a governmental action’s similarity to the general  
15 warrants of old is a dispositive inquiry. In *Weeks v. United States*, the Supreme Court  
16 analyzed the government’s search of “all of [the defendant’s] books, letters, money,  
17 papers, notes, ... and other property in said home,” paying careful attention to the  
18 *generality* of the search, before concluding that the search violated “the fundamental  
19 law ... that a man’s house was his castle and not to be invaded by any *general*  
20 *authority* to search.” *Weeks*, 232 U.S. at 387, 390 (emphasis added); *see also Rush v.*  
21 *Obledo*, 756 F.2d 713, 721, 723 (9th Cir. 1985) (striking down a California statute  
22 authorizing “general searches of any home ... at any time of the day or night” as  
23 “invalid under the Fourth Amendment as general searches”).

24 315. Moreover, a marginal specificity as to only *certain* types of homes and  
25 *certain* types of businesses (here, firearm dealers) cannot save Section 26806. Indeed,  
26 “[o]ne of the most important types of general searches banned by the fourth  
27

28 <sup>37</sup> *James Otis: Against Writs of Assistance*, *supra* note 32.

1 amendment is general paper searches. Typically, such searches are ‘specific’ as to the  
 2 person and/or place to be searched, but they are ‘general’ because the quest for  
 3 incriminating papers requires examination of the contents of *innocent papers*  
 4 *containing private expressions and communications.*”<sup>38</sup>

5 316. Unsurprisingly, then, the Supreme Court has described those British  
 6 warrants “authoriz[ing] the arrest and *search of the premises of all persons connected*  
 7 *with the publication of a particular libel*” as a “kind[] of general warrant[.]” *Stanford*,  
 8 379 U.S. at 482, 483 (emphasis added); cf. Cal. Penal Code § 26806 (authorizing the  
 9 *search of the premises of all persons connected with the conduct of firearm dealing*).

10 317. Section 26806’s pervasive surveillance scheme undoubtedly operates as a  
 11 forbidden general warrant. After all, while a constitutional warrant “particularly  
 12 describing the place to be searched, and the persons or things to be seized” sets  
 13 subject-matter, locational, and temporal boundaries, no such protections exist under  
 14 Section 26806. Instead, Section 26806’s surveillance mandate casts a dragnet,  
 15 indiscriminately sweeping up all manner of persons, conversations, and conduct,  
 16 recording all that occurs for future parsing by the state.

17 318. Accordingly, Section 26806 violates the Fourth Amendment’s prohibition  
 18 of general warrants and is *per se* unconstitutional.

19 *Section 26806’s Surveillance Scheme Invades Plaintiffs’ Property Without License or*  
 20 *Warrant and Is Therefore “Unreasonable.”*

21 319. Although this Court may resolve its Fourth Amendment question based on  
 22 the flat historical prohibition of general warrants, Section 26806’s constitutional  
 23 defects do not end there. Indeed, Section 26806 compels intrusions into individuals’  
 24 private property without individual permission, judicial warrant, or any claim of  
 25 superior property interest in Californians’ shops and homes. Under the Fourth  
 26

27 <sup>38</sup> Russell W. Galloway, Jr., *The Intruding Eye: A Status Report on the*  
 28 *Constitutional Ban Against Paper Searches*, 25 How. L.J. 367, 396 (1982) (emphasis  
 added).

1 Amendment’s traditional protection of property rights, such intrusions cannot stand.

2 320. The original public understanding of the Fourth Amendment’s protections  
3 emphasized “property rights in search-and-seizure analysis” such that “Fourth  
4 Amendment jurisprudence was tied to common-law trespass, at least until the latter  
5 half of the 20th century.” *Jones*, 565 U.S. at 405.

6 321. Marking a modern resurgence in analyzing the Fourth Amendment’s  
7 property underpinnings in *United States v. Jones*, and reaffirming this approach in  
8 *Florida v. Jardines*, the Supreme Court has observed that “[t]he text of the Fourth  
9 Amendment reflects its close connection to property, since otherwise it would have  
10 referred simply to ‘the right of the people to be secure against unreasonable searches  
11 and seizures’; the phrase ‘in their persons, houses, papers, and effects’ would have  
12 been superfluous.” *Jones*, 565 U.S. at 405.

13 322. This property-rights approach stands apart from the 20th-century  
14 “reasonable-expectations test,” which merely “‘has been *added to*, not *substituted for*,’  
15 the traditional property-based understanding of the Fourth Amendment.” *Jardines*,  
16 569 U.S. at 11.

17 323. As the *Jardines* Court observed, “[o]ne virtue of the Fourth Amendments  
18 property-rights baseline is that it keeps easy cases easy.” 569 U.S. at 11. The case at  
19 bar is one such “easy case[.]”

20 324. Under *Jones* and *Jardines*, an unconsented and unwarranted physical  
21 intrusion onto an individual’s property to gather information for the government  
22 constitutes an unreasonable search without regard to any privacy expectations. *Jones*,  
23 565 U.S. at 404-05 (“The Government physically occupied private property for the  
24 purpose of obtaining information. We have no doubt that such a physical intrusion  
25 would have been considered a ‘search’ within the meaning of the Fourth Amendment  
26 when it was adopted.”); *see also id.* at 413 (Sotomayor, J., concurring) (“I join the  
27 Court’s opinion because I agree that a search within the meaning of the Fourth  
28 Amendment occurs, at a minimum, ‘[w]here, as here, the Government obtains

1 information by physically intruding on a constitutionally protected area.”); *Jardines*,  
2 569 U.S. at 7 (examining whether a search “was accomplished through an unlicensed  
3 physical intrusion”).

4 325. In other words, in order to commit a trespass against an individual’s  
5 property for a search, the government must prove a superior property interest in the  
6 “person[], house[], paper[], [or] effect[],” U.S. Const. amend. IV, such as through a  
7 warrant based upon probable cause, a seizure of stolen property (in which the  
8 individual has no property interest), or a seizure of contraband (in which no individual  
9 can claim lawful interest).

10 326. Section 26806, without any warrant, oath or affirmation, or probable cause  
11 of any wrongdoing, “physically occupie[s] private property for the purpose of  
12 obtaining information” by requiring the installation of government recording  
13 equipment against the will of businessowner and homeowner alike. *Jones*, 565 U.S. at  
14 404. Accordingly, there is “no doubt that such a physical intrusion would have been  
15 considered a ‘search’ within the meaning of the Fourth Amendment when it was  
16 adopted.” *Id.* at 404-05.

17 327. While an intrusion (and indeed occupation) of Plaintiffs’ private property is  
18 dispositive on the unreasonable-search question, Section 26806’s edicts are especially  
19 intolerable for home-based dealers.

20 328. Indeed, invasive household surveillance implicates *all* of the property  
21 interests identified in the Fourth Amendment’s text. Not only will Plaintiffs’ “houses”  
22 be searched while on camera, but so will their “persons” be, as will their relatives and  
23 guests be, should they find themselves within view of one of the likely multiple  
24 permanently mounted cameras required by Section 26806. What previously may have  
25 been an underwear-clad, late-night traipse to the bathroom is now, under Section  
26 26806, essentially a public outing. Similarly, all personal property (papers and effects)  
27 within view will be unable to escape California’s prying eyes. As a result, California  
28 has managed to violate the entirety of an amendment’s text in one fell swoop.

1       329. Because Section 26806 mandates physical intrusions of Plaintiffs’ property  
2 for the purpose of gathering information, such a mandate violates the Fourth  
3 Amendment’s protection against unreasonable searches of “persons, houses, papers,  
4 and effects,” which must be “secure.”

5           *Section 26806 Violates Plaintiffs’ Reasonable Expectations of Privacy.*

6       330. The Supreme Court’s “privacy” doctrine provides a distinct basis for relief  
7 under the Fourth Amendment. *See Katz v. United States*, 389 U.S. 347  
8 (1967). According to this principle, “a person must show he had a ‘legitimate  
9 expectation of privacy.’ To establish a ‘legitimate’ expectation of privacy, he must  
10 demonstrate a subjective expectation that his activities would be private, and he must  
11 show that his expectation was ‘one that society is prepared to recognize as  
12 reasonable.’” *United States v. Nerber*, 222 F.3d 597, 599 (9th Cir. 2000).

13       331. Using this “reasonable expectation of privacy” formulation, the Supreme  
14 Court has “found a [Fourth Amendment] violation in attachment of an eavesdropping  
15 device to a public telephone booth.” *Jones*, 565 U.S. at 406 (citing *Katz*, 389 U.S. at  
16 351).

17       332. Section 26806 violates this test multiple times over by installing  
18 eavesdropping devices on all *private* properties where firearm dealing occurs—  
19 including the home.

20       333. Section 26806’s eavesdropping devices collect much more than just audio,  
21 which the Court already has found to be intolerably intrusive. *See Kyllo v. United*  
22 *States*, 533 U.S. 27, 35 (2001) (discussing “*Katz*, where the eavesdropping device  
23 picked up only sound waves that reached the exterior of the phone booth”); *cf.* Cal.  
24 Penal Code § 26806(a) (requiring audio *and* video *inside* the proverbial phone booth).

25       334. In rejecting the mechanical distinction of “off-the-wall” and “through-the-  
26 wall” surveillance first in *Katz* and later in *Kyllo*, the Court observed that “just as a  
27 thermal imager captures only heat emanating from a house, so also a powerful  
28



1 directional microphone picks up only sound emanating from a house.” *Kyllo*, 533 U.S.  
2 at 35.

3 335. Now, imagine a microphone (and camera) *inside the walls* of a house,  
4 capturing the sights and sounds within the home, and you have Section 26806.

5 336. Indeed, “[w]hat the ancients knew as ‘eavesdropping,’ we now call  
6 ‘electronic surveillance’.... Electronic surveillance is the greatest leveler of human  
7 privacy ever known.” *United States v. White*, 401 U.S. 745, 756 (1971) (Douglas, J.,  
8 dissenting) (emphasis added).

9 337. Courts are loathe to sanction the electronic surveillance of individuals  
10 generally and within private properties especially. Holding even a transient, anti-  
11 cheating “room scan” at the start of a remotely held college exam to violate the Fourth  
12 Amendment, a district court in Ohio noted that, “[a]lthough the intrusion at issue might  
13 not strike a person as especially problematic, particularly in the nascent Zoom era, the  
14 core protection afforded to the home, the limited options, inconsistency in application  
15 of the policy, and short notice of the scan weigh in Plaintiff’s favor.” *Ogletree v.*  
16 *Cleveland State Univ.*, 647 F. Supp. 3d 602, 616 (N.D. Ohio 2022).

17 338. Accordingly, “[b]ased on consideration of the[] factors, individually and  
18 collectively, the Court conclude[d] that [the student’s] privacy interest in his home  
19 outweighs Cleveland State’s interests in scanning his room.” *Ogletree*, 647 F. Supp.  
20 3d at 617.

21 339. Notably, these video-based anti-cheating exam measures “lasted less than a  
22 minute, and as little as ten to twenty seconds.” *Ogletree*, 647 F. Supp. 3d at 609. Such  
23 brief invasions of privacy pale in comparison to the *perpetual* video surveillance  
24 Plaintiffs face.

25 340. Other courts already have dispensed with the perpetual video surveillance  
26 of private property as plainly unconstitutional under the “reasonable expectation of  
27 privacy” analysis. For example, the Fifth Circuit has held that even the video  
28 surveillance of one’s backyard, outside one’s house, is a bridge too far. *United States*



1 v. *Cuevas-Sanchez*, 821 F.2d 248, 250 (5th Cir. 1987) (reasonable expectation of  
2 privacy against installation of a “video camera atop a power pole overlooking the  
3 appellant’s 10-foot-high fence bordering the back of the yard”).

4 341. At the prospect of “a camera monitoring all of a person’s backyard  
5 activities,” the Fifth Circuit was unequivocal: “This type of surveillance provokes an  
6 immediate negative visceral reaction: indiscriminate video surveillance raises the  
7 spectre of the Orwellian state.” *Cuevas-Sanchez*, 821 F.2d at 251; *see also Nerber*,  
8 222 F.3d at 602 (emphasis added) (Ninth Circuit citing *Cuevas-Sanchez* with approval  
9 and noting the “*legitimate expectation to be free from constant video surveillance*”).

10 342. Section 26806 captures where gun owners and prospective purchasers go,  
11 what they say, and indeed what firearms they purchase.

12 343. Yet “[a] majority of this Court has already recognized that individuals have  
13 a reasonable expectation of privacy in the whole of their physical  
14 movements.” *Carpenter*, 138 S. Ct. at 2217.<sup>39</sup> The Fourth Amendment also protects  
15 the contents of conversations from unreasonable governmental intrusion. *Alderman v.*  
16 *United States*, 394 U.S. 165, 178 (1969) (noting “the Court has now decided that the  
17 Fourth Amendment protects a person’s private conversations as well as his private  
18 premises”).

19 344. Taken together, it is clear that Section 26806 captures all manner of  
20 information, locations, and conduct to which individuals maintain a reasonable  
21 expectation of privacy.

22  
23 <sup>39</sup> *See also Jones*, 565 U.S. at 415 (Sotomayor, J., concurring) (“Disclosed ... will  
24 be trips the indisputably private nature of which takes little imagination to conjure:  
25 trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment  
26 center, the strip club, the criminal defense attorney, the by-the-hour motel, the union  
27 meeting, the mosque, synagogue or church, the gay bar and on and on.” (quoting  
28 *People v. Weaver*, 909 N.E.2d 1195, 1199 (N.Y. 2009))). Permitting the perpetual  
surveillance of gun dealers disfavored by California may encourage other states to  
enact the same sort of surveillance laws in places, like abortion clinics, that are  
disfavored by those states. And while the right to keep and bear arms is enumerated in  
the bill of rights, abortion is not. *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct.  
2228 (2022).

1       345. For instance, Plaintiffs Richardson and Vandermeulen legitimately expect  
2 their homes to be private and free from constant governmental surveillance of his  
3 family, visitors, conversations, and all aspects of his private daily life. This  
4 expectation is plainly “reasonable” under the Fourth Amendment because “‘at the very  
5 core’ of the Fourth Amendment ‘stands the right of a man to retreat into his own  
6 home’” and “there be free from unreasonable governmental intrusion.” *Soldal v. Cook*  
7 *County*, 506 U.S. 56, 61 (1992); *Silverman v. United States*, 365 U.S. 505, 511 (1961);  
8 *see also Nerber*, 222 F.3d at 602.

9       346. Similarly, Plaintiffs Jesse Harris, On Target and Smokin’ Barrels Firearms  
10 legitimately expect their businesses to be private to the extent that it is free from  
11 constant governmental audiovisual surveillance of all employees, patrons,  
12 conversations, and transactions. This expectation is “reasonable” under the Fourth  
13 Amendment because society does not expect constitutionally protected commerce to be  
14 subject to such intrusive surveillance. Indeed, it never has been in the past.

15       347. Section 26806 undoubtedly sanctions “searches” under the Court’s  
16 “privacy” test. *See Katz*, 389 U.S. at 353 (noting that “the reach of that Amendment  
17 cannot turn upon the presence or absence of a physical intrusion into any given  
18 enclosure”); *Jones*, 565 U.S. at 414 (Sotomayor, J., concurring) (emphasis added)  
19 (citation omitted) (“Nonetheless, as Justice Alito notes, physical intrusion is now  
20 unnecessary to many forms of surveillance. With increasing regularity, the  
21 government will be capable of duplicating the monitoring undertaken in this case by  
22 enlisting factory- or owner-installed ... devices....”).

23       348. California has absolutely no legitimate interest in recording the identities  
24 and interactions of people exercising their constitutional rights, which will serve only  
25 to chill the exercise of those rights. No state can claim an interest in chilling the  
26 exercise of constitutional rights, the very negative rights that the state is tasked with  
27 *not* violating. *Jones*, 565 U.S. at 416 (Sotomayor, J., concurring) (“Awareness that the  
28 government may be watching chills associational and expressive freedoms. And the

1 government's unrestrained power to assemble data that reveal private aspects of  
2 identity is susceptible to abuse.”).

3 349. In contrast, individuals' privacy interests in the exercise of constitutional  
4 rights reach their zenith in hostile jurisdictions like California.

5 350. Section 26806 represents just the latest of California's insidious attempts to  
6 nullify another disfavored portion of the Bill of Rights. In words that ring as true today  
7 as they did during Reconstruction, “illegitimate and unconstitutional practices get their  
8 first footing in that way, namely, by silent approaches and slight deviations from legal  
9 modes of procedure. This can only be obviated by adhering to the rule that  
10 constitutional provisions for the security of person and property should be liberally  
11 construed.” *Boyd*, 116 U.S. at 635; *Silverman*, 365 U.S. at 512 (reiterating the same in  
12 1961).

13 351. Section 26806 is no slight deviation, and this Court should defend against it  
14 with even greater protective vigor still.

15 *The “Highly Regulated Industry” Exception to the Warrant Requirement Cannot Save*  
16 *Section 26806.*

17 352. To be sure, courts have recognized an exception to the warrant requirement  
18 for administrative searches in so-called “highly regulated industries,” to which firearm  
19 dealers have been found to belong. *See, e.g., United States v. Hamad*, 809 F.3d 898,  
20 905 (7th Cir. 2016) (“sellers of alcohol and firearms are highly regulated and licensed  
21 and therefore subject to the administrative search exception”).

22 353. Of course, unlike the “right to keep and bear arms,” there is no  
23 constitutionally enumerated right to imbibe. Thus, Plaintiffs question the continuing  
24 validity of these sorts of holdings when applied to dealers in constitutionally protected  
25 products, as it would seem that the right to Fourth Amendment property and privacy  
26 rights is at its zenith when other constitutional rights (here, Second Amendment rights)  
27 are involved.  
28

1       354.     Indeed, the “highly regulated industry” exception is premised on the notion  
2 that “[c]ertain industries have such a history of government oversight that no  
3 reasonable expectation of privacy could exist for a proprietor over the stock of such an  
4 enterprise.” *Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 313 (1978) (citation  
5 omitted). *But see United States v. Biswell*, 406 U.S. 311, 315 (1972) (emphasis added)  
6 (admitting that “[f]ederal regulation of the interstate traffic in firearms is *not as deeply*  
7 *rooted in history* as is governmental control of the liquor industry” but citing the  
8 governmental interests in such regulation); *N.Y. State Rifle & Pistol Ass’n v. Bruen*,  
9 142 S. Ct. 2111, 2136 (2022) (focusing constitutional analysis on early, Founding-era  
10 historical traditions and rejecting governmental interest balancing entirely).

11       355.     It would appear, then, that *Biswell*’s holding, which upheld the Gun Control  
12 Act’s warrantless administrative searches of gun dealers, has been undermined  
13 significantly by the Court’s recent return to original-meaning analysis, which focuses  
14 on the public understanding during the Founding era. There is no early American  
15 tradition of warrantless inspections of gunsmiths to justify a “highly regulated  
16 industry” Fourth Amendment exception today. Indeed, the Founding generation had  
17 every expectation that the government would *not* rummage through gunsmiths’  
18 “records” to verify “compliance,” having just cast off the yoke of the British regulators  
19 who had done so in most commercial affairs.

20       356.     Nevertheless, merely belonging to a highly regulated industry is no magic  
21 talisman to ward off Fourth Amendment challenges. Instead, to be “reasonable,” a  
22 warrantless administrative search of a highly regulated industry “must be specifically  
23 authorized by statute, and the parameters of any exception to the search warrant  
24 requirement must be found in the statute.” *Taylor v. Va. Alcoholic Beverage Control*  
25 *Auth.*, 827 S.E.2d 15, 25 (Va. Ct. App. 2019) (citing *Biswell*, 406 U.S. at 315 (1972)).

26       357.     While statutes may authorize warrantless administrative searches, these  
27 searches remain susceptible to overbreadth challenges if they sweep too far. *See Rush*,  
28 756 F.2d at 719.

1       358. To illustrate, in striking down a California statute authorizing warrantless  
 2 inspections of home-based daycares, the Ninth Circuit found the “statutes authorizing  
 3 such searches [we]re overbroad – permitting general searches of any home providing  
 4 care and supervision at any time of the day or night – and thus invalid unless  
 5 sufficiently limited by the current regulations so as to preclude general  
 6 searches.” *Rush*, 756 F.2d at 721 (emphasis added).

7       359. Moreover, the Ninth Circuit observed that a “family day care home is a  
 8 business only when children cared for from other families for compensation are  
 9 present and at all other times is a private residence.” *Rush*, 756 F.2d at 721 (emphasis  
 10 added).

11       360. Violating that principle, Section 26806 subjects home-based dealers to  
 12 searches “at any time of the day or night” – in fact, *at all times* – because surveillance  
 13 must be continuous and uninterrupted. *Rush*, 756 F.2d at 721.

14       361. Section 26806 does not lift its surveillance mandate during non-business  
 15 hours, despite the fact that a home-based dealer “at all other times is a private  
 16 residence.” *Rush*, 756 F.2d at 721. Indeed, Section 26806 contains no limiting  
 17 principle whatsoever.

18       362. Accordingly, Section 26806 is “thus invalid under the Fourth Amendment  
 19 as [a] general search[.]” *Rush*, 756 F.2d at 723.

20 *California Constitution, Article I, Section 1, Specifically Institutes a Right to Privacy*

21       363. California is the first state in the nation to include an explicit right to  
 22 privacy in its state constitution.

23       364. Article I, Section 1 of the California Constitution applies to both  
 24 government and private entities and is specifically designed “to preserve our private  
 25 lives and fundamental rights in the face of technological advances.”<sup>40</sup>

26  
 27  
 28 <sup>40</sup> *California Constitutional Right to Privacy*, ACLU NorCal,  
<https://tinyurl.com/mrxptude> (last visited Dec. 5, 2023).

1       365. For fifty years, California’s right to privacy has been a north star for work  
2 on cutting-edge laws—from consumer protections that require businesses to provide  
3 people with privacy policies, data-breach notifications, and the right to know about and  
4 delete the information being collected on them—to anti-surveillance laws that require  
5 the government get a warrant to access personal information and that protect  
6 against face surveillance and other dangerous technology.

7       366. An example of this protection in action is found in *White v. Davis*, 533 P.2d  
8 222 (Cal. 1975), where the California Supreme Court ruled that the Los Angeles Police  
9 Department violated Article I, Section 1 of the Californian Constitution when they  
10 infiltrated UCLA courses and organizations to create dossiers on students and  
11 professors, without any suspicion of illegal activity. The Court wrote that the LAPD’s  
12 spying program “epitomizes the kind of governmental conduct which the new  
13 constitutional amendment [Article I, Section 1] condemns.” *Id.* at 234.

14       367. Section 26806 clearly violates California’s own constitutional privacy  
15 protection, by recording legally protected private moments, recording those areas and  
16 events where people have a reasonable expectation of privacy, and recording these  
17 events and areas constitutes a serious invasion of privacy that even Defendants cannot  
18 overcome.

19                               *California Dual Consent Law for Recording Others*

20       368. California Penal Code § 632.7 requires dual consent of all parties included  
21 in a recording and issues criminal penalties for knowingly recording someone without  
22 their consent.

23       369. Section 632 states that “anyone who, intentionally and without the consent  
24 of all parties to a confidential communication, uses an electronic amplifying or  
25 recording device to eavesdrop upon or record it, or to use a telegraph, telephone, or  
26 another device, will be punished by a fine up to \$2,500 per violation, or up to one year  
27 in county jail, or both. If the person has a previous conviction, the penalty increased to  
28 \$10,000 or both jail and a fine. ”

1 **[Section 26806 Will Financially Cripple Many FFLs]**

2 370. Section 26806 contains numerous and often unclear technical requirements.  
3 However, even assuming a best-case scenario, the statute is cost-prohibitive to  
4 implement for many dealers.

5 371. Erring on the side of caution, even a conservative estimate would produce  
6 substantial financial outlays for gun dealers of nearly \$20,000.

7 372. For starters, Section 26806(a)<sup>41</sup> requires cameras to “clearly record images  
8 and ... audio” that will allow for the “clear identification” of persons, but the law  
9 provides no minimum standard, such as video resolution of 720p or 1080p. The only  
10 minimum standard provided refers to frame rate of the video being recorded—“15  
11 frames per second.”

12 373. Likewise, although the statute provides no details, in order to record audio  
13 sufficient to capture conversations at distances, especially in order to clearly identify  
14 speakers, unidirectional microphones may be necessary in locations where cameras are  
15 pointed and would increase the cost.

16 *Hypothetical Costs*

17 374. To demonstrate the costs, take a hypothetical gun store with a simple 20’ x  
18 20’ floorplan, with gun racks lining one full 20’ wall and an 18’ glass display counter  
19 in front of it, with 4’ of space between the counter and the racks for employees to  
20 work.

21 375. Further, this hypothetical store will have one point-of-sale (“POS”) system  
22 where transactions occur, which is located on the display counter in the corner where  
23 the counter meets the wall. The National Instant Criminal Background Check  
24

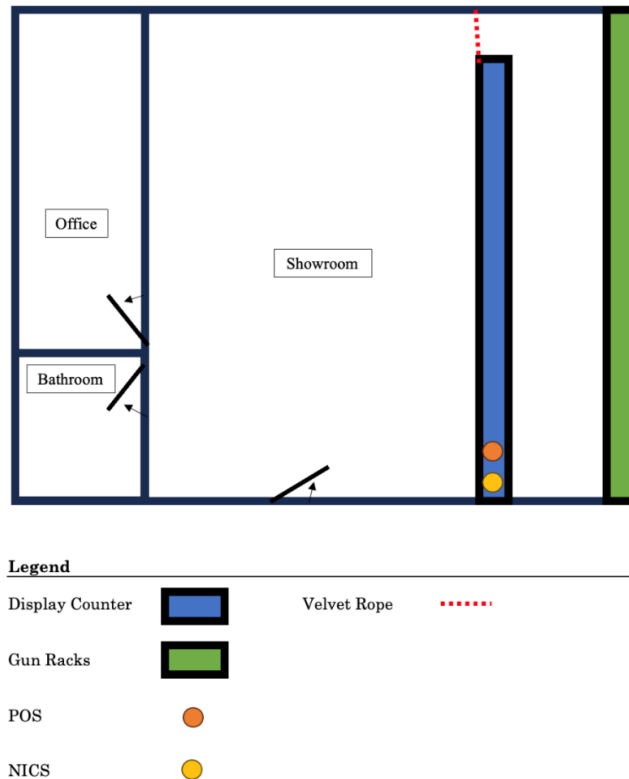
25  
26 <sup>41</sup> Notwithstanding the already outrageous requirements of the statute, Section  
27 26806(e) invites additional local requirements: “This section does not preclude any  
28 local authority or local governing body from adopting or enforcing local laws or  
policies regarding video surveillance that do not contradict or conflict with the  
requirements of this section.”



1 (“NICS”) station is located immediately next to the computer, between the POS and  
2 the wall.

3 376. There is only one door that leads to the outside of the store. It is used as  
4 the sole entrance and exit for clients, employees, and inventory deliveries (unlikely in  
5 most gun stores). On the wall opposite the firearm display, there is a bathroom and an  
6 office that doubles as a stockroom.

7 377. Finally, there are no other displays or obstructions in the middle of the  
8 showroom. The gun store has a drop ceiling and sheetrock walls with wood studs, and  
9 there is neither a basement nor an attic. *See Fig. 1.1:*



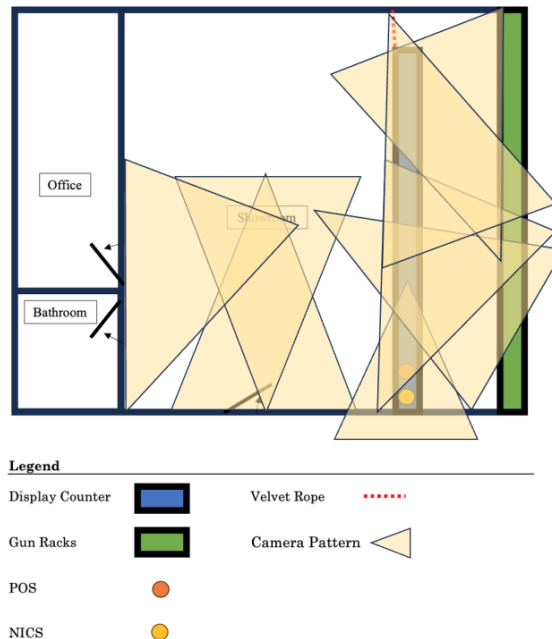
24 378. **Cameras.** Section 26806 requires that cameras must be “digital,”  
25 “permanently mounted in a fixed location,” that the system record “audio,” and that it  
26 capture images capable of “clear identification of any person.”

27 379. The cameras must be of sufficient quantity to record all interior views of  
28 “entries and exits,” “all areas where firearms are displayed,” and all POS stations

1 “sufficient to identify the parties involved in the transaction.” Cal. Penal Code  
2 § 26806.

3 380. Based on those statutory requirements, in the above hypothetical gun store,  
4 a minimum of eight cameras would be required: one camera capturing customers  
5 entering the store, one capturing people leaving the store, one capturing the doors to  
6 the bathroom and office/storeroom, one focused on the POS from mid-store, one on the  
7 same wall as the POS capturing a portion of the display counter and gun rack, one on  
8 the wall opposite the POS capturing the display counter and part of the gun rack, one  
9 mid-store aiming towards the counter and gun rack, and finally one aiming from the  
10 gun rack towards the opening for the display counter.

11 381. Even then, it would be difficult to capture everything that the statute  
12 demands. *See* Fig. 1.2:



1       382. Because the statute fails to specify what resolution cameras are acceptable,  
2 a middle-of-the-road camera system was chosen: Luma Surveillance 420 Series 4MP  
3 Dome IP cameras with built-in microphones and motorized varifocal lenses that allow  
4 the cameras to be customized to the shot. These cameras have an MRSP of \$518.00  
5 each. Eight cameras would cost approximately \$4,144.00.

6       383. **Recording.** The statute requires the ability to record high-quality audio  
7 and video continuously, 24 hours a day, at a minimum of 15 frames per second, and to  
8 store that information for a minimum of one year. Cal. Penal Code § 26806.

9       384. Recording video alone and omitting the audio, would require roughly 105  
10 terabytes (“TB”) of storage using H.265 compression.<sup>42</sup>

11       385. Additionally, in order to comply with Section 26806’s requirements, the  
12 network video recorder (“NVR”) necessary for recording would need to be secure,  
13 send notifications when it goes down, and accurately display the date and time. Cal.  
14 Penal Code § 26806.

15       386. For example, a Luma Surveillance 820 Series 32-Channel Network Video  
16 Recorder would accommodate the needed storage. The NVR itself has an MSRP of  
17 \$3,238.00 and can handle a maximum of eight 18TB hard drives for a total capacity of  
18 144TB, greater than the 105TB estimated requirement for video recordings. The extra  
19 space should be sufficient to accommodate the audio recording but, of course, is  
20 insufficient to provide a redundant backup.

21       387. Installed within that NVR could be, for example, Western Digital WD  
22 Purple Pro Smart Video 18TB Hard Drives, at \$369.99 each, for a total of \$2,959.92.  
23 Together, the NVR and hard drives come to \$6,197.92.

24       388. Of course, a redundant backup system could double this cost.  
25  
26

27 <sup>42</sup> See *Seagate Required Storage Space Calculator*, SEAGATE,  
28 <https://tinyurl.com/mjpw4p54> (“8” cameras; “15” frames per second; “24” hours per  
day; “365” days stored; “high” video quality; double “1080P” results = 105.4TB;  
compare to “3MP” + half the difference between “5MP” = 104.3TB).

1       389.     **Power.** Power to the cameras likely would be provided by the NVR  
2 through power-over-ethernet (“POE”) connection. The NVR would require an  
3 uninterruptible power supply (“UPS”) of sufficient size to ensure that audio and video  
4 continued to record, even during utility maintenance or power outages.

5       390.     A Wattbox IP UPS Kit, which offers 12 controllable outlets, surge  
6 protection, power conditioning, and a 2000VA battery backup has an MSRP of  
7 \$2,476.95.

8       391.     **Accessories.** To house and secure the system and to prevent tampering,  
9 unauthorized access or use, or theft—as required by statute—it would require a  
10 lockable rack system (at a minimum). A Strong FS Series 21U Rack System Package  
11 with DC cooling fans would cost approximately \$1,039.45.

12       392.     **Installation.** Obviously, installation costs can vary, but an estimate of  
13 \$250.00 per camera to mount each camera and run its respective wiring through walls,  
14 ceiling, under carpet or flooring, etc., is reasonable. Accordingly, eight cameras might  
15 cost \$2,000.00 to mount and wire.

16       393.     Installing and configuring the hard drives likely would cost \$50.00 per hard  
17 drive, or \$400.00 in total.

18       394.     Installing and configuring the components into the rack system would  
19 easily cost another \$200.00.

20       395.     Setting up and fine-tuning the entire system, configuring settings, remote  
21 access, and alerts so that everything operates smoothly, and providing store employees  
22 with instruction on proper use of the system, would be an additional \$600.00.

23       396.     Total installation costs for this small system thus could be expected to be  
24 approximately \$3,200.00.

25       397.     **Total.** Estimating \$4,144.00 for cameras, \$6,197.92 for the NVR and hard  
26 drives, \$2,476.95 for surge protection and UPS, \$1,039.45 for a rack system to protect  
27 and house the components, and \$3,200.00 in labor totals approximately \$17,058.32  
28 prior to sales tax, shipping, or other costs not specifically identified herein.

1       398.     The Senate Committee on Public Safety also recognized this burden,  
2     stating, “[t]hough few would disagree with the critical importance of high security at  
3     gun shops, the intensive and detailed nature of the requirements in this bill may  
4     represent a challenge for licensees, both economically and logistically.” The  
5     Committee also suggested that the author try to take steps to “ease the potential burden  
6     of compliance.”<sup>43</sup>

7       399.     The above estimate assumes that the system identified is 1) sufficient to  
8     meet the requirements of the statute and 2) available for installation.

9       400.     This estimate also does not take into account ongoing system maintenance,  
10    to include replacing cameras that malfunction, hard drives that eventually wear out, or  
11    additional redundant recording systems, should the original system go down or  
12    otherwise not function properly.

13      401.     Of course, depending on the type of store, this figure can vary wildly to the  
14    upside, as not all retail stores are simple squares with easily determined mounting  
15    locations to capture all of the places, images, and audio the statute requires.

16      402.     For example, Plaintiff GOC has heard from at least one large retailer who  
17    reportedly already has spent in excess of \$250,000 in order to comply with Section  
18    26806. Of course, many California dealers have not yet complied with Section 26806.

19      403.     Needless to say, the costs imposed on California gun stores and dealers  
20    (including home dealers) are astronomical.

21      404.     For many gun stores, such as Plaintiffs On Target, Smokin’ Barrels  
22    Firearms, and Harris, this cost is prohibitive.

23      405.     For home-based dealers, such as Plaintiffs Richards and Vandermeulen, this  
24    cost is prohibitive and will drive them out of business entirely.

25           **[Section 26806’s Recordings are Unlawful Under Federal and State Law]**

26  
27           <sup>43</sup> Senate Committee on Public Safety Hearing on SB 1384, Apr. 19, 2022, p. 9  
28           [https://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/sb\\_1384\\_analysis.pdf](https://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/sb_1384_analysis.pdf) (last  
          visited Dec. 4, 2023).

1       406. California has shown a willingness to legislatively protect privacy against  
2 surreptitious recording, such as by enactment of Cal. Penal Code § 632, which  
3 criminalizes “intentionally and without the consent of all parties to a confidential  
4 communication, us[ing] an electronic amplifying or recording device to eavesdrop  
5 upon or record the confidential communication, whether the communication is carried  
6 on among the parties in the presence of one another or by means of a telegraph,  
7 telephone, or other device, except a radio.”

8       407. In other words, California is a “two party consent state.”

9       408. Yet under California’s new and contradictory Section 26806, dealers now  
10 are mandated to keep surveillance rolling irrespective of the risk of accidentally  
11 recording a communication by someone who expects privacy.

12       409. Interestingly enough, Section 26806 partially (but not entirely) anticipates  
13 this problem, mandating that dealers must post conspicuous signage warning visitors *to*  
14 *the property* that they are under surveillance.

15       410. But Section 26806 does not provide for a situation where a conversation is  
16 *not* in-person.

17       411. For example, Plaintiffs routinely speak with customers over the phone, in  
18 order to take orders, schedule pickups, receive payments, arrange appointments, etc.  
19 Oftentimes, Plaintiffs uses the phone’s “speaker phone” in order to work the computer,  
20 review paperwork, or otherwise multitask when talking with customers by phone.  
21 Section 26806 thus would result not only in Plaintiffs’ side of the conversation being  
22 recorded, but also that of his customers, suppliers, other dealers, and more.

23       412. Naturally, Plaintiffs’ customers who call in by phone will be unable to see  
24 the “conspicuous” signage posted on the exterior of the store, warning them that their  
25 conversation is being recorded.

26       413. Thus, Section 26806 mandates that Plaintiffs Richards, Vandermeulen,  
27 Smokin’ Barrel Firearms, Harris, and On Target violate Cal. Penal Code § 632,  
28

1 recording customers, on behalf of the state and without their knowledge. Especially if  
2 the calls occur on speaker phone.

3 414. What is more, Plaintiffs do not consent to Section 26806's recording even  
4 of their end of a conversation with customers. In other words, neither party to these  
5 private conversations has consented to the recordings under Section 26806.

6 415. Unfortunately, California firearms dealers will now be at risk of violating  
7 California's wiretap law should they put a caller on speaker phone, or even have their  
8 phone volume turned up loudly enough to capture a conversation in a location subject  
9 to Section 26806 recording.

10 416. This risk is not limited merely to visitors at traditional gun stores, but also  
11 to those who call home-based dealers about a personal matter, totally unaware that they  
12 are under surveillance and that recording equipment is capturing their conversation.

13 417. Arguably, Section 26806's dystopian defects do not end there. Should a  
14 gun store accept a phone call from a customer and place it on speaker in an area under  
15 Section 26806 surveillance, California's resulting recording may additionally violate  
16 the federal Wiretap Act, 18 U.S.C. § 2511(1)(a), which prohibits "any person who ...  
17 intentionally intercepts, endeavors to intercept, or procures any other person to  
18 intercept or endeavor to intercept, any wire, oral, or electronic  
19 communication...." Section (c) and (d) of that Section provide additional penalties for  
20 "disclosure" and "use" of that wiretapped conversation. Here, there is no exception if  
21 "one of the parties to the communication has given prior consent to such interception,"  
22 because it is California (a third party) that has imposed the surveillance requirement on  
23 gun dealers. Again, Plaintiffs do not consent to California recording their  
24 conversations. Section 26806 thus appears to legislate a violation of federal law or,  
25 alternatively, should be found to be preempted by federal law.

26 **[Section 26806 Opens FFLs Up to Criminal and Civil Liability]**

27 418. Additionally, Section 26806 places FFLs in danger of legal action against  
28 them for recording customers and patrons who have not given their consent to be



1 recorded. Even with the mandatory sign placement, California is a mutual consent state  
 2 and requires the consent of all parties being recorded. If an individual does not consent  
 3 to be recorded carrying out a constitutional right to purchase a firearm, they will not be  
 4 able to purchase a firearm at all in the state. It is either forced compliance to the  
 5 government listening to private conversations or not purchasing a firearm or  
 6 ammunition at all.

7 419. Many FFLs operate their small businesses out of their homes. Many do the  
 8 firearm transfer paperwork with a client at the kitchen table. Imagine the shocking  
 9 intrusion that a fixed camera, recording all conversations 24 hours per day, would have  
 10 on the entire household or anyone visiting the home, even when no firearms  
 11 transactions are taking place. Every dinner guest, handyman, child's playdate, or  
 12 potentially the client of a spouse who works from home would have to give consent to  
 13 be recorded. Every telephone conversation or intimate family issue, recorded. It is  
 14 unfathomable the reach that Section 26806 has in the intrusion upon the private lives  
 15 and private conversations of people simply because they are visiting the premises of an  
 16 FFL.

17 420. The bill comments by Senator Min note that the need for this bill is "[t]o  
 18 ensure gun owners are educated about the dangers of firearm usage."<sup>44</sup> **It is unclear**  
 19 **how forcing recorded conversations (video and audio) will help gun owners to be**  
 20 **more educated about the "dangers of firearm usage."** Defendants offer no evidence  
 21 to support that Section 26806 will accomplish these governmental goals.

22 *SB 1384 Will Not Stop Gun Violence and Crime.*

23 421. A recent article stated that "we find evidence that some retailers contribute  
 24 disproportionately to the supply of crime guns, though much less dramatically than  
 25 statistics often cited would suggest. The data indicate that there may be somewhat  
 26

27 <sup>44</sup> Senate Committee on Public Safety Hearing on SB 1384, April 19, 2022, p. 5.  
 28 [https://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/sb\\_1384\\_analysis.pdf](https://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/sb_1384_analysis.pdf) (last  
 visited Dec. 4, 2023).

1 fewer problematic dealers now than there were a decade ago.” This directly from  
 2 conversations with DOJ and the impact they have already had in shutting down dealers  
 3 who do not comply under current laws.<sup>45</sup>

4 422. A statewide dealer regulation was also passed in 2013, requiring all persons  
 5 engaged in the business of selling firearms to possess a state Certificate of Eligibility  
 6 and be named on the state’s Centralized List of firearms retailers. Cal. Pen. Code §  
 7 28450.

8 423. The California Senate Public Safety Committee’s April 19, 2022, analysis  
 9 of AB 1384 relied on studies on retail gun theft that are either older (2016 or earlier) or  
 10 that deal with nationwide issues and not specifically any issues with gun shops in  
 11 California. (See Exhibit 1 at 9.) Much has changed in California over the past decade,  
 12 and relying on factual data that is that far out of touch with our current reality makes  
 13 little sense to those truly searching for the science behind the issues of our time.

14 424. The sponsors of SB 1384 were hopeful that somehow adding costly  
 15 surveillance and audio requirements would stop theft of gun shops,<sup>46</sup> but as retail crime  
 16 rises in California,<sup>47</sup> the use of video surveillance does not seem to be any kind of  
 17 deterrent to criminals willing to break the law.

18 425. The video footage only fills the media with the images of thefts in action.  
 19 Criminals simply do not care if there are cameras in a retail business. In fact, many of  
 20 them hope for cameras that will capture their antics and give them their 10 seconds of  
 21 fame. Meanwhile, Section 26806’s audio and video recording of lawful citizens  
 22

23 <sup>45</sup> Trends and Sources of Crime Guns in California: 2010-2021, September 11,  
 2023. <https://link.springer.com/article/10.1007/s11524-023-00741-y> (last visited Dec.  
 24 3, 2023).

25 <sup>46</sup> As noted, Senate Committee on Public Safety Hearing on SC 1384, Apr. 19,  
 2022, p. 7, “the rate of gun store thefts seems to have tapered slightly in recent years  
 since peaking in 2016 (690), with 208 reported thefts in 2021.”

26 <sup>47</sup> *Retail Theft and Robbery Rates Have Risen Across California*, Pub. Pol’y Inst. of  
 Cal. (Sept. 7, 2023), [https://www.ppic.org/blog/retail-theft-and-robbery-rates-have-](https://www.ppic.org/blog/retail-theft-and-robbery-rates-have-risen-across-california/)  
 27 [risen-across-california/](https://www.ppic.org/blog/retail-theft-and-robbery-rates-have-risen-across-california/); *What We Know (and Don’t) About the Rise in Retail Theft*,  
 L.A. Times (Oct. 18, 2023), [https://www.latimes.com/california/newsletter/2023-10-](https://www.latimes.com/california/newsletter/2023-10-18/what-we-know-and-dont-about-the-rise-in-retail-theft-essential-california)  
 28 [18/what-we-know-and-dont-about-the-rise-in-retail-theft-essential-california](https://www.latimes.com/california/newsletter/2023-10-18/what-we-know-and-dont-about-the-rise-in-retail-theft-essential-california);  
<https://www.youtube.com/watch?v=IMnwgh5XGhk>.

1 directly infringes on the rights of those attempting to exercise their constitutional  
2 rights.

3 **[Section 26806 Conditions the Exercise of One Enumerated Right on the**  
4 **Forfeiture of Others]**

5 426. Under Section 26806, Californians seeking to exercise their Second  
6 Amendment rights to acquire firearms must leave many other constitutional rights at  
7 the gun shop door.

8 427. Indeed, Section 26806 imposes an intolerable Hobson’s choice on  
9 Californians “insisting upon”<sup>48</sup> exercising their Second Amendment rights. If they do  
10 so, then they relinquish their First, Fourth, and Fifth Amendment rights, as discussed  
11 *supra/infra*. But if they choose to retain those rights, then they necessarily must forgo  
12 their Second Amendment right to acquire constitutionally protected arms.

13 428. Desirable to California politicians as such a scheme may be, the compelled  
14 choice between or among constitutional rights—where the exercise of one turns on the  
15 relinquishment of others—necessarily violates them all.

16 429. The Supreme Court has found it “intolerable that one constitutional right  
17 should have to be surrendered in order to assert another.” *Simmons v. United States*,  
18 390 U.S. 377, 394 (1968) (recognizing an “undeniable tension” between the exercise of  
19 Fourth and Fifth Amendment rights when the government uses testimony in support of  
20 a suppression motion at a later trial to prove guilt); *see also United States v. Jackson*,  
21 390 U.S. 570, 581 (1968) (holding unconstitutional a federal statute that created a  
22 tension between “the Fifth Amendment right not to plead guilty” and “the Sixth  
23 Amendment right to demand a jury trial” by allowing the death penalty upon a jury  
24 conviction).

25 430. This principle applies with equal force to other Bill of Rights guarantees,  
26 the Second Amendment included. Indeed, the Second Amendment often results in a  
27

28 <sup>48</sup> *District of Columbia v. Heller*, 554 U.S. 570, 634 (2008).

1 confluence with other rights. *See, e.g., Hardaway v. Nigrelli*, 636 F. Supp. 3d 329, 349  
2 (W.D.N.Y. 2022) (granting a TRO enjoining enforcement of a prohibition on firearms  
3 in places of worship because “[l]aw-abiding citizens are forced to forgo their Second  
4 Amendment rights to exercise their First Amendment rights to free exercise of religion,  
5 or vice versa”); *Bruen*, 142 S. Ct. at 2156 (“The constitutional right to bear arms in  
6 public for self-defense is not ‘a second-class right, subject to an entirely different body  
7 of rules than the other Bill of Rights guarantees.’”).

8 431. For example, the intersection of First and Second Amendment rights is no  
9 foreign concept within this Circuit, as “[g]un possession can be speech where there is  
10 ‘an intent to convey a particularized message, and the likelihood [is] great that the  
11 message would be understood by those who viewed it.’” *Nordyke v. King*, 319 F.3d  
12 1185, 1190 (9th Cir. 2003) (second alteration in original). Just as how “[f]lag waving  
13 and flag burning are both protected expressive conduct,” so too is “a gun supporter  
14 waving a gun at an anti-gun control rally.” *Id.*

15 432. Similarly, the First Amendment undoubtedly protects speech about  
16 firearms, including speech concerning their purchase and sale. *See Nordyke v. Santa*  
17 *Clara County*, 110 F.3d 707, 711 (9th Cir. 1997) (citation omitted) (“Since the sale of  
18 guns at a gun show at the Fairgrounds is ‘lawful activity,’ a proposal to engage in such  
19 a transaction is protected as commercial speech under the First Amendment.”).

20 433. Additionally, Californians seeking to purchase firearms should not be  
21 forced, even temporarily, to surrender their First Amendment rights to criticize  
22 California policies and politicians in order to exercise their Second Amendment rights.  
23 But that will be the direct result of Section 26806’s chilling effect when persons visit  
24 California gun stores.

25 434. Of course, “[t]he loss of First Amendment freedoms, for even minimal  
26 periods of time (like while in a gun store), unquestionably constitutes irreparable  
27 injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

1       435. Likewise, courts have had no trouble concluding that recording one's  
2 personal biometric information without consent is equivalent to an "act of  
3 trespass." *Bryant v. Compass Grp. USA, Inc.*, 958 F.3d 617, 624 (7th Cir.  
4 2020). "Consent" to be recorded for the "privilege" of exercising a constitutional right  
5 cannot be mandated by governmental edict, nor the refusal to give "consent"  
6 criminalized. Indeed, "[government] may not deny a benefit to a person on a basis that  
7 infringes his constitutionally protected interests – especially, his interest in freedom of  
8 speech. For if the government could deny a benefit to a person because of his  
9 constitutionally protected speech or associations, his exercise of those freedoms would  
10 in effect be penalized and inhibited. This would allow the government to produce a  
11 result which [it] could not command directly. Such interference with constitutional  
12 rights is impermissible." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (internal  
13 quotation omitted). *See also Miller v. United States*, 230 F.2d 486, 490 (5th Cir. 1956)  
14 ("[t]he claim and exercise of a constitutional right cannot thus be converted into a  
15 crime.").

16       436. Distilled to its essence, Section 26806 creates a *de facto* registry of gun  
17 owners, complete with facial and vocal data cataloguing every exercise of their Second  
18 Amendment right to acquire firearms. This information is then turned over to gun  
19 owners' political opponents in the executive branch, opening this information to use in  
20 politicians further attacking constitutional rights in California. Once in effect, the only  
21 "opting out" of this registry is the relinquishment of the Second Amendment right to  
22 acquire firearms altogether.

23       437. Such privacy concerns are not speculative. In November 2023, the  
24 California Court of Appeals ruled that the state can turn over personal identifying  
25  
26  
27  
28

1 information of California gun owners to so-called “researchers” who purportedly  
2 “study gun violence.”<sup>49</sup>

3 438. Of course, these euphemistically titled “researchers” are the California  
4 Firearm Violence Research Center at the University of California-Davis. The Center is  
5 headed by Dr. Garen Wintemute, a longtime belligerent in battles against the Second  
6 Amendment. Wintemute has a long history of surreptitiously recording customers at  
7 gun shows,<sup>50</sup> a “self-described ‘guerilla scientist’ masquerading as a firearms dealer.”<sup>51</sup>  
8 Wintemute’s tactics, described by some as “sleazy,” have led to Second Amendment  
9 advocates calling him “more a biased campaigner than a researcher.” *Id.* He has  
10 referred to “Stand your ground” laws as legalizing “murder.”<sup>52</sup>

11 439. Wintemute’s Center, founded in 2017 at the behest of the California  
12 legislature,<sup>53</sup> is essentially a state-funded organ dedicated to producing “research” to  
13 aid the state in further restricting Second Amendment rights. Under the guise of  
14 “research,” the Court of Appeals essentially has turned the most intimate personal data  
15 of California gun owners over to a state-funded agency dedicated to further restrictions  
16 on their Second Amendment rights.

17 440. Wintemute has “worked with California lawmakers on crafting gun policy  
18 and helped to drive a group of gun-making companies out of business.”<sup>54</sup> It is little  
19 wonder, then, that California gun owners would not wish Wintemute to have  
20 possession of their personal information—or to have any confidence that he would not  
21 share the information with their political opponents for political purposes.

22  
23 <sup>49</sup> Tran Nguyen, *California Can Share Gun Owners’ Personal Information with*  
24 *Researchers, Appeals Court Rules*, Associated Press (Nov. 21, 2023),  
<https://tinyurl.com/44utzay8>.

25 <sup>50</sup> Meredith Wadman, *Firearms Research: The Gun Fighter*, Nature,  
<https://tinyurl.com/2vuh6wjy> (June 12, 2013).

26 <sup>51</sup> Cynthia H. Craft, *For This Man, Reducing Gun Violence Is a Life’s Mission*, KFF  
27 Health News (July 5, 2016), <https://tinyurl.com/yc33k7yw>.

28 <sup>52</sup> Garen J. Wintemute, *Tragedy’s Legacy*, New Eng. J. Med. (Jan. 31, 2013),  
<https://tinyurl.com/ycy85s7w>.

<sup>53</sup> *About the California Firearm Violence Research Center (CA FVRC)*, U.C. Davis  
Health, <https://tinyurl.com/43c6rxae> (last visited Nov. 28, 2023).

<sup>54</sup> Wadman, *supra* note 47.



1       441.     Where, as under Section 26806, the nonconsensual recording is mandated  
2 by government as a condition to exercise an enumerated constitutional right (the right  
3 to keep and bear arms), California’s apparent “constructive consent” argument (that  
4 citizens give “consent” by entering a facility marked “conspicuously” with a  
5 “recording” notice) collapses.

6       442.     Nor can Section 26806 require a citizen to subject his political, religious, or  
7 intimate personal speech, including in the safe haven of his own home, to government  
8 surveillance in exchange for the exercise of Second Amendment rights.

9       443.     Nor can Section 26806 require a person to waive Fifth Amendment  
10 privileges as a condition of holding a dealer’s license or doing business with a dealer to  
11 acquire constitutionally protected arms.

12       444.     Likewise, Section 26806 cannot chill the ability of California gun owners to  
13 receive information from and engage with Plaintiff organizations who rely on  
14 California gun stores as a source of new members.

15       445.     The Ninth Circuit has held that there can be “no sanction or penalty  
16 imposed upon one because of [the] exercise of constitutional rights.” *Sherar v. Cullen*,  
17 481 F.2d 945, 947 (9th Cir. 1973). Section 26806 imposes just such a sanction.

18       446.     Thus, California’s attempt to condition the exercise of the Second  
19 Amendment right to acquire firearms on the forfeiture of numerous other constitutional  
20 rights is an “intolerable” situation.

21                   **FIRST CAUSE OF ACTION**

22                   **Violation of the Right to Free Speech Under U.S. Const. amend. I**

23                   **42 U.S.C. § 1983**

24       447.     Plaintiffs incorporate by reference paragraphs 1 through 446 of this  
25 Complaint as though fully set forth herein in their entirety.

26       448.     Defendants, acting under color of state law, are enforcing AB 2571, which  
27 deprives Plaintiffs of free speech rights secured by the First Amendment of the United  
28 States Constitution in violation of 42 U.S.C. § 1983.



1       449. On its face and as applied, Section 26806 is an unconstitutional  
2 abridgement of Plaintiffs’ right to free speech under the First Amendment because it  
3 casts such a wide net that it directly prohibits Plaintiffs’ pure speech related to the  
4 lawful possession and use of lawful firearms without any compelling governmental  
5 interest.

6       450. Section 26806 Violates Virtually Every Right Protected by the First  
7 Amendment. The First Amendment to the U.S. Constitution provides that “Congress  
8 shall make no law respecting an establishment of religion or prohibiting the free  
9 exercise thereof; or abridging the freedom of speech, or of the press; or the right of the  
10 people peaceably to assemble, and to petition the government for a redress of  
11 grievances.” The Fourteenth Amendment incorporates these protections against the  
12 states through its Due Process Clause.

13       451. Defendants have no compelling (or even legitimate) governmental interest  
14 in recording video and audio of lawful gun owners constantly for the mere hope of  
15 catching a criminal somewhere in the thousands of hours of tape. But in reviewing that  
16 tape, would have to review private and confidential matters that the government has no  
17 right to.

18       452. Further, Section 26806 is neither narrowly tailored to nor the least  
19 restrictive means of achieving the state’s dubious interests. Indeed, it sweeps up all  
20 communications—even communications concerning lawful (and constitutionally  
21 protected) products and communications that are private and confidential and have  
22 nothing to do with the process of transactions for the purchase of a firearm.

23       453. Section 26806 is unconstitutionally overbroad because, in an effort to  
24 “catch a criminal,” the law seriously and deliberately burdens a vast amount of speech  
25 that does not constitute such a communication and is fully protected by the First  
26 Amendment.

27       454. As a direct and proximate result of Defendants’ conduct, Plaintiffs have  
28 suffered irreparable harm, including the violation of their constitutional right to free

1 speech, right to assembly, and right to remain anonymous entitling them to declaratory  
2 and injunctive relief. Absent intervention by this Court, through declaratory and  
3 injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

## 4 **SECOND CAUSE OF ACTION**

### 5 **Violation of the Right to Equal Protection Under U.S. Const. amend. XIV**

#### 6 **42 U.S.C. § 1983**

7 (By All Plaintiffs Against All Defendants)

8 455. Plaintiffs incorporate by reference paragraphs 1 through 454 of this  
9 Complaint as if fully set forth herein in their entirety.

10 456. Defendants, acting under color of state law, are enforcing SB 1384, which  
11 deprives Plaintiffs of the right to equal protection under the law secured by the  
12 Fourteenth Amendment of the United States Constitution in violation of 42 U.S.C. §  
13 1983.

14 457. On its face and as applied, SB 1384 is an unconstitutional abridgment of  
15 Plaintiffs' right to equal protection under the law guaranteed by the Fourteenth  
16 Amendment because it is a viewpoint-discriminatory and/or animus-based restriction  
17 on Plaintiffs' protected speech that serves no compelling governmental interest.

18 458. On its face, it is clear that the law's purpose and intention is to make a  
19 "symbolic" gesture and a "value statement" about the otherwise lawful sale of firearms  
20 and related products and of the proliferation of the "gun culture" in California and  
21 elsewhere. This is clear because there is no evidence that adding costly surveillance of  
22 24 hours of business activity will deter any gun violence or make gun owners safer.  
23 Stores all over California are experiencing growing amounts of retail theft and they  
24 already decided (they were not mandated) to install cameras that are not a deterrent.

25 459. Defendants have no compelling (or even legitimate) governmental interest  
26 in recording Plaintiffs' speech. Indeed, any purported interest in "public safety" is  
27 betrayed by the fact that SB 1384 does nothing to stop the criminal element of gun  
28

1 theft and gun violence, but instead only targets law abiding gun owners through  
2 outrageous government overreach.

3 460. Further, SB 1384 is not narrowly tailored to achieving the state’s dubious  
4 interests.

5 461. As a direct and proximate result of Defendants’ conduct, all Plaintiffs have  
6 suffered irreparable harm, including the violation of their constitutional right to equal  
7 protection under the law, entitling them to declaratory and injunctive relief. Absent  
8 intervention by this Court, through declaratory and injunctive relief, Plaintiffs will  
9 continue to suffer this irreparable harm.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **Violation of the Right to Keep and Bear Arms Under U.S. Const. amend. II**

#### 12 **42 U.S.C. § 1983**

13 (By All Plaintiffs Against All Defendants)

14 462. Plaintiffs incorporate by reference paragraphs 1 through 461 of this  
15 Complaint as if fully set forth herein in their entirety.

16 463. The Second Amendment provides that “[a] well regulated Militia, being  
17 necessary to the security of a free State, the right of the people to keep and bear Arms,  
18 shall not be infringed.”

19 This absolutist language contains no qualification or limitation constraining which  
20 members of “the people” enjoy the pre-existing individual right, which “Arms” are  
21 protected, or the purposes for which individuals may use such arms. Accordingly, the  
22 right presumptively belongs to “all Americans,” presumptively protects “all  
23 instruments that constitute bearable arms,” and presumptively covers all “lawful  
24 purposes.” *District of Columbia v. Heller*, 554 U.S. 570, 581, 582, 624 (2008).

25 464. In violation of the Second Amendment, Section 26806 chills a lawful  
26 person’s desire to exercise their constitutional right to bear arms out of fear of being  
27 constantly observed and recorded by an administration hostile towards gun ownership  
28 while doing so.

1       465.     Section 26806 also extends into the sanctuary of a person’s home, where  
 2 Second Amendment protections are at their zenith, just because they are a licensed a  
 3 firearm dealer that already undergoes strict oversight by the state and federal  
 4 government and now must submit to having the government record all activities inside  
 5 that home 24 hours per day just because they sell a lawful product.

6       466.     Defendants cannot justify Section 26806’s intrusions upon the people,  
 7 including Plaintiffs, to be free of overbearing government control that sinks to the very  
 8 heart of our constitutional rights. The entire purpose of the Second Amendment is to  
 9 protect and defend and that includes from the tyranny of government.

10       467.     As a direct and proximate result of Defendants’ conduct, Plaintiffs have  
 11 suffered irreparable harm, including the violation of their constitutional right to equal  
 12 protection under the law, entitling them to declaratory and injunctive relief. Absent  
 13 intervention by this Court, through declaratory and injunctive relief, Plaintiffs will  
 14 continue to suffer this irreparable harm.

#### 15                                   **FOURTH CAUSE OF ACTION**

#### 16       **Violation of Government Taking Without Just Compensation Under U.S. Const.**

#### 17   **amend. V**

#### 18   **42 U.S.C. § 1983**

19                                   (By All Plaintiffs Against All Defendants)

20       468.     Plaintiffs incorporate by reference paragraphs 1 through 467 of this  
 21 Complaint as if fully set forth herein in their entirety.

22       469.     The Fifth Amendment to the U.S. Constitution states no private property  
 23 shall be taken for public use without just compensation.

24       470.     “A property owner may bring a takings claim under § 1983 upon the taking  
 25 of his property without just compensation....” *Knick*, 139 S. Ct. at 2179.

26       471.     As the Founders recognized uniformly, “the protection of private property  
 27 is indispensable to the promotion of individual freedom.” *Cedar Point Nursery v.*  
 28 *Hassid*, 141 S. Ct. 2063, 2071 (2021).

1       472. Among the most vital rights of property ownership is the right to exclude  
2 others, from private individuals to the government itself. *Cedar Point*, 141 S. Ct. at  
3 2072. Indeed, without the right to decide who may enter upon your property and what  
4 they may do while there, the right to property does not exist. *See Loretto v.*  
5 *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) (“the power to  
6 exclude has traditionally been considered one of the most treasured strands in an  
7 owner’s bundle....”); *id.*

8       473. Section 26806 imposes upon licensee Plaintiffs a legal obligation to  
9 purchase government approved video surveillance systems, and to operate, maintain  
10 and store the resulting video and audio recordings, all at the expense of the licensee.

11       474. Section 26806 imposes on licensee plaintiffs a legal obligation to  
12 undertake continuous digital video surveillance of their own private property, and to  
13 permit government agents to freely enter upon their property to perpetually access and  
14 view, at-will, that digital video surveillance.  
15 Such surveillance, mandated to be located on the private property of a business owner,  
16 or their home where they conduct business, constitutes a permanent physical  
17 occupation of their property by the government.

18       475. Such at-will surveillance and viewing impair Plaintiffs’ right to exclude  
19 other persons from their property.

20       476. Such at-will surveillance and viewing impair Plaintiffs’ right to freely use  
21 their property, free from the prying eyes of the government.

22       477. Such at-will surveillance and viewing authorize the government to possess  
23 and use Plaintiffs’ property as it pleases, and impairs Plaintiffs’ right to possess, use,  
24 and dispose of their own property as they please, in violation of the 5th and the 14th  
25 Amendments.

26       478. Defendants have failed to compensate Plaintiffs for the permanent physical  
27 taking or the permanent easement imposed upon Plaintiffs’ property.  
28

1       479.     Section 26806 commandeers private property owners and lessees to  
2 implement and then accommodate a sweeping and perpetual government surveillance  
3 scheme without any form of compensation for the significant costs incurred or the  
4 severe limitations on property rights suffered.

5       480.     What is more, once California has its Section 26806 recording regime in  
6 place (with private industry having done all the legwork), California reserves the right  
7 to insert itself into gun dealers' stores and homes for compliance inspections as often  
8 as it pleases – at the dealers' cost.

9       481.     Section 26806 thus constitutes a permanent,<sup>3</sup> physical, government  
10 occupation of numerous portions of (and uses of) Plaintiffs' property where  
11 government surveillance equipment must be installed, and additionally for all space  
12 upon the property where cameras and audio equipment are pointed and recording.

13       482.     As a direct and proximate result of Defendants' conduct, Plaintiffs have  
14 suffered irreparable harm, including the violation of a government taking under the  
15 law, entitling them to declaratory and injunctive relief. Absent intervention by this  
16 Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this  
17 irreparable harm.

18       483.     In the alternative, to the extent that Section 26806 does not constitute a  
19 physical taking, it is an unconstitutional regulatory taking.

20                   **FIFTH CAUSE OF ACTION**

21                   **Violation of the Right to Privacy Under U.S. Const. amend. IV**

22                   **42 U.S.C. § 1983**

23                   (BY All Plaintiffs Against All Defendants)

24       484.     Plaintiffs incorporate by reference paragraphs 1 through 483 of this  
25 Complaint as if fully set forth herein in their entirety.

26       485.     “The right of the people to be secure in their persons, houses, papers, and  
27 effects, against unreasonable searches and seizures, shall not be violated, and no  
28 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and

1 particularly describing the place to be searched, and the persons or things to be seized.”  
2 U.S. Const. amend. IV.

3 486. The Fourth Amendment prohibits unreasonable searches and seizures  
4 without a warrant—generally, law enforcement must obtain a warrant when a search  
5 would violate a person’s “reasonable expectation of privacy.”

6 487. The Fourth Amendment also requires that warrants be supported by  
7 probable cause and describe with particularity the places to be searched and persons to  
8 be seized.

9 488. Particularly for at home FFL dealers, the business space is more than just  
10 where they conduct transactions; it is where they sleep, eat, go to school, have family  
11 gatherings, host holidays, and participate in everyday private activities just like those  
12 not running a business in their home.

13 489. Round-the-clock video surveillance of the inside of a person’s home can  
14 reveal our daily routine, who we associate with, what we purchase, and many other  
15 intimate details, especially as camera and video analytical technology advances to  
16 allow for automated pan, tilt, and zoom, the ability to read and identify small text from  
17 long distances, face recognition, and more.

18 490. Imagine not being able to walk around your home unless fully dressed,  
19 having every conversation with your spouse recorded, or even having private  
20 indiscretions recorded. All of which under Section 26806 can be subpoenaed by a court  
21 for civil legal matters.

22 491. In *Katz v. United States*, the Court held that the Fourth Amendment protects  
23 people, not places: "What a person knowingly exposes to the public, even in his own  
24 home or office, is not a subject of Fourth Amendment protection, but what he seeks to  
25 preserve as private, even in an area accessible to the public, may be constitutionally  
26 protected." 389 U.S. 347 (1967).



1       492.     Section 26806 violates the privacy of the people by intrusion into places  
2 and conversations that are meant to remain private from the prying eyes of the  
3 government.

4       493.     The Fourth Amendment protects not only property interests but certain  
5 expectations of privacy as well. *Katz v. United States*, 389 U. S. 347, 351. Thus, when  
6 an individual “seeks to preserve something as private,” and his expectation of privacy  
7 is “one that society is prepared to recognize as reasonable,” official intrusion into that  
8 sphere generally qualifies as a search and requires a warrant supported by probable  
9 cause. *Smith v. Maryland*, 442 U. S. 735, 740 (internal quotation marks and alterations  
10 omitted).

11       494.     While communicating private information always risks betrayal of  
12 confidence by the other party, from a privacy perspective, repeating private  
13 information secondhand is quite different from recording the information for potential  
14 dissemination to countless recipients. *Smith v. LoanMe, Inc.*, 11 Cal. 5th 183, 200  
15 (2021).

16       495.     Additionally, Section 62806 violates California Penal Code § 632.7 which  
17 requires dual consent of all parties included in a recording and issues criminals  
18 penalties for knowingly recording someone without their consent and the California  
19 Constitution, Article I, Section 1 right to privacy.

20       496.     As a direct and proximate result of Defendants’ conduct, Plaintiffs have  
21 suffered irreparable harm, including the violation of their constitutional right to equal  
22 protection under the law, entitling them to declaratory and injunctive relief. Absent  
23 intervention by this Court, through declaratory and injunctive relief, Plaintiffs will  
24 continue to suffer this irreparable harm.

25  
26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for:

3 1. A declaration that SB 1384, codified at California Penal Code section  
4 26806, violates Plaintiffs' free speech, anonymity, free association, and assembly  
5 rights under the First Amendment to the United States Constitution, on its face and as  
6 applied to Plaintiffs;

7 2. A declaration that SB 1384, codified at California Penal Code section  
8 26806, violates Plaintiffs' rights to equal protection under the law per the Fourteenth  
9 Amendment to the United States Constitution, on its face and as applied to Plaintiffs;

10 3. A declaration that SB 1384, codified at California Penal Code section  
11 26806, violates Plaintiffs' right to keep and bear arms under the Second Amendment to  
12 the United States Constitution, on its face and as applied to Plaintiffs;

13 4. A declaration that SB 1384, codified at California Penal Code section  
14 26806, violates Plaintiffs' right to be free from governmental taking without just  
15 compensation under the Fifth Amendment to the United States Constitution, on its face  
16 and as applied to Plaintiffs;

17 5. A declaration that SB 1384, codified at California Penal Code section  
18 26806, violates the Plaintiffs' right to privacy under the Fourth Amendment to the  
19 United States Constitution, on its face and as applied to the Plaintiffs;

20 6. A preliminary and permanent injunction prohibiting all Defendants, their  
21 employees, agents, successors in office, and all District Attorneys, County Counsel,  
22 and City Attorneys holding office in the state of California, as well as their successors  
23 in office, from enforcing SB 1384, codified at Penal Code section 26806;

24 7. Damages pursuant to government taking which would reimburse FFLs for  
25 costly systems mandated by the government, payments for technical expertise and  
26 installation, and damages for the physical intrusion of permanent structures by the  
27 government upon private property;

28 8. Nominal damages;

1           9.     An award of costs and expenses, including attorney's fees, pursuant to 42  
2 U.S.C. § 1988 or other applicable state or federal law; and

3           10.    Any such other relief the Court deems just and equitable.  
4

5 Dated: December 19, 2023

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

6 *s/ C.D. Michel*

C.D. Michel

7 Attorneys for Plaintiffs Adam Richards,  
8 Jeffrey Vandermeulen, Gerald Clark, Jesse  
9 Harris, On Target Indoor Shooting Range,  
10 LLC, Gaalswyk Enterprises, Inc. (D/B/A/  
11 Smokin' Barrel Firearms), Gun Owners of  
California, Inc., Gun Owners of America, Inc.,  
Gun Owners Foundation, and California Rifle  
& Pistol Association, Incorporated

12 Dated: December 19, 2023

**LAW OFFICES OF DONALD KILMER, APC**

13 *s/ Donald Kilmer*

Donald Kilmer

14 Attorney for Plaintiff Second Amendment  
15 Foundation

16 **ATTESTATION OF E-FILED SIGNATURES**

17 I, C.D. Michel, am the ECF User whose ID and password are being used to file  
18 this COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF. In compliance  
19 with Central District of California L.R. 5-4.3.4, I attest that all signatories are  
20 registered CM/ECF filers and have concurred in this filing.

21 Dated: December 19, 2023

*s/ C.D. Michel*

C.D. Michel

# **EXHIBIT 1**

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**SENATE COMMITTEE ON PUBLIC SAFETY**

Senator Steven Bradford, Chair

2021 - 2022 Regular

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<b>Bill No:</b>	SB 1384	<b>Hearing Date:</b>	April 19, 2022
<b>Author:</b>	Min		
<b>Version:</b>	April 7, 2022		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	AB		

**Subject:** *Firearms: dealer requirements***HISTORY****Source:** Brady United Against Gun Violence (National) and Brady California

**Prior Legislation:** AB 1064 (Muratsuchi, 2019), held in Assembly Appropriations  
 SB 220 (Hill, 2019), died on Assembly Floor  
 SB 464 (Hill, 2017), vetoed by the Governor  
 AB 2459 (McCarty, 2016), failed in Assembly Privacy

**Support:** Brady United Against Gun Violence, Ventura County Chapter**Opposition:** California Waterfowl Association; Gun Owners of California**PURPOSE**

*The purpose of this bill is to strengthen security requirements for licensed firearms dealers, require firearms dealers to carry general liability insurance, and require firearms dealers and their employees to complete a training course developed by the Department of Justice.*

*Existing law* generally prohibits the sale, lease or transfer of firearms unless the person has been issued a license by the California Department of Justice, and establishes various exceptions to this prohibition. (Penal Code §§26500 – 26625)

*Existing law* requires that prospective firearms dealers (licensees) satisfy the following requirements:

- Has a valid federal firearms license from the federal Bureau of Alcohol, Tobacco and Firearms (ATF).
- Has any regulatory or business license, or licenses, required by local government.
- Has a valid seller's permit issued by the State Board of Equalization
- Has a Certificate of Eligibility issued by DOJ demonstrating that the applicant is not prohibited from acquiring or possessing firearms
- Has an annual license granted by the licensing authority of any city, county, or city and county.
- Is on the DOJ's centralized list of all persons licensed to sell firearms. (Penal Code §26700(a)-(f).)

*Existing law* provides that a license to sell firearms is subject to forfeiture for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Penal Code §26800(a).)

*Existing law*, effective July 1, 2022, provides that the DOJ may assess specified civil fines against a licensee for any breach of a prohibition or requirement that subjects the licensee to forfeiture of their license to sell firearms. (Penal Code §26800(b), effective July 1, 2022.)

*Existing law* provides that the business of a licensee shall be conducted only in the buildings designated in the license, subject to exceptions. (Penal Code §26805).

*Existing law* requires licensees to post various notices and warnings conspicuously within the licensed premises. (Penal Code §26835).

*Existing law*, except as otherwise provided, requires that any time when the licensee is not open for business, all inventory firearms must be stored in the licensed location. All firearms must be secured using one of the following methods as to each particular firearm:

- Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.
- Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.
- Store the firearm in a locked fireproof safe or vault in the licensee's business premises. (Penal Code §26890(a).)

*Existing law* provides that the licensing authority in an unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those specified. (Penal Code §26890(b).)

*Existing law* defines a "secure facility," for the purposes of firearms dealers, as a building that satisfies the following requirements:

- All perimeter doorways shall meet one of the following:
  - A windowless steel security door equipped with both a dead bolt and a doorknob lock.
  - A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.
  - A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.
- All windows are covered with steel bars.

- Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.
- Any metal grates have spaces no larger than six inches wide measured in any direction.
- Any metal screens have spaces no larger than three inches wide measured in any direction.
- All steel bars shall be no further than six inches apart (Penal Code §17110)

*Existing law* provides that a licensee shall require any agent or employee who handles, sells or delivers firearms to obtain and provide to the licensee a certificate of eligibility from the DOJ verifying that the agent or employee is not prohibited from acquiring or possessing firearms. (Penal Code §26915).

*This bill*, commencing January 1, 2024, requires a licensee to ensure that its business premises are monitored by a digital video surveillance system that meets the following requirements:

- The system shall clearly record images and audio of the area under surveillance
- Each camera shall be permanently mounted in a fixed location. Cameras shall be placed in locations that allow the camera to clearly record activity occurring in specified areas and reasonably produce recordings that allow for the clear and identification of any person.
- The areas recorded shall include, without limitation, interior and exterior views of all entries or exits to the premises, all areas where firearms are displayed, and all points of sale, sufficient to identify the parties involved in the transaction.
- The system shall continuously record 24 hours per day at a frame rate no less than 15 frames per second
- The media or device on which recordings are stored shall be secured in a manner to protect the recording from tampering or theft.
- Recordings shall be maintained for a minimum of 3 years.
- Recorded images shall clearly and accurately display the date and time synchronized with the United States Department of Commerce National Institute Standards and Technology official time.
- The system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the system or storage device.

*This bill* specifies that a licensee shall not allow access, or otherwise release recordings, except as follows:

- A licensee shall allow access to an agent of the DOJ or a licensing authority conducting an inspection of the licensee's premises to ensure compliance with this bill.
- A licensee shall allow access pursuant to a search warrant or other court order.
- A licensee may allow access to a peace officer conducting a criminal investigation.

*This bill* requires that a licensee must post a sign in a conspicuous place at each entrance to the premises stating, "These premises are under video surveillance. Your image and conversations may be recorded."



**SB 1384 (Min )**

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*This bill* requires a licensee, on an annual basis, to provide certification to the DOJ that its video surveillance system is in proper working order.

*This bill*, commencing January 1, 2024, requires that a licensee ensure that its business premises are monitored by a burglary alarm system that meets the following requirements:

- The alarm system shall be installed, maintained, and monitored by a licensed alarm company.
- The alarm must be monitored 24 hours a day and include a notification to law enforcement of any activation other than an accidental activation.
- The alarm system shall include the capability for the monitoring entity to remotely identify the exact location and type of activation and the ability to remotely arm, disarm, or reprogram the system, and shall notify the monitoring entity of any disruption to system power.
- The alarm system shall include motion sensors that cover 100% of the interior of the licensed premises
- The alarm system shall include contact sensors on all exterior doors, windows, and other points of entry.
- The alarm system shall include shock or breakage sensors on all exterior windows.
- The alarm system shall include a backup power source, as specified.
- The alarm system shall include a keypad used to arm and disarm the system, as specified.

*This bill* requires a licensee to ensure that the alarm system is activated at all times when nobody is on the premises.

*This bill* requires each licensee to maintain records of the installation and maintenance of the alarm system and alarm activity and shall make those records available upon request to the DOJ for inspection.

*This bill*, commencing January 1, 2024, requires a licensee to ensure that its business premises have physical security measures that meet the following requirements:

- All exterior doors are equipped with a commercial grade nonresidential door lock
- All exterior doors are equipped with a keyless entry system operated by assigned key cards that identify the user.
- The keyless entry system shall include a backup power source, as specified.

*This bill* provides that a licensee shall ensure that the exterior doors are secured and locked at all times when nobody is on the premises.

*This bill* directs the DOJ to adopt regulations relating to the placement of building security bollards outside a licensed premises.

*This bill*, commencing July 1, 2023, requires that a licensee carry a general liability insurance policy providing at least one million dollars of coverage per incident.

*This bill*, commencing July 1, 2024, requires every licensee, and every employee thereof who handles or processes the sale, loan, or transfer of firearms or ammunition in the course of their duties, to complete a training and certification, as specified, on an annual basis.

*This bill* requires that every licensee maintain records of certification for all employees on the business premises and shall make these records available to any agent of the DOJ or a licensing authority conducting an investigation of the licensee's premises.

*This bill* requires that the DOJ, by no later than January 1, 2024, shall develop and implement a course of training for licensees and their employees, and specifies the topics that must be included in that training.

*This bill* specifies that the training shall be available in an online format and include an examination with no fewer than 20 questions derived from the course materials. A participant that answers at least 70 percent of the exam questions correctly will receive a printable certificate of completion valid for one year.

*This bill* provides that, in addition to the online training course, the DOJ shall prepare – and regularly review and update – supplemental written materials to be made available to all course participants and shall include, without limitation, all of the following:

- A behavioral profile of persons who may be involved in drug trafficking or straw purchasing, including several characteristics specified in the bill.
- How to ascertain whether a prospective firearm purchaser is lawfully purchasing a firearm, including by asking questions of that person.
- How to report a suspected fraudulent firearm purchase to the ATF and the DOJ.

*This bill* specifies that none of its provisions preclude any local authority from requiring a more stringent requirement regarding video surveillance, the maintenance of liability insurance, or training.

## COMMENTS

### 1. Need for This Bill

According to the author:

“Gun ownership is on the rise in the United States. According to a [Pew research Center survey](#), four-in-10 U.S. adults say they live in a household with a gun, including 30% who say they personally own one. With increased gun purchases, the need for comprehensive education about firearm safety grows.

To ensure gun owners are educated about the dangers of firearm usage, this bill requires the California Department of Justice to develop and make available to each licensed firearms dealer, a training course in the conduct of ammunition and firearm transfers [...]. The training course shall include an examination with not less than 20 questions derived from the course materials and intended to confirm that a course participant has learned the information covered by the course. To receive certification of completion of the course, a participant must answer at least 70 percent of the

examination questions correctly. Not less frequently than annually, the Attorney General shall review the training course materials, and revise them as necessary.

Every new and current employee and other personnel engaged in the retail sale of ammunition, firearms, rifles, and shotguns shall annually complete the training outlined above, and must complete a certification with the DOJ. No employee or agent of any retail dealer shall participate in the sale or disposition of firearms, rifles, or shotguns unless such person has first received the training required by this section. Retail dealers shall keep a record of the completion of this training which may be requested by DOJ at any time. The DOJ shall promulgate regulations setting forth minimum requirements for the maintenance of records of such training. [...]

Additionally, every dealer shall carry insurance coverage against liability for damage to property and for injury to or death of any person related to the sale, delivery, lease, or transfer of ammunitions, a firearm, rifle, or shotgun in amounts appropriate to its level of sales, but no less than one million dollars for each incident of damage, injury, or death.”

## 2. Firearms Dealer Licensing and Security Requirements

Federal law requires firearms dealers to obtain a license (also known as a “federal firearms license,” or “FFL”) through the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). An FFL is necessary but not sufficient for obtaining a firearms dealer license in California. Additional requirements include any business license required by local government, a seller’s permit issued by the California Department of Tax and Fee Administration, a seller’s license issued by the local licensing authority of a local government, a certificate of eligibility (background check) issued by the DOJ, and being recorded on the DOJ’s centralized list of firearms dealers.<sup>1</sup> Existing state law also requires that all firearms in the inventory of a licensee be kept at the dealer’s licensed location, subject to very limited exceptions.<sup>2</sup> Additionally, anytime a dealer is not open for business, they must secure all firearms either in a “secured facility,” as defined, with a steel rod, lock and shackle, as defined, or in a locked fireproof safe or vault in the licensee’s business premises.<sup>3</sup> Local governments have the authority to further regulate firearms dealers, provided local regulations are not preempted by state law.

One such local government that has opted for further regulation is the City of San Jose, which, in 2021, approved a measure requiring video and audio recordings of all retail firearms sales. The city’s mayor, Sam Liccardo, proposed the measure after a gunman killed nine workers at a regional rail hub just three weeks prior.<sup>4</sup> Among other provisions, the ordinance establishes detailed specifications for the required audio and video recording system as well as an alarm system, mandates annual inventory checks, and requires licensed gun sellers to train their

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<sup>1</sup> Penal Code §26700

<sup>2</sup> Penal Code §26885

<sup>3</sup> Penal Code §26890

<sup>4</sup> “Transit worker opens fire at California rail yard killing 9 and self.” *NBC News*. 27 May 2021.

<https://www.nbcnews.com/news/us-news/active-shooter-near-northern-california-rail-yard-authorities-say-n1268623>

employees to question potential purchasers about possible “straw purchases” (discussed below).<sup>5</sup> This bill is modeled largely after several of these provisions.

### 3. Gun Store Thefts and Straw Purchases

Thefts from licensed gun retailers have been a persistent problem in California. In 2015, according to data compiled by the ATF and California DOJ, more than 400 guns were reported stolen from gun stores. The following year, the Sacramento area alone saw five gun store thefts in a period of less than three months, during which more than 200 guns were stolen.<sup>6</sup> Many of these thefts involved the perpetrators ramming vehicles through storefronts, bypassing any security measures. Between 2012 and 2019, 1,937 guns were reported stolen from federally licensed gun dealers in California, the 7<sup>th</sup> highest rate of theft for any state during that period.<sup>7</sup> However, the rate of gun store thefts seems to have tapered slightly in recent years since peaking in 2016 (690), with 208 reported thefts in 2021.<sup>8</sup>

Another practice contributing to the illicit gun market is “straw purchasing,” the illegal purchase of a firearm by one person for another. Data compiled by Giffords Law Center to Prevent Gun Violence illustrates the problem:

“Data from a national survey of firearm licensees suggests that there are more than 30,000 attempted straw purchases each year. A representative survey found that more than two-thirds of dealers experienced at least one attempted straw purchase in the year preceding the survey. Researchers have also found that gun dealers are willing to make gun sales under conditions that suggest straw purchases. In one investigation, one in five gun sellers were willing to sell guns to people explicitly asking to buy firearms on behalf of someone else.”<sup>9</sup>

Existing California law makes it illegal for any corporation, person or dealer to sell, loan or transfer a firearm to anyone they know or have cause to believe is not the actual purchaser or the person actually being loaned the firearm, if they know that the firearm is to be subsequently sold or transferred in violation of various requirements.<sup>10</sup> Existing law also prohibits a person from acquiring a firearm with the intention of selling, loaning, or transferring it in violation of the requirement that private sales or transfers be conducted through a licensed dealer.<sup>11</sup> However, proving these crimes in court can be a challenge, as prosecutors must show evidence connecting the straw purchaser and person for whom they are purchasing the gun. For instance, a straw purchaser could claim that the gun was stolen from their house, or was sold to someone else who then sold it to the intended recipient. By imposing stricter security and training requirements on

<sup>5</sup> “Ordinance Regulating the Sale, Lease and Transfer of Firearms and Firearms and Ammunition in San Jose at Retail.” Municipal Code of San Jose Ch. 6.90.

<https://sanjose.legistar.com/View.ashx?M=F&ID=9453396&GUID=DAA92C76-BA8C-498B-8E07-2ECECC8E2279>

<sup>6</sup> “Gun Stores in Northern California Getting Hit Harder by Thieves.” *NBC Bay Area*. 1 November 2016.

<https://www.nbcbayarea.com/news/local/gun-stores-in-northern-california-getting-hit-harder-by-thieves/2010754/#ixzz4aandO02M>; that year (2016) the ATF reported 690 thefts from licensed dealers

<sup>7</sup> “Gun theft in the United States: A state-by-state analysis.” *The Center for American Progress*. 4 March 2020.

<https://www.americanprogress.org/article/gun-theft-united-states-state-state-analysis/>

<sup>8</sup> “Federal Firearms Licensee Theft/Loss Report.” *Bureau of Alcohol, Tobacco, Firearms and Explosives*. January 1, 2021 – December 31, 2021. <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2021>

<sup>9</sup>

<sup>10</sup> Penal Code §27515.

<sup>11</sup> Penal Code §27520(b).

California gun dealers and their employees, this bill ostensibly seeks to curb gun store theft and straw purchasing, and buttress related enforcement efforts.

#### **4. Effect of this Bill**

##### **a. Video Surveillance Requirement**

Existing state law imposes no requirements on licensed gun dealers regarding the maintenance of an audio and video surveillance system, though most licensees do operate at least a video surveillance system as a matter of standard practice in the industry. This bill requires licensees to maintain an audio and video recording system that must continuously record specified areas of a licensee's business premises 24 hours a day at a rate of at least 15 frames per second and must "reasonably produce recordings that allow for the clear identification of any person." The bill also requires the recordings to be maintained for a minimum of 3 years in a manner to protect the recordings from tampering or theft. In addition, the bill prohibits access to the recordings except that a licensee must provide access to the DOJ or a local licensing authority for the limited purpose of ensuring compliance with this bill and to any person permitted to access the recordings pursuant to a search warrant or other court order.

##### **b. Alarm and Physical Security Requirement**

Existing law requires that the business of a licensee shall only be conducted in the buildings designated in the license, with limited exceptions.<sup>12</sup> As mentioned above, existing law also mandates that when a licensee is not open for business, all firearms must be stored on the licensee's business premises, secured according to a manner prescribed in Penal Code §26890.<sup>13</sup> This bill imposes several additional physical security requirements that would generally apply regardless of whether the licensee is open for business. Specifically, the bill requires the use of a burglary alarm system that meets eight distinct operability criteria, including that the system be installed, maintained and monitored by a licensed alarm company 24 hours per day, that it include motion sensors covering 100% of the interior of the licensed premises, and that it be connected to a backup power source capable of providing 72 hours of power, among others. In addition to the alarm system requirement, this bill mandates the use of a commercial grade door lock and keyless entry system operated by individually assigned key cards, the latter of which must also be connected to a backup power source.

##### **c. Insurance Requirement**

Existing state law imposes no requirements on licensed gun dealers regarding the maintenance of general liability insurance at their licensed business premises. Existing state law does however, require gun show organizers to ensure that liability insurance is in effect for the duration of the show in an amount of not less than \$1 million.<sup>14</sup> In addition, 34 local jurisdictions in California have required gun dealers to carry liability insurance, typically with a minimum coverage of \$1 million. This bill would impose this

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<sup>12</sup> Penal Code §26805

<sup>13</sup> Under this section, during non-business hours, firearms must be stored 1) in a 'secured facility,' as defined in §17110, 2) with a steel rod or cable, as specified, or 3) in a fireproof safe or vault.

<sup>14</sup> Penal Code §27200(b)(2).

requirement statewide, mandating that every state licensee carry a general liability insurance policy of at least \$1 million of coverage per incident. Although federal law, the Protection of Lawful Commerce in Arms Act, shields firearms manufacturers and dealers from liability when crimes have been committed with their products, they can still be held liable for a range of torts, contract violations and criminal misconduct for which they are directly responsible.<sup>15</sup>

#### **d. Training Requirement**

Existing law imposes no training requirements on licensed gun dealers in California. This bill requires all licensees and their employees to annually complete an online training, examination and certification program developed by the DOJ. The training must cover a host of topics, including state and federal laws applicable to gun dealers, how to recognize straw purchasing and other illegal activity, how to prevent theft or burglary of firearms, and how to teach consumers about firearm safety, among other issues. Additionally, the bill requires licensees to maintain records of employee certification and make those records available to the DOJ upon request.

### **5. Burdens on Business**

To California's credit, we are one of only a handful of states that currently requires gun stores to impose physical security measures, and available evidence demonstrates that states with physical security requirements, on average, have had lower annual rates of gun theft than those without.<sup>16</sup> However, a recent investigation by *The New Yorker* concluded that many licensed gun sellers "are mom-and-pop shops that feel squeezed by low profit margins and rising competition from online retailers; their owners see security mandates as another blow to the bottom line."<sup>17</sup> In total, this bill obligates licensed gun dealers to comply with five distinct requirements, three of which involve security measures that must meet very specific criteria. Except for the insurance requirement, with which dealers must comply by July 1, 2023, all of these requirements demand compliance by January 1, 2024, one year from the effective date of the bill. Though few would disagree with the critical importance of high security at gun shops, the intensive and detailed nature of the requirements in this bill may represent a challenge for licensees, both economically and logistically. The Author may wish to consider amendments staggering the bill's requirements over a longer period in order to ease the potential burden of compliance.

### **6. Duties of the DOJ**

This bill generally vests the DOJ with the responsibility to oversee compliance with its provisions. Specifically, under this bill, the DOJ is responsible for the following:

- Conducting inspections of a licensee's video surveillance system, as required.
- Receiving and reviewing annual certifications from licensees that their video surveillance systems are in proper working order.
- Receiving and reviewing installation and maintenance records for licensees' alarm systems, as required.

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<sup>15</sup> 15 U.S.C. §§7901-7903.

<sup>16</sup> Freskos, Brian. "Why Thieves Target Gun Stores." *The New Yorker*. 8 February 2019.  
<https://www.newyorker.com/news/news-desk/why-thieves-target-gun-stores>

<sup>17</sup> *Ibid*



- Adopting regulations relating to the placement of building security bollards outside a licensed premises.
- Conducting inspections of a licensee's training records, as required.
- Developing and implementing a training, examination and certification program for licensees and their employees regarding firearm sales and related topics.
- Preparing, disseminating and updating supplemental written materials for the training course.

Given the considerable scope of these responsibilities, the bill's compliance timeline may present significant implementation challenges for the DOJ. Staggering this timeline, as suggested above, may alleviate some of these challenges.

In addition, many of the topics required to be included in the licensee training program are arguably outside the DOJ's expertise, including how to recognize indicators that an individual intends to use a firearm for unlawful purposes or self-harm, and how to teach consumers about firearm safety, particularly with regard to firearm handling and storage. The Author may wish to either narrow the scope of the required topics in consultation with the DOJ or authorize DOJ to contract with another entity to develop the training program.

It is also worth noting that the bill requires DOJ to adopt regulations regarding the placement of security bollards outside a licensed premises, but does not expressly require licensees to install such bollards, rendering that requirement somewhat vague. The Author may wish to clarify this issue by separately requiring licensees to install security bollards.

## **7. Author's Amendments to be Taken in Committee**

The Author intends to amend the bill in committee per the following:

- Clarifying that the required audio and video recording system shall only record audio inside the licensee's premises.
- Requiring the licensee shall make a good faith effort not to capture or record activity occurring beyond the business property.
- Adding additional parameters on the use of and access to recordings, including that a licensee may allow access to recordings in response to an insurance claim or part of a civil discovery process.
- Requiring that the training mandated by the bill include how to properly operate a video or audio surveillance system and ensure that the system and related recording are secure.

## **8. Argument in Support**

According to the bill's sponsor, Brady Campaign to Prevent Gun Violence:

Access to guns is a critical driver of chronic violence. A comprehensive approach to reducing gun violence must therefore include a focus on the upstream source of crime guns that are infiltrating communities. SB 1384 will do just this by requiring firearm dealers and their employees to complete training annually and requiring dealers to have a digital video surveillance system, carry a policy of general liability insurance, and enhance their security systems.



Gun dealers play the critical role of gatekeepers, including using the Brady Background Check System to confirm the eligibility of potential gun purchasers, and their conduct has a direct bearing on whether guns are diverted to illegal markets through straw sales or theft, or are made available to individuals who would harm themselves or others. [...] Despite these substantial risks and the fact that gun dealers can play a critical role in preventing violence in our communities, they are not sufficiently regulated. The ATF considers dealers to be “the first line in maintaining the security and lawful transfer of firearms” but it merely issues guidance on safe business practices that dealers can adopt *on a voluntary basis* and it provides **almost no oversight** of those business practices.<sup>8</sup> For example, there are no federal laws or regulations that require gun dealers to adhere to safe business practices or train their employees on recognizing signs of illegal activity. Nor are there federal requirements concerning security standards, video or audio recording of sales and premises, or liability insurance.

California has worked to fill some of these gaps, but state gun dealer standards and oversight must be further strengthened to create an environment where dealers have the tools they need to prevent gun trafficking and understand that they have a responsibility to engage in responsible business practices. [...] This legislation is critical to curbing dangerous sales, preventing guns from being diverted into the criminal market and reducing the likelihood of straw purchases, theft, burglary, and loss of inventory. This bill strengthens gun dealer standards and oversight in California to ensure that gun dealers have the tools they need to prevent gun trafficking and understand that they have an obligation to engage in responsible business practices.

## 9. Argument in Opposition

According to the California Waterfowl Association:

Our concerns, on behalf of our members, is that these additional onerous restrictions will do very little to add additional safety and security to legal, licensed FFL businesses in the State, but will exact significant costs and challenges that will likely result in some FFLs going out of business or leaving the State.

Firearms ownership in California is legal, and the members of our organization rely on the ability to purchase firearms, ammunition, and other associated supplies to engage in hunting activities in California. In fact, the State has an active program (R3) designed to encourage more California citizens to engage in and pursue these recreational activities. Taxes from the sales of firearms and ammunition, license fees, and other assorted fees and charges provide a significant source of revenue to the California Department of Fish and Wildlife for wildlife habitat and other conservation purposes.

-- END --

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Attorney for Plaintiff Second Amendment Foundation

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
 JEFFREY VANDERMEULEN, an  
 individual; GERALD CLARK, an  
 individual; JESSE HARRIS, an  
 individual; ON TARGET INDOOR  
 SHOOTING RANGE, LLC;  
 GAALSWYK ENTERPRISES, INC.  
 (D/B/A/ SMOKIN' BARREL  
 FIREARMS); GUN OWNERS OF  
 CALIFORNIA, INC.; GUN OWNERS  
 OF AMERICA, INC.; GUN OWNERS  
 FOUNDATION; CALIFORNIA RIFLE  
 & PISTOL ASSOCIATION,  
 INCORPORATED; and SECOND  
 AMENDMENT FOUNDATION, a  
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF ADAM  
 RICHARDS IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF ADAM RICHARDS

**DECLARATION OF ADAM RICHARDS**

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2           1.     I, Adam Richards, am a plaintiff in the above-entitled action. I make  
3 this declaration of my own personal knowledge and if called as a witness, I could  
4 and would testify competently to the truth of the matters set forth herein.

5           2.     I am a current resident of El Dorado County, California.

6           3.     I am a home-based FFL and an attorney. I work out of my home doing  
7 legal work approximately 50% of the time.

8           4.     In my home office, I conduct legal work and operate my FFL business.

9           5.     I was forced to become a home-based FFL because the City of  
10 Sacramento (where my law office is located) made the permitting process for  
11 becoming an established commercial FFL so expensive that I could not afford to  
12 have the FFL license in the same place as my main law office. Rather than waste  
13 money on permitting with the city, I decided to open my FFL business in my home.

14          6.     I have a separate structure at my home, which houses my home office.

15          7.     The work I do for my legal practice includes telephone calls with  
16 clients, opposing counsel, law enforcement, and others. These are often attorney-  
17 client privileged conversations, and they are always private and not intended for  
18 others to hear.

19          8.     While working on legal matters in my home office, I may also have  
20 confidential client files open and controlled documents such as criminal histories  
21 provided in discovery, spread out that could be picked up on a recording device that  
22 would be located in that space. This would be a breach of client confidentiality.

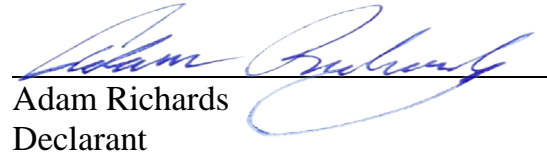
23          9.     I also have a family with younger children. Many times, my children  
24 will come to see me in the home office before school or before bed in the evenings.  
25 As younger children, they can sometimes be partially dressed when they visit. I  
26 could not imagine exposing my children in their most intimate times with a parent  
27 to government recording.

28          10.    Should AB 1384 be implemented, I will be forced to either

1 include highly intrusive recording devices into my home and home office, alert all  
2 of my clients, family, friends, neighbors, etc., that they are being recorded, and  
3 then hope that I do not get sued for recording someone without consent.

4 11. If this court were to enjoin SB 1384 enforcement, I would resume my  
5 activities along with other gun owners and FFLs who conduct lawful and highly  
6 regulated businesses.

7  
8 I declare under penalty of perjury that the foregoing is true and correct.  
9 Executed within the United States on December 19, 2023.

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13 Adam Richards  
14 Declarant  
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Attorney for Plaintiff Second Amendment Foundation

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
 JEFFREY VANDERMEULEN, an  
 individual; GERALD CLARK, an  
 individual; JESSE HARRIS, an  
 individual; ON TARGET INDOOR  
 SHOOTING RANGE, LLC;  
 GAALSWYK ENTERPRISES, INC.  
 (D/B/A/ SMOKIN' BARREL  
 FIREARMS); GUN OWNERS OF  
 CALIFORNIA, INC.; GUN OWNERS  
 OF AMERICA, INC.; GUN OWNERS  
 FOUNDATION; CALIFORNIA RIFLE  
 & PISTOL ASSOCIATION,  
 INCORPORATED; and SECOND  
 AMENDMENT FOUNDATION, a  
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF JEFFREY  
 VANDERMEULEN IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF JEFFREY VANDERMEULEN

**DECLARATION OF JEFFREY VANDERMEULEN**

1. I, Jeffrey Vandermeulen, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am a current resident of Amador County, California.

3. I am a retired police officer and FFL. I operate a retail sales firearms business and e-sales firearms business out of my home. The name of my FFL business is MountainHouse Firearms.

4. MountainHouse Firearms is a locally owned small business specializing in the sale of new and use consignment handguns, rifles, shotguns, and accessories.

5. I also operate a small aerial ash dispersal business out of my home.

6. Through operating my many businesses, I often have private conversations with customers about firearm ownership, family firearm collections, and customers wishing to have the ashes of their loved ones scattered.

7. SB 1384 would force me to record all of these transactions regardless of whether they are about the sale of firearms or not. My customers would find this very offensive to have the DOJ listening in on all of their private conversations that they have in confidence with me. Customers will not seek out my services and I fear having to close down my business.

8. SB 1384 requires me to post signage on my private residence alerting anyone (customer or friend) who enters my property that they will be recorded. I do not feel comfortable posting this kind of sign on my private property.

9. SB 1384 will require me to purchase expensive equipment to comply and pay for the storage of the recordings for one year. The requirements are not for a simple home alarm system, they are for a commercial grade system with specific requirements that are very costly to me as a small business owner.

10. I am afraid of additional liability for being sued by someone who

1 misses the posted sign or does not give their consent to be recorded. SB 1384 seems  
2 to put me in a bad position where I could be sued by those people over privacy  
3 rights.

4 11. Many of my transactions are done on the computer with people outside  
5 of California through my e-sales. I am unclear if SB 1384 would force me to point a  
6 camera at that screen directly or not. If that is a requirement (because e-sales are  
7 transactions) the recording then captures all of those customers' private details on  
8 the screen on video. Additionally, those customers have not consented to recording  
9 by the DOJ. This will destroy my online business as well.

10 12. As a direct result of SB 1384 being fully implemented, I may be force  
11 to give up my business due to the cost to my business and the disapproval of my  
12 customers over being recorded.

13 I declare under penalty of perjury that the foregoing is true and correct.  
14 Executed within the United States on December 19, 2023.

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Jeffrey Vandermeulen  
Declarant



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Attorney for Plaintiff Second Amendment Foundation

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
 JEFFREY VANDERMEULEN, an  
 individual; GERALD CLARK, an  
 individual; JESSE HARRIS, an  
 individual; ON TARGET INDOOR  
 SHOOTING RANGE, LLC;  
 GAALSWYK ENTERPRISES, INC.  
 (D/B/A/ SMOKIN' BARREL  
 FIREARMS); GUN OWNERS OF  
 CALIFORNIA, INC.; GUN OWNERS  
 OF AMERICA, INC.; GUN OWNERS  
 FOUNDATION; CALIFORNIA RIFLE  
 & PISTOL ASSOCIATION,  
 INCORPORATED; and SECOND  
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 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF GERALD  
 CLARK IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF GERALD CLARK

**DECLARATION OF GERALD CLARK**

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2           1.     I, Gerald Clark, am a plaintiff in the above-entitled action. I make this  
3 declaration of my own personal knowledge and, if called as a witness, I could and  
4 would testify competently to the truth of the matters set forth herein.

5           2.     I am a current resident of Orange County, California.

6           3.     Before the passage of SB 1384, I regularly attended gun shows,  
7 frequented gun shops, and instructed gun safety courses in these facilities and at  
8 ranges all across the state on behalf of the California Rifle & Pistol Association and  
9 the state of California Hunters' Education Program.

10          4.     I am an instructor and work as a volunteer offering training to scouting  
11 groups and gun owners across the state. In these roles, it is important for me to  
12 be able to have personal conversations with students, members, parents, and FFLs  
13 regarding their safety, security, and why their being a gun owner is important to  
14 them. I also discuss issues affecting gun owners in California like pending litigation  
15 and legislation and how groups like CRPA, GOC, SAF, GOA, GOF, and 2ALC are  
16 working to protect their rights. My being able to visit these locations and speak to  
17 gun owners allows valuable opportunities to educate gun owners and to learn from  
18 others while engaging in political speech.

19          5.     As an instructor, it is imperative that I share my knowledge about  
20 current law, potential laws that are being considered, and what groups are doing to  
21 stop more gun control against lawful citizens that will not stop crime in the state.

22          6.     I also enjoy attending gun shows because these events offer me a  
23 unique opportunity to engage with like-minded people to explore and discuss the  
24 lawful uses of firearms, including self-defense, hunting, target shooting, safety  
25 training, gunsmithing, and general appreciation of our Second Amendment rights. I  
26 also discuss politics, being a gun owner in California, gun safety, and political  
27 actions against lawful gun ownership in California with other attendees and  
28 volunteers.

1           7. I also visit gun shows and gun shops to purchase firearms and  
2 ammunition, parts for firearms, and materials to help with my training as a gun  
3 owner to be more proficient. As a purchaser of such products, I do not want to have  
4 my speech stifled because I know that the government is tracking my every word. I  
5 want to have open and honest conversations with the FFL about my specific needs  
6 at a gun owner. I think being recorded under SB 1384 would severely limit those  
7 conversations and chill my First Amendment rights.

8           8. I think that SB 1384 would also chill the speech of my students, gun  
9 owners that I meet in the gun shops, on ranges, and in gun shows because they will  
10 be fearful of saying or doing the wrong things instead of being open to ask about  
11 issues. They will be less likely to congregate in such spaces or even come to  
12 training classes because of constant monitoring by the government like they are  
13 citizen of China instead of citizens of America with constitutional rights.

14           9. Even when I am not in the market to purchase a firearm or  
15 ammunition, being able to speak to the vendors and FFLs about new products and  
16 pending laws is important to me as an instructor and a gun owner.

17           10. SB 1384 will diminish my right to engage in otherwise lawful speech,  
18 it will violate my right to have private conversations by recording me and others  
19 without our consent, and it will limit the type of interactions gun owners are willing  
20 to have while being spied upon by the government.

21           11. If this court were to enjoin SB 1384 enforcement, I would resume my  
22 activities along with other gun owners and FFLs who conduct lawful and highly  
23 regulated businesses.

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1 I declare under penalty of perjury that the foregoing is true and correct.  
2 Executed within the United States on December 19, 2023.

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5 s/ Gerald Clark

6 Gerald Clark

7 Declarant  
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Attorney for Plaintiff Second Amendment Foundation

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
 JEFFREY VANDERMEULEN, an  
 individual; GERALD CLARK, an  
 individual; JESSE HARRIS, an  
 individual; ON TARGET INDOOR  
 SHOOTING RANGE, LLC;  
 GAALSWYK ENTERPRISES, INC.  
 (D/B/A/ SMOKIN' BARREL  
 FIREARMS); GUN OWNERS OF  
 CALIFORNIA, INC.; GUN OWNERS  
 OF AMERICA, INC.; GUN OWNERS  
 FOUNDATION; CALIFORNIA RIFLE  
 & PISTOL ASSOCIATION,  
 INCORPORATED; and SECOND  
 AMENDMENT FOUNDATION, a  
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF JESSE HARRIS  
 IN SUPPORT OF PLAINTIFFS'  
 COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF**

DECLARATION OF JESSE HARRIS

**DECLARATION OF JESSE HARRIS**

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2           1.     I, Jesse Harris, am a plaintiff in the above-entitled action. I make this  
3 declaration of my own personal knowledge and, if called as a witness, I could and  
4 would testify competently to the truth of the matters set forth herein.

5           2.     I am a current resident of Siskiyou County, California.

6           3.     Before the passage of SB 1384, I regularly attended gun shows and  
7 frequented gun shops on behalf of California Rifle & Pistol Association and as a  
8 field representative.

9           4.     I am a certified firearms instructor and work as an FFL in a tire and  
10 tackle shop where I lease space from the owner.

11          5.     In these roles, it is important for me to be able to have personal  
12 conversations with students, members, customers, and other FFLs regarding their  
13 safety, security, and why being a gun owner is important to them. I also discuss  
14 issues affecting gun owners in California, like pending litigation and legislation,  
15 and how groups like CRPA are working to protect their rights. My being able to  
16 visit these locations and speak to gun owners allows valuable opportunities to  
17 educate gun owners and to learn from others while engaging in political speech.

18          6.     As an instructor, it is imperative that I share my knowledge about  
19 current law, potential laws that are being considered, and what groups are doing to  
20 stop more gun control against lawful citizens that will not stop crime in the state.  
21 Many times, these conversations happen one-on-one with students.

22          7.     I also enjoy attending gun shows and pro-Second Amendment events  
23 because these events offer me a unique opportunity to engage with like-minded  
24 people to explore and discuss the lawful uses of firearms, including self-defense,  
25 hunting, target shooting, safety training, gunsmithing, and general appreciation of  
26 our Second Amendment rights. I also discuss politics, being a gun owner in  
27 California, gun safety, and political actions against lawful gun ownership in  
28 California with other attendees and volunteers.

1           8.     SB 1384 would chill the speech of gun owners that I meet in the gun  
2 shops, on ranges, and in gun shows because they will be fearful of saying or doing  
3 the wrong things instead of being open to asking about issues. They will be less  
4 likely to congregate in such spaces or even come to training classes because of  
5 constant monitoring by the government.

6           9.     I speak with customers in the shop where I lease space, and the owner  
7 of the shop speaks with his own customers as well as his legal counsel while in the  
8 shop.

9           10.    Under SB 1384, both my conversations regarding firearms and the  
10 private conversations of the owner of the shop with customers who have nothing to  
11 do with purchasing a firearm would be recorded all the same.

12          11.    SB 1384 would negatively impact my business by driving away  
13 customers who do not want to have their personal and confidential conversations  
14 with me recorded. The recording of customers in the shop who are not purchasing a  
15 firearm may also cause the shop owner to lose customers and create tension for my  
16 lease agreement and business.

17          12.    SB 1384 poses financial difficulties for me because I am a small one-  
18 man shop with limited transfers and because I do not own the space where my FFL  
19 is located. The lease does not allow me to transform the entire shop (outside of my  
20 lease space, which would be required) into a recorded area for the DOJ. The cost  
21 alone would ruin my business and would prevent me from continuing as an FFL.

22          13.    If this court were to enjoin SB 1384 enforcement, I would resume my  
23 activities along with other gun owners and FFLs who conduct lawful and highly  
24 regulated businesses.

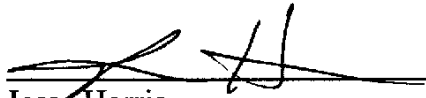
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1 I declare under penalty of perjury that the foregoing is true and correct.  
2 Executed within the United States on December 19, 2023.

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6 Jesse Harris  
7 Declarant  
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Attorney for Plaintiff Second Amendment Foundation

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
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 SHOOTING RANGE, LLC;  
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 (D/B/A/ SMOKIN' BARREL  
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 official capacity as Attorney General of  
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Defendants.

Case No.:

**DECLARATION OF GREGG L.  
 BOUSLOG IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF GREGG L. BOUSLOG

**DECLARATION OF GREGG L. BOUSLOG**

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2           1.     I, Gregg L. Bouslog, represent plaintiff On Target Indoor Shooting  
3 Range, LLC in the above-entitled action. I make this declaration of my own  
4 personal knowledge and if called as a witness, I could and would testify  
5 competently to the truth of the matters set forth herein.

6           2.     I am the Manager and Principle for On Target Indoor Shooting Range,  
7 LLC ("On Target") in Orange County, CA. I oversee the day to day activity of the  
8 facility including firearms sales, transfers, the shooting range activity, and training.

9           3.     On Target is a brick-and-mortar shop and indoor range.

10          4.     On Target specializes in firearms sales (in store and e-sales), firearms  
11 transfers, ammunition sales, and training classes.

12          5.     As an FFL, On Target has conversations with customers that are  
13 confidential in nature regarding their needs to protect themselves and keep them  
14 and others safe. We also discuss the types of firearms that are good for their needs  
15 and the laws that they must follow as well as pending laws that the state is trying to  
16 pass against lawful gun owners.

17          6.     On Target supports groups like CRPA and encourages and speaks to  
18 customers about why it is so important to join these groups to fight for their rights  
19 as gun owners in a state that is constantly trying to restrict their basic constitutional  
20 rights.

21          7.     On Target offers many training courses for new gun owners and is  
22 specifically geared towards making women feel confident in the use of their  
23 firearm.

24          8.     Twice a month On Target hosts discussion sessions with gun owners to  
25 talk about topics that are important to them in a safe and informative environment.  
26 Should SB 1384 be implemented, these training groups and discussion groups will  
27 be completely recorded by the DOJ. This would stifle the entire purpose of open  
28 conversation and many would stop attending.

1           9.     The recording of these sessions would make gun owners less likely to  
2 ask questions and speak openly for fear of the anti-Second Amendment government  
3 watching and listening to them.

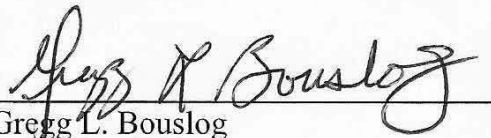
4           10.    On Target is also concerned about the additional liability of audio  
5 recording these confidential conversations without the other persons giving their  
6 consent. This opens On Target up to liability for future legal action that we would  
7 not have absent SB 1384.

8           11.    Beyond driving the customers and students away, SB 1384 will impact  
9 On Target financially by forcing them to purchase costly commercial recording  
10 equipment that is beyond what is necessary for security of the store. Additional  
11 equipment, audio recording, space to store the recordings and wiring of the space  
12 are all a huge financial burden.

13           12.    If SB 1384 is fully implemented, On Target will see reduced number  
14 of gun owners coming to safety classes, reduced number of gun owners willing to  
15 have open and honest conversations about their firearm and the laws surrounding  
16 their possession and use, and will be greatly impacted by the financial cost this bill  
17 would mandate on businesses like On Target.

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

19 Executed within the United States on DECEMBER 19, 2023.

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22 Gregg L. Bouslog  
23 Declarant  
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Attorney for Plaintiff Second Amendment Foundation

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
 JEFFREY VANDERMEULEN, an  
 individual; GERALD CLARK, an  
 individual; JESSE HARRIS, an  
 individual; ON TARGET INDOOR  
 SHOOTING RANGE, LLC;  
 GAALSWYK ENTERPRISES, INC.  
 (D/B/A/ SMOKIN' BARREL  
 FIREARMS); GUN OWNERS OF  
 CALIFORNIA, INC.; GUN OWNERS  
 OF AMERICA, INC.; GUN OWNERS  
 FOUNDATION; CALIFORNIA RIFLE  
 & PISTOL ASSOCIATION,  
 INCORPORATED; and SECOND  
 AMENDMENT FOUNDATION, a  
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF ROBERT  
 GAALSWYK IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF ROBERT GAALSWYK

**DECLARATION OF ROBERT GAALSWYK**

1  
2           1.     I, Robert Gaalswyk, represent plaintiff Smokin' Barrel Firearms in the  
3 above-entitled action. I make this declaration of my own personal knowledge and if  
4 called as a witness, I could and would testify competently to the truth of the matters  
5 set forth herein.

6           2.     I am the owner of Smokin' Barrel Firearms in Tulare County, CA. I  
7 oversee the day-to-day activity of the facility, including firearms sales and transfers.

8           3.     Smokin' Barrel Firearms is a family-owned small business.

9           4.     Smokin' Barrel Firearms is a brick-and-mortar gun shop that handles  
10 firearms sales, firearms transfers, layaway sales, consignment firearms, and e-  
11 transfers.

12          5.     Smokin' Barrel Firearms is a 1300 square foot facility which would  
13 require 5 cameras plus the hardware and wiring to record 24 hours per day (even  
14 when not open and transacting business) under SB 1384 rules.

15          6.     Smokin' Barrel Firearms estimates that to comply with SB 1384, we  
16 would have to spend an estimated \$5,000 to \$12,000 dollars. The cost to a small  
17 business like ours would be very challenging especially in the current economy.

18          7.     As an FFL, Smokin' Barrel Firearms has conversations with customers  
19 that are confidential in nature regarding their needs to protect themselves and keep  
20 them and others safe as well as collecting their personal and private information.  
21 We also discuss the types of firearms that are good for their needs and the laws that  
22 they must follow as well as pending laws that the state is trying to pass against  
23 lawful gun owners.

24          8.     Smokin' Barrel Firearms would also be forced to target a camera  
25 directly at the computer screen where the online transfers occur which would  
26 directly collect all of the customer data being put into the system for processing and  
27 thus create a defacto gun registry that the state DOJ could access at any time.

28          9.     Smokin' Barrel Firearms supports groups like CRPA, GOC, GOF, and



1 SAF and encourages and speaks to customers about why it is so important to join  
2 these groups to fight for their rights as gun owners in a state that is constantly trying  
3 to restrict their basic constitutional rights.

4 10. The recording of these conversations and private information being  
5 entered would make gun owners less likely to ask questions and speak openly for  
6 fear of the anti-Second Amendment government watching and listening to them.

7 11. Smokin' Barrel Firearms' customers and students would be injured by  
8 SB 1384 because those recordings could be accessed on demand by the DOJ as well  
9 as by subpoena for any criminal or civil action against the customers who did not  
10 consent to be recorded in the first place.

11 12. Smokin' Barrel Firearms is also concerned about the additional  
12 liability of audio recording these confidential conversations without the other  
13 persons giving their consent. This opens them up to liability for future legal action  
14 that we would not have absent SB 1384.

15 13. Beyond driving the customers and students away, SB 1384 will impact  
16 Smokin' Barrel Firearms financially by forcing them to purchase costly commercial  
17 recording equipment that is beyond what is necessary for security of the store.  
18 Additional equipment, audio recording, space to store the recordings and wiring of  
19 the space are all a huge financial burden.

20 14. If SB 1384 is fully implemented, Smokin' Barrel Firearms will see  
21 reduced number of gun owners purchasing from their store, reduced number of gun  
22 owners willing to have open and honest conversations about their firearms and the  
23 laws surrounding their possession and use, and will be greatly impacted by the  
24 financial cost this bill would mandate on businesses like Smokin' Barrel Firearms.

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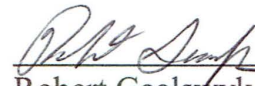
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1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed within the United States on 12 - 19, 2023.

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6 Robert Gaalswyk  
7 Declarant  
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Attorney for Plaintiff Second Amendment Foundation

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**CENTRAL DISTRICT OF CALIFORNIA**

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 INCORPORATED; and SECOND  
 AMENDMENT FOUNDATION, a  
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF SAMUEL A.  
 PAREDES IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF SAMUEL A. PAREDES

**DECLARATION OF SAMUEL A. PAREDES**

1  
2 1. I, Samuel A. Paredes, am the Executive Director of the Gun Owners of  
3 California (GOC), a plaintiff in the above-entitled action. I make this declaration of  
4 my own personal knowledge, and, if called as a witness, I could and would testify  
5 competently to the truth of the matters set forth herein.

6 2. I am a U.S. citizen and resident of California.

7 3. GOC is a California non-stock corporation with its principal place of  
8 business in El Dorado County California. GOC is organized and operated as a non-  
9 profit membership organization that is exempt from federal income taxes under  
10 section 501(c)(4) of the U.S. Internal Revenue Code. GOC was formed in 1975 to  
11 preserve and defend the Second Amendment rights of gun owners. GOC has  
12 thousands of members and supporters across the state, including firearm dealers.  
13 Many of GOC's members and supporters are being and will be irreparably harmed  
14 by the implementation of SB 1384, which is being wielded as a political weapon  
15 making it financially impossible for many firearms dealers to implement the required  
16 video, audio and recording surveillance equipment required to comply with the  
17 statute, and which will cause many to go out of business entirely, and will thereby  
18 restrict law-abiding Californians' access to constitutionally protected firearms that  
19 can only be purchased in California through a federal firearm licensee (FFL).

20 4. In my capacity as Executive Director of GOC, I oversee staff that are  
21 in daily contact with members and supporters regarding their concerns, questions,  
22 requests, and suggestions on how GOC can best represent their interests.

23 5. Since the passage of SB 1384, an overwhelming concern of our  
24 members and supporters, which include licensed California gun dealers, has been  
25 that this seemingly vindictive statute would cause gun stores across the state to  
26 close down if they cannot afford the type of equipment and technology required to  
27 comply with the mandate for 24/7 audio and video recording within their place of  
28 business, including the private homes of dealers who operate out of their private

1 residence.

2 6. Additionally, some of GOC's members and supporters similarly will  
3 be subjected to and harmed by the requirement that gun dealers record, with  
4 sophisticated and expensive audio and video equipment, all activities and  
5 conversations within licensed dealer's premises, whether a big box store, ordinary  
6 gun store, or home-based firearms business.

7 7. Our members desire and overwhelmingly support GOC's involvement  
8 in litigation to protect the rights are being unconstitutionally infringed by SB 1384.

9 8. GOC itself also will be harmed directly by SB1384. GOC has  
10 volunteers (called Field Agents) who distribute our organization's literature,  
11 including fliers, newsletters, and membership applications, to hundreds of gun  
12 stores across California. The dealers typically are thankful to receive the material  
13 because patrons frequently visit their stores not only to purchase firearms, but also  
14 to discuss firearms related issues. The GOC materials thus provide a convenient  
15 way for gun stores to engage with and provide relevant literature to inquiring  
16 customers. Often times, this leads to discussion about Second Amendment issues,  
17 and to new GOC members joining the organization based on materials obtained  
18 from their local gun store. Many GOC members report having initially obtained  
19 information about GOC from their local gun store.

20 9. I am concerned that GOC's mission will be harmed by SB 1384.  
21 Because many of our new members sign up while visiting California's gun stores,  
22 SB 1384's requirement that their every action and word be recorded and handed  
23 over to the government for review will chill these prospective members as they seek  
24 out educational and other materials related to the Second Amendment and GOC.  
25 With California's anti-gun executive branch looking over their shoulder, these  
26 prospective members will be less likely to seek out GOC materials, engage in First  
27 Amendment discussions about our activities, and sign up for GOC membership.  
28 This will lead to GOC having fewer members, and receiving lesser donations, than

1 without SB 1384, and thus affecting our ability to perform our mission to secure  
2 and protect the right to keep and bear arms.

3 10. As noted above, GOC represents the interests of many dealers and  
4 their customers across the state who are affected by SB 1384's audio and video  
5 surveillance requirements. For instance, in addition to big box stores and traditional  
6 brick-and-mortar gun stores, other firearm licenses are held by gas stations, law  
7 offices, and other types of businesses that also happen to maintain a federal firearm  
8 license to sell firearms.

9 11. GOC has heard from multiple members who say that they do not wish  
10 to be audio and video recorded when exercising their enumerated constitutional  
11 right to keep and bear arms. These members explained that, in addition to  
12 purchasing constitutionally protected arms, they visit and patronize California gun  
13 dealers to discuss various politics and legal issues, including California's tyrannical  
14 anti-gun laws, and to meet other like-minded individuals to discuss Second  
15 Amendment activities, firearms, and associated topics.

16 12. However, when learning that all conversations and interactions at the  
17 gun counter will be audio and video recorded, this individual stated that SB 1384  
18 will chill their speech and association, and that they would self-censor and no  
19 longer exercise their rights to the same extent as before, under California's prying  
20 eyes.

21 13. These members also explained that they feel as though SB 1384  
22 targets them and treats them like a criminal simply for exercising protected Second  
23 Amendment rights, and that, out of fear of the government, they no longer would  
24 speak freely at these gun stores because they will now be recorded.

25 14. Some of GOC's members and supporters are home-based firearm  
26 dealers, and do not wish to have their homes under constant 24/7 government  
27 surveillance simply for conducting business, from time to time, from home.

28 15. GOC has heard from members who reported they conduct business at

1 their kitchen table, including completing and maintaining paperwork, and when  
2 filling out the required forms to conduct firearms transactions with customers, as  
3 their home is their licensed premises for firearm purchase purposes.

4 16. These members do not want to 1) install video and audio recording  
5 devices, mandated by the State; 2) to exercise constitutionally protected rights  
6 under the prying eye of the government; 3) be required to pay for these recording  
7 devices; 4) be forced to put up signage around their home informing visitors that  
8 they are being recorded, and 5) be subjected, in their own home, to 24/7  
9 government surveillance.

10 17. These dealers expressed outrage that SB 1384 requires them to record  
11 inside their home on a continual basis, even on days and at times when they do not  
12 conduct any business, as they only have specific hours during which they conduct  
13 firearms transactions.

14 18. These FFLS are afraid that their businesses may have to be shut down  
15 because 1) they are unwilling to record all goings on within their own home at all  
16 times of the day and night, no matter what they are doing, and not only within their  
17 kitchen but also at all entrances and exits of their home (and perhaps other places),  
18 and 2) they likely cannot afford the expensive equipment to record audio and video  
19 all day, every day.

20 19. Some of these members have no intent to comply with SB 1384, as  
21 they flatly refuse to install the government's mandated surveillance equipment  
22 within their own home.

23 20. Protection of the constitutional rights advanced in this litigation is  
24 germane to GOC's mission, which includes the effort to preserve and protect the  
25 Second Amendment and the rights of Americans to keep and bear arms, including  
26 against overreach by the legislative and executive branch of California government  
27 and anti-gun bureaucrats. GOC routinely litigates cases in California on behalf of  
28 its members and supporters and is capable of fully and faithfully representing the

1 interests of its members and supporters without participation by each of the  
2 individuals and entities.

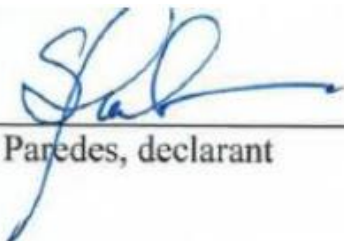
3 21. The magnitude and scope of the harms alleged above to GOC's  
4 members and supporters, while already real, concrete, and irreparable, are still yet  
5 to be fully realized, as implementation of SB 1384 will occur on January 1, 2024,  
6 when the video and audio surveillance requirements go into effect.

7 22. In different ways and to varying degrees, each of our members and  
8 supporters will be irreparably harmed once this law is fully implemented. Some  
9 will be subjected to ever encroaching, illegal, and unconstitutional infringements of  
10 their right to keep and bear arms, and some will have to dramatically change the  
11 way they do business, including the elimination of assembling and speaking with  
12 like-minded individuals about protected rights while shopping at gun stores, having  
13 to install a government monitor in their homes invading all aspects of their private  
14 lives, and having to waive numerous other constitutional rights simply to exercise  
15 their Second Amendment rights.

16 23. If SB 1384's 24/7 video and audio recording requirement is not  
17 enjoined now, our members' and supporters' constitutional rights will be  
18 significantly curtailed, and GOC, as an organization, will be impeded in fulfilling  
19 its mission.

20 I declare under penalty of perjury that the foregoing is true and correct.  
21 Executed within the United States on December 19, 2023.

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Sam Paredes, declarant



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Attorney for Plaintiff Second Amendment Foundation

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
 JEFFREY VANDERMEULEN, an  
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 SHOOTING RANGE, LLC;  
 GAALSWYK ENTERPRISES, INC.  
 (D/B/A/ SMOKIN' BARREL  
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 FOUNDATION; CALIFORNIA RIFLE  
 & PISTOL ASSOCIATION,  
 INCORPORATED; and SECOND  
 AMENDMENT FOUNDATION, a  
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF RICHARD  
 MINNICH IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF RICHARD MINNICH

**DECLARATION OF RICHARD MINNICH**

1  
2 1. I, Richard Minnich, am the Treasurer of the California Rifle & Pistol  
3 Association, Incorporated (CRPA), a plaintiff in the above-entitled action. I make  
4 this declaration of my own personal knowledge, and, if called as a witness, I could  
5 and would testify competently to the truth of the matters set forth herein.

6 2. CRPA is a non-profit membership organization classified under  
7 section 501(c)(4) of the Internal Revenue Code and incorporated under the laws of  
8 California, with its headquarters in Fullerton, California.

9 3. Founded in 1875, CRPA seeks to defend the Second Amendment and  
10 advance laws that protect the rights of individual citizens. CRPA works to preserve  
11 the constitutional and statutory rights of gun ownership, including the rights to self-  
12 defense, the right to hunt, and the right to keep and bear arms. CRPA is also  
13 dedicated to promoting the shooting sports, providing education, training, and  
14 organized competition for adult and junior shooters. CRPA works to defeat anti-  
15 Second Amendment and hunting legislation and defend against unconstitutional  
16 laws in court. CRPA's members include law enforcement officers, prosecutors,  
17 professionals, firearm experts, FFLs, attorneys, gun owners, and members of the  
18 general public. CRPA accomplishes these goals through educational offerings,  
19 publications, member engagement, legislative advocacy, and litigation.

20 4. CRPA has approximately 500 business affiliates that we work with  
21 across the state. Many of these business affiliate members are Federal Firearm  
22 Licensees.

23 5. CRPA Business Affiliate members have reached out to CRPA through  
24 emails and phone calls, expressing concern over what SB 1384 would do to their  
25 businesses and customers. SB 1384 is cost prohibitive to many FFL members and  
26 would put them out of business, many do not want intrusive recording in their  
27 homes and shops, and others are concerned that customers will be kept away by the  
28 violation of their privacy.

1           6. CRPA will also be harmed directly. CRPA has field representatives  
2 who enter the business affiliate premises to conduct business, update the business  
3 affiliates on news and information, distribute literature, and discuss important  
4 political and legal challenges in the state. These CRPA materials and discussions  
5 that explain what is happening legislatively, politically, and legally in the state are a  
6 convenient way for FFLs to in turn provide that information to their customers.  
7 Many CRPA members make the decision to sign up as members while in a gun  
8 shop or at a gun show so they can continue receiving this type of information. SB  
9 1384 may chill their desire to join a group like CRPA if they know the anti-gun  
10 government is monitoring that activity. This will affect CRPAs ability to perform  
11 our mission, associate with gun owners looking for information, and protect Second  
12 Amendment rights in California.

13           7. CRPA trainers, members, FFLs, and class participants would have  
14 their constitutional rights violated under SB 1384 (Section 26806) because their  
15 private discussions and actions would be recorded, some of which have nothing to  
16 do with the purchase of a firearm.

17           8. CRPA has tens of thousands of members and supporters, many of  
18 whom, like myself, frequent gun stores and gun shows to engage in lawful  
19 purchases, expressive activities with like-minded people, including discussions  
20 related to firearms, ammunition, accessories, the shooting sports, politics, and the  
21 Second Amendment.

22           9. Because SB 1384 would force the recording of many of these private  
23 conversations, CRPA members may be deterred from entering the FFL  
24 establishments to conduct these constitutionally protected activities. They would  
25 also have to choose between allowing some rights to be violated in order to exercise  
26 other rights.

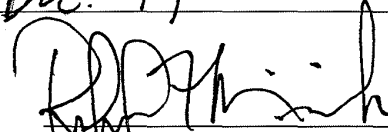
27           10. Under SB 1384, CRPA members who are FFLs would be forced by the  
28 government to purchase expensive monitoring equipment, record all activities 24

1 hours per day, and record the activities of their customers who may not consent to  
2 being recorded, thus opening them up to potential liability for violating customer  
3 privacy.

4 11. If SB 1384's recording provisions are allowed to stay in place,  
5 CRPA's members' and supporters' constitutional rights will be violated and CRPA  
6 will be prevented from carrying out its full mission because of the ever-present  
7 government surveillance scheme found in SB 1384.

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

9 Executed within in the United States on Dec. 19, 2023.

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12 Richard Minnich  
13 Declarant  
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Attorney for Plaintiff Second Amendment Foundation

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 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF ERICH M.  
 PRATT IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF ERICH M. PRATT

**DECLARATION OF ERICH M. PRATT**

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2           1.     I, Erich M. Pratt, am the Senior Vice President of the Gun Owners of  
3 America (GOA) and Senior Vice President of Gun Owners Foundation, plaintiffs in  
4 the above-entitled action. I make this declaration of my own personal knowledge,  
5 and, if called as a witness, I could and would testify competently to the truth of the  
6 matters set forth herein.

7           2.     I am a U.S. citizen and resident of Virginia.

8           3.     GOA is a California non-stock corporation with its principal place of  
9 business in Springfield, VA. GOA is organized and operated as a non-profit  
10 membership organization that is exempt from federal income taxes under section  
11 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1976 to preserve  
12 and defend the Second Amendment rights of gun owners. GOA's members and  
13 supporters include residents of California that reside in this district, many of whom  
14 are and will be irreparably harmed by the implementation of SB 1384, which is  
15 being wielded as a political weapon, making it financially impossible for many  
16 firearms dealers to implement the required video, audio, and recording surveillance  
17 equipment required to comply with the statute, and which will cause many to go out  
18 of business entirely, and will thereby restrict law-abiding Californians' access to  
19 constitutionally protected arms.

20           4.     Gun Owners Foundation (GOF) is a Virginia non-stock corporation,  
21 with its principal place of business in Springfield, VA. GOF is organized and  
22 operated as a non-profit legal defense and educational foundation that is exempt  
23 from federal income taxes under Section 501(c)(3) of the U.S. Internal Revenue  
24 Code. GOF is supported by gun owners across the country, and within California  
25 including residents of this district, who are and will be irreparably harmed by the  
26 implementation of SB 1384.

27           5.     GOA and GOF together have more than two million members and  
28 supporters nationwide, including thousands who are California residents, many of

1 whom reside or have businesses within this district. Many of those members and  
2 supporters are either customers of California gun stores, or firearms dealers  
3 themselves.

4 6. GOA also maintains the Caliber Club, a “partnership program”  
5 comprised of more than five thousand gun stores and shooting ranges across the  
6 country, including those located in California. GOA distributes literature, including  
7 information about becoming a GOA member, to gun stores in California. SB  
8 1384’s onerous surveillance regime will have a chilling effect on our ability to  
9 engage with new prospective members, donors, and supporters, leading to GOA  
10 having fewer members, and receiving fewer donations, than without SB 1384, and  
11 thus affecting our ability to perform our mission to secure and protect the right to  
12 keep and bear arms.

13 7. Since the passage of SB 1384, a significant concern of our members  
14 and supporters, who include licensed California firearms dealers, has been that this  
15 seemingly vindictive statute would cause gun stores across the state to close down  
16 if they cannot afford the type of equipment and technology required to comply with  
17 the mandate for 24/7 audio and video recording within their places of business,  
18 including the private homes of dealers who are home-based.

19 8. Additionally, GOA’s and GOF’s members and supporters, including  
20 customers and family members of firearms dealers, will be subjected to and harmed  
21 by the requirement that gun dealers record, with sophisticated audio and video  
22 equipment, all activities and conversations within the licensed dealers’ premises,  
23 whether a big box store, ordinary gun store, or even home-based firearms business.

24 9. Our members and supporters desire and overwhelmingly support  
25 GOA and GOF’s involvement in litigation to protect the rights which are being  
26 unconstitutionally infringed by SB 1384.

27 10. In other words, GOA and GOF represent the interests of many dealers  
28 and their customers across the state who are affected by SB 1384’s audio and video



1 surveillance requirements.

2 11. GOA and GOF have members and supporters who routinely shop at  
3 these home-based or otherwise non-retail firearm dealers.

4 12. GOA's and GOF's members and supporters are representative of  
5 those who will be affected by SB 1384's 24/7 video and audio surveillance  
6 requirements, which will have a ubiquitous and negative effect on the firearms  
7 community.

8 13. Protection of the right to privacy advanced in this litigation is  
9 germane to GOA's and GOF's missions, which include the effort to preserve and  
10 protect the Second Amendment and the rights of Americans to keep and bear arms,  
11 including against overreach by the legislative and executive branch of California  
12 government and anti-gun bureaucrats. GOA and GOF routinely litigate cases  
13 throughout the country on behalf of their members and supporters, and GOA and  
14 GOF are capable of fully and faithfully representing the interests of their members  
15 and supporters without participation by each of the individuals and entities.

16 14. The magnitude and scope of the harms alleged above to GOA's and  
17 GOF's members and supporters, while already real, concrete, and irreparable, are  
18 still yet to be fully realized, as SB 1384 will become effective on January 1, 2024,  
19 when the video and audio surveillance requirements go into effect.

20 15. In different ways and to varying degrees, each of our members and  
21 supporters in California will be irreparably harmed once this law is fully  
22 implemented. Some will be subjected to ever encroaching, illegal, and  
23 unconstitutional infringements of their right to keep and bear arms, and some will  
24 have to dramatically change the way they do business, including the elimination of  
25 assembling and speaking with like-minded individuals about protected rights while  
26 shopping at gun stores, having to install a government monitor in their homes  
27 invading all aspects of their private lives, and having to waive numerous other  
28 constitutional rights simply to exercise their Second Amendment rights. SB 1384's

1 tyranny is now affecting these persons in ways that, heretofore, even California  
2 residents could not have contemplated.

3 16. If SB 1384's 24/7 video and audio recording mandates are not  
4 enjoined now, our members' and supporters' First, Second, Fourth, and Fifth  
5 Amendment rights will be significantly curtailed.

6  
7 I declare under penalty of perjury that the foregoing is true and correct.  
8 Executed within the United States on December 19, 2023.

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12 Erich M. Pratt  
13 Declarant  
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Attorney for Plaintiff Second Amendment Foundation

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, an individual;  
 JEFFREY VANDERMEULEN, an  
 individual; GERALD CLARK, an  
 individual; JESSE HARRIS, an  
 individual; ON TARGET INDOOR  
 SHOOTING RANGE, LLC;  
 GAALSWYK ENTERPRISES, INC.  
 (D/B/A/ SMOKIN' BARREL  
 FIREARMS); GUN OWNERS OF  
 CALIFORNIA, INC.; GUN OWNERS  
 OF AMERICA, INC.; GUN OWNERS  
 FOUNDATION; CALIFORNIA RIFLE  
 & PISTOL ASSOCIATION,  
 INCORPORATED; and SECOND  
 AMENDMENT FOUNDATION, a  
 California Corporation,

Plaintiffs,

v.

GAVIN NEWSOM, in his official  
 capacity as Governor of the State of  
 California; ROBERT BONTA, in his  
 official capacity as Attorney General of  
 the State of California, and DOES 1-10,

Defendants.

Case No.:

**DECLARATION OF ALAN  
 GOTTLIEB IN SUPPORT OF  
 PLAINTIFFS' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF**

DECLARATION OF ALAN GOTTLIEB

**DECLARATION OF ALAN GOTTLIEB**

1  
2       1. I, Alan Gottlieb, am the Executive Vice President and founder of Plaintiff  
3 Second Amendment Foundation (“SAF”), a plaintiff in the above-entitled action. I  
4 make this declaration of my own personal knowledge, and, if called as a witness, I  
5 could and would testify competently to the truth of the matters set forth herein.

6       2. SAF is a non-profit membership and donor-supported organization classified  
7 under IRC section 501(c)(4) and incorporated under the laws of the state of  
8 Washinton with its headquarters in Bellevue, Washington.

9       3. SAF has over 720,000 members that we work with across the nation, with  
10 many in California. Many of these members are Federal Firearm Licensees and gun  
11 owners who frequent gun shops, gun shows, and private FFL establishments.

12       4. SAF’s members include law enforcement officers, prosecutors, professionals,  
13 firearm experts, FFLs, attorneys, gun owners, and members of the general public.  
14 SAF accomplishes these goals through educational offerings, publications, member  
15 engagement, legislative advocacy, and litigation.

16       5. SAF seeks to defend the Second Amendment, promote a better understanding  
17 of our constitutional heritage to own and possess firearms privately, and advance  
18 laws that protect the rights of individual citizens. SAF works to preserve the  
19 constitutional and statutory rights of gun ownership, including the rights to self-  
20 defense, the right to hunt, and the right to keep and bear arms. SAF works to defeat  
21 anti-Second Amendment legislation and defend against unconstitutional laws in  
22 court.

23       6. SAF also strives to educate the public about gun control issues. SAF is a  
24 pioneer and innovator in the defense of the right to keep and bear arms through its  
25 publications and education programs like the Gun Rights Policy Conference.

26       7. SAF expends a significant amount of money sponsoring public interest  
27 litigation to defend its own interests and the interests of its members and supporters.

28       8. It is crucial to the success of SAF that its promotional materials, publications,

1 and messages are communicated to people of the “gun culture,” who are the very  
2 people who frequent gun shops, gun shows, and FFL establishments. It is also  
3 crucial that SAF be able to freely communicate with people in gun shops, attending  
4 gun shows, and with individual FFLs regarding their rights, the gun control  
5 movement’s agenda and tactics, and the need to understand their rights. These  
6 conversations are many times one-on-one, but even if they are not one-on-one  
7 conversations, people in shops picking up information about political speech and  
8 making a decision to support pro-Second Amendment groups like SAF while the  
9 government is recording them is cringeworthy, to say the least.

10 9. SB 1384 would capture and collect each and every word and action of  
11 someone engaged in lawful political speech and association, even if they never  
12 purchase a firearm at the counter. Because of the vile intrusions by SB 1384, many  
13 gun owners will not go to gun shops or gun shows and will never have these very  
14 important conversations.

15 10.SAF members have reached out to SAF, expressing concern over what SB  
16 1384 would do to their businesses and customers. SB 1384 is cost-prohibitive to  
17 many FFL members and would put them out of business; many do not want  
18 intrusive recording in their homes and shops, and others are concerned that  
19 customers will be kept away by the violation of their privacy.

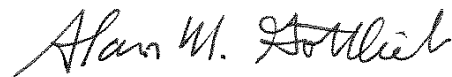
20 11.SAF will also be harmed directly through the implementation of SB 1384.  
21 These SAF materials and discussions that explain what is happening legislatively,  
22 politically, and legally in the state are a convenient way for FFLs to in turn provide  
23 that information to their customers. Many SAF members make the decision to sign  
24 up as members while in a gun shop or at a gun show so they can continue receiving  
25 this type of information. SB 1384 may chill their desire to join a group like SAF if  
26 they know the anti-gun government is monitoring that activity. This will affect  
27 SAF’s ability to perform our mission, associate with gun owners looking for  
28 information, and protect Second Amendment rights in California.

1 establishments to conduct these constitutionally protected activities. They would  
2 also have to choose between allowing some rights to be violated to exercise other  
3 rights.

4 13. Under SB 1384, SAF members who are FFLs would be forced by the  
5 government to purchase expensive monitoring equipment, record all activities 24  
6 hours per day, and record the activities of their customers who may not consent to  
7 be recorded, thus opening them up to potential liability for violating customer  
8 privacy.

9 14. If SB 1384's recording provisions are allowed to stay in place, SAF's  
10 members' and supporters' constitutional rights will be violated, and SAF will be  
11 prevented from carrying out its full mission because of the ever-present government  
12 surveillance scheme found in SB 1384.

13 I declare under penalty of perjury that the foregoing is true and correct.  
14 Executed within the United States on December 18, 2023.

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17 ALAN GOTTLIEB  
18 Declarant  
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C. D. Michel – SBN 144258  
Tiffany D. Cheuvront – SBN 317144  
Joshua Robert Dale – SBN 209942  
Anna M. Barvir – SBN 268728  
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Attorney for Plaintiff The Second Amendment Foundation

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ADAM RICHARDS, et al.,  
  
Plaintiffs,  
  
v.  
  
GAVIN NEWSOM, et al.,  
  
Defendants.

Case No.: 8:23-cv-02413 JVS (KESx)

**PLAINTIFFS' NOTICE OF APPEAL  
AND REPRESENTATION  
STATEMENT**

Action Filed: December 19, 2023



1 NOTICE IS HEREBY GIVEN that Plaintiffs Adam Richards, Jeffrey  
2 Vandermeulen, Gerald Clark, Jesse Harris, On Target Indoor Shooting Range, LLC,  
3 Gaalswyk Enterprises, Inc. (D/B/A/ Smokin' Barrel Firearms), Gun Owners of  
4 California, Inc., Gun Owners of America, Inc., Gun Owners Foundation, California  
5 Rifle & Pistol Association, Incorporated, and The Second Amendment Foundation,  
6 hereby appeal to the United States Court of Appeals for the Ninth Circuit from the  
7 Judgment entered in this action January 28, 2025 (ECF No. 58).

8 Plaintiffs' Representation Statement is attached to this Notice as required by  
9 Ninth Circuit Rule 3-2(b).

10  
11 Dated: January 31, 2025

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

s/ Anna M. Barvir

Anna M. Barvir

12  
13 Attorneys for Plaintiffs Adam Richards,  
14 Jeffrey Vandermeulen, Gerald Clark, Jesse  
15 Harris, On Target Indoor Shooting Range,  
16 LLC, Gaalswyk Enterprises, Inc. (D/B/A/  
17 Smokin' Barrel Firearms), Gun Owners of  
California, Inc., Gun Owners of America, Inc.,  
Gun Owners Foundation, and California Rifle  
& Pistol Association, Incorporated

18 Dated: January 31, 2025

**LAW OFFICES OF DONALD KILMER, APC**

s/ Donald Kilmer

Donald Kilmer

19  
20 Attorney for Plaintiff The Second Amendment  
21 Foundation  
22  
23  
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## REPRESENTATION STATEMENT

The undersigned represents Plaintiffs-Appellants, Adam Richards, Jeffrey Vandermeulen, Gerald Clark, Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc. (D/B/A/ Smokin' Barrel Firearms), Gun Owners of California, Inc., Gun Owners of America, Inc., Gun Owners Foundation, California Rifle & Pistol Association, Incorporated, and The Second Amendment Foundation, and no other party.

Pursuant to Rule 12(b) of the Federal Rules of Appellate Procedure and Circuit Rule 3-2(b), Plaintiffs-Appellants submit this Representation Statement. The following list identifies all parties to the action, and it identifies their respective counsel by name, firm, address, telephone number, and e-mail, where appropriate.

PARTIES	COUNSEL OF RECORD
Plaintiffs-Appellants Adam Richards; Jeffrey Vandermeulen; Gerald Clark; Jesse Harris; On Target Indoor Shooting Range, LLC; Gaalswyk Enterprises, Inc. (D/B/A/ Smokin' Barrel Firearms); Gun Owners of California, Inc.; Gun Owners of America, Inc.; Gun Owners Foundation; California Rifle & Pistol Association, Incorporated	C. D. Michel – SBN 144258 Email: <a href="mailto:cmichel@michellawyers.com">cmichel@michellawyers.com</a> Tiffany D. Cheuvront – SBN 317144 Email: <a href="mailto:tcheuvront@michellawyers.com">tcheuvront@michellawyers.com</a> Joshua Robert Dale – SBN 209942 Email: <a href="mailto:jdale@michellawyers.com">jdale@michellawyers.com</a> Anna M. Barvir – SBN 268728 Email: <a href="mailto:abarvir@michellawyers.com">abarvir@michellawyers.com</a> MICHEL & ASSOCIATES, P.C. 180 E. Ocean Blvd., Suite 200 Long Beach, CA 90802 Telephone: (562) 216-4444 Facsimile: (562) 216-4445  Counsel is registered for Electronic Filing in the Ninth Circuit
Plaintiff-Appellant The Second Amendment Foundation	Donald Kilmer – SBN 179986 Email: <a href="mailto:don@dklawoffice.com">don@dklawoffice.com</a> Law Offices of Donald Kilmer, APC 14085 Silver Ridge Road Caldwell, Idaho 83607 Telephone: (408) 264-8489  Counsel is registered for Electronic

1		Filing in the Ninth Circuit
2	Defendant-Appellee Robert Bonta, in	Todd Grabarsky – SBN 286999
3	his official capacity as Attorney	Deputy Attorney General
4	General of the State of California	<a href="mailto:todd.grabarsky@doj.ca.gov">todd.grabarsky@doj.ca.gov</a>
5		Carolyn Downs
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7		Office of the Attorney General for
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**ATTESTATION OF E-FILED SIGNATURES**

I, Anna M. Barvir, am the ECF User whose ID and password are being used to file this PLAINTIFFS' NOTICE OF APPEAL AND REPRESENTATION STATEMENT. In compliance with Central District of California L.R. 5-4.3.4, I attest that all signatories are registered CM/ECF filers and have concurred in this filing.

Dated: January 31, 2025

s/ Anna M. Barvir  
Anna M. Barvir

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

Case Name: *Richards, et al. v. Newsom, et al.*  
Case No.: 8:23-cv-02413 JVS (KESx)

IT IS HEREBY CERTIFIED THAT:

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

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

**PLAINTIFFS' NOTICE OF APPEAL AND REPRESENTATION  
STATEMENT**

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

Todd Grabarsky  
Deputy Attorney General  
[todd.grabarsky@doj.ca.gov](mailto:todd.grabarsky@doj.ca.gov)  
Carolyn Downs  
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*Attorneys for Defendants*

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

Executed January 31, 2025.

  
\_\_\_\_\_  
Laura Fera

To order copies of any documents listed below, contact Court Express  
courtexpress@thomsonreuters.com, 1-877-362-7387 (Additional charges apply)

### This docket is current through 05/27/2025

Today's Date: 5/27/2025

Source: U.S. District Court, Central District of California (Southern Division - Santa Ana)

**Court:** U.S. District Court, Central District of California (Southern Division - Santa Ana)  
**Case Title:** [Adam Richards et al v. Gavin Newsom et al](#)  
**Case:** 8:23-CV-02413  
**Judge:** Judge James V. Selna  
**Date Filed:** 12/19/2023  
**Other Dockets:** Case in other court: 9TH CCA, 24-06940; Case in other court: 9th CCA, 25-00693  
**Date Closed/Terminated:** 01/28/2025  
**Case Status:** ACCO, TRO, (KESx), APPEAL, CLOSED, DISCOVERY, MANADR

### CASE INFORMATION

**Case Number:** 8:23CV02413  
**Referred To:** Magistrate Judge Karen E. Scott  
**Jury Demand:** Plaintiff  
**Nature of Suit:** Civil Rights: Other Civil Rights (440)  
**Jurisdiction:** Federal Question  
**Cause:** 42 USC 1983 Civil Rights Act

### PARTICIPANT INFORMATION

#### Adam Richards

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## Jeffrey Vandermeulen

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## Gerald Clark

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**Type:** Plaintiff  
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**Attorney:** Joshua R Dale  
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## Jesse Harris

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**Attorney:** Tiffany Dawn Cheuvront  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
**Firm Address:** 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802  
**Firm Phone:** 562-216-4444  
**Firm Fax:** 562-216-4445  
**Email Address:** tcheuvront@michellawyers.com  
**Attorney:** Anna M Barvir  
**Status:** ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
**Firm Address:** 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802



**Firm Phone:** 562-216-4444  
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**Attorney:** Joshua R Dale  
**Status:** ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
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 Los Angeles, CA 90802  
**Firm Phone:** 562-216-4444  
**Firm Fax:** 562-216-4445  
**Email Address:** jdale@michellawyers.com

## On Target Indoor Shooting Range, LLC

**Party Description:** an individual  
**Type:** Plaintiff  
**Attorney:** Carl Dawson Michel  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
**Firm Address:** 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802  
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**Email Address:** cmichel@michellawyers.com  
**Attorney:** Tiffany Dawn Cheuvront  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
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 Los Angeles, CA 90802  
**Firm Phone:** 562-216-4444  
**Firm Fax:** 562-216-4445  
**Email Address:** jdale@michellawyers.com

## Gaalswyk Enterprises, Inc.

**Party Description:** an individual  
**Party Description:** Doing Business As Smokin Barrel Firearms

**Type:** Plaintiff  
**Attorney:** Carl Dawson Michel  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
**Firm Address:** 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802  
**Firm Phone:** 562-216-4444  
**Firm Fax:** 562-216-4445  
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**Attorney:** Tiffany Dawn Cheuvront  
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**Attorney:** Anna M Barvir  
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**Attorney:** Joshua R Dale  
**Status:** ATTORNEY TO BE NOTICED  
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 Los Angeles, CA 90802  
**Firm Phone:** 562-216-4444  
**Firm Fax:** 562-216-4445  
**Email Address:** jdale@michellawyers.com

## Gun Owners of California, Inc.

**Party Description:** an individual  
**Type:** Plaintiff  
**Attorney:** Carl Dawson Michel  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
**Firm Address:** 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802  
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**Email Address:** cmichel@michellawyers.com  
**Attorney:** Tiffany Dawn Cheuvront  
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**Attorney:** Anna M Barvir  
**Status:** ATTORNEY TO BE NOTICED

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**Attorney:** Joshua R Dale  
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 Los Angeles, CA 90802  
**Firm Phone:** 562-216-4444  
**Firm Fax:** 562-216-4445  
**Email Address:** jdale@michellawyers.com

### Gun Owners of America, Inc.

**Party Description:** an individual  
**Type:** Plaintiff  
**Attorney:** Carl Dawson Michel  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
**Firm Address:** 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802  
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**Email Address:** cmichel@michellawyers.com  
**Attorney:** Tiffany Dawn Cheuvront  
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**Attorney:** Anna M Barvir  
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**Attorney:** Joshua R Dale  
**Status:** ATTORNEY TO BE NOTICED  
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**Firm Fax:** 562-216-4445  
**Email Address:** jdale@michellawyers.com

**Gun Owners Foundation**

**Party Description:** an individual  
**Type:** Plaintiff  
**Attorney:** Carl Dawson Michel  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
**Firm Address:** 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802  
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**Attorney:** Tiffany Dawn Cheuvront  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
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**Email Address:** tcheuvront@michellawyers.com  
**Attorney:** Anna M Barvir  
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**Attorney:** Joshua R Dale  
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**Email Address:** jdale@michellawyers.com

**California Rifle and Pistol Association, Incorporated**

**Type:** Plaintiff  
**Attorney:** Carl Dawson Michel  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** Michel and Associates PC  
**Firm Address:** 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802  
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**Attorney:** Tiffany Dawn Cheuvront  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
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Firm Phone: Long Beach, CA 90802  
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 Email Address: tcheuvront@michellawyers.com  
 Attorney: Anna M Barvir  
 Status: ATTORNEY TO BE NOTICED  
 Firm Name: Michel and Associates PC  
 Firm Address: 180 East Ocean Boulevard Suite 200  
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 Firm Phone: 562-216-4444  
 Firm Fax: 562-216-4445  
 Email Address: abarvir@michellawyers.com  
 Attorney: Joshua R Dale  
 Status: ATTORNEY TO BE NOTICED  
 Firm Name: Michel and Associates PC  
 Firm Address: 180 East Ocean Boulevard Suite 200  
 Los Angeles, CA 90802  
 Firm Phone: 562-216-4444  
 Firm Fax: 562-216-4445  
 Email Address: jdale@michellawyers.com

## Second Amendment Foundation

Party Description: a California Corporation  
 Type: Plaintiff  
 Attorney: Donald E J Kilmer Jr.  
 Status: LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
 Firm Name: Law Offices of Donald Kilmer APC  
 Firm Address: 14085 Silver Ridge Road  
 Caldwell, ID 83607  
 Firm Phone: 408-264-8489  
 Email Address: don@dklawoffice.com  
 Attorney: Joshua R Dale  
 Status: ATTORNEY TO BE NOTICED  
 Firm Name: Michel and Associates PC  
 Firm Address: 180 East Ocean Boulevard Suite 200  
 Los Angeles, CA 90802  
 Firm Phone: 562-216-4444  
 Firm Fax: 562-216-4445  
 Email Address: jdale@michellawyers.com  
 Attorney: Carl Dawson Michel  
 Status: ATTORNEY TO BE NOTICED  
 Firm Name: Michel and Associates PC  
 Firm Address: 180 East Ocean Boulevard Suite 200  
 Long Beach, CA 90802  
 Firm Phone: 562-216-4444  
 Firm Fax: 562-216-4445  
 Email Address: cmichel@michellawyers.com

## Gavin Newsom

Party Description: in his official capacity as Governor of the State of California  
 Type: Defendant

**Attorney:** Todd Grabarsky  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** CAAG - Office of Attorney General  
**Firm Address:** California Department of Justice  
 300 South Spring Street Suite 1702  
 Los Angeles, CA 90013  
**Firm Phone:** 213-269-6044  
**Firm Fax:** 213-897-7604  
**Email Address:** todd.grabarsky@doj.ca.gov  
**Attorney:** Carolyn F Downs  
**Status:** ATTORNEY TO BE NOTICED  
**Attorney Address:** California Department of Justice  
 300 S. Spring Street, Suite 1702  
 Los Angeles, CA 90013  
**Attorney Phone:** 213-269-6720  
**Attorney Fax:** 916-731-2124  
**Email Address:** carolyn.downs@doj.ca.gov (Inactive)  
**Attorney:** Christina R.B. Lopez  
**Attorney Terminated:** 12/18/2024  
**Firm Name:** United States Attorneys Office  
**Firm Address:** 312 North Spring Street  
 Los Angeles, CA 90012  
**Firm Phone:** 213-894-2475  
**Firm Fax:** 213-894-0141  
**Email Address:** christina.lopez@usdoj.gov

## Robert Bonta

**Party Description:** in his official capacity as Attorney General of the State of California  
**Type:** Defendant  
**Attorney:** Todd Grabarsky  
**Status:** LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
**Firm Name:** CAAG - Office of Attorney General  
**Firm Address:** California Department of Justice  
 300 South Spring Street Suite 1702  
 Los Angeles, CA 90013  
**Firm Phone:** 213-269-6044  
**Firm Fax:** 213-897-7604  
**Email Address:** todd.grabarsky@doj.ca.gov  
**Attorney:** Carolyn F Downs  
**Status:** ATTORNEY TO BE NOTICED  
**Attorney Address:** California Department of Justice  
 300 S. Spring Street, Suite 1702  
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**Attorney Phone:** 213-269-6720  
**Attorney Fax:** 916-731-2124  
**Email Address:** carolyn.downs@doj.ca.gov (Inactive)  
**Attorney:** Christina R.B. Lopez  
**Attorney Terminated:** 12/18/2024  
**Firm Name:** United States Attorneys Office  
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 Los Angeles, CA 90012  
**Firm Phone:** 213-894-2475  
**Firm Fax:** 213-894-0141  
**Email Address:** christina.lopez@usdoj.gov

**Does**

Party Description:

1-10

Type:

Defendant

**DOCKET PROCEEDINGS (60)****Entry #:****Date:****Description:**

60

02/03/2025

NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 25-693 assigned to Notice of Appeal to 9th Circuit Court of Appeals, [59](#) as to plaintiffs California Rifle and Pistol Association, Incorporated, Second Amendment Foundation, Adam Richards, Jeffrey Vandermeulen, Gerald Clark, Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc., Gun Owners of California, Inc., Gun Owners of America, Inc., Gun Owners Foundation. (mat) (Entered: 02/04/2025)

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59

01/31/2025

NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Adam Richards, Jeffrey Vandermeulen, Gerald Clark, Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc., Gun Owners of California, Inc., Gun Owners of America, Inc., Gun Owners Foundation. Appeal of Order on Motion for Judgment,, [58](#) . (Appeal Fee - \$605 Fee Paid, Receipt No. ACACDC-39023203.) (Barvir, Anna) (Entered: 01/31/2025)

JUDGMENT FOLLOWING ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [57](#) by Judge James V. Selna: On October 16, 2024, this Court entered an order dismissing all claims with leave to amend within twenty-one (21) days. (ECF No. [49](#) ) Plaintiffs elected to stand on their complaint, and did not file

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58

01/28/2025

JUDGMENT FOLLOWING ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [57](#) by Judge James V. Selna: On October 16, 2024, this Court entered an order dismissing all claims with leave to amend within twenty-one (21) days. (ECF No. [49](#) ) Plaintiffs elected to stand on their complaint, and did not file

[Docket Status](#)[View](#)[Add to request](#)



		an amended complaint. IT IS THUS HEREBY ORDERED, ADJUDGED, AND DECREED THAT: Every claim and prayer for relief asserted in Plaintiffs Amended and Supplemental Complaint is dismissed without prejudice pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure. (MD JS-6. Case Terminated). (es) (Entered: 01/28/2025)		
57	01/27/2025	REQUEST for Judgment filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Adam Richards, Jeffrey Vandermeulen, Gerald Clark, Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc., Gun Owners of California, Inc., Gun Owners of America, Inc., Gun Owners Foundation. (Attachments: # 1 Proposed Judgment) (Barvir, Anna) (Entered: 01/27/2025)	<a href="#">View</a>	<a href="#">Add to request</a>
56	01/27/2025	NOTICE TO FILER OF DEFICIENCIES in Electronic Filed Document RE: Notice of Appearance,,,,, 55 . The following error(s) was/were found: Incorrect event selected. Correct event to be used is: Notice of Appearance or Withdrawal of Counsel G-123.. 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. (ak) (Entered: 01/27/2025)	<a href="#">View</a>	<a href="#">Add to request</a>
55	01/24/2025	NOTICE of Appearance filed by attorney Anna M Barvir on behalf of Plaintiffs California Rifle and Pistol Association, Incorporated, Adam Richards, Jeffrey Vandermeulen, Gerald Clark, Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc., Gun Owners of California, Inc., Gun Owners of America, Inc., Gun Owners Foundation (Attorney Anna M Barvir added to party California Rifle and	<a href="#">View</a>	<a href="#">Add to request</a>

		Pistol Association, Incorporated (pty:pla), Attorney Anna M Barvir added to party Adam Richards(pty:pla), Attorney Anna M Barvir added to party Jeffrey Vandermeulen(pty:pla), Attorney Anna M Barvir added to party Gerald Clark(pty:pla), Attorney Anna M Barvir added to party Jesse Harris(pty:pla), Attorney Anna M Barvir added to party On Target Indoor Shooting Range, LLC(pty:pla), Attorney Anna M Barvir added to party Gaalswyk Enterprises, Inc.(pty:pla), Attorney Anna M Barvir added to party Gun Owners of California, Inc. (pty:pla), Attorney Anna M Barvir added to party Gun Owners of America, Inc. (pty:pla), Attorney Anna M Barvir added to party Gun Owners Foundation(pty:pla)) (Barvir, Anna) (Entered: 01/24/2025)	
54	12/18/2024	NOTICE OF REASSIGNMENT of California Attorney General Office Todd Grabarsky on behalf of Defendant Robert Bonta. California Attorney General Christina Rae Burgart Lopez terminated. (Lopez, Christina) (Entered: 12/18/2024)	<a href="#">View</a> <a href="#">Add to request</a>
53	12/11/2024	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals,, <a href="#">51</a> filed by Gun Owners of America, Inc., Gaalswyk Enterprises, Inc., Gun Owners of California, Inc., On Target Indoor Shooting Range, LLC, Gerald Clark, Gun Owners Foundation, Jesse Harris, California Rifle and Pistol Association, Incorporated, Second Amendment Foundation, Adam Richards, Jeffrey Vandermeulen. CCA # 24-6940. The motion for voluntary dismissal is granted. This case is dismissed. This order serves as the mandate of the court. (mat) (Entered: 12/12/2024)	<a href="#">View</a> <a href="#">Add to request</a>
52	11/15/2024	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and	<a href="#">View</a> <a href="#">Add to request</a>

		briefing schedule. Appeal Docket No. 24-6940 assigned to Notice of Appeal to 9th Circuit Court of Appeals, <a href="#">51</a> as to Plaintiffs California Rifle and Pistol Association, Incorporated, Second Amendment Foundation, Adam Richards, Jeffrey Vandermeulen, Gerald Clark, Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc., Gun Owners of California, Inc., Gun Owners of America, Inc., Gun Owners Foundation. (mat) (Entered: 11/19/2024)		
51	11/13/2024	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Second Amendment Foundation, Adam Richards, Jeffrey Vandermeulen, Gerald Clark, Jesse Harris, On Target Indoor Shooting Range, LLC, Gaalswyk Enterprises, Inc., Gun Owners of California, Inc., Gun Owners of America, Inc., Gun Owners Foundation. Appeal of Order on Motion to Dismiss Case, <a href="#">49</a> . (Appeal Fee - \$605 Fee Paid, Receipt No. ACACDC-38572480.) (Moros, Konstadinos) (Entered: 11/13/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
50	11/12/2024	Notice filed by defendant Robert Bonta. re Plaintiffs' failure to file a second amended complaint (Grabarsky, Todd) (Entered: 11/12/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
49	10/16/2024	MINUTES [IN CHAMBERS] Order Regarding Motion to to Dismiss <a href="#">41</a> by Judge James V. Selna: Before this Court is Bonta's motion to dismiss. (Mot., Dkt. No. 41.) Plaintiffs filed an opposition. (Opp'n, Dkt. No. 45.) Defendants filed a reply. (Reply, Dkt. No. 46.) For the following reasons, the Court GRANTS the motion to dismiss on all claims, with leave to amend within twenty-one (21) days. Granting <a href="#">41</a> MOTION to Dismiss Case. [SEE DOCUMENT FOR	<a href="#">Docket Status</a> <a href="#">View</a>	<a href="#">Add to request</a>

48	10/16/2024	<p>FURTHER INFORMATION.] (es) (Entered: 10/16/2024) [IN CHAMBERS] SCHEDULING NOTICE: The Court having been advised by the parties that they submit on the Courts tentative order, the Court hereby VACATES the Motion hearing set for Wednesday, October 16, 2024, at 4:00 p.m. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (eva) TEXT ONLY ENTRY (Entered: 10/16/2024)</p>	<a href="#">Send Runner to Court</a>
47	10/04/2024	<p>[IN CHAMBERS] SCHEDULING NOTICE by Judge James V. Selna: On its own motion, and with the agreement of counsel the Court hereby CONTINUES Defendant's Motion to Dismiss <a href="#">41</a> from Monday, October 07, 2024, at 1:30 p.m. to Wednesday, October 16, 2024, at 4:00 p.m. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (eva) TEXT ONLY ENTRY (Entered: 10/04/2024)</p>	<a href="#">Send Runner to Court</a>
46	09/26/2024	<p>REPLY in support of NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">41</a> filed by Defendant Robert Bonta. (Grabarsky, Todd) (Entered: 09/26/2024)</p>	<a href="#">View</a> <a href="#">Add to request</a>
45	09/05/2024	<p>Opposition Opposition re: NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">41</a> filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Second Amendment Foundation, Jeffrey Vandermeulen. (Attorney Joshua R Dale added to party Second Amendment Foundation(pty:pla))(Dale, Joshua) (Entered: 09/05/2024)</p>	<a href="#">View</a> <a href="#">Add to request</a>
44	08/23/2024	<p>ORDER RE: ORDER SETTING RULE 26(f) SCHEDULING CONFERENCE <a href="#">43</a> by Judge James V. Selna, The Court hereby orders that the Rule</p>	<a href="#">View</a> <a href="#">Add to request</a>

43	08/22/2024	<p>26(f) Scheduling Conference is taken off calendar and that the related dates and deadlines are held in abeyance until after the Court rules on Defendant's pending motion to dismiss. The hearing on Defendant's motion to dismiss, set for October 7, 2024, at 1:30 p.m., shall remain on calendar. [See document for further information.] (es) (Entered: 08/23/2024)</p> <p>Joint STIPULATION for Order hold in abeyance Rule 26(f) conference and related dates and deadlines filed by defendant Robert Bonta. (Attachments: # <a href="#">1</a> Proposed Order)(Grabarsky, Todd) (Entered: 08/22/2024)</p>	<div style="display: inline-block; border: 1px solid #ccc; padding: 2px 5px; margin-right: 5px;">View</div> <div style="display: inline-block; border: 1px solid #ccc; padding: 2px 5px;">Add to request</div>
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42	08/02/2024	Order Setting Rule 26(f) Scheduling Conference for 10/07/2024 at 1:30 p.m. before Judge James V. Selna. Counsel shall file the Joint Rule 26 Meeting Report, with the completed Exhibit A, by 09/30/2024. (eva) (Entered: 08/02/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
41	08/02/2024	NOTICE OF MOTION AND MOTION to Dismiss Case filed by defendant Robert Bonta. Motion set for hearing on 10/7/2024 at 01:30 PM before Judge James V. Selna. (Attachments: # <a href="#">1</a> Declaration Todd Grabarsky, # <a href="#">2</a> Request for Judicial Notice, # <a href="#">3</a> Proposed Order) (Grabarsky, Todd) (Entered: 08/02/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
40	07/02/2024	Notice of Appearance or Withdrawal of Counsel: for attorney Carolyn F Downs counsel for Defendants Robert Bonta, Gavin Newsom. Adding Carolyn Downs as counsel of record for Rob Bonta, in his official capacity as Attorney General of California, and Gavin Newsom, in his official capacity as Governor of California for the reason indicated in the G-123 Notice. Filed by Defendants GAVIN NEWSOM, in his official capacity as Governor of California, and Rob Bonta, in his official capacity as Attorney General of California. (Attorney Carolyn F Downs added to party Robert Bonta(pty:dft), Attorney Carolyn F Downs added to party Gavin Newsom(pty:dft)) (Downs, Carolyn) (Entered: 07/02/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
39	06/28/2024	FIRST AMENDED COMPLAINT against Defendants All Defendants amending Complaint (Attorney Civil Case Opening),,,,,, <a href="#">1</a> , filed by Plaintiffs Gaalswyk Enterprises, Inc., Second Amendment Foundation, Gerald Clark, Gun Owners of California, Inc., Gun Owners Foundation, Jeffrey Vandermeulen, Gun Owners of America, Inc., Adam Richards, Jesse Harris, California Rifle and Pistol Association, Incorporated, On Target Indoor Shooting Range, LLC(Attorney Carl Dawson Michel added to party Second Amendment Foundation(pty:pla))(Michel, Carl) (Entered: 06/28/2024)	<a href="#">View</a>	<a href="#">Add to request</a>

38	06/24/2024	ORDER TO TAKE MOTION TO DISMISS COMPLAINT OFF-CALENDAR, TO DISMISS CERTAIN CLAIMS AND PARTIES, ON REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT, AND ON REQUEST TO SET BRIEFING AND HEARING SCHEDULE THEREON <a href="#">37</a> by Judge James V. Selna. Plaintiffs are granted leave to file an amended complaint. Such complaint must be filed and served no later than June 28, 2024. Subject to the timely filing of a motion to dismiss, the hearing on such motion is set for October 7, 2024, at 1:30 p.m., in Courtroom 10C. [SEE DOCUMENT FOR FURTHER DETAILS AND DEADLINES.] (es) (Entered: 06/24/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
37	06/21/2024	Joint STIPULATION to Withdraw Motion NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">31</a> filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen. (Attachments: # <a href="#">1</a> Proposed Order)(Dale, Joshua) (Entered: 06/21/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
36	06/07/2024	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION to Dismiss Case <a href="#">31</a> filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen. (Dale, Joshua) (Entered: 06/07/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
35	05/15/2024	ORDER TO EXTEND TIME ON BRIEFING AND CONTINUE HEARING DATE ON DEFENDANTS' MOTION TO DISMISS COMPLAINT <a href="#">34</a> , Plaintiffs' deadline to file an opposition to the motion to dismiss	<a href="#">View</a>	<a href="#">Add to request</a>



is CONTINUED June 7, 2024; Defendants' deadline to file a reply in support of the motion to dismiss is CONTINUED to June 28, 2024; The hearing on the motion to dismiss is CONTINUED to July 15, 2024 at 1:30 p.m. (es) (Entered: 05/15/2024)

34 05/15/2024

STIPULATION to Continue Hearing on Defendants' Motion to Dismiss from June 17, 2024 to July 15, 2024 Re: NOTICE OF MOTION AND MOTION to Dismiss Case [31](#) filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen. (Attachments: # [1](#) Proposed Order)(Dale, Joshua) (Entered: 05/15/2024)

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33 04/19/2024

ORDER IN RESPONSE TO NOTICE TO FILER OF DEFICIENCIES IN FILED DOCUMENT RE: NOTICE OF MOTION AND MOTION to Dismiss Case [31](#) by Judge James V. Selna. The hearing date has been rescheduled. Motion set for hearing on 7/1/2024 at 01:30 PM before Judge James V. Selna. Counsel is ordered to consult Local Rules AND the Court's Procedures and Schedules page prior to filing any future documents. (rolm) (Entered: 04/19/2024)

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32 04/18/2024

NOTICE TO FILER OF DEFICIENCIES in Electronic Filed Document RE: NOTICE OF MOTION AND MOTION to Dismiss Case [31](#) . The following error(s) was/were found: Hearing information is missing, incorrect, or untimely. Other error(s) with document(s): The hearing is set on a closed motion date. 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

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- directs you to do so. (es) (Entered: 04/18/2024)
- 31 04/18/2024 NOTICE OF MOTION AND MOTION to Dismiss Case filed by defendants Robert Bonta, Gavin Newsom. Motion set for hearing on 6/17/2024 at 01:30 PM before Judge James V. Selna. (Attachments: # [1](#) Declaration Todd Grabarsky, # [2](#) Request for Judicial Notice, # [3](#) Proposed Order) (Grabarsky, Todd) (Entered: 04/18/2024) [View](#) [Add to request](#)
- 30 03/25/2024 ORDER SETTING BRIEFING AND HEARING SCHEDULE ON DEFENDANTS' INTENDED MOTION TO DISMISS THE COMPLAINT [29](#) by Judge James V. Selna, The Court hereby orders the following briefing and hearing schedule: Defendants' deadline to file a motion to dismiss or other responsive pleading to the Complaint: April 18, 2024. Plaintiffs' deadline to file an opposition to the motion to dismiss: May 16, 2024. Defendants' deadline to file a reply in support of the motion to dismiss: June 6, 2024. Hearing date on the motion to dismiss: June 17, 2024, at 1:30 p.m. (es) (Entered: 03/25/2024) [View](#) [Add to request](#)
- 29 03/21/2024 Joint STIPULATION for Extension of Time to File Answer to April 18, 2024 filed by defendants Robert Bonta, Gavin Newsom. (Attachments: # [1](#) Proposed Order) (Grabarsky, Todd) (Entered: 03/21/2024) [View](#) [Add to request](#)
- 28 03/01/2024 MINUTES [IN CHAMBERS] Order Regarding Preliminary Injunction [11](#) by Judge James V. Selna: For the following reasons, the Court DENIES the application for preliminary injunction. [SEE DOCUMENT FOR FURTHER INFORMATION.] (es) (Entered: 03/01/2024) [Docket Status](#) [View](#) [Add to request](#)
- 27 01/31/2024 [PLAINTIFFS' SUPPLEMENTAL BRIEF ON MOTION FOR PRELIMINARY INJUNCTION filed as] RESPONSE filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc.,

		Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulento Text Only Scheduling Notice, 25 (Attachments: # <a href="#">1</a> Declaration of Matthew Gene Peterson-Haywood)(Dale, Joshua) Modified on 2/1/2024 (es). (Entered: 01/31/2024)		
26	01/24/2024	RESPONSE filed by Defendants Robert Bonta, Gavin Newsomto Text Only Scheduling Notice, 25 (Grabarsky, Todd) (Entered: 01/24/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
25	01/17/2024	[IN CHAMBERS] Order by Judge James V. Selna: Having reflected on oral argument, the Court invites Defendants to brief within seven days and in no more than eight pages the applicability of the statute to the following two situations: kitchen table firearm transactions and gun show transactions. Plaintiffs may reply in no more than eight pages within seven days of the filing of Defendants brief. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (eva) TEXT ONLY ENTRY (Entered: 01/17/2024)	<a href="#">Send Runner to Court</a>	
24	01/16/2024	MINUTES OF Order to Show Cause RE: Preliminary Injunction Hearing held before Judge James V. Selna: Cause called and counsel make their appearances. The Court states the areas under discussion for the hearing. Counsel make their arguments. The Court takes the matter under submission. A separate order to issue. Court Reporter: Sharon Seffens. (es) (Entered: 01/16/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
23	01/12/2024	Notice of Appearance or Withdrawal of Counsel: for attorney Christina Rae Burgart Lopez counsel for Defendants Robert Bonta, Gavin Newsom. Adding Christina R.B. Lopez as counsel of record for Gavin Newsom, in his official capacity as Governor of California; Rob Bonta, in his official capacity as Attorney General of California for the reason indicated in the G-123 Notice. Filed by Defendants Gavin Newsom, in his official capacity as Governor of California; Rob Bonta, in his official capacity as Attorney General	<a href="#">View</a>	<a href="#">Add to request</a>

		of California. (Attorney Christina Rae Burgart Lopez added to party Robert Bonta(pty:dft), Attorney Christina Rae Burgart Lopez added to party Gavin Newsom(pty:dft)) (Lopez, Christina) (Entered: 01/12/2024)		
22	01/11/2024	REPLY in support EX PARTE APPLICATION for Temporary Restraining Order as to enjoin the implementation, enforcement, and effect of Senate Bill 1384 (Cal. Penal Code Section 26806) <a href="#">11</a> filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen. (Dale, Joshua) (Entered: 01/11/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
21	01/09/2024	ORDER EXTENDING TIME TO RESPOND TO COMPLAINT, <a href="#">19</a> by Judge James V. Selna. After full consideration, and good cause appearing, the Parties' request is GRANTED. Within twenty-eight days after the Court's order on Plaintiffs' request for preliminary injunctive relief, Defendants will respond to the Complaint. (es) (Entered: 01/09/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
20	01/08/2024	OPPOSITION to EX PARTE APPLICATION for Temporary Restraining Order as to enjoin the implementation, enforcement, and effect of Senate Bill 1384 (Cal. Penal Code Section 26806) <a href="#">11</a> filed by Defendants Robert Bonta, Gavin Newsom. (Attachments: # <a href="#">1</a> Request for Judicial Notice) (Grabarsky, Todd) (Entered: 01/08/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
19	01/08/2024	Joint STIPULATION for Extension of Time to File Answer to 28 days after ruling on request for preliminary injunction re Complaint (Attorney Civil Case Opening),,,,,, <a href="#">1</a> filed by defendants Robert Bonta, Gavin Newsom. (Attachments: # <a href="#">1</a> Proposed Order)(Grabarsky, Todd) (Entered: 01/08/2024)	<a href="#">View</a>	<a href="#">Add to request</a>
18	01/03/2024	NOTICE of Appearance filed by attorney Joshua R Dale on behalf of Plaintiffs California Rifle and Pistol	<a href="#">View</a>	<a href="#">Add to request</a>

		Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen (Attorney Joshua R Dale added to party California Rifle and Pistol Association, Incorporated (pty:pla), Attorney Joshua R Dale added to party Gerald Clark(pty:pla), Attorney Joshua R Dale added to party Gaalswyk Enterprises, Inc.(pty:pla), Attorney Joshua R Dale added to party Gun Owners Foundation(pty:pla), Attorney Joshua R Dale added to party Gun Owners of America, Inc. (pty:pla), Attorney Joshua R Dale added to party Gun Owners of California, Inc.(pty:pla), Attorney Joshua R Dale added to party Jesse Harris(pty:pla), Attorney Joshua R Dale added to party On Target Indoor Shooting Range, LLC(pty:pla), Attorney Joshua R Dale added to party Adam Richards(pty:pla), Attorney Joshua R Dale added to party Jeffrey Vandermeulen(pty:pla))(Dale, Joshua) (Entered: 01/03/2024)		
17	12/28/2023	CERTIFICATE OF SERVICE filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen, re Order on Motion for Temporary Restraining Order,,,, <a href="#">15</a> served on 12/27/23. (Michel, Carl) (Entered: 12/28/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
16	12/28/2023	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE SELNA. (eva) (Entered: 12/28/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
15	12/27/2023	ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER <a href="#">11</a> by Judge James V. Selna: Denying <a href="#">11</a> EX PARTE APPLICATION for TRO, it is ORDERED as follows: The	<a href="#">Docket Status</a> <a href="#">View</a>	<a href="#">Add to request</a>

Court denies the application for a temporary restraining order. 1. Defendants Gavin Newsom, in his official capacity as Governor of the State of California, Robert Bonta, in his official capacity as Attorney General of the State of California, must show cause before the Plaintiffs' application in Courtroom 10C, on January 16, 2024 at 9:00 am, of the Central District of California, why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the Defendants during the pendency of this action from implementation and enforcement of SB 1384 (Ca Penal Code Section 26806) ; 2. Plaintiffs are ordered to serve on all Defendants a copy of this order and all supporting pleading documents by December 29, 2023. 3. Defendant's response is due January 8, 2024. Plaintiffs may file a reply no later than noon January 11, 2024. IT IS SO ORDERED. (es) (Entered: 12/27/2023)

14 12/27/2023

PROOF OF SERVICE Executed by Plaintiff Gaalswyk Enterprises, Inc., Gerald Clark, Gun Owners of California, Inc., Gun Owners Foundation, Jeffrey Vandermeulen, Gun Owners of America, Inc., Adam Richards, Jesse Harris, California Rifle and Pistol Association, Incorporated, On Target Indoor Shooting Range, LLC, upon Defendant Robert Bonta served on 12/22/2023, answer due 1/12/2024. Service of the Summons and Complaint were executed upon Adrian M., Person Authorized to Accept Service in compliance with Federal Rules of Civil Procedure by personal service (Michel, Carl) (Entered: 12/27/2023)

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13 12/27/2023

PROOF OF SERVICE Executed by Plaintiff Gaalswyk Enterprises, Inc., Gerald Clark, Gun Owners of California, Inc., Gun Owners Foundation, Jeffrey Vandermeulen, Gun Owners of America, Inc., Adam Richards, Jesse Harris, California Rifle and Pistol Association, Incorporated, On Target Indoor Shooting Range, LLC, upon Defendant Gavin

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		Newsom served on 12/22/2023, answer due 1/12/2024. Service of the Summons and Complaint were executed upon E. Maldonado, Person Authorized to Accept Service in compliance with Federal Rules of Civil Procedure by personal service (Michel, Carl) (Entered: 12/27/2023)		
12	12/22/2023	OPPOSITION to EX PARTE APPLICATION for Temporary Restraining Order as to enjoin the implementation, enforcement, and effect of Senate Bill 1384 (Cal. Penal Code Section 26806) <a href="#">11</a> filed by Defendants Robert Bonta, Gavin Newsom. (Attorney Todd Grabarsky added to party Robert Bonta(pty:dft), Attorney Todd Grabarsky added to party Gavin Newsom(pty:dft))(Grabarsky, Todd) (Entered: 12/22/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
11	12/21/2023	EX PARTE APPLICATION for Temporary Restraining Order as to enjoin the implementation, enforcement, and effect of Senate Bill 1384 (Cal. Penal Code Section 26806) filed by Plaintiffs California Rifle and Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Inc., Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen. (Attachments: # <a href="#">1</a> Memorandum of Points & Authorities, # <a href="#">2</a> Declaration of Tiffany D. Cheuvront, # <a href="#">3</a> Declaration of Adam Richards, # <a href="#">4</a> Declaration of Alan Gottlieb, # <a href="#">5</a> Declaration of Erich Pratt, # <a href="#">6</a> Declaration of Gerald Clark, # <a href="#">7</a> Declaration of Gregg Bouslog, # <a href="#">8</a> Declaration of Jeffrey Vandermeulen, # <a href="#">9</a> Declaration of Jesse Harris, # <a href="#">10</a> Declaration of Richard Minnich, # <a href="#">11</a> Declaration of Robert Gaalswyk, # <a href="#">12</a> Declaration of Samuel Paredes, # <a href="#">13</a> Proposed Order) (Michel, Carl) (Entered: 12/21/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
10	12/21/2023	MINUTES [IN CHAMBERS] Order Regarding Motion for Temporary Restraining Order <a href="#">5</a> by Judge James V. Selna: The Motion is DENIED without prejudice for	<a href="#">Docket Status</a> <a href="#">View</a>	<a href="#">Add to request</a>



		failure to comply with Local Rule 7-19.1. Denying <a href="#">5</a> MOTION for TRO. [SEE DOCUMENT FOR FURTHER INFORMATION.] (es) (Entered: 12/21/2023)		
9	12/20/2023	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening), <a href="#">1</a> as to Defendants Robert Bonta, Gavin Newsom. (ghap) (Entered: 12/20/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
8	12/20/2023	Notice to Counsel Re Consent to Proceed Before a United States Magistrate Judge. (ghap) (Entered: 12/20/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
7	12/20/2023	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (ghap) (Entered: 12/20/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
6	12/20/2023	NOTICE OF ASSIGNMENT to District Judge James V. Selna and Magistrate Judge Karen E. Scott. (ghap) (Entered: 12/20/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
5	12/20/2023	NOTICE OF MOTION AND MOTION for Temporary Restraining Order as to enjoin the implementation, enforcement, and effect of SB 1384 (Cal. Penal Code Section 26806) filed by Plaintiffs California Rifle & Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen. (Attachments: # <a href="#">1</a> Memorandum of Points and Authorities, # <a href="#">2</a> Declaration of Adam Richards, # <a href="#">3</a> Declaration of Alan Gottlieb, # <a href="#">4</a> Declaration of Erich Pratt, # <a href="#">5</a> Declaration of Gerald Clark, # <a href="#">6</a> Declaration of Gregg Bouslog, # <a href="#">7</a> Declaration of Jeffrey Vandermeulen, # <a href="#">8</a> Declaration of Jesse Harris, # <a href="#">9</a> Declaration of Richard Minnich, # <a href="#">10</a> Declaration of Robert Gaalswyk, # <a href="#">11</a> Declaration of Samuel Paredes, # <a href="#">12</a> Proposed Order) (Michel, Carl) (Entered: 12/20/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
4	12/19/2023	NOTICE of Interested Parties filed by Plaintiffs California Rifle & Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting	<a href="#">View</a>	<a href="#">Add to request</a>

3	12/19/2023	Range, LLC, Adam Richards, Jeffrey Vandermeulen, (Michel, Carl) (Entered: 12/19/2023) Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening),,,,,, <a href="#">1</a> filed by Plaintiffs California Rifle & Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen. (Michel, Carl) (Entered: 12/19/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
2	12/19/2023	CIVIL COVER SHEET filed by Plaintiffs California Rifle & Pistol Association, Incorporated, Gerald Clark, Gaalswyk Enterprises, Inc., Gun Owners Foundation, Gun Owners of America, Inc., Gun Owners of California, Inc., Jesse Harris, On Target Indoor Shooting Range, LLC, Adam Richards, Jeffrey Vandermeulen. (Michel, Carl) (Entered: 12/19/2023)	<a href="#">View</a>	<a href="#">Add to request</a>
1	12/19/2023	COMPLAINT Receipt No: ACACDC-36604796 - Fee: \$405, filed by Plaintiffs Gaalswyk Enterprises, Inc., Gerald Clark, Gun Owners of California, Inc., Gun Owners Foundation, Jeffrey Vandermeulen, Gun Owners of America, Inc., Adam Richards, Jesse Harris, California Rifle & Pistol Association, Incorporated, On Target Indoor Shooting Range, LLC. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Declaration of Adam Richards, # <a href="#">3</a> Declaration of Jeffrey Vandermeulen, # <a href="#">4</a> Declaration of Gerald Clark, # <a href="#">5</a> Declaration of Jesse Harris, # <a href="#">6</a> Declaration of Gregg Bouslog, # <a href="#">7</a> Declaration of Robert Gaalswyk, # <a href="#">8</a> Declaration of Samuel Paredes, # <a href="#">9</a> Declaration of Richard Minnich, # <a href="#">10</a> Declaration of Erich Pratt, # <a href="#">11</a> Declaration of Alan Gottlieb) (Attorney Carl Dawson Michel added to party California Rifle & Pistol Association, Incorporated(pty:pla), Attorney Carl Dawson Michel added to party Gerald Clark(pty:pla), Attorney Carl Dawson Michel added to party Gaalswyk Enterprises, Inc. (pty:pla), Attorney Carl Dawson	<a href="#">View</a>	<a href="#">Add to request</a>

Michel added to party Gun Owners  
Foundation(pty:pla), Attorney Carl  
Dawson Michel added to party Gun  
Owners of America, Inc.(pty:pla),  
Attorney Carl Dawson Michel  
added to party Gun Owners of  
California, Inc.(pty:pla), Attorney  
Carl Dawson Michel added to party  
Jesse Harris(pty:pla), Attorney  
Carl Dawson Michel added to  
party On Target Indoor Shooting  
Range, LLC(pty:pla), Attorney Carl  
Dawson Michel added to party  
Adam Richards(pty:pla), Attorney  
Carl Dawson Michel added to party  
Jeffrey Vandermeulen(pty:pla))  
(Michel, Carl) (Entered: 12/19/2023)

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2025, an electronic PDF of **APPELLANTS' EXCERPTS OF RECORD, VOLUME 4 OF 4**, was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Dated: May 27, 2025

Respectfully submitted,

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

s/ Anna M. Barvir

Anna M. Barvir

*Attorneys for Plaintiffs-Appellants*