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19  
20 **UNITED STATES DISTRICT COURT**  
21 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

22 JAMES MILLER, et al.  
23 Plaintiffs,  
24 v.  
25 XAVIER BECERRA, in his official  
26 capacity as Attorney General of the  
27 State of California, et al.,  
28 Defendants.

CASE NO. 3:19-cv-1537-BEN-JLB

**AMICUS CURIAE BRIEF OF  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE**

**Hearing:**  
Date: February 6, 2020  
Time: 2:00 pm

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*Amicus curiae* hereby certifies that it has no parent corporation. It has no stock, and therefore no publicly held corporation owns 10% or more of its stock.

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1 **I. STATEMENT OF INTEREST**

2 *Amicus curiae* Giffords Law Center to Prevent Gun Violence (“Giffords Law  
3 Center”) is a non-profit policy organization dedicated to researching, writing, enacting,  
4 and defending laws and programs proven to reduce gun violence and save lives. The  
5 organization was founded in 1993 after a gun massacre at a San Francisco law firm and  
6 renamed Giffords Law Center in October 2017 after joining forces with the gun-safety  
7 organization founded by former Congresswoman Gabrielle Giffords.

8 Today, Giffords Law Center provides free assistance and expertise to  
9 lawmakers, advocates, legal professionals, law enforcement officials, and citizens who  
10 seek to make their communities safer from gun violence. Its attorneys track and  
11 analyze firearm legislation, evaluate gun safety research and policy proposals, and  
12 participate in firearms-related litigation nationwide, where it has provided analysis as  
13 an amicus in numerous important cases.<sup>1</sup>

14 **II. ARGUMENT**

15 The assault rifles at issue in this case are semiautomatic versions of a military  
16 design first deployed on the battlefields of Vietnam. *See, e.g.,* Natasha Singer, *The*  
17 *Most Wanted Gun in America*, N.Y. Times, Feb. 2, 2013, *available at*  
18 [https://www.nytimes.com/2013/02/03/business/the-ar-15-the-most-wanted-gun-in-](https://www.nytimes.com/2013/02/03/business/the-ar-15-the-most-wanted-gun-in-america.html)  
19 [america.html](https://www.nytimes.com/2013/02/03/business/the-ar-15-the-most-wanted-gun-in-america.html). Decades later, in an effort to create a bigger civilian market for  
20 semiautomatic rifles, gun makers ran “ads celebrating the rifle’s military connections, .  
21 . . lur[ing] a new and eager audience to weapons that, not long ago, few serious gun  
22 enthusiasts would buy.” *Id.* Those combat connections are not a relic—the  
23 semiautomatic assault rifles California regulates remain military-grade weapons. Even  
24 today, the United States military calls semiautomatic fire the “most important firing  
25 technique during fast-moving, modern combat” and “the most accurate technique of

26 \_\_\_\_\_  
27 <sup>1</sup> No party’s counsel authored this brief in whole or in part. No party or party’s  
28 counsel contributed money that was intended to fund preparing or submitting this  
brief. No person other than *amicus curiae*, its members, or its counsel contributed  
money that was intended to fund preparing or submitting the brief.

1 placing a large volume of fire” on moving targets. Department of the Army, Rifle  
2 Marksmanship: A Guide to M16- and M4-Series Weapons (2011), at 7–12.

3 The enhanced pistols and shotguns Plaintiffs claim the Constitution protects are  
4 newer designs that are just as dangerous and unfit for lawful use. The semiautomatic  
5 shotguns at issue are not traditional hunting weapons; they were modeled after  
6 weapons originally used for riot control by foreign law enforcement. The Armsel  
7 Striker, popular in South Africa, was marketed in the U.S. as the Street Sweeper; it  
8 featured a folding stock and measured only 16.5” long (slightly longer than a sawed-  
9 off shotgun). This design combined concealability with the capability of firing 12  
10 rounds in under 3 seconds. When the Street Sweeper was designated a “destructive  
11 device” and regulated under the National Firearms Act (“NFA”), gunmakers designed  
12 workaround weapons that are as powerful as the Street Sweeper, as ill-suited to  
13 sporting purposes, and as capable of delivering catastrophic injuries by rapidly firing  
14 more than a dozen shotgun slugs. Similarly, the pistols at issue in this case are not  
15 “common pistols” as Plaintiffs claim (Pls. Prelim. Inj. Br. at 3) but include weapons  
16 combining the enhanced lethality of assault rifles with a pistol’s concealability, another  
17 workaround to evade the short-barreled rifle definition.

18 The Roberti-Roos Assault Weapons Control Act of 1989 and its subsequent  
19 iterations represent the considered and well-supported judgment of the California  
20 legislature to enact a weapon-by-weapon and feature-by-feature restriction. The  
21 AWCA affects only a subset of semiautomatic rifles—those weapons closest to  
22 original military rifles, making them the firearm of choice for individuals seeking to  
23 carry out mass shootings, drive-by shootings, and gang violence (“Regulated Assault  
24 Rifles”)—and an even smaller subset of other weapons, namely combat-grade  
25 shotguns and AR-style pistols (“Regulated Assault Shotguns and Pistols”). The  
26 AWCA has made Californians safer for decades, and is narrowly tailored to affect only  
27 combat shotguns and the most warlike features of semiautomatic rifles and pistols.

28

1 Therefore the AWCA is constitutional, and the Court should deny Plaintiffs’ request  
2 for preliminary injunctive relief.

3 This *amicus* brief will focus on this core constitutional question and the reasons  
4 why Plaintiffs have failed to demonstrate either a likelihood of success or a “serious  
5 question” as to the merits of their claim. *See, e.g., A Woman’s Friend Pregnancy Res.*  
6 *Clinic v. Becerra*, 901 F.3d 1166, 1167 (9th Cir. 2018). Counseling further against  
7 Plaintiffs’ motion, a preliminary injunction would upend a decades-old California law  
8 just as the Ninth Circuit is poised to issue a ruling that will either vindicate, eliminate,  
9 or dramatically clarify the scope of Plaintiffs’ challenge. The Court should apply the  
10 Circuit’s established Second Amendment precedent and reject Plaintiffs’ efforts to  
11 reintroduce in the legal market mass shooters’ weapons of choice and an exotic newer  
12 class of highly lethal, enhanced pistols and shotguns.<sup>2</sup>

13 **A. The AWCA Bans a Subset of Semiautomatic Rifles and Other Weapons**  
14 **Whose Military Features Facilitate Criminal Mass Killings**

15 The Act is not an outright ban on the semiautomatic rifles that are the focus of  
16 Plaintiffs’ case, or on the shotguns and pistols they include in their complaint. Rather,  
17 the AWCA regulates certain available add-on features that have been repeatedly used  
18 to perpetrate mass shootings, drive-by shootings, and gang violence, among other  
19 criminal activities, in California. *See Kasler v. Lockyer*, 23 Cal. 4th 472, 482–85  
20 (2000); *see also, infra*, Section II.A.2.

21 In particular, the AWCA targets semiautomatic rifles that have been enhanced—  
22 through the addition of detachable magazines, folding stocks, flash suppressors, pistol  
23 grips, or other features. Cal. Penal Code § 30515(a). In so doing, the AWCA targets a  
24 subset of semiautomatic rifles whose capacity and tendency to inflict mass casualties

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26 <sup>2</sup> As the State’s brief explains, the fact that Plaintiffs have moved to enjoin a 1989 law  
27 and dramatically disrupt the status quo should subject them to the higher standard  
28 applicable to motions for mandatory preliminary injunctions. (Defs. Opp. Br. at 8.)  
Since Plaintiffs have failed to even meet the lower standard generally applicable to  
preliminary injunction motions, Plaintiffs certainly fail to demonstrate that “the law  
and facts *clearly favor* their position.” (*Id.* (citation omitted).)

1 outweigh their usefulness for lawful purposes. The AWCA also appropriately targets  
2 semiautomatic pistols enhanced with these same features, as well as military-grade,  
3 high-capacity shotguns—weapons Plaintiffs wholly fail to demonstrate are widely  
4 possessed or used for lawful defensive or sporting purposes.

5 **1. The Regulated Assault Rifles Are Uniquely Dangerous**

6 The AWCA regulates assault rifles by prohibiting semiautomatic versions of  
7 weapons developed for the American armed forces (such as the AR-15, which was  
8 developed by the U.S. military and “retain[s] the military features and capabilities of  
9 the fully automatic M16 and AK-47”) as well as other rifles that have the same  
10 features as those combat-style models (*i.e.*, the Regulated Assault Rifles). *Kolbe v.*  
11 *Hogan*, 849 F. 3d 114, 124–25 (4th Cir. 2017) (en banc) (describing relationship  
12 between AR-15, M16, and AK-47 and referring to folding and telescoping stocks,  
13 pistol grips, flash suppressors, grenade launchers, and the ability to accept large-  
14 capacity magazines as “military features”).

15 Such combat-style features distinguish military rifles and their semi-automatic  
16 counterparts from standard sporting rifles, and are not “merely cosmetic”—they “serve  
17 specific, combat-functional ends.” H. Rep. No. 103-489, at 18. The Regulated Assault  
18 Rifles include features that enhance ammunition capacity, concealability, stability, and  
19 control, making it easier for shooters to fire accurately without sacrificing rate of fire.  
20 The “net effect of these military combat features is a capability for lethality—more  
21 wounds, more serious, in more victims—far beyond that of other firearms in general,  
22 including other semiautomatic guns.” *Id.* In fact, semi-automatic firing of military-  
23 style weapons like the Regulated Assault Rifles is in many ways *more* effective than  
24 automatic firing of the same weapons because they allow for more accuracy without  
25 substantially sacrificing rate of fire. Department of the Army, *supra*, at 7–12 (stating  
26 that “rapid semiautomatic fire” is “[t]he most accurate technique of placing a large  
27 volume of fire on poorly defined targets or target areas such as short exposure,  
28 multiple, or moving targets”).

1 Plaintiffs nevertheless argue that “so-called ‘assault weapons’ are merely typical  
2 semi-automatic firearms” (First Am. Compl. ¶ 30) and claim that “semi-automatic  
3 firearms” are “the category of firearms at issue in this case” (*id.* ¶ 45). That claim is  
4 false. The Regulated Assault Rifles are a *subset* of semi-automatic firearms, and they  
5 include those that are capable of firing greater-velocity rounds and enhanced with  
6 detachable magazines that enable higher round capacity, and have other features that  
7 allow more “casual” handling by inexperienced shooters. Owing to technological  
8 innovations deliberately geared toward increasing body counts at the expense of  
9 personal safety, today’s military-style semiautomatic rifles are deadlier than ever.

10 One such innovation is the detachable magazine, which allows shooters to  
11 deplete the ammunition in one magazine and quickly swap it for another, decreasing  
12 the time a shooter must stop firing to reload and, thus, the time victims have to escape  
13 during pauses in firing. The lack of a fixed magazine also allows rifles to  
14 accommodate large-capacity magazines, which reduce the frequency with which a  
15 shooter must pause to reload, eliminating opportunities for potential victims to escape  
16 and for bystanders or law enforcement to intervene.<sup>3</sup> The importance of pauses in a  
17 gunman’s shooting is underscored by the atrocity at Marjory Stoneman Douglas High  
18 School in Parkland, Florida. The shooter there was later confirmed to have used a  
19 weapon equipped with 30- to 40-round magazines. *See Marjory Stoneman Douglas*  
20 *High School Public Safety Commission Report*, Fl. Dep’t of Law Enforcement, at 31,  
21 257 (Jan. 2, 2019) (“MSD Commission Report”), *available at*  
22 <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf>.<sup>4</sup> At one point during the  
23 massacre, eight students were able to flee during a 13-second pause while the shooter  
24 retrieved and inserted a new magazine. MSD Commission Report at 31. If he had an

25  
26 <sup>3</sup> These dangers also explain why California prohibits semiautomatic rifles that have a  
large-capacity magazine as a *fixed* magazine. *See* Defs. Opp. Br. at 23-24.

27 <sup>4</sup> *Cf. Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1177 & n.64 (S.D. Cal. 2019) (citing  
28 an erroneous National Review article that cited sources who claimed, mistakenly,  
that the Parkland shooter only used 10-round magazines).

1 even larger magazine (say, with 100 rounds), those students may not have had that  
2 opportunity. If he had used a smaller detachable or fixed magazine, more students  
3 might have had opportunities to escape.

4 Indeed, a recent study (released after this Court’s decision in *Duncan v.*  
5 *Becerra*) confirms that large capacity magazines (“LCMs”) “increase the number of  
6 rounds that can be fired at potential victims before having to pause to reload or switch  
7 weapons” and thus increase the likelihood that victims will be struck by multiple  
8 rounds and suffer more grievous injuries. Louis Klarevas et al., *The Effect of Large-*  
9 *Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017*, 109 Am. J.  
10 Public Health 1754, 1754 (Nov. 6, 2019). This peer-reviewed analysis reached the  
11 following conclusions about LCMs’ role in high-fatality mass shootings and the  
12 effectiveness of restricting them:

- 13 • More people are killed when LCMs are used in such shootings, and the  
14 difference is “substantial and statistically significant”;
- 15 • States with LCM bans experience a lower rate of high-fatality mass  
16 shootings involving LCMs, and at a lower fatality count; and
- 17 • States with LCM bans experience fewer high-fatality mass shootings  
18 overall and at a lower fatality rate.

19 *Id.* at 1760.

20 In addition, another danger posed by weapons like the Regulated Assault Rifles  
21 is that the velocity of bullets fired by weapons like the Regulated Assault Rifles is  
22 three times those fired by a 9-millimeter handgun—making the force with which they  
23 hit three times greater. See Heather Sher, *What I Saw Treating the Victims from*  
24 *Parkland Should Change the Debate on Guns*, The Atlantic Weekly (Feb. 22, 2018),  
25 available at [https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-](https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/)  
26 [the-victims-from-parkland-should-change-the-debate-on-guns/553937/](https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/). Dr. Garen  
27 Wintemute of the University of California, Davis Medical School testified before  
28 California’s Committee of the Whole that “[w]hen a high velocity bullet enters the

1 body, . . . it starts to ‘tumble’ as it moves through the tissue[,] . . . greatly increasing  
2 the amount of tissue which is damaged by direct contact with the bullet.” *Kasler*, 23  
3 Cal. 4th at 484. “Moreover, as this high-velocity missile travels through the tissue, it  
4 sends out pressure waves.” *Id.* Dr. Wintemute explained: “We’ve all seen pictures of  
5 airplanes breaking the sound barrier, and waves moving away from the plane. The  
6 same thing happens as these bullets travel through tissue; these pressure waves . .  
7 . create what is called a ‘temporary cavity’ behind the path of the bullet, which may be  
8 10 to 15 times—or even greater—the diameter of the bullet itself.” *Id.* “As a  
9 result . . . these high-velocity missiles can damage or destroy organs, break bones—  
10 including the femur, possibly the strongest bone in the body—without ever touching  
11 them.” *Id.* Exit wounds can be as much as a foot wide. Sher, *supra*; Gina Kolata &  
12 C.J. Chivers, *Wounds from Military-Style Rifles? ‘A Ghastly Thing to See’*, N.Y.  
13 Times (Mar. 4, 2018), *available at*  
14 <https://www.nytimes.com/2018/03/04/health/parkland-shooting-victims-ar15.html>.

15 Ultimately, a “low velocity bullet is like clipping the corner of your car” while a  
16 high velocity bullet is like “getting slammed by an 18-wheeler . . . . The high velocity  
17 bullet totals you.” Alex Daugherty, *Mangled Tissue and Softball-Sized Exit Wounds:  
18 Why AR-15 Injuries Are So Devastating*, Miami Herald (Feb. 24, 2018), *available at*  
19 <https://www.miamiherald.com/news/local/community/broward/article201949054.html>.  
20 While injuries from low-velocity bullets are generally survivable, injuries from the  
21 high-velocity bullets fired by the Regulated Assault Rifles—“the same sort of horrific  
22 injuries seen on battlefields”—are often not. Kolata and Chivers, *supra*. Were that not  
23 enough, the destructive power of semiautomatic rifle fire—capable of breaking the  
24 femur without touching it—increases the likelihood that bullets will speed through  
25 walls and obstacles, which can increase casualties in a mass shooting and the risk of  
26 striking bystanders to a criminal confrontation.

27 Finally, the additional features targeted by the AWCA in the Regulated Assault  
28 Rifles (such as folding stocks, pistol grips, and flash suppressors) enhance



1 concealability, stability, and control, making the weapons easier for mass shooters to  
 2 operate without sacrificing the speed of fire. *See* Allen Rostron, *Style, Substance, and*  
 3 *the Right to Keep and Bear Assault Weapons*, 40 Campbell L. Rev. 301, 327 (2018).  
 4 The best evidence that mass shooters value these features is that, as described *infra*,  
 5 section II.A.2, they select them, over and over again.<sup>5</sup>

## 6           **2. The Regulated Assault Rifles Are Disproportionately Used by** 7           **Criminals and in Mass Shootings**

8           As might be expected, these dangerous copies of military firearms are most  
 9 popular with criminals, especially mass shooters. Rostron, *supra*, at 322–23; Elzerie  
 10 de Jager et al., *Lethality of Civilian Active Shooter Incidents With and Without*  
 11 *Semiautomatic Rifles in the United States*, 320 J. of Am. Med. Ass’n 1034, 1034 (Sept.  
 12 11, 2018). As of 1993, only one percent of total firearms in the United States were  
 13 assault weapons, yet they comprised over eight percent of guns traced by law  
 14 enforcement. Rostron, *supra*, at 322. Researchers have also found that firearm  
 15 purchasers with criminal histories were more likely to buy assault weapons, and that  
 16 probability was even higher if purchasers had more serious criminal histories.  
 17 Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban:*  
 18 *Impacts on Gun Markets and Gun Violence, 1994-2003*, Jerry Lee Ctr. Of Criminology  
 19 (June 2004) at 17–18 (citing Wintemute et al., *Criminal Activity and Assault-Type*  
 20 *Handguns: A Study of Young Adults*, Ann. Emerg. Med. (July 1998)).

21           Most notably, these weapons have been used in many of the deadliest shootings  
 22 in United States history: in El Paso, Parkland, Sutherland Springs, Las Vegas, Orlando,

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24           <sup>5</sup> Perpetrators of four of the five deadliest shootings in modern American history  
 25 used assault-style weapons incorporating or modified with one or more of these  
 26 features. The Las Vegas shooter used AR-15 style rifles with a forward grip; the  
 27 Orlando shooter used a Sig Sauer “concealable” assault weapon with a pistol grip  
 28 and collapsible stock; the Sandy Hook shooter used a Bushmaster Model XM15-  
 E2S semiautomatic rifle with a pistol grip; and the Sutherland Springs shooter used  
 a Ruger AR-556 rifle, which has a pistol grip and flash suppressor. *See High-*  
*Capacity Ammunition Magazines*, Violence Policy Center (Feb. 15, 2019),  
*available at* [http://www.vpc.org/fact\\_sht/VPCshootinglist.pdf](http://www.vpc.org/fact_sht/VPCshootinglist.pdf).

1 San Bernardino, Sandy Hook, and Aurora. *Id.* at 330; de Jager et al., *supra*, at 1034.  
2 A recent study published in the Journal of the American Medical Association found  
3 that 24.6% of active shooter incidents involved a semi-automatic rifle. About 80% of  
4 all rifles used by active shooters were semi-automatic, which is a far greater share than  
5 the percentage of total rifles in circulation that are semi-automatic. De Jager et al.,  
6 *supra*, at 1034 (providing data). Shootings involving a semi-automatic rifle resulted in  
7 82% more people wounded and 71% more killed. *Id.* The deadlier the shooting, the  
8 higher the likelihood that the shooter used a semiautomatic rifle. *Id.*

9 Criminals (including mass shooters) choose these weapons because they are  
10 effective (in terms of the number and likelihood of casualties) and because the  
11 weapons' military style makes them particularly intimidating to intended victims.  
12 Rostron, *supra*, at 329–30. That advantage is not merely “cosmetic.” It has a real and  
13 damaging effect. Intimidation not only allows shooters to carry out their attacks with  
14 less chance of resistance, it means victims die in fear and survivors are left  
15 traumatized. Fear has physical and psychological consequences: post-traumatic stress  
16 disorders linked to mass shootings last longer and are more debilitating for those  
17 survivors who were in closer proximity to the shooter and feared for their lives. *See*  
18 Amy Novotney, *What Happens to the Survivors*, 49 Monitor on Psychol. 36 (Sep.  
19 2018), available at <https://www.apa.org/monitor/2018/09/survivors>.

20 Experts also suggest that the military style fuels a potential shooter's violent  
21 fantasies and may “embolden [him] to undertake a mass shooting spree he otherwise  
22 might not have attempted.” Rostron, *supra*, at 329. Weapons like the Regulated  
23 Assault Rifles appeal to perpetrators of mass shootings because they are uniquely  
24 deadly—and they are uniquely deadly, in part, because they appeal to perpetrators of  
25 mass shootings.

26 **3. The Regulated Assault Rifles Are Not Suited for Sporting or Self-**  
27 **Defense**

1 As discussed, weapons like the Regulated Assault Rifles are more effective at  
2 inflicting “more wounds, more serious, in more victims.” H. Rep. No. 103-489, at 18.  
3 For hunting and self-defense, however, they are no more effective and are in some  
4 ways less useful. For example, the last state to legalize semiautomatic rifles like the  
5 AR-15 for big game hunting did so despite feedback that hunters did not need or want  
6 them. Maddie Crocenzi, *Pa. Was the Last State to Allow Hunting With an AR-15, and*  
7 *Hunters are Split*, York Daily Record (Feb. 6, 2018), available at  
8 [https://www.ydr.com/story/news/2018/02/06/ar-15-s-legal-hunting-pa-but-some-](https://www.ydr.com/story/news/2018/02/06/ar-15-s-legal-hunting-pa-but-some-hunters-dont-want-them/1036386001/)  
9 [hunters-dont-want-them/1036386001/](https://www.ydr.com/story/news/2018/02/06/ar-15-s-legal-hunting-pa-but-some-hunters-dont-want-them/1036386001/). And a high-velocity bullet that explodes bones  
10 and organs is no better for stopping a home intruder than a traditional firearm well-  
11 suited for this purpose. See Peter M. Rhee et al., *Gunshot Wounds: A Review of*  
12 *Ballistics, Bullets, Weapons, and Myths*, 80 J. Trauma Acute Care Surg. 853, 865  
13 (2016) (observing that law enforcement use shotguns for short-range combat and self-  
14 defense because it is “easier to aim and hit a target,” and the traditional shotgun, not an  
15 assault weapon, is arguably “the optimal weapon for home defense” for less  
16 experienced shooters too).

17 Furthermore, though these weapons are not more useful in these contexts, they  
18 certainly are more dangerous. Users are likely to fire more rounds (even when not  
19 needed), bystanders are more likely to be hit, and bystanders who are hit are more  
20 likely to be killed. See *supra* Section II.A.1.

#### 21 **4. The Regulated Assault Pistols and Shotguns Also Have Uniquely** 22 **Destructive Features, and Are Not Suited for Lawful Use**

23 The AWCA covers semiautomatic pistols enhanced with the same features that  
24 make the Regulated Assault Rifles the weapon of choice in gun massacres and criminal  
25 shootings—only packaged in a fully concealable pistol. Because these pistols are  
26 designed not to be fired from the shoulder, they evade the NFA’s definition of short-  
27 barreled rifles. But their short length paired with the number of rounds they fire mean  
28 they present a similar, if not identical, threat to public safety, as evidenced during the

1 2019 mass shooting in Dayton, Ohio, in which the perpetrator used an AR-style pistol  
2 to kill nine people and wound over a dozen in just 30 seconds. Bill Chappell, *The*  
3 *Pistol That Looks Like A Rifle: The Dayton Shooter's Gun*, NPR, Aug. 8, 2019,  
4 available at [https://www.npr.org/2019/08/08/748665339/the-pistol-that-looks-like-a-](https://www.npr.org/2019/08/08/748665339/the-pistol-that-looks-like-a-rifle-the-dayton-shooters-gun)  
5 [rifle-the-dayton-shooters-gun](https://www.npr.org/2019/08/08/748665339/the-pistol-that-looks-like-a-rifle-the-dayton-shooters-gun).<sup>6</sup> Conversely, such pistols have no demonstrated value  
6 for responsible self-defense; weapons reviewers have noted that instructors generally  
7 do not even offer self-defense courses with AR-style pistols. See B. Gil Horman, *AR-*  
8 *15 Pistols for Home Defense?*, American Rifleman, Nov. 28, 2016, available at  
9 [https://www.americanrifleman.org/articles/2016/11/28/ar-15-pistols-for-home-](https://www.americanrifleman.org/articles/2016/11/28/ar-15-pistols-for-home-defense/)  
10 [defense/](https://www.americanrifleman.org/articles/2016/11/28/ar-15-pistols-for-home-defense/).

11 The AWCA's prohibition on high-capacity shotguns similarly targets weapons  
12 that are unreasonably dangerous and not suited for lawful purposes. The Regulated  
13 Shotguns include those modeled after the Street Sweeper, discussed *supra*: a combat-  
14 grade weapon used by militaries and international law enforcement for riot control.  
15 The gun industry claims that the weapons' design modifications means they are not  
16 "destructive devices" under the NFA, but the Bureau of Alcohol, Tobacco & Firearms  
17 still bars their import on grounds that they serve no sporting purpose. See, e.g., Max  
18 Slowik, *UTS-15 Production Starting in US*, Guns.com, May 2, 2012, available at  
19 [https://www.guns.com/news/2012/05/02/utas-makina-producing-uts-15-shotguns-in-](https://www.guns.com/news/2012/05/02/utas-makina-producing-uts-15-shotguns-in-us-des-plaines-il)  
20 [us-des-plaines-il](https://www.guns.com/news/2012/05/02/utas-makina-producing-uts-15-shotguns-in-us-des-plaines-il). These high-capacity shotguns share the Street Sweeper's firepower  
21 and ability to hold a dozen rounds or more. The weapons' history and design, and the  
22  
23

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24  
25 <sup>6</sup> Unsurprisingly, these pistols have been used to carry out other devastating attacks as  
26 well. Last year, a Milwaukee man suspected of illegal gun and drug dealing used  
27 an AK-47 semiautomatic pistol to murder a police officer, puncturing the officer's  
28 aorta and both lungs with a single shot. Rick Romell, *Jordan Fricke Fired AK-47*  
*Pistol Through Door at Officer Matthew Rittner, Criminal Complaint Says*,  
Milwaukee J. Sentinel, Feb. 10, 2019, available at  
[https://www.jsonline.com/story/news/2019/02/10/suspected-killer-milwaukee-](https://www.jsonline.com/story/news/2019/02/10/suspected-killer-milwaukee-police-officer-charged-1st-degree-murder/2822223002/)  
[police-officer-charged-1st-degree-murder/2822223002/](https://www.jsonline.com/story/news/2019/02/10/suspected-killer-milwaukee-police-officer-charged-1st-degree-murder/2822223002/).

1 way they are marketed, underscores that they are designed for killing enemies on the  
2 battlefield or violently suppressing mobs, not self-defense.<sup>7</sup>

3 **B. The AWCA Is a Reasonable and Tailored Response to a Compelling State**  
4 **Interest in Public Safety**

5 The AWCA’s constitutionality turns on “whether the challenged law burdens  
6 conduct protected by the Second Amendment,” *Fyock v. Sunnyvale*, 779 F.3d 991, 996  
7 (9th Cir. 2015) (internal quotation marks and citation omitted), and if so, “what level  
8 of scrutiny should be applied” and whether it survives such scrutiny. *Id.*

9 The AWCA does not burden conduct protected by the Second Amendment.  
10 “The Second Amendment right is ‘not a right to keep and carry any weapon  
11 whatsoever in any manner whatsoever and for whatever purpose.’” *Id.* at 996 (quoting  
12 *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). “Thus, longstanding  
13 prohibitions on the possession of ‘dangerous and unusual weapons’ have uniformly  
14 been recognized as falling outside the scope of the Second Amendment.” *Id.* at 997  
15 (quoting *Heller*, 554 U.S. at 625). The semiautomatic military-style rifles, pistols, and  
16 high-capacity shotguns regulated by the AWCA have little (if any) connection to the  
17 arms protected by the Second Amendment. They are far more similar to those  
18 weapons “specifically designed for military use and . . . employed in a military  
19 capacity”—the arms that the Supreme Court held in *Heller* are not the “arms”  
20 protected by the Second Amendment’s “right to bear arms.” 554 U.S. at 581; *see also*  
21 *Kolbe*, 849 F.3d at 135–37.

22 Even if the Court finds that the AWCA governs weapons within the scope of the  
23 Second Amendment, it should evaluate the law under intermediate scrutiny. The  
24 appropriate level of scrutiny is determined by “how closely the law comes to the core  
25

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26 <sup>7</sup> *See, e.g.*, USA Gun Shop, *23 High Capacity Tactical Shotguns for Sale in 2019*  
27 (accessed Jan. 14, 2019), [https://www.usa-gun-shop.com/7-badass-tactical-](https://www.usa-gun-shop.com/7-badass-tactical-shotguns-for-home-defense-mag-capacity/)  
28 shotguns-for-home-defense-mag-capacity/ (touting weapons described as “total  
combat shotgun[s],” a shotgun that “could be a 50-round weapon of mass  
destruction,” and a “civilian combat shotgun” with a “short barrel [that] turns  
serious buckshot into pure evil at close quarters”).

1 of the Second Amendment right” and “how severely, if at all, the law burdens that  
2 right.” *Fyock*, 779 F.3d at 998–99. The AWCA does not reach the core Second  
3 Amendment right — “the right of law-abiding, responsible citizens to use arms in  
4 defense of hearth and home,” *Heller*, 554 U.S. at 634–35 — because it in no way  
5 prevents “law-abiding, responsible citizens” from generally keeping firearms in their  
6 home for self-defense. The AWCA also has no substantial effect on “the ability of  
7 law-abiding citizens to possess the ‘quintessential self-defense weapon’—the  
8 handgun.” *Fyock*, 779 F.3d at 999. Although the AWCA restricts a limited class of  
9 pistols, “the plaintiffs admit that they are able to buy an operable handgun suitable for  
10 self-defense—just not the exact gun they want.” *Pena v. Lindley*, 898 F.3d 969, 978  
11 (9th Cir. 2018) (noting that “[p]urchasers have adduced little evidence that the  
12 handguns unavailable for purchase in California are materially more effective for self-  
13 defense than handguns currently for sale in the state”).

14 To be sure, the Regulated Assault Rifles and the Regulated Assault Shotguns  
15 and Pistols *could* be used for home or self-defense. But the mere possibility that a  
16 weapon could be used for this purpose does not immunize it from all state regulation.  
17 Under that rationale, “any type of firearm possessed in the home would be protected  
18 merely because it could be used for self-defense.” *United States v. Marzzarella*, 614  
19 F.3d 85, 94 (3d Cir. 2010). Nor does a weapon’s potential usefulness in a militia or  
20 military insulate it from regulation (*cf.* First Am. Compl. ¶ 42); otherwise, the Second  
21 Amendment would permit unrestricted civilian possession of weapons like machine  
22 guns and missiles. *Heller* confirmed that governments may bar citizens from  
23 possessing machine guns and other “sophisticated arms” for use “against modern-day  
24 bombers and tanks,” even if a modern-day militia might require them. 554 U.S. at  
25 627.

26 Even if the AWCA implicated the core Second Amendment right, however, the  
27 burden it imposes is minimal. The law “bans only certain military-style weapons and  
28 detachable magazines, leaving citizens free to protect themselves with a plethora of

1 other firearms and ammunition.” *Kolbe v. Hogan*, 849 F.3d 114, 138 (4th Cir. 2017)  
2 (en banc). Nor does the AWCA categorically “ban ‘an entire class of arms.’” *New*  
3 *York State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 260 (2d Cir. 2015). This  
4 limited scope “makes the restrictions substantially less burdensome,” since “numerous  
5 alternatives remain for law-abiding citizens to acquire a firearm for self-defense.” *Id.*  
6 Rather, California has “ban[ned] only a limited subset of semiautomatic firearms,  
7 which contain one or more enumerated military-style features.” *Id.* Californians  
8 remain free to protect themselves with a wide range of other firearms and ammunition,  
9 including traditional shotguns, semiautomatic weapons with fixed magazines, and  
10 semiautomatic weapons with detachable magazines that lack parts deemed more  
11 dangerous by the California legislature.

12 Other courts have overwhelmingly agreed that targeted legislation regulating  
13 semiautomatic assault weapons is subject to, at most, intermediate scrutiny. *See, e.g.,*  
14 *Kolbe*, 849 F.3d at 138–39; *New York State Rifle*, 804 F.3d at 258–61; *Heller v.*  
15 *District of Columbia*, 670 F.3d 1244, 1256–58 (D.C. Cir. 2011). Because the AWCA  
16 does not closely affect “the core of the Second Amendment right,” and does not  
17 “severely . . . burden[] that right,” *Fyock*, 779 F.3d at 998, the strictest standard that  
18 should be applied to the AWCA is intermediate scrutiny.

19 **1. The AWCA Furthers the Substantial Governmental Interest in**  
20 **Reducing Gun Violence**

21 California had ample reason to conclude that the AWCA’s prohibition of private  
22 possession of military-style weapons serves the State’s compelling interest in reducing  
23 the frequency and lethality of gun violence. Overwhelming evidence supports this  
24 conclusion. Therefore the AWCA readily withstands intermediate scrutiny.

25 The intermediate scrutiny test is “not a strict one,” *Silvester v. Harris*, 843 F.3d  
26 816, 827 (9th Cir. 2016), and requires “(1) the government’s stated objective to be  
27 significant, substantial, or important; and (2) a reasonable fit between the challenged  
28 regulation and the asserted objective.” *Fyock*, 779 F.3d at 1000. Intermediate scrutiny

1 “does not require the least restrictive means of furthering a given end”; only that the  
2 challenged law “promote[] a substantial government interest that would be achieved  
3 less effectively absent the regulation.” *Id.* The State may use “any evidence  
4 reasonably believed to be relevant to substantiate its important interests,” *id.*, and  
5 “reasonable inference[s]” from such evidence should be credited, *Mahoney v. Sessions*,  
6 871 F.3d 873, 883 (9th Cir. 2017).

7 California’s stated objective is significant, substantial, *and* important. The  
8 California legislature sought to address “[t]he shooting incident in Stockton, the drive-  
9 by shootings that have been going on in Southern California at an alarming rate, the  
10 number of police officers who have been the victims of semi-automatic weapons, [] the  
11 ‘stats’ that now show the alarming group of arrests that are taking place, and [the fact  
12 that] when the items are confiscated, on many, many occasions those items have turned  
13 out to be semi-automatic weapons.” *Kasler*, 23 Cal. 4th at 482 (quoting Speaker of the  
14 Assembly Willie L. Brown, Jr. on the purpose of the “extraordinary” session of the  
15 California State Assembly . . . as a Committee of the Whole”).

16 To address assault weapons’ enormous public safety threat, the California  
17 legislature enacted the AWCA. *See* Cal. Penal Code § 30505 (“The Legislature hereby  
18 finds and declares that the proliferation and use of assault weapons poses a threat to the  
19 health, safety, and security of all citizens of this state . . .”). California’s purpose in  
20 banning possession of these weapons—promoting public safety and reducing gun  
21 violence—is a substantial interest. *See, e.g., Fyock*, 779 F.3d at 1000 (explaining that  
22 the State’s interest in “promoting public safety,” “reducing violence crime,” and  
23 “reducing the harm and lethality of gun injuries” are “substantial and important  
24 government interests”); *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 969  
25 (9th Cir. 2014) (“It is self-evident that [the State’s] interest in reducing the fatality of  
26 shootings is substantial.”).

27 And there is a reasonable fit between the AWCA and these important State  
28 interests. The AWCA bans semiautomatic rifles and pistols with military features and



1 an uncommon class of shotguns with military-grade firepower. As demonstrated *supra*  
2 in Section A, these are all particularly dangerous military-style devices designed to  
3 inflict mass casualties. They pose real and immediate threats to public safety. Absent  
4 the AWCA, California’s interests in public safety and reducing gun violence plainly  
5 “would be achieved less effectively.” *Fyock*, 779 F.3d at 1000.

6 Case law and empirical evidence confirm the reasonable fit between the AWCA  
7 and California’s substantial interests. Courts have upheld similar assault weapons  
8 statutes under intermediate scrutiny, recognizing that the Second Amendment allows  
9 reasonable restrictions on semiautomatic weapons with military-style features. As  
10 these courts have concluded, there is a reasonable fit between assault weapons bans  
11 and the government interest in reducing gun violence: assault weapons make mass  
12 shootings and criminal violence more lethal.

13 For example, in *New York State Rifle*, the Second Circuit upheld New York’s  
14 and Connecticut’s assault weapons bans because they prohibited semiautomatic rifles  
15 with “enumerated military-style features” and had “a capability for lethality—more  
16 wounds, more serious, in more victims—far beyond that of other firearms in general.”  
17 804 F.3d at 262. The Second Circuit accordingly upheld the challenged weapons bans  
18 under intermediate scrutiny because they were “substantially” related to the States’  
19 interests in mitigating the risk and lethality of mass shootings. *Id.* at 262–63.

20 Similarly, in *Kolbe*, the Fourth Circuit upheld Maryland’s assault weapons ban, which  
21 prohibited semiautomatic weapons that included “features designed to achieve their  
22 principal purpose—‘killing or disabling the enemy’ on the battlefield.” 849 F.3d at  
23 124–25, 139–40. In light of the unique lethality of the banned assault weapons, the  
24 Fourth Circuit concluded that there was “a reasonable, if not perfect, fit between the  
25 [ban] and Maryland’s interest in protecting public safety.” *Id.* at 140–41.

26 In sum, California’s Legislature made the reasonable choice to prohibit access to  
27 an extremely dangerous subset of weapons that facilitate mass killings. The record  
28 available to the legislature and the evidence catalogued in this brief demonstrates that

1 California’s stated interest of addressing gun violence would be achieved less  
2 effectively—far less effectively—absent the AWCA, which is sufficient to uphold the  
3 law under intermediate scrutiny.

4 **2. The AWCA Is Also Narrowly Tailored to Achieve a Compelling**  
5 **Government Interest**

6 The AWCA need only satisfy strict scrutiny if the law *severely* burdens the core  
7 Second Amendment right to self-defense in the home. As discussed, the AWCA does  
8 not. *See, e.g., United States v. Torres*, 911 F.3d 1253, 1253 (9th Cir. 2019); *Kolbe*,  
9 849 F.3d at 138. Yet the AWCA would survive even strict scrutiny.

10 Strict scrutiny in the Second Amendment context requires that a statute be  
11 “narrowly tailored to achieve a compelling governmental interest.” *Kolbe*, 849 F.3d at  
12 133 (quoting *Abrams v. Johnson*, 521 U.S. 74, 82 (1997)). The AWCA meets even  
13 this higher bar because its restrictions are narrowly tailored in furtherance of  
14 California’s compelling interests in reducing gun violence, including the frequency and  
15 severity of mass shootings. *See United States v. Salerno*, 481 U.S. 739, 750 (1987)  
16 (noting that “the Government’s general interest in preventing crime” is compelling);  
17 *see also* 2015 California Senate Bill No. 880, California 2015-2016 Regular Session.

18 California’s compelling interest in regulating assault weapons is clear. Gun  
19 violence exacts an enormous toll on Californians. “In recent years, California has  
20 experienced an average of 1,327 gun-related homicides, 1,553 gun-related suicides,  
21 4,284 nonfatal interpersonal shootings, and 1860 accidental shootings per year.”  
22 Giffords Law Center, *The Economic Cost of Gun Violence in California*,  
23 [https://lawcenter.giffords.org/wp-content/uploads/2018/03/Economic-Cost-of-Gun-](https://lawcenter.giffords.org/wp-content/uploads/2018/03/Economic-Cost-of-Gun-Violence-in-California.pdf)  
24 [Violence-in-California.pdf](https://lawcenter.giffords.org/wp-content/uploads/2018/03/Economic-Cost-of-Gun-Violence-in-California.pdf). Assault weapons have had a particularly devastating role  
25 in California. A month before the California legislature considered the AWCA, a man  
26 used a semiautomatic AK-47 to rake an elementary schoolyard in Stockton, California  
27 where 300 kindergartners to third graders were enjoying recess. Five children, ages 6  
28 to 9, died; one teacher and 29 children were wounded. *Kasler*, 23 Cal. 4th at 483.

1 This was not the only recent incident. After telling his wife he was “going to  
2 hunt humans,” a man opened fire in a McDonalds with a 9-millimeter UZI submachine  
3 gun, among other weapons. *Id.* With his Uzi “[h]e fired nearly hundreds of rounds.  
4 The gunfire was so heavy that police at first assumed that more than one gunman was  
5 inside.” *Id.* Twenty-one people died and 15 people were injured.

6 Then-California Attorney General John Van de Kamp testified before the  
7 Committee of the Whole that semi-automatic military assault rifles were “the weapons  
8 of choice” for gang members, and “it had ‘become fashionable among hard-core  
9 members of the Crips gang to spray a stream of bullets in hopes of taking down one  
10 rival gang member.’” *Id.* at 484. He said, “the young killers even have a phrase for  
11 [the collateral damage that may result]. They say, ‘I spray the babies to the eighties.’”  
12 *Id.* Lieutenant Bruce Hagerty, a Los Angeles police officer, described a Good Friday  
13 gang shooting that killed children, teens, and the elderly as a “war scene.” *Id.* at 485.

14 In addition to the sheer carnage, gun violence has devastating financial costs.  
15 “The 9,980 shootings that occur each year in California are a serious drain on the  
16 state’s economy.” *Id.* Gun violence costs California over \$6.5 billion per year, due to  
17 losses from healthcare, law enforcement, criminal justice, and lost income. *Id.*

18 The AWCA is the least restrictive means of furthering California’s interest in  
19 mitigating the humanitarian and economic costs of mass shootings. For example, the  
20 California legislature banned only those weapons that it found did not have a  
21 legitimate sporting use. *See, e.g.,* 2015 California Senate Bill No. 880, California  
22 2015-2016 Regular Session (“[B]ullet button-equipped semi-automatic weapons have  
23 no legitimate use for sport hunters or competitive shooters.”). The law prohibits a  
24 fraction of available firearms: high-capacity shotguns and those semiautomatic rifles  
25 and pistols with military-style features, including detachable magazines. These  
26 weapons facilitate rapid devastation of human life, which the California legislature  
27 found uniquely dangerous.

28

1 In drafting the AWCA, “[t]he Legislature was . . . confronted with two  
2 conflicting societal interests, both of which it recognized as legitimate—the interest of  
3 all citizens in being protected against the use of semiautomatic weapons by criminals,  
4 and the interest of some citizens in using semiautomatic weapons for hunting, target  
5 practice, or other legitimate sports or recreational activities.” *Kasler*, 23 Cal. 4th at  
6 488. “[T]o accommodate those conflicting interests,” the legislature found that it was  
7 “the most effective way to identify and restrict a *specific class* of semiautomatic  
8 weapons.” *Id.* (emphasis added). Rather a categorical ban, the legislature made  
9 feature-by-feature decisions and then determined that *each* other firearm listed in the  
10 AWCA “has such a high rate of fire and capacity for firepower that its function as a  
11 legitimate sports or recreational firearm is substantially outweighed by the danger that  
12 it can be used to kill and injure human beings.” *Id.*; *see also* Cal. Penal Code § 30505,  
13 referencing *id.* § 30510 (current version of statute cited in *Kasler*). The AWCA is  
14 therefore a quintessential example of narrow tailoring.

### 15 3. This Court Should Defer to the Reasoned Decisions of the Legislature

16 State legislatures must have the leeway to make informed, predictive judgments  
17 about curbing gun violence, and legislative deference is particularly appropriate in this  
18 realm. Gun violence is a complex problem, and experts disagree on the most effective  
19 policy solution. States must be able to experiment with multiple, localized approaches.  
20 The Supreme Court has accordingly emphasized that the Second Amendment “limits  
21 (but by no means eliminates) [the States’] ability to devise solutions to social problems  
22 that suit local needs and values.” *McDonald v. Chicago*, 561 U.S. 742, 785 (2010); *see*  
23 *also Heller*, 554 U.S. at 636 (reserving to state legislatures “a variety of tools for  
24 combating” gun violence); *Jackson*, 746 F.3d at 961 (localities “must be allowed a  
25 reasonable opportunity to experiment with solutions to admittedly serious problems”).

26 Even if California’s law is not a perfect solution to the gun violence problems  
27 the Legislature identified, “the Legislature was not constitutionally compelled to throw  
28 up its hands just because a perfectly comprehensive regulatory scheme was not

1 politically achievable,” *Kasler*, 23 Cal. 4th at 487. Targeted steps to achieve  
2 incremental results are precisely the type of reasonable laws that are constitutionally  
3 permissible. *See, e.g., Mance v. Sessions*, 896 F.3d 699, 708 (5th Cir. 2018)  
4 (upholding interstate handgun sales restrictions under strict scrutiny because “a State  
5 need not address all aspects of a problem in one fell swoop; policymakers may focus  
6 on their most pressing concerns” (internal quotation marks omitted)); *New York State*  
7 *Rifle*, 804 F.3d at 263. Indeed, an incremental approach is necessary to keep up with  
8 innovations by gun manufacturers and sellers, some of which are only identified as  
9 dangerous or attractive to mass shooters after months or even years of sales and use.  
10 For example, states only banned machine guns after they were circulated widely and  
11 increasingly used in crimes. *See* Robert Spitzer, *Gun Law History in the United States*  
12 *and Second Amendment Rights*, 80 L. & Contemp. Probs. 55, 67–68 (2017).

13 This Court should not second-guess California’s policy judgment. Legislatures  
14 are “far better equipped than the judiciary to make sensitive public policy judgments”  
15 about the risks of gun violence and the dangers of specific firearm features. *Kachalsky*  
16 *v. Cty. of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012); *see also Pena v. Lindley*, 898  
17 F.3d 969, 979–80 (9th Cir. 2018) (courts “must allow the government to select among  
18 reasonable alternatives in its policy decisions” and “lack the means” to resolve “a  
19 policy disagreement that the California legislature already settled”). Those judgments  
20 should be reserved to elected state representatives who are directly accountable to the  
21 public. *See, e.g., Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir.  
22 2015) (the “best way to evaluate the relation among assault weapons, crime, and self-  
23 defense is through the political process and scholarly debate”). California found a  
24 narrowly tailored solution that balanced citizens’ Second Amendment rights with a  
25 compelling and urgent public safety interest. The AWCA’s narrow restrictions on  
26 certain especially dangerous semiautomatic weapons—precisely those that criminals  
27 repeatedly select for their value in boosting casualty counts and intimidating victims—  
28 should be upheld.

1 **C. Plaintiffs Rely on Dubious Evidence from a Widely Discredited Declarant**

2 In arguing that the AWCA does not survive heightened scrutiny, Plaintiffs rely  
 3 on a 64-paragraph declaration by economist John R. Lott. (*See* Dkt. 22-18 (Lott  
 4 Decl.)) Plaintiffs cite Mr. Lott extensively, including for the (incorrect) propositions  
 5 that there is “no demonstrable correlation” between assault weapon bans and “reducing  
 6 gun violence and/or mass shootings” (Pls. Prelim. Inj. Br. at 3) and that no prospective  
 7 mass shooter would “pause for a second at the prospect of also violating the AWCA”  
 8 (Pls. Prelim. Inj. Br. at 24–25 n.13). In fact, as explained above and in the State’s  
 9 brief, social science research establishes that assault weapons play a disproportionate  
 10 role in fueling violent crimes, homicide, and gun massacres and that restricting them  
 11 will likely reduce these incidents’ frequency and lethality. Furthermore, contrary to  
 12 Lott’s assumption that criminal shooters will invariably evade the law, FBI data on  
 13 active shootings from 2000 to 2013 demonstrated that “only very small percentages [of  
 14 shooters] obtain[ed] a firearm illegally.” U.S. Dep’t of Justice, Federal Bureau of  
 15 Investigation, *A Study of the Pre-Attack Behaviors of Active Shooters in the United*  
 16 *States Between 2000 and 2013*, at 7 (June 2018), [https://www.fbi.gov/file-](https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view)  
 17 [repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view](https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view).<sup>8</sup>

18 Yet it is unsurprising that Mr. Lott’s view opposes this wide body of research.  
 19 Mr. Lott makes his living offering intellectually dubious and scientifically flawed  
 20 opinions on firearm policy. His declaration in this case should be given no weight.

21 **1. Mr. Lott’s Research Methodologies Have Been Widely Criticized**

22 Mr. Lott’s research methodology on firearm restrictions’ impact on crime rates  
 23 has been criticized as fundamentally flawed. Academics including Stanford  
 24 University’s Abhay Aneja and John Donohue reviewed Mr. Lott’s research on “right-  
 25 \_\_\_\_\_

26 <sup>8</sup> Lawmakers therefore can assume that restricting access to assault weapons will deter  
 27 their criminal use—precisely the type of reasonable assumption that underlies virtually  
 28 all criminal laws and regulations aimed at regulating dangerous products. *Accord, e.g.,*  
*Nat’l Paint & Coatings Ass’n v. City of Chicago*, 45 F.3d 1124, 1128–29 (7th Cir.  
 1995) (“Legislatures often enact laws that reduce but cannot eliminate the effects of  
 movements across municipal and state borders.”).

1 to-carry” laws and the National Research Council’s subsequent critical evaluation of  
2 that research, concluding that Mr. Lott’s data set had “several coding errors” that  
3 skewed his conclusions. They highlighted incorrect coding for the year in which  
4 several states adopted right-to-carry laws and other key variables. Abhay Aneja et al.,  
5 *The Impact of Right-to-Carry Laws and the NRC Report*, 13 Am. Law & Econ. Rev.  
6 565, 585, 613–14 (2011). Moreover, as Drs. Aneja and Donohue observed, Mr. Lott  
7 neglected “major factors influencing the pattern of U.S. crime in recent decades,” such  
8 as increases in the prison and police populations. *Id.* at 614–15. Professor Donohue  
9 published a separate critique with Yale Law Professor Ian Ayres, concluding that Mr.  
10 Lott’s research had “not withstood the test of time,” since his results “collapsed” when  
11 “more complete” data sets were used in plausible models. Ian Ayres et al., *Shooting*  
12 *Down the “More Guns, Less Crime” Hypothesis*, 55 Stan. L. Rev. 1193, 1296 (2003).  
13 They also noted significant coding errors in Mr. Lott’s past work, including one that,  
14 when fixed, undermined his claim that “right to carry” laws reduce crime. *Id.* at 1261.

15 Mr. Lott has also adopted conveniently crafted definitions for what constitute  
16 “mass shootings” and “gun-free zones,” and there are significant discrepancies  
17 between his research—which he claimed showed that 94% of mass shootings since  
18 1950 occurred in gun free zones—and other experts’, who have found that only 10% of  
19 mass shootings occur in gun-free zones. *See, e.g.*, Meg Kelly, *Do 98 Percent of Mass*  
20 *Public Shootings Happen in Gun-Free Zones?*, Wash. Post, May 10, 2018, available at  
21 [https://www.washingtonpost.com/news/fact-checker/wp/2018/05/10/do-98-percent-of-](https://www.washingtonpost.com/news/fact-checker/wp/2018/05/10/do-98-percent-of-mass-public-shootings-happen-in-gun-free-zones)  
22 [mass-public-shootings-happen-in-gun-free-zones](https://www.washingtonpost.com/news/fact-checker/wp/2018/05/10/do-98-percent-of-mass-public-shootings-happen-in-gun-free-zones). For example, Mr. Lott excludes  
23 from the definition of mass shootings those “that resulted from gang or drug violence  
24 or during the commission of a crime,” as well as shootings in residences. *Id.* As for  
25 gun-free zones, Mr. Lott has included areas where military and police are regularly  
26 present and permitted to carry guns. *Id.* This bizarre definition leads him to claim  
27 shootings occurred in gun-free zones when in fact they happened in places where guns  
28 were actually present—such as Fort Hood, the Washington Navy Yard, and Pensacola

1 Naval Base. To support his outlier claims about the efficacy of gun laws, Mr. Lott  
2 relies on nonsensical assumptions that diverge from other experts.

3 **2. Mr. Lott Avoids Peer Review and Has Failed to Publish Source Data**

4 Mr. Lott is not affiliated with a university, and “[l]ittle of his gun research has  
5 been published in peer-reviewed journals.” Peter Moskowitz, *Inside the Mind of*  
6 *America’s Favorite Gun Researcher*, Pacific Standard (updated Sept. 23, 2018),  
7 available at [https://psmag.com/magazine/inside-the-mind-of-americas-favorite-gun-](https://psmag.com/magazine/inside-the-mind-of-americas-favorite-gun-researcher)  
8 *researcher*. The Supreme Court recognizes that peer review—*i.e.*, “submission to the  
9 scrutiny of the scientific community”—increases reliability and “the likelihood that  
10 substantive flaws in methodology will be detected.” *Daubert v. Merrell Dow Pharm.,*  
11 *Inc.*, 509 U.S. 579, 593–94 (1993). Mr. Lott’s failure to publish peer-reviewed work  
12 calls into question the reliability of his methods and conclusions. Mr. Lott apparently  
13 shares this concern, having publicly claimed he was published in a peer-reviewed  
14 journal that, in reality, rejected his work. Evan Defilippis et al., *The GOP’s Favorite*  
15 *Gun ‘Academic’ is a Fraud*, ThinkProgress, Aug. 12, 2016, available at  
16 <https://thinkprogress.org/debunking-john-lott-5456e83cf326>.

17 Moreover, in order for a scientific finding to be credible, it must be replicable.  
18 But Mr. Lott is known for publishing research without source data needed to test it.  
19 For instance, Mr. Lott’s was unable to produce any poll data underlying a 1997 survey  
20 on the protective effect of brandishing a weapon. Claudia Deane, *A Fabricated Fan*  
21 *and Many Doubts*, Wash. Post, Feb. 11, 2003, available at  
22 [https://www.washingtonpost.com/archive/politics/2003/02/11/a-fabricated-fan-and-](https://www.washingtonpost.com/archive/politics/2003/02/11/a-fabricated-fan-and-many-doubts/b086b96f-0c86-417e-afe9-c4623d5e936f/)  
23 *many-doubts/b086b96f-0c86-417e-afe9-c4623d5e936f/. Mr. Lott claimed he lost the  
24 data in a computer crash. *Id.* Experts find this explanation implausible, including  
25 because “all evidence of a study with 2,400 respondents does not just disappear when a  
26 computer crashes”; there should still be some records on survey funding, the survey  
27 instrument, or individual responses. See James Lindgren, *Comments on Questions*  
28 *About John R. Lott’s Claims Regarding a 1997 Survey*, Jan. 17, 2003, available at*



1 <https://web.archive.org/web/20130304061928/http://www.cse.unsw.edu.au/~lambert/gu>  
2 [ns/lindgren.html](https://web.archive.org/web/20130304061928/http://www.cse.unsw.edu.au/~lambert/gu).

3 **3. Mr. Lott Has Committed Ethical Violations to Defend His Work.**

4 Mr. Lott’s credibility is further undermined by a pattern of unethical behavior.  
5 For example, Mr. Lott assumed a fictional identity to post online praise for himself and  
6 defend himself from critics, even masquerading as a former student and posting: “he  
7 was the best professor I ever had.” Richard Morin, *Scholar Invents Fan to Answer His*  
8 *Critics*, Wash. Post, Feb. 1, 2003, available at [https://www.washingtonpost.com/](https://www.washingtonpost.com/archive/lifestyle/2003/02/01/scholar-invents-fan-to-answer-his-critics/f3ae3f46-68d6-4eee-a65e-1775d45e2133/)  
9 [archive/lifestyle/2003/02/01/scholar-invents-fan-to-answer-his-critics/f3ae3f46-68d6-](https://www.washingtonpost.com/archive/lifestyle/2003/02/01/scholar-invents-fan-to-answer-his-critics/f3ae3f46-68d6-4eee-a65e-1775d45e2133/)  
10 [4eee-a65e-1775d45e2133/](https://www.washingtonpost.com/archive/lifestyle/2003/02/01/scholar-invents-fan-to-answer-his-critics/f3ae3f46-68d6-4eee-a65e-1775d45e2133/). Mr. Lott also wrote a first-person narrative claiming to be  
11 Dartmouth student and stalking victim Taylor Woolrich, criticizing Dartmouth for not  
12 letting her carry a gun for self-defense. Evan Defilippis, et al., *supra*.

13 In short, Mr. Lott’s work is highly suspect. Experts have widely critiqued his  
14 methodology, pointing out coding errors, biases, and bizarre definitions and  
15 assumptions. He has published his research without peer-review and has been unable  
16 to produce his source data. Finally, he is notorious for deceptive tactics such as  
17 posting under false identities. This Court should give no weight to Mr. Lott’s  
18 declaration.

19 Even if the Court credited some of Mr. Lott’s assertions, his arguments suggest  
20 at best that the effectiveness of assault weapons restrictions is subject to debate among  
21 experts. Disagreements among academics do not render California’s law  
22 unconstitutional: courts “do not demand of legislatures ‘scientifically certain criteria of  
23 legislation.’” *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 60 (1973) (internal citation  
24 omitted). When a state regulates “in areas fraught with medical and scientific  
25 uncertainties, legislative options must be especially broad.” *Marshall v. United States*,  
26 414 U.S. 417, 427 (1974); *Kansas v. Hendricks*, 521 U.S. 346, 360 n.3 (1997) (where  
27 psychiatric professionals joined conflicting amicus briefs, their disagreements “do not  
28 tie the State’s hands” in its policy choices). The conclusions of Plaintiffs’ experts,

1 including Mr. Lott, do not undermine the AWCA’s constitutionality in light of a record  
2 showing that California drew “reasonable inferences” from the wide body of research  
3 and expertise it considered. *Mahoney v. Sessions*, 871 F.3d 873, 883 (9th Cir. 2017).

4 **III. CONCLUSION**

5 For all the reasons stated above, we urge this Court to deny Plaintiffs’ motion for  
6 a preliminary injunction.

7  
8 Dated: January 24, 2019

Respectfully Submitted,

9  
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