

No. 19-56004

IN THE
United States Court of Appeals
for the Ninth Circuit

STEVEN RUPP, et al.,
Plaintiffs-Appellants

v.

XAVIER BECERRA, in his official capacity
as Attorney General of the State of California,
Defendant-Appellee.

On Appeal From the United States District Court
For the Central District of California (Hon. Josephine L. Staton)
No. 8:17-cv-00746

**BRIEF OF SURVIVORS OF THE 101 CALIFORNIA SHOOTING AND
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE AS *AMICI
CURIAE* IN SUPPORT OF APPELLEE AND AFFIRMANCE**

Hannah Shearer
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
268 Bush St. #555
San Francisco, CA 94104
(415) 433-2062

J. Adam Skaggs
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
223 West 38th St. #90
New York, NY 10018
(917) 680-3473

Scott A. Edelman
GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East
Los Angeles, CA 90067-3026
(310) 552-8500

Vivek R. Gopalan
Matthew C. Reagan
Zhen He Tan
GIBSON, DUNN & CRUTCHER LLP
555 Mission St., Ste. 3000
San Francisco, CA 94105
(415) 393-8200

Counsel for Amici Curiae

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Large-Capacity Ammunition Magazines, VIOLENCE POLICY CENTER
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Todd S. Purdum, *California Enacts the Toughest Ban on Assault Weapons*, N.Y. TIMES (Jul. 20, 1999).....26

Vanessa Vieties, *How to Cope with Fear of Public Places after Mass Shootings*, MEDICAL XPRESS (Aug. 27, 2019), <https://medicalxpress.com/news/2019-08-cope-mass.html>25

Why Regulate Guns, 48(4) J.L. MED. & ETHICS (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=359960321

IDENTITIES AND INTERESTS OF *AMICI CURIAE*¹

Amici curiae Michelle Scully Hobus, Steve Sposato, Carol Kingsley, Sheldon Siegel, Charles Ehrlich, and Cam Baker are survivors, relatives, and colleagues of the victims of the 101 California Street shooting, a gun massacre at a San Francisco law firm that remains the worst mass shooting in the city’s history. *Amici* have lost spouses, colleagues, and friends to the semi-automatic weapons that California’s Roberti-Roos Assault Weapons Control Act of 1989 (“AWCA”) prohibits. They submit this brief to remind the Court of the real human impact of gun violence, and the full scope of interests that laws like the AWCA protect.

Joining these *amici* is Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”). Giffords Law Center was founded by survivors of the 101 California shooting, including certain *amici* here and other members of the San Francisco legal community. Under its former names (the Legal Community Against Violence and the Law Center to Prevent Gun Violence), the organization supported the 1994 federal law restricting assault weapons. The group was renamed Giffords

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party contributed money intended to fund its preparation or submission. No person other than *amici* and their counsel contributed money intended to fund the preparation or submission of this brief. All parties consented to the filing of this brief.

Law Center to Prevent Gun Violence in October 2017 after joining forces with the gun-safety organization founded by former Congresswoman Gabrielle Giffords.

INTRODUCTION

Mass shootings have become endemic to American society. Over the past decade, they have occurred more often, killed more people, and made it glaringly clear that the devastating, military-grade weapons used to rapidly slaughter masses of people must be heavily regulated. California's AWCA was enacted to prevent individuals from accessing and using the specific weapons and features most commonly chosen by those who perpetrate mass shootings—those that allow gunmen to surreptitiously bring weapons into movie theatres, concert venues, or schools, and those that allow shooters to simply stand in one place and fire dozens of rounds in a virtually unceasing torrent.

Courts have consistently and correctly held that it is constitutional for states and localities to restrict the sale, possession, and distribution of the types of weapons regulated by the AWCA, in recognition that they kill more people, with greater ease, in faster succession, and in a more horrifying manner than the Second Amendment can tolerate. But missing from these decisions is a full depiction of the wreckage that shootings perpetrated with these weapons leave behind: the trauma endured by survivors; the broken families, tormented friends, and shuttered businesses; and the omnipresent fear and sadness that pervades communities in the wake of such events. The government's interest in regulating these weapons is thus at its zenith.

This brief presents the stories of survivors of the 101 California Street massacre, a 1993 mass shooting primarily at the law offices of Pettit & Martin in San Francisco, carried out with the same types of military-style weapons that the AWCA seeks to control. Their experiences bring into sharp relief that the impacts of gun violence do not stop when the final bullet is fired, or the final funeral held. They reverberate throughout the lives of the survivors, family members and friends of victims, and the community at large. And yet, at the same time, they spur those grappling with that pain into action—to use the democratic process to try to shield others from enduring the same horror.

This brief urges the Court to recognize that California’s interest in protecting its citizens from gun violence extends far beyond reducing the number of dead or injured. The state has equally compelling interests in preventing trauma to those left behind; in ensuring that people can enjoy places of work, worship, education, and entertainment without fear; and in safeguarding confidence in the democratic institutions on which citizens rely to protect themselves in the wake of mass shootings and everyday violence.

ARGUMENT

I. The Survivors, Relatives, Colleagues, and Community Members Affected by the 101 California Street Shooting.

On July 1, 1993, a “heavysset gunman stepped off an elevator and sprayed a downtown San Francisco high-rise law office with gunfire ... killing eight and wounding six.”² The shooting at a prominent law office in the heart of downtown San Francisco moved survivors, family members of victims, and the San Francisco legal community to seek change and protection through the democratic process. Their efforts contributed to the formation of some of the nation’s leading gun violence prevention organizations, and the passage of the federal assault weapons ban in 1994, amongst many other state and local gun safety laws.

The survivors of the 101 California massacre, and the widows and friends of those who were killed, are uniquely qualified to contribute to this nation’s discourse on the impacts of gun violence. Six of their stories are shared here.

A. Michelle Scully Hobus

In the early afternoon of July 1, 1993, Michelle Scully Hobus was visiting her husband John Scully, a young lawyer at Pettit & Martin, at his office to review some

² Tim O’Rourke, *Chronicle Covers: The 101 California shooting, a blood-soaked day in SF*, S.F. CHRON. (July 2, 2016), https://www.sfchronicle.com/chronicle_vault/article/Chronicle-Covers-The-101-California-shooting-23-8330249.php.

materials from their law library. Michelle—a lawyer as well—had married John about a year before, and many of John’s colleagues had attended their wedding in Hawaii.

Michelle was working in an empty office on the 34th floor when John burst in and told Michelle that “we need to get out of here” because someone had heard gunshots. Michelle assumed that, because it was near the 4th of July, it was probably nothing. She and John headed to the elevator bank. There, they saw David Sutcliffe—a law student from Colorado who was interning at the firm—walking towards the elevators, and another man walking towards them, who was wearing khaki pants, a white shirt, and what Michelle thought were suspenders. They were gun holsters. The man came right up to David Sutcliffe and shot him in the stomach.

Michelle and John looked at one another and didn’t say a word. They ran back to the office where Michelle had been working. The door didn’t lock. John tried to push the file cabinet to block the door, but it was too heavy. The gunman entered. Michelle crouched down on the floor, and John spread his body across the top of her. Michelle remembers looking up and seeing the barrel of the gun. And then came a rapid spray of bullets—really fast—and the smell of oil. John was laying on the ground in front her, with blood coming out of his nose and mouth. He asked Michelle if she had been shot, and she didn’t know. She realized that she had been shot in her right arm, and couldn’t move her right hand.

Michelle instinctively looked up and saw the gunman in the hallway. He had gone to the office next door and shot someone else. She thought he would come back for them, but it became quiet. Michelle could hear David Sutcliffe gasping in the hallway. She looked down at John and he said, "I'm dying, I love you." Using her left hand she grabbed the phone and called 911. The officers were hesitant to send help because they didn't know how many gunmen there were. Eventually, Michelle heard the voices of police and firemen in the stairwell. They took John to the building lobby, which had been converted into a triage center. John was taken to San Francisco General Hospital, but he was dead on arrival. He was 28.

Michelle and John's family suffered tremendously. John was one of seven children, who were all very close. His siblings and parents were devastated that their children and grandchildren would never get to meet their uncle, this incredible person. John's friends and colleagues have also carried that loss their entire lives. Michelle still sees John's old friends from all walks of life who are pained by what happened. "The effect didn't stop at the eight people who died, or those who were there and survived. It was exponential."

Michelle survived her bullet wounds but endured post-traumatic stress. After that day, she was in such a state of shock that she wasn't aware of what was going on around her. Even now, it is difficult for her to be in enclosed spaces from where she can't escape, and where someone might be hiding. She doesn't watch violent

movies. She couldn't handle it when her two sons wanted to play with toy guns growing up.

When Michelle came "out of the fog" of the shooting that killed John, she wanted to do something to prevent other families from going through the same excruciating pain her family had endured. She testified in front of the Senate Judiciary Committee as part of the effort to pass the federal assault weapons ban, and spoke with similar committees in Sacramento and before city councils. She found it cathartic. Advocacy work forced Michelle to talk about the incident, which helped her internalize it as real, not a bad nightmare. Being around other victims and survivors, who had also lost loved ones, was like being in a big support group.

When Michelle hears reports about young people being shot, and reflects on what happened to John, she thinks about lost potential. John was so much fun and such a smart person. He could have contributed so much to the legal community, and to his family, friends, and society in general. Michelle is heartened by the younger generation of advocates, who have taken up the mantle of preventing gun violence. And by the legislators who have the courage to speak out on this issue, even if it might not be popular with all their constituents.

B. Steve Sposato

Steve Sposato's wife, Jody Jones Sposato, was at Pettit & Martin on July 1, 1993 for the second day of her deposition as the plaintiff in a lawsuit. At around

3:00 pm, the gunman entered Jody's conference room, and rapidly shot her five times. Her last words were "I'm having trouble breathing," and then she died on the floor. Steve and Jody had a 10-month-old daughter, Meghan Marie.

Steve and his daughter's lives were shattered. Steve "tried to build a wall to prevent the shooting from defining him," but he now understands that it will never leave. Meghan is still wrestling with the impact. At the time of her mother's death, she was still breastfeeding and couldn't process what had happened. Steve remembers seeing 10-month-old Meghan constantly looking around the room, searching for her mother.

To Steve, the shooting was about the failure of a government to protect its people. He did not understand how it could be that assault weapons of the kind used to brutally murder his wife, seven others, and injure many more, were legal and readily available. These were the weapons used in Vietnam and Iraq, and in war films. They were built for combat.

After the shooting, Steve testified before the Senate Judiciary Committee in support of the federal assault weapons ban, carrying his daughter on his back as he spoke. He told the senators that he was not there to plead for their compassion, but in the hope that he regain his faith in government through the passage of sensible gun legislation. Afterwards, Steve continued to advocate for gun reforms, and received death threats as a result. They only served to encourage him. The passing

of the federal assault weapons ban instilled Steve, at least for the time, with a renewed faith in the power of government to protect its citizens.

To this day, Steve works with several gun violence prevention organizations, including the Brady Campaign and the Hope and Heal Fund. He remains “motivated to his core.” It is “bigger than him, his wife, and his daughter.” He feels a common thread between him, other survivors, and their relatives. They understand one another because they’ve all endured terrible tragedy. He has “watched too many kids put dirt on their mothers’ graves” to stop advocating for gun safety legislation.

Steve would have this Court understand that the AWCA is a model of what works in this country. It prevents the deaths of mothers and fathers, and safeguards their children’s right to a family.

C. Carol Kingsley

The afternoon of July 1, 1993, Carol thought that her husband, Jack Berman, was in Los Angeles. Jack was attending a deposition in San Francisco that morning, and was planning to be on a flight back to LA for a second deposition in the afternoon. But the first deposition ran long, and Jack delayed his flight. When Carol heard about the shootings happening at Pettit & Martin that day, she was disturbed. As a lawyer herself, she wondered whether she knew anyone working there. Jack was shot and killed in a conference room on the 34th floor while defending the

deposition of his client, Jody Jones Sposato. Carol and Jack's son, Zack, was 15 months old at the time.

The whole event was a “bomb” in Carol's family. Jack's parents were holocaust survivors; his mother survived death camps, and his father had hid from the Nazis in Russia. They came to a country that was supposed to be peaceful, free, and full of opportunity. They were devastated. Their friends, colleagues, and relatives were also hit hard.

After the shooting, other than being in shock, Carol remembers feeling grateful that she and Jack had a child, through whom Jack would live on. Carol also remembers how the San Francisco Chronicle and the media covered the incident nonstop for days. She kept thinking about how pervasive gun violence was in different communities in San Francisco—Bayview, Hunter's Point, the Tenderloin—and yet those shootings, impacting entire communities, didn't make one line in the newspaper. Those families must have felt so forgotten.

As she reflects now, Carol is increasingly aware of the persistent emotional pain from her loss over the past 27 years. When she speaks out against gun violence, it resurfaces. The same is true when she hears about other mass shootings, or listens to the stories of survivors, which makes her angry and disheartened. Carol knows that they, their families, and their friends are going to carry that hurt in different degrees for the rest of their lives, like a “sickness passed down from year to year.”

Growing up, Carol's son Zack had to endure a stream of painful questions from other kids. "Where is your dad?" "What does he do?" It was a constant reminder of how his family had been damaged. Carol has seen Zack longing for his father, and trying to grapple with the senselessness of what happened that day.

After the shooting, Carol became involved in advocating for gun safety legislation, including as part of the Legal Community Against Violence ("LCAV"). Even though doing so created its own anxiety—around being her son's only parent and provider, and not wanting to put a target on her back by angering the wrong advocates on the other side. Carol also formed the Jack Berman Advocacy Center along with the American Jewish Congress to address the effects of gun violence on children.

Carol fell in love with Jack in part because of his big heartedness and his devotion to social justice. He did a lot of volunteer and pro bono work, and had a broad reach for his age and experience. His death was a terrible loss to the legal community in addition to her own family.

Carol believes that the law can do a great deal to help prevent gun violence. It can curb accessibility to guns and ammunition, and reduce a shooter's ability to do great damage at once. She is proud of the fact that the gun death rate has fallen significantly in California since the mid-1990s, as the state strengthened its firearm laws. She plans to keep fighting.

D. Sheldon Siegel

Sheldon Siegel was sitting in his office on the afternoon of July 1, 1993, looking forward to the 4th of July weekend. His secretary appeared at the doorway. “They’re saying there’s a guy with a gun on the 34th floor, and he’s shooting people.” Sheldon remembers giving her an incredulous look. Mass shootings “weren’t common back then, like they are now.” This wasn’t supposed to be happening anywhere, least of all over 30 stories up in a high-rise.

Sheldon’s first instinct was to run. He and 20 other people made the snap decision to head to a suite of interior offices because those doors had locks. They waited there for two hours. They had a radio and were listening to the broadcasters trying to figure out what was happening; whether it was a terrorist attack; whether there was more than one shooter. Sheldon recalls thinking: “I hope the gunman doesn’t have one of those big magazines with 30 to 50 rounds. If not, and he comes here, we might be able to stop him before he shoots a bunch of people.” He also remembers sitting next to his colleagues, who had children the same age as Sheldon’s twin boys, talking about how they wanted to get to see their kids grow up.

Eventually the police arrived and told them that the shooter had killed himself. Before starting to take witness accounts, a police officer yelled: “Attention everybody!” Sheldon and the others immediately dove under the nearby desks.

They all had the same intense, fearful reaction, which they never would have had beforehand.

After the shooting, Sheldon and his colleagues “just went to funerals for two weeks.” It was all an out of body experience. Sheldon had trouble sleeping and didn’t want to speak with reporters. It took years for him to be able to talk about what happened. As for Pettit & Martin, the firm had gatherings and brought grief counselors to speak to the survivors. Little legal work got done for a long time, and they struggled to recruit anyone. A feeling of sadness engulfed the office in the years following the shooting. Finally, the partners voted to close the firm.

Sheldon was an early supporter of LCAV’s work. The genesis of the organization was the idea that the legal community needed to do something to prevent this from happening to anyone else. When a mass shooting occurs, like Las Vegas, Newtown, or Columbine, it infuriates Sheldon that so little progress has been made on the federal level. The whole process is ritualized: the news reports, the thoughts and prayers offered, the renewed momentum towards change and political action, and then gridlock and despair. Sheldon isn’t sure whether we can fix the problem of gun violence in his lifetime, but he hopes that we can within the lifetimes of his sons.

E. Charles Ehrlich

The afternoon of July 1, 1993, senior Pettit & Martin partner Charles (Chuck) Ehrlich had planned a client meeting for a conference room on the 34th floor of 101 California, just down the hall from his office. The room was unavailable because Jack Berman's deposition was running long. Chuck waved "hello" to Jack, and went with his clients down to the 33rd floor instead. There, he heard what sounded like "someone working on the plumbing in a very primitive manner." What he actually heard was the gunman shooting people in the conference room he had planned to be in with his client. After a few minutes, not knowing what was happening, the meeting ended; Chuck went to ride the elevator down with his clients, narrowly avoiding the gunman emerging from the internal stairway on the 33rd floor. When the elevator doors opened, terrified colleagues told them that there was "a guy with a gun" in the office. Chuck left the building, and watched the coverage from a nearby restaurant with one of his colleagues. Chuck called his wife immediately.

Two days later, the firm had a meeting. They had a grief counselor there. It had just come to light that the shooter was able to legally buy the military-grade weapons he had used—the high-capacity assault pistols and 50-round magazines.³

³ See Robert Reinhold, *The Broker Who Killed 8: Gunman's Motives a Puzzle*, N.Y. TIMES (Jul. 3, 1993), <https://www.nytimes.com/1993/07/03/us/the-broker-who-killed-8-gunman-s-motives-a-puzzle.html>.

Chuck remembers saying: “This is lunacy. It can’t be that you can just walk into some gun store in a strip mall and buy weapons like this.” He decided to do something about it. This decision was the beginning of LCAV.

Chuck recruited other partners at Pettit & Martin, and LCAV immediately got to work mobilizing the Bay Area legal community to support meaningful weapons reform. With support ranging from the Bay Area’s largest firms to solo practitioners, they assembled a small staff of mostly volunteers. As its first steps, LCAV supported the enactment of the 1994 federal assault weapons ban, and helped reform California’s gun laws by providing free legal assistance to cities across the state.

Despite the efforts of LCAV and now Giffords Law Center, Chuck is shocked that America’s gun problem is worse than ever. At 101 California, eight people died and six others were shot, spurring a massive outcry against assault weapons. Now, shootings with death counts that are magnitudes higher are almost routine, and nothing changes. And, Chuck points out, focusing only on the death toll far understates the tragedy. Little is said about the wounded, who, if they don’t die shortly after, as did Chuck’s colleague Brian Berger, will have lives that are never the same. There is little thought, and less comprehension, of the devastation to the families that will never see their children, their partners, or their parents live full lives. “It’s like throwing a rock in a pond. The ramifications ripple far outward. It seems never to end.”

F. Cam Baker

Cam was the managing partner at Pettit & Martin for twelve years. He was with the firm as it grew from 10 lawyers to 250, becoming one of the top firms in California. But on the day of the shooting, Cam was home sick with the flu. Cam received a call telling him about the active shooter at 101 California. He immediately phoned the office, and spoke with colleagues as they hid behind doors and under their desks, terrified for their lives.

The next day Cam heard about the horrifying experiences of the friends and colleagues he was not able to reach by phone. How John Scully had taken bullets for his wife. How another colleague managed to shove his door closed when the gunman tried to enter, and survived as a result. How a summer associate was shot point blank. How people were shot in their offices and through glass walls. For over 25 years, there “has rarely been a day” when Cam isn’t working on gun safety issues with gun safety organizations, and remembering the 101 California shooting and his friends who lost their lives there. It is still an emotional and searing memory.

Cam helped lead the firm’s response after the shooting. “Some people just tried to plow forward with their lives and others needed therapeutic help.” Immediately afterwards, Cam, several other lawyers from the firm, and other people connected by the tragedy formed LCAV. Several LCAV members “went on the

road” to fight for stronger gun laws and eventually were successful in advocating for law reform in Sacramento and at the federal level.

Meanwhile, the firm that Cam helped grow was suffering. Pettit & Martin dissolved just two years later, though Cam “stayed until the very end.” The “people hurt and killed there” on July 1, 1993 took a toll on Pettit & Martin that its lawyers were not able to overcome. As Chuck Ehrlich said, “[t]here’s an argument that the murders killed the firm,” and as Sheldon Siegel remembered, sadness had simply “engulfed the place.” Several partners left, and those that remained voted unanimously to close the firm. Although the shooting united Cam, Chuck, Sheldon and others to found LCAV to fight for stronger gun safety laws, it came at the very high price of their colleagues’ lives and livelihoods.

Cam continues to advocate for state-level and national assault weapons bans with gun safety organizations and those affected by the 101 California shooting. Cam is also close with other survivors of gun violence and wants them to know that “this is not over.” Even though the current political environment is challenging, “you can never give up.”

II. The Government’s Interest in Public Safety Extends Far Beyond Merely Reducing Death and Injury.

As people who have lost husbands, wives, friends, and colleagues to gun violence, the 101 California shooting survivors and their community know too

intimately how gun violence leads to actual death and injury. Yet, their stories also illustrate the broader interests that laws like the AWCA protect.

As told through these stories, survivors dealing with the trauma of mass violence are left questioning why existing laws have failed their families and communities. This sense of loss leads to a fundamental instinct to seek change and protection through the democratic process by regulating the very types of weapons that have been used to harm their communities. To these survivors, these efforts are a form of building courage after incredible tragedy, and also one of their only means of regaining faith in the institutions entrusted to protect them. The laws that come as a product of these efforts further more than just the proactive purpose of preventing further death and destruction—they also mitigate the mass trauma that stems from these violent episodes. And, critically, these laws further the remedial purpose of allowing these communities to heal and regain faith in civic life.

To that end, while courts have consistently upheld restrictions on the specific classes of dangerous weapons and features that the AWCA regulates, they have often done so in ways that might appear to artificially narrow the valid government interests at stake. In particular, some courts have resorted to only assessing the “lethality” of these weapons, measured exclusively in terms of the numbers of deaths or the severity of the injuries they can cause. *See, e.g., N.Y. State Rifle and Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 262 (2nd Cir. 2015) (upholding New York’s

and Connecticut’s assault weapons laws and reasoning that “semiautomatic assault weapons have been understood to pose unusual risks [and] tend to result in *more numerous wounds, more serious wounds, and more victims.*”) (emphasis added); *Kolbe v. Hogan*, 849 F.3d 114, 139–40 (4th Cir. 2017) (en banc) (upholding Maryland’s restrictions on assault weapons because “military-style features pose heightened risks ... because of an amalgam of [] capabilities that allow a shooter to cause *mass devastation in a very short amount of time,*” and summarily describing the state’s interest in terms of forcing criminals to use “*a less dangerous weapon [with] less severe consequences*”) (emphasis added).

The courts’ focus on the lethality of restricted weapons, measured by their capacity for bloodshed, is perfectly understandable and in no way inappropriate. Death and injury are the most visceral of harms, and it is “manifest and incontrovertible” that reducing these harms is a government interest of the highest order. *N.Y. State Rifle and Pistol Ass’n*, 804 F.3d at 262. When regulations are designed specifically to restrict classes of weapons that produce these grave harms, courts are correct to dispose of Second Amendment challenges to these regulations on that basis alone. To that extent, *amici* have no objection to the careful analysis, performed by sister circuits, the lower court, and advanced by the state of California in its briefing, that directly ties the weapons restricted by the AWCA to their

lethality, and recognizes states' inordinate interests in regulating them. *See Rupp v. Becerra*, 401 F. Supp. 3d 978, 990–93 (C.D. Cal. 2019); Dkt. 39 at 47–64.

But reducing the Second Amendment inquiry to the question of whether the weapons at issue will kill or injure *enough* people unduly narrows the interests at stake. As Professors Reva Siegel and Joseph Blocher observe, “[i]f Second Amendment doctrine takes a rigid view of the government’s interest in regulation – focusing solely on ‘public safety,’ narrowly defined – it is likely to ask the wrong questions and demand the wrong kinds of evidence.” *Why Regulate Guns*, 48(4) J.L. MED. & ETHICS (forthcoming 2020) (manuscript at 2), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3599603.

Indeed, in *Fyock v. Sunnyvale*, when upholding the constitutionality of a city’s regulation of large-capacity magazines, this Court recognized that protecting public safety cannot be reduced to mere evidence of a restricted weapon’s lethality. 779 F.3d 991, 1000 (9th Cir. 2015). The Court reasoned that “promoting public safety” was a valid government interest and “[s]o, too” was that of “reducing the harm and lethality of gun injuries.” *Id.* While the Court left undefined what those broader interests in “public safety” might encapsulate, *Fyock* signifies that a government’s interest in promoting “public safety” through gun safety legislation must at least include more than just reducing death and injury.

One such interest is the psychological well-being of citizens, or the interest in protecting citizens from fear and terror. The Supreme Court has “long recognized that a State’s interest in the health and well-being of its residents extend beyond mere physical interests.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel. Barez*, 458 U.S. 592, 609 (1982). And as the Seventh Circuit has observed in the context of the Second Amendment, “the public’s *sense of safety*” is itself “a substantial benefit.” *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015) (emphasis added). Put another way, “Americans living in fear of gun violence” must be able to “turn to their government to enact gun laws, not simply to keep people from being shot, but also to protect people from being terrorized and intimidated.” Siegel & Blocher, *supra* at 3–4.

Governments also have a significant interest in securing for their communities the ability to engage in public and political life without the fear wrought by particularly intimidating weapons—those that are used to intimidate while they kill. The Supreme Court has explained that governments have an interest in securing “the benefits of wide participation in political, economic, and cultural life,” and must have the corresponding power to remedy barriers to such participation. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984). This fundamental need to secure civic participation forms both an affirmative basis for government power, *see, e.g., Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 256–57 (1964); *Katzenbach v.*

McClung, 379 U.S. 294, 300–01 (1964), and a justification for restrictions on the assertion of unfettered individual rights, *see e.g.*, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1727–28 (2018).

Perhaps the strongest manifestation of a State’s interest in civic participation is its role in ensuring confidence in participatory democracy. The Supreme Court has long recognized a state’s interest in “encourag[ing] citizen participation in the democratic process.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008); *see also Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991); *United States v. Windsor*, 570 U.S. 744, 769 (2013) (describing the State’s interests in “responding to ‘the initiative of those who [sought] a voice in shaping the destiny of their own times’”). In order for such faith to be enduring, democracy must be responsive to the hopes and fears of its constituents, and a government thus has a “substantial interest in assuring its residents that it will act to protect them from [recognized] evils.” *Alfred L. Snapp & Son*, 458 U.S. at 609. In this context, it is paramount that citizens not be dissuaded from participating in the democratic process because of the possibility that they might be targeted with violence.⁴

⁴ *See supra* at 12; Lois Beckett, ‘We can’t let fear consume us’: why Parkland activists won’t give up, THE GUARDIAN (Feb. 11, 2019), <https://www.theguardian.com/us-news/2019/feb/11/parkland-student-activists-march-for-our-lives-year-later-2019>.

The Court has not allowed the arguably less quantifiable nature of these goals to diminish their importance. It has rather recognized the “genuine and compelling” nature of these interests even if not “easily reduc[ible] to precise definition [or capable of] proof by documentary record. *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 447–48 (2015); *cf. Heart of Atlanta*, 379 U.S. at 257 (“That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid.”). California’s interest in protecting the public’s safety and confidence in civic engagement is not diminished in any way because the AWCA happens to deal with weapons that cause *actual* death and destruction.

Ultimately, while the lives taken by gun violence are themselves sufficient justification for restrictions on dangerous weapons, laws like the AWCA protect a broader set of interests. The horror perpetrated when assault weapons are used in a mass shooting does not end when the last round is fired. The aftereffects reverberate across entire communities, and infiltrate every aspect of society, be it medical, economic, or political.⁵ In the aftermath of mass shootings, communities are faced

⁵ Sarah R. Lowe & Sandro Galea, *The Mental Health Consequences of Mass Shootings*, 18(1) TRAUMA, VIOLENCE, & ABUSE 62, 79 (2017) (Mass shootings “have been associated with increased fears and decreased perceptions of safety in indirectly exposed populations.”); SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, U.S. DEP’T OF HUMAN & HEALTH SERVICES, *Mass Violence and Behavioral Health*, at 14 (2017) (Mass shootings have an “enormous behavioral health impact on most people, whether they are survivors, witnesses, or exposed through mass media.”).

with a choice: to fold to intimidation and retreat from public life, or to seek protection and solace through the democratic process.⁶ Gun safety laws are the manifestations of these communities’ efforts to protect themselves. They represent democracy’s ability to heal, defend, and empower. The “structural considerations of democracy and federalism,” coupled with “the many freedoms that gun safety laws vindicate,” should be recognized—not overlooked—by the courts. Siegel & Blocher, *supra* at 6.

III. The AWCA Advances California’s Interest in Safeguarding Public Confidence in Civic Participation.

The AWCA itself is a response to real terror imposed by assault weapons. In its first iteration in 1989, the AWCA was a deliberate response to “[t]he shooting incident in Stockton, the drive-by shootings that have been going on in Southern California at an alarming rate, [and] the number of police officers who have been the victims of semi-automatic weapons.” *Kasler v. Lockyer*, 2 P.3d 581, 587 (Cal. 2000) (citations omitted).⁷

⁶ Lowe & Galea, *supra*, at 77 (“Forms of coping that involve taking action ... have been associated with” better mental health outcomes.”); Vanessa Vieties, *How to Cope with Fear of Public Places after Mass Shootings*, MEDICAL XPRESS (Aug. 27, 2019), <https://medicalxpress.com/news/2019-08-cope-mass.html> (“Actively participating in the change process can help [those in fear] gain a sense of control.”).

⁷ In the Stockton shooting, the gunman used an AK-47 to fire 106 rounds in three minutes, killing five children and wounding 30 others. *15 shootings that changed the law: Stockton, 1989*, AOAV (Apr. 17, 2014), <https://aoav.org.uk/2014/cleveland-elementary-school-1989/>.

Since then, the guiding principle of the AWCA has remained the same: protecting California’s communities through a features-based approach that regulates the types of firearms, and their equivalents, that have proven to make communities *be* less safe and hence *feel* less safe. The Act is not, as Plaintiffs contend, an outright ban on common semiautomatic rifles. Dkt. 23 at 22. Rather, the AWCA regulates certain add-on features that have been repeatedly used to perpetrate mass killings, drive-by shootings, and organized crime in California’s cities. *See Kasler*, 2 P.3d at 587–89. The California legislature strengthened the AWCA in the years following the 101 California shooting,⁸ and then enacted the most recent 2016 amendments to close a specific “loophole” in existing law that had allowed two assailants in San Bernadino to gun down 36 people in less than four minutes. *Rupp*, 401 F. Supp. 3d at 981 (citing S.B. 880 Report at 8 (Cal. 2016)).

Far from being a knee-jerk response against certain weapons simply because they were chosen by criminals (including mass shooters), the AWCA regulates these weapons precisely *because* they possess characteristics, such as higher round capacity and the ability to fire rounds with greater rapidity, that allow them to be

⁸ *See* Todd S. Purdum, *California Enacts the Toughest Ban on Assault Weapons*, N.Y. TIMES (Jul. 20, 1999), <https://www.nytimes.com/1999/07/20/us/california-enacts-the-toughest-ban-on-assault-guns.html> (Governor Gray Davis signed assault weapons legislation near the anniversary of the 101 California shooting, surrounded by “relatives of the victims”).

used as tools for intimidation. In 1989, the California legislature heard testimony not only regarding the general fact that semi-automatic assault weapons were used for mass violence, but also specific testimony about how these weapons were deliberately used to intimidate and terrorize California communities. For example, Lieutenant Bruce Hagerty, a Los Angeles police officer, testified about a neighborhood shootout carried out with an AR-15:

There were bodies everywhere and people were terrified, and *the only reason that this gang did that was to terrorize the neighborhood ... the military assault rifle is the vehicle they used.*”

Kasler, 2 P.3d at 588 (citing 1. Assem. J. (1989-1990 Reg. Sess.) at 450).

The AWCA regulates features like detachable magazines with greater ammunition capacity precisely because these features enable mass shooters and others perpetrating violence to inflict greater devastation and intimidation. *See* Allen Rostron, *Style, Substance, and the Right to Keep and Bear Assault Weapons*, 40 CAMPBELL L. REV. 301, 327–28 (2018). Because these features limit the frequency with which a shooter must pause to reload, they eliminate the opportunity for potential victims to escape and for bystanders or law enforcement to intervene, thereby prolonging the sense of terror even if victims make it out alive. *See Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 910 F.3d 106, 119–20 (3d Cir. 2018) (stating that “[w]eapon changes and reloading result in a pause in shooting and provide an opportunity for bystanders or police to intervene and victims to flee,”

and citing examples including the mass shootings in Las Vegas, Newtown, and Tucson). As recalled by several of the 101 California survivors, the shooter's rapid rate of fire—and the fear that he was using large-capacity magazines—remains one of their most vivid memories to this day.

The best evidence that the AWCA-regulated features are valuable to mass shooters seeking to terrorize American communities is that they select them over and over again.⁹ Criminals choose these weapons not only because they are effective (in terms of the number and likelihood of casualties), but also because military-style weapons are particularly intimidating to their intended victims. Rostron, *supra*, at 329. That choice is not merely “cosmetic,” because it has a real and damaging effect. *Id.* As the stories from 101 California make clear, intimidation not only allows mass shooters to carry out their attacks with less resistance; it also means that victims die in fear and survivors are left traumatized.¹⁰

⁹ Perpetrators of four of the five deadliest shootings in American history used assault-style weapons incorporating one or more of these features. The Las Vegas shooter used AR-15 style rifles with a forward grip; the Orlando shooter used a Sig Sauer “concealable” assault weapon with a pistol grip and collapsible stock; the Sandy Hook shooter used a Bushmaster Model XM15-E2S semiautomatic assault rifle with a pistol grip; and the Sutherland Springs shooter used a Ruger AR-556 rifle with a pistol grip and flash suppressor. See *Large-Capacity Ammunition Magazines*, VIOLENCE POLICY CENTER (Feb. 15, 2019), http://www.vpc.org/fact_sht/VPCshootinglist.pdf.

¹⁰ See Amy Novotney, *What Happens to the Survivors*, 49 MONITOR PSYCHOL. 36 (2018), <https://www.apa.org/monitor/2018/09/survivors>.

The AWCA also regulates weapons and features designed for greater concealability, because concealability is particularly threatening in modern society. “[T]he shorter the rifle, the easier it is to conceal, as might be necessary to gain access to areas where a shooter wishes to inflict mass violence, such as a school or concert. Thus, the AWCA understandably bans semiautomatic assault rifles under 30 inches in length, and folding stocks that allow individuals to collapse the weapon to a shorter length.” *Rupp*, 401 F. Supp. 3d at 992. As described above, the 101 California survivors attributed much of the horror they experienced to the ease in which such violence was carried out in a place that no one would expect: a high-rise office building in the middle of the day.

As these shootings occur with heightened frequency and in more places, survivors and the general public need the ability to demand regulation of the features that make these weapons a persistent threat to civic life. The alternative is the gradual degradation of public confidence in the safety of places of work, worship, education, and entertainment, as they all become forums associated with terror.

CONCLUSION

To strike down laws like the AWCA would eliminate the little solace that communities experience in the aftermath of mass violence. It would tell the citizens of California that they are unable to protect themselves because not *enough* of them have been killed or injured, or because victims could have died by some other

weapon. To say these things through judicial fiat would strike at the very heart of democracy's ability to "assur[e] its residents that it will act to protect them from [recognized] evils." *Alfred L. Snapp & Son*, 458 U.S. at 609.

The Supreme Court has pledged that "[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment," that communities will retain the "ability to devise solutions to social problems that suit local needs and values," and that "the Constitution leaves [communities] a variety of tools for combating" gun violence. *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008). For these promises to mean anything, communities must retain the ability to protect themselves against the military-style weapons that have been used to kill, injure, and intimidate their friends, family, and communities.

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Respectfully submitted,

/s/ Scott A. Edelman

Hannah Shearer
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
268 Bush St. #555
San Francisco, CA 94104
(415) 433-2062

J. Adam Skaggs
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
223 West 38th St. #90

Scott A. Edelman
GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East
Los Angeles, CA 90067-3026
(310) 552-8500

Vivek R. Gopalan
Matthew C. Reagan
Zhen He Tan
GIBSON, DUNN & CRUTCHER LLP

New York, NY 10018
(917) 680-3473

555 Mission St., Ste. 3000
San Francisco, CA 94105
(415) 393-8200

Counsel for Amici Curiae

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/s/ Scott A. Edelman

Scott A. Edelman
GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East
Los Angeles, CA 90067-3026
(310) 552-8500

Dated: June 2, 2020

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2020, an electronic copy of the foregoing Amicus Brief was filed with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit using the Court's CM/ECF system and was served electronically by the Notice of Docket Activity upon registered CM/ECF participants.

/s/ Scott A. Edelman

Scott A. Edelman
GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East
Los Angeles, CA 90067-3026
(310) 552-8500