

No. 24-542

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

KIM RHODE., ET AL.,
Plaintiffs-Appellees

v.

ROB BONTA,
IN HIS OFFICIAL CAPACITY AS THE
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Defendant-Appellant.

On Appeal from the
United States District Court for the Southern District of California
Case No. 3:18-cv-00802-BEN-JLB
Honorable J. Roger T. Benitez

**BRIEF OF AMICI CURIAE SECOND AMENDMENT FOUNDATION,
CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR
ARMS, AND SECOND AMENDMENT LAW CENTER, INC. IN
SUPPORT OF PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Under Rule 26.1(a) of the Federal Rules of Appellate Procedure, counsel for amici curiae certify that Second Amendment Foundation, Citizens Committee for the Right to Keep and Bear Arms, and Second Amendment Law Center, Inc., are nonprofit organizations and thus have no parent corporations and no stock.

Date: January 2, 2026

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INTEREST OF AMICI CURIAE¹

Second Amendment Foundation (“SAF”) is a non-profit membership organization founded in 1974 with over 720,000 members and supporters in every state of the union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. Currently, SAF is involved in several Second Amendment-related lawsuits proceeding in the Ninth Circuit and thus has great interest in the outcome of this case.

The Citizens Committee for the Right to Keep and Bear Arms is a non-profit corporation organized under Section 501(c)(4) of the Internal Revenue Code, dedicated to promoting the benefits of the right to bear arms. This Court’s interpretation of the Second Amendment directly impacts the Committee’s organizational interests, as well as the Committee’s members and supporters, who enjoy exercising their Second Amendment rights.

Second Amendment Law Center, Inc. is a nonprofit corporation headquartered in Henderson, Nevada. Second Amendment Law Center is dedicated to promoting and defending the individual rights to keep and bear arms as envisioned by the Founding Fathers. Its purpose is to defend these rights in state and federal courts across the United States. It also seeks to educate the public about the social utility of

¹ The parties have given their consent to the filing of this brief, and it has been accompanied by a motion for leave as required by this Court’s rules. No counsel for a party authored the brief in whole or in part. Counsel of record for Amici previously represented Plaintiffs-Appellees in this matter over two years ago when the case was pending in the district court, but he has not worked on the matter during its appellate proceedings and has since departed his employment with the law firm that represents Plaintiffs-Appellees (Michel & Associates, P.C.). No party, counsel for a party, or any person other than amici and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

firearm ownership and to provide accurate historical, criminological, and technical information about firearms to policymakers, judges, and the public.

INTRODUCTION

If a voter registration system erroneously rejected the applications of over 10% of the people who used it, improperly turning away over 400 applications for each single application that was correctly rejected, this Court would not hesitate to quickly rule that system unconstitutional. Rightfully so. Whatever the good intentions of ensuring only those qualified to vote can do so, a registration system that is shoddy enough to result in so many incorrect rejections would never pass constitutional muster. And if it also cost \$1 each time it was used (later increased to \$5), that poll tax would only add more insult to constitutional injury and would serve as an additional reason for this Court to strike the system in its entirety. The result must be no different when the right at issue implicates the Second Amendment, which is not some “second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause.” *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

A first-of-its-kind ammunition background check regime that began in 2019 obviously has no basis in our historical tradition. Plaintiffs-Appellees should succeed for all of the reasons discussed in their briefing, and those discussed in the excellent panel majority opinion written by the late Judge Ikuta. But even if this Court believes that an ammunition background check system of some sort could be constitutional, the shoddy one at issue here clearly is not.

As the State conceded in its own declarations filed in the district court, over

one in ten people who are subjected to it are rejected erroneously. These erroneous rejections cannot be explained away as early “growing pains”, because the data in question was gathered in 2023, several years after the system was first implemented. Once rejected, there is no informational process in place for individuals to be informed of why they were rejected, and they must try and navigate that themselves without any guidance. The statistics demonstrate that a large number of them did not subsequently purchase ammunition even months later. They simply gave up, a result the State does not seem bothered by despite the massive constitutional concerns that are implicated. Without ammunition, firearms are useless, so blocking ammunition sales effectively extinguishes the right of self-defense both in the home and in public.

This brief seeks to accomplish two main goals. First, it will highlight the statistics around the “technical rejections” that blocked ammunition purchases for over 58,000 peaceable and legally eligible Californians in the first half of 2023 alone. The district court noted that some of those rejected may have “given up trying” to buy ammunition, *Rhode v. Bonta*, 713 F. Supp. 3d 865, 877 (S.D. Cal. 2024), and indeed some did, as this brief will cover with specific examples. Amici will also explain why this high proportion of wrongful rejections makes the entire regime facially unconstitutional, and not merely as applied to those wrongfully rejected.

Second, in deciding this case, Amici urge this Court to consider the cumulative burden imposed by California’s gun control regime in totality, of which the error-prone ammunition background check system at issue in this case is merely one piece. To give this Court a better understanding of all the relevant costs, burdens, and other hurdles facing someone seeking to legally acquire a handgun for simple home defense

in California, the second portion of this brief will endeavor to put this Court into the shoes of someone seeking to exercise their Second Amendment rights for the first time in the state.

Finally, some of the Amici here previously submitted a brief in the pending *Yukutake* matter which was critical of this Court's continuing practice of vacating almost every Second Amendment panel victory with en banc rehearing. *See* Brief of Amici Curiae Second Amendment Foundation et al. in Support of Plaintiffs-Appellees at 3-12, *Yukutake v. Lopez*, No. 21-16756 (9th Cir. Aug. 25, 2025). That brief also urged this court to reconsider its ruling in *B&L Productions v. Newsom* because it reinserted interest balancing back into the Second Amendment analysis in defiance of *Bruen*. *Id.* at 13-19. While those subjects are directly relevant to this brief too, there is no need to be repetitive. Amici instead incorporate the arguments made in their *Yukutake* brief by reference here.

ARGUMENT

I. AN AMMUNITION BACKGROUND CHECK SYSTEM THAT WRONGFULLY REJECTS OVER ONE-IN-TEN PEOPLE WHO USE IT IS FACIALLY UNCONSTITUTIONAL.

Whether or not this Court agrees with Amici's position that the "meaningful constraint" standard of *B&L Productions* defies *Bruen*, even under that standard, California's current ammunition background check regime must be stricken. A background check system which improperly rejects over 10% of law-abiding people (and 100% of those who are not residents of California) is, quite plainly, a meaningful constraint on the Second Amendment and fails *Bruen*'s test because there is no historical tradition supporting such a regime. Given it denies such a large fraction of

eligible people who attempt to use it, the regime is also facially unconstitutional even though the majority can successfully navigate it.

A. California’s ammunition background check regime wrongfully rejects over 400 law-abiding people for each prohibited person it correctly denies.

The background check regime adopted by the voters with Proposition 63 was not supposed to be the convoluted and costly one that exists today. Instead, it originally required that individuals pay \$50 and pass a single background check, after which they would have an ammunition purchase permit that was good for four years. *See Rhode v. Bonta*, 713 F. Supp. 3d 865, 869 (S.D. Cal. 2024). But before the voters could even have their say, the legislature “prospectively amended” the law prior to election day. The result was that by voting for Proposition 63, the voters were not passing what their voter information pamphlets had told them, but rather an entirely different and more complex background check regime which demands that they pay for “an automated background check every time they need to buy ammunition.” *Id.* at 870.²

To make matters much worse, the system does not even work properly — and the State admits it. In a court-ordered declaration submitted in the district court, the State provided data on its ammunition background check regime from the first half of

² To be sure, Amici may have taken issue with the originally planned system too, as paying \$50 to exercise a constitutional right is troubling, and there is no clear historical justification for it. But Amici acknowledge that burdening law-abiding Californians once every four years would have at least been less offensive to the Second Amendment than the State’s current system, which erroneously rejects so many people, and, as of July 1, 2025, costs them a minimum of \$5 for *each* ammunition background check. *See* Cal. Dep’t of Just., *Regulations: Ammunition Purchase Fee* (May 12, 2025), <https://oag.ca.gov/firearms/regs/ammofee> (discussing approved rulemaking to raise the fee of an AFS check from \$1 to \$5).

2023 (and therefore several years after it first started in 2019, long after any initial issues should have been ironed out). According to that declaration, from January 1, 2023, through June 30, 2023, the State processed 538,359 AFS checks, which constituted “roughly 99.2% of all ammunition eligibility checks in that time period.” Fifth Supp. Decl. of Mayra G. Morales at ¶ 11, *Rhode v. Bonta*, No. 3:18-cv-00802-BEN-JLB (S.D. Cal. Aug. 16, 2023), ECF No. 92-11. Of those AFS checks, about 10.8% were rejected each month, with the exact number ranging from 10.5% to 11.1%, depending on the month. *Id.* at ¶ 14.

In raw numbers, from January 2023 through June 2023, 58,087 people were denied ammunition because of an AFS rejection. *Id.* at 15. Only 141 people were denied because they were legally barred from possessing firearms. *Id.* In other words, for each individual prohibited person properly stopped from buying ammunition, about 412 law-abiding people were rejected in their attempt to exercise their Second Amendment rights. The complete data was presented in the State’s declaration:

Table 1.1: AFS Checks — Approvals, Denials, & Rejections							
	January 2023	February 2023	March 2023	April 2023	May 2023	June 2023	Total
AFS Checks Processed	86,669	85,989	98,533	95,031	83,593	88,544	538,359
Approved	77,264	76,682	88,182	84,422	74,693	78,888	480,131
Denied (Prohibited Persons)	17	19	16	22	30	37	141
Rejected (no match with AFS records)	9,388	9,288	10,335	10,587	8,870	9,619	58,087
Average Processing Time	3.4 sec.	1.4 sec	998.7 sec ²	1.0 sec	10.6 sec	9.4 sec	170.7 sec (overall average)

Id. The underlying cause of all these mistaken rejections is quite mundane: “An AFS

Check will be rejected if the purchaser’s name, address, date of birth, or ID number, or some combination of that information, does not match an AFS record.” *Id.* at ¶ 18. As the State’s declaration explained, an AFS rejection is “is not a determination that the purchaser is ineligible to purchase ammunition. It means that the purchaser cannot avail themselves of that streamlined eligibility check. They may still use a Basic Check, or, in certain situations, a Certificate of Eligibility Verification Check (California Code of Regulations, title 11, section 4285 (renumbered from section 4305)) or Firearms Eligibility Check (California Code of Regulations, title 11, section 4284 (renumbered from section 4304)).” *Id.* at ¶ 17.

Unfortunately, those rejected are not *told* this, certainly not by the State. They are left to their own devices to figure out what happened, and as they tend to be laypeople, many of them may fear they have somehow become a prohibited person and thus do not attempt to buy ammunition again, lest they break the law. The numbers back up that exactly that may be happening. For example, of the 7,342 people rejected in January of 2023, 37.1% (2,722 people) had not successfully purchased ammunition by five months later in June of 2023. *Id.* at ¶ 31.

Table 1.3: Purchasers Who were Rejected on an AFS Check and Subsequently Purchased Ammunition on or before June 30, 2023						
	January 2023	February 2023	March 2023	April 2023	May 2023	June 2023
Individuals Rejected in AFS Checks	7,342	7,222	7,941	8,139	6,950	7,410
Number Who Purchased Ammunition on or before June 30, 2023, after an AFS Check Rejection	4,620	4,601	5,105	4,937	4,080	3,905

Id.

B. California’s ammunition background check regime has prevented members of the associational plaintiff in this case from buying ammunition, including a total ban for those members who are residents of other states.

Lest the above data seem too abstract, some specific examples may be helpful. Members of the associational Plaintiff-Appellee attested in signed declarations submitted to the district court about how California’s ammunition laws have frustrated their efforts to purchase ammunition. For example, one member of the California Rifle & Pistol Association (CRPA) explained how after he moved to a new address, he attempted to update his information through the state’s portal, CFARS, but was unsuccessful and was rejected when he tried to buy ammunition. *See* Decl. of Jack Mullin at ¶ 6, *Rhode v. Bonta*, No. 3:18-cv-00802-BEN-JLB (S.D. Cal. Aug. 17, 2023), ECF No. 93-9. A lawyer eventually explained to him that his only options were “purchasing a new firearm to potentially fix [his] records with the Department; obtaining a COE for \$71 (and \$22 every year thereafter) plus a fingerprinting fee; or paying a \$19 fee for a Basic Check every time [he] purchased ammunition.” *Id.* at ¶ 9. Neither the vendor nor DOJ’s form letters informed him of those options. *Id.* Amici believe it should not take a consultation with a lawyer to figure out how to navigate the California regime preventing the exercise of basic constitutional rights. Further, these alternatives are all quite costly.

For some, it is not the system’s failings, but the system itself that erects a complete bar to their ability to acquire ammunition. Under California’s ammunition background check regime, visitors from other states are prohibited from purchasing

ammunition entirely.³ CRPA member Stephen Hoover, for instance, is a resident of Florida who spent much of summer 2023 in California. As he explained in his declaration: “[o]n Wednesday, July 19th, 2023, I attempted to purchase ammunition at a sporting goods store located in Monterey, California. I asked two employees to check if they could sell me ammunition. One of the two employees called someone, I assume a supervisor, over the in-store telephone. I waited while the person on the other end of the phone conferred with the employee I was speaking with. The employee then informed me that I would not be allowed to purchase ammunition because I was not a California resident.” Decl. of Stephen Hoover at ¶ 4, *Rhode v. Bonta*, No. 3:18-cv-00802-BEN-JLB (S.D. Cal. Aug. 17, 2023), ECF No. 93-13.⁴

Even if the individual buying ammunition is a California resident and can navigate the system successfully, the regime still makes ammunition much costlier by making online ammunition purchases much more difficult than they were before 2019. As another member of CRPA explained, “[b]ecause of the challenged laws, I cannot order online for direct shipment to my home. This has resulted in me having to spend more time and money trying to acquire the ammunition that I use from local

³ Aside from those serving in the armed forces who have military identification, a California driver’s license or identification card is required to buy ammunition in California. See Cal. Dep’t of Just., *Frequently Asked Questions: Ammunition Purchases* (Question 3), <https://oag.ca.gov/firearms/apfaqs> (last visited Dec. 29, 2025).

⁴ As courts are finally beginning to recognize, denying Second Amendment rights to visitors from other states is unconstitutional. In fact, Mr. Hoover himself was a plaintiff in a lawsuit that successfully ended California’s ban on issuing carry permits to nonresidents. See *Cal. Rifle & Pistol Ass’n v. L.A. Cty. Sheriff’s Dep’t*, 745 F. Supp. 3d 1037, 1066-67 (C.D. Cal. 2024) (“The State has thus failed to demonstrate that it is likely that its residency requirement to apply for a CCW license is part of a historical tradition of this Nation.”). Mr. Hoover can now be issued a California carry permit, but he still may not purchase ammunition in California.

vendors. And, on some occasions, I have been unable to find the ammunition that I need from local vendors, while it is regularly available from online vendors.” Decl. of Kirk Weir at ¶ 6, *Rhode v. Bonta*, No. 3:18-cv-00802-BEN-JLB (S.D. Cal. Aug. 17, 2023), ECF No. 93-10.

C. California’s ammunition background check regime is facially unconstitutional.

Some of the dissent to the now-vacated panel ruling in this case focused its criticism on the fact that, at most, Plaintiffs-Appellees could only pursue an as-applied challenge because California “has shown that the vast majority of its checks cost one dollar and impose less than one minute of delay.” *Rhode v. Bonta*, 145 F.4th 1090, 1121 (9th Cir. 2025) (Bybee, J., dissenting). Of course, as discussed above, the fee has now risen to \$5. But much more importantly, the dissent overlooked that the difference between facial and as-applied challenges is not a binary choice. “The label is not what matters. The important point is that plaintiffs’ claim and the relief that would follow . . . reach beyond the particular circumstances of these plaintiffs. They must therefore satisfy our standards for a facial challenge to the extent of that reach.” *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010).

That is exactly the case here. The relief Plaintiffs-Appellees hope to achieve would reach well beyond their specific circumstances, as it would eliminate the ongoing constitutional harm that results from a faulty ammunition background check regime that wrongfully rejects more than one in ten people who use it, and blocks residents from other states from purchasing ammunition entirely. Such a large chance of erroneous denial in exercising Second Amendment rights is a “meaningful

constraint” on that right, and without precedent in our historical tradition.

It is not enough to say that because a majority of people can successfully navigate this ammunition background check system, then Plaintiffs’ arguments that the law is facially unconstitutional must fail. That would mean that *any* background check system, no matter how faulty or burdensome, could never be challenged facially unless everyone who tried to use it was turned away. Yet that is exactly the standard the panel dissent would have imposed, as it argued that “in order to conclude in a facial challenge that California's law ‘meaningfully constrains’ the right to keep and bear arms on its face, the majority must demonstrate that *all* of the law's conceivable applications do so.” *Rhode*, 145 F.4th at 1126.

The dissent was looking at the facts through the wrong lens. What is critical here is not that most people manage to go through the ammunition background check unimpeded, but rather that any background check system which has such a high failure rate is facially unconstitutional.

A key example of this principle can be found in the voter registration context. In 2011, Kansas adopted a documentary proof of citizenship (“DPOC”) requirement to stop noncitizens from voting. But over 99% of people who were prevented from voting “were citizens who would have been able to vote but for the DPOC requirement.” *Fish v. Schwab*, 957 F.3d 1105, 1115 (10th Cir. 2020). In total, 31,089 total applicants were affected, or approximately 12% of the total voter registration applications submitted. *Id.* at 1128. By contrast, just 39 noncitizens had successfully registered to vote even before the law went into effect, signaling the problem was a miniscule one in the first place. *Id.* at 1115. The facts in *Fish* are strikingly similar to

those found in this case, which involves a background check that wrongfully rejects about 11% of people who use it, improperly stopping over 400 people from buying ammunition for each truly prohibited person it catches.

Just like California does here, Kansas argued that the Tenth Circuit should not facially invalidate its DPOC requirement based on these numerous errant rejections. After all, most people could still successfully register to vote. But the court dispensed with that argument easily enough because “the demonstrated disenfranchisement of approximately 30,000 would-be voters demonstrates that the ‘broad application’ of the DPOC requirement imposed an unjustified burden on ‘all [Kansas] voters.’” *Fish*, 957 F.3d at 1136 n.10 (quoting *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 202 (2008)).⁵

If that is so, then the Second Amendment should not be treated any differently, as it is not a second-class right. *McDonald*, 561 U.S. at 780. The focus should not be on the fact that most people manage to navigate the burdensome system California has imposed, it should instead be on the fact that far too many of them, a large fraction,⁶ *do not*. As the Supreme Court explained in rejecting poll taxes, “[w]e say the same whether the citizen, otherwise qualified to vote, has \$ 1.50 in his pocket or nothing at

⁵ Similarly, in the First Amendment context, when a substantial number of a law’s applications are unconstitutional, that law is vulnerable to a facial challenge. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008).

⁶ While there is no longer any constitutionally recognized right to an abortion after *Dobbs*, it is still worth noting that under the Supreme Court’s pre-*Dobbs* precedent, an abortion restriction that presented an obstacle to the right in a “large fraction” of cases was deemed an unconstitutional undue burden. *See Planned Parenthood v. Casey*, 505 U.S. 833, 895 (1992) (“in a large fraction of the cases in which § 3209 is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion. It is an undue burden, and therefore invalid.”).

all, pays the fee or fails to pay it. The principle that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors by analogy bars a system which excludes those unable to pay a fee to vote or who fail to pay.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966).

Obviously, many people, perhaps the overwhelming majority, could have paid that \$1.50 poll tax. But the fact that it would have excluded some and dissuaded others was enough for it to be considered facially unconstitutional. California’s ammunition background check regime should meet the same fate.

II. IN DECIDING THIS CASE, THIS COURT SHOULD KEEP IN MIND THE CUMULATIVE BURDENS IMPOSED BY THE TOTALITY OF CALIFORNIA’S GUN CONTROL REGIME.

Some of California’s gun laws, taken alone in a vacuum, may not seem like a considerable burden. For example, perhaps for someone who is not one of the individuals erroneously rejected by California’s ammunition background check, the law at issue in this case may not seem like that big of a burden, especially if they are financially well off enough that the \$5 fee each time they purchase ammunition is not a concern for them.

That view of things ignores just how much California’s expansive gun control regime, *taken in its totality*, burdens the Second Amendment. This sort of “aggregate-effect” analysis was adopted by the Seventh Circuit in barring the City of Chicago from zoning gun ranges out of existence, because the “combined effect” of the various zoning rules left very little of the City of Chicago available for ranges. *Ezell v. City of Chicago*, 846 F.3d 888, 894 (7th Cir. 2017). In this case, the aggregate effect of

California's firearms laws makes exercising this constitutional right both legally complex, and financially costly.

To illustrate this point, this Court should put itself in the shoes of a law-abiding Californian who desires to exercise her right to own a handgun for the first time.

First, she will have to choose a firearm. In most states, the most popular choice would be a Glock handgun, as they are some of the best-selling and reliable handguns in the country. Unfortunately, California has effectively banned the sale of Glock handguns effective July 1, 2026, under Assembly Bill 1127, so if our aspiring gun owner is buying after that date, she will have to make a different choice. *See* A.B. 1127, 2025-2026 Reg. Sess. (Cal. 2025) (enacted).

Besides the new Glock sales ban, California also bans the sale of most of the handguns available in the rest of the country through its Unsafe Handgun Act, which requires that all handguns sold in the state have unpopular "features" like magazine disconnect mechanisms and loaded chamber indicators that are usually not present in the same handguns sold in other states.⁷ A limited selection is available, so our aspiring gun owner will have to pick from those unless she wants to pay much more to buy an off-roster handgun from the secondhand market. *See* Cal. Dep't of Just., Off. of the Att'y Gen., *Handguns Certified for Sale*, <https://oag.ca.gov/firearms/certified-handguns/search> (last visited Dec. 23, 2025).

⁷ Those requirements were preliminarily enjoined by two separate district courts in 2023, but this Court promptly stayed those rulings, and a decision is still pending from this Court in those cases. *See* Order Granting in Part Emergency Motion to Stay Preliminary Injunction Pending Appeal, *Boland v. Bonta*, No. 23-55276 (9th Cir. Mar. 31, 2023); *see also* *Renna v. Bonta*, 667 F. Supp. 3d 1048, 1072 (S.D. Cal. 2023) (granting preliminary injunction but immediately staying it in light of the Ninth Circuit staying *Boland*).

Suppose our aspiring gun owner settles on the compact version of the Walther PDP that is included on California's roster. *See* Cal. Dep't of Just., Off. of the Att'y Gen., PDP 4.0" Compact, <https://oag.ca.gov/firearms/handgun/pdp-40-compact> (last visited Dec. 23, 2025). Besides the roster's requirements, the California version will be less capable compared to those available in most other states because the magazines it comes with will be limited to ten rounds,⁸ a restriction this Court upheld in *Duncan v. Bonta*, 131 F.4th 1019 (9th Cir. 2025).

Despite being an inferior version, it will cost more, because designing a handgun to meet California's additional "feature" requirements adds expense. Bass Pro Shops, a major retailer that sells firearms, demonstrates this well on their website. As of December 29, 2025, a standard compact Walther PDP sells for \$529.98, but when the California-compliant version is selected on the same webpage, the price jumps to \$649.00. *See* Bass Pro Shops, *Walther PDP Compact Optic Ready Semi-Auto Pistol*, <https://www.basspro.com/p/walther-pdp-compact-optic-ready-semi-auto-pistol> (last visited Dec. 29, 2025).⁹ So already, our aspiring gun owner is paying about **\$119** more than she would be in Arizona, Nevada, and most other states.

But the financial burdens are only just beginning. For one, California requires a background check on every firearm purchase. Yet even though the State chooses to impose this burden on its citizens, it also piles on fees. California's background check

⁸ The standard capacity for a compact Walther PDP with a flush-fit magazine is 15 rounds, and it comes in that configuration in most other states.

⁹ Bass Pro Shops' pricing is not outside the norm. For example, Turner's Outdoorsman, a large firearm retailer in California, sells the California version of the compact PDP for \$649.98. *See* Walther PDP Compact Optic Ready 9MM 4" Barrel, TURNERS.COM (last visited Dec. 29, 2025), <https://www.turners.com/walther/walther-pdp-compact-optic-ready-9mm-4-barrel-1944680> (last visited Dec. 29, 2025).

system requires a \$31.19 Dealer Record of Sale fee, a \$1 Firearms Safety Act Fee, and a \$5 Safety and Enforcement fee. *See* Cal. Dep't of Just., Off. of the Att'y Gen., Firearms Division - *Frequently Asked Questions #13 (How much is the state fee when purchasing a firearm?)*, <https://oag.ca.gov/firearms/pubfaqs> (last visited Dec. 23, 2025). In total, for a background check that is free in other states,¹⁰ Californians must pay **\$37.19** every time they purchase firearms.

Additionally, in 2023, California enacted an 11% excise tax on firearms and ammunition. *See* Cal. Dep't of Tax & Fee Admin., *Cal. Firearm Excise Tax Law § 36011* (2025), <https://cdtfa.ca.gov/lawguides/vol4/fetl/fetl-36011.html> (last visited Dec. 23, 2025) (“Commencing July 1, 2024, an excise tax is hereby imposed upon licensed firearms dealers, firearms manufacturers, and ammunition vendors, at the rate of 11 percent of the gross receipts from the retail sale in this state of any firearm, firearm precursor part, or ammunition.”). This tax applies in addition to standard sales tax, and it adds another **\$71.39** to the price of our aspiring gun owner’s compact Walther PDP.

Finally, because it is the first firearm she is purchasing, our aspiring gun owner must also obtain a Firearm Safety Certificate, which is acquired by passing a 30-question multiple choice test on firearms facts and safety rules. The card is good for five years. Whether such a requirement is sensible or not can be debated, but it adds

¹⁰ “The FBI does not charge a fee for conducting NICS checks. However, states that act as points of contact for NICS checks may charge a fee consistent with state law.” Bureau of Alcohol, Tobacco, Firearms & Explosives, *Is There a Charge for NICS Checks?*, <https://www.atf.gov/firearms/qa/there-charge-nics-checks> (last visited Dec. 23, 2025).

yet another **\$25** in expense. *See* Cal. Dep't of Just., Off. of the Att'y Gen., *Firearm Safety Certificate Frequently Asked Questions #6 (How much does the Firearm Safety Certificate cost?)*, <https://oag.ca.gov/firearms/fscfaqs> (last visited Dec. 23, 2025).

In total then, factoring in the price difference of the California-compliant version of the gun, the background check fee, the excise tax, and the price of the Firearms Safety Certificate, our aspiring gun owner will pay **\$252.58 more** for her compact Walther PDP than she would have in most other states thanks to California's hostility to the Second Amendment. Considering that a better version of the same model costs about \$530 in other states, that's a nearly 50% price premium just to exercise the same right in California.

After all of that, our aspiring gun owner will need to wait ten days to pick up her firearm due to the state-mandated waiting period. *See* Cal. Penal Code § 26815 (West 2024). The wait applies even if the purchaser already owns several other firearms, and therefore the underlying "cooling off" logic is not even applicable. There also are no exceptions for those in imminent danger; even if our aspiring gun owner can prove she has a stalker threatening her life, she must still wait ten days. This sort of delay is dangerous, but nevertheless, there is no way around it. *See* Perry Chiaramonte, *'No One Helped Her': NJ Woman Murdered by Ex While Awaiting Gun Permit*, Fox News (June 10, 2015), <https://www.foxnews.com/us/no-one-helped-her-nj-woman-murdered-by-ex-while-awaiting-gun-permit> (last visited Dec. 29, 2025).

Of course, after our aspiring gun owner picks up her firearm following that waiting period, she will also need to purchase ammunition. As this Court is now aware thanks to this case, that will cost her at least \$5 each time she attempts to do so, plus

also the 11% excise tax discussed above, which also applies to ammunition. If she ever moves from the address she resided at when she first purchased her firearm, she will join the 10.8% of those attempted purchasers who receive an AFS rejection, and she will then need to navigate that process too on top of everything else.

The burdens are not only financial in nature. For example, under California Penal Code section 26845, “[n]o handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that the person is a California resident.” Our aspiring gun owner will therefore need both a government-issued ID and proof of residence in California to buy her handgun. That proof can be a “utility bill, residential lease, property deed, or government-issued identification (other than a driver license or other DMV-issued identification).” Cal. Dep't of Just., Off. of the Att'y Gen., *Firearms: Frequently Asked Questions* (Question 3), <https://oag.ca.gov/firearms/pubfaqs#3> (last visited Dec. 26, 2025). If she does not have one of those things, then she will need to get a passport or other ID in addition to her driver's license to be able to buy a firearm. For example, perhaps she is living with her parents, and maybe she is even helping them pay the bills. But because it is not *her* name on any utility bill, lease, or deed, there is no acceptable proof of residence, and she must obtain a second ID to buy a gun.¹¹

¹¹ California does not stand for similar requirements in other contexts. For example, when the City of Huntington Beach recently tried to implement its own voter ID laws following a majority vote of its residents to adopt such a measure, the legislature acted quickly to pass Senate Bill 1174, which prohibited local governments from requiring voters to present identification when casting their ballots at the polls. *See* S.B. 1174, 2023-2024 Reg. Sess. (Cal. 2024) (enacted). Before that, the Attorney General of California had sued the city, stating that “[i]mposing unnecessary obstacles to voter participation disproportionately burdens low-income voters, voters of color, young or elderly voters, and people with disabilities.” Press Release, Cal. Att’y Gen.,

Amici are only scratching the surface in terms of California’s extensive gun control regime. For example, if our aspiring gun owner practices enough and feels ready to begin carrying a firearm in public, the process of getting a California carry permit will cost her hundreds of dollars more and will include livescan fingerprinting, a police interview, a 16-hour training course, and sometimes even a psychological exam. *See* Cal. Penal Code §§ 26150-26235 (West 2024). If she lives in Santa Clara County, one of the worst offenders, the total expense of obtaining a carry permit will rise to about \$2,000.¹² In other counties, the expense of getting a permit may be “only” around \$500-\$600, but wait times can take over a year.¹³ The California Penal Code sets a 120-day time limit for processing permits, but the Attorney General has taken no action to enforce it against the many counties and cities blatantly violating that statutory time limit. *See* Cal. Penal Code § 26205 (West 2024).

Attorney General Bonta, Secretary of State Weber File Lawsuit Against Huntington Beach over Unlawful Municipal Voter ID Amendment (Apr. 15, 2024), <https://oag.ca.gov/news/pressreleases/attorney-general-bonta-secretary-state-weber-file-lawsuit-against-huntington>. Of course, all of those same concerns would apply to California’s requirements for purchasing a firearm, which has much father-reaching burdens than the simple voter ID law Huntington Beach tried to enact. If that ID requirement truly “disproportionately burdens low-income” people and other groups, then so do California’s firearms laws, but to a much greater degree. California’s divergent treatment of the Second Amendment compared to other constitutional rights is as breathtaking in its scope as it is shameless in its hypocrisy.

¹² One of the Amici here, Second Amendment Foundation, is currently suing that county over its expenses. *See* First Amended Complaint, *Blank v. Santa Clara County*, No. 5:25-cv-08027-EJD (N.D. Cal. Nov. 14, 2025).

¹³ One of the Amici here, Second Amendment Foundation, also sued the Los Angeles Sheriff’s Department due its two year wait times for getting a carry permit and won preliminary relief for two individual plaintiffs in the lawsuit. *See Cal. Rifle & Pistol Ass’n v. L.A. Cty. Sheriff’s Dep’t*, 745 F. Supp. 3d 1037, 1054 (C.D. Cal. 2024) (“Plaintiff Messel’s application to LASD has been pending for more than two years.”). The United States Department of Justice has recently filed its own lawsuit against Los Angeles due to these lengthy wait times. *See* Complaint, *United States v. L.A. Cty. Sheriff’s Dep’t*, No. 2:25-cv-09323 (C.D. Cal. Sept. 30, 2025).

Alternatively, suppose she needed a new barrel for her handgun. Until the end of 2025, she could order such a part online and have it shipped to her home. Now, thanks to the recently enacted Senate Bill 704, the barrel will need to ship to a licensed dealer, and a separate background check will need to be conducted along with yet another fee. *See* S.B. 704, 2025-2026 Reg. Sess. (Cal. 2025) (enacted). The years to come will surely bring even more burdens, as they always do in California, where the Second Amendment is a disfavored right that is constantly under siege.

The State's gun control regime, taken in totality, is thus "prophylaxis-upon-prophylaxis." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 479 (2007). The ammunition background check process is just one part of that regime, but a particularly unconstitutional one given how error-prone it is. Just as "[t]he Government may not suppress lawful speech as the means to suppress unlawful speech," *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255 (2002), California's efforts to stop prohibited people from acquiring ammunition may not trample on the rights of so many law-abiding people in the process. Amici hope this Court's ruling takes these cumulative burdens into consideration.

CONCLUSION

Because California’s ammunition background check system has no support in the history and tradition of firearms regulation in this nation, it violates the Second Amendment. The state can create no artificial safe harbor by relying on the “meaningful constraint” standard, because even under that questionable standard, a regime that improperly disenfranchises 1 in 10 citizens cannot reasonably be viewed as anything but meaningful. No background check system should come with such a high chance of a constitutional right being at best delayed, and at worst denied. Amici urge this Court to rule for Plaintiffs-Appellees and finally begin to roll back at least one of the many ways California undermines the Second Amendment.

Dated: January 2, 2026

Respectfully submitted,

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