

1 John W. Dillon (Bar No. 296788)  
2 Gatzke Dillon & Ballance LLP  
3 2762 Gateway Road  
4 Carlsbad, California 92009  
5 Telephone: (760) 431-9501  
6 Facsimile: (760) 431-9512  
7 E-mail: [jdillon@gdandb.com](mailto:jdillon@gdandb.com)

8 Attorney for Plaintiffs

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 MATTHEW JONES; THOMAS FURRH;  
12 KYLE YAMAMOTO; PWGG, L.P. (d.b.a.  
13 POWAY WEAPONS AND GEAR and  
14 PWG RANGE); NORTH COUNTY  
15 SHOOTING CENTER, INC.; BEEBE  
16 FAMILY ARMS AND MUNITIONS LLC  
17 (d.b.a. BFAM and BEEBE FAMILY  
18 ARMS AND MUNITIONS); FIREARMS  
19 POLICY COALITION, INC.; FIREARMS  
20 POLICY FOUNDATION; CALIFORNIA  
21 GUN RIGHTS FOUNDATION; and  
22 SECOND AMENDMENT  
23 FOUNDATION,

24 Plaintiffs,

25 v.

26 XAVIER BECERRA, in his official  
27 capacity as Attorney General of the  
28 State of California, et al.,

Defendants

Case No.: 3:19-cv-01226-L-AHG

Hon. M. James Lorenz and  
Magistrate Judge Allison H. Goddard

**PLAINTIFFS' REPLY BRIEF**

Complaint Filed: July 1, 2019  
Second Amended Complaint Filed:  
November 8, 2019

No oral argument should be heard unless  
ordered by the Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TOPICAL INDEX**

- I. THE CHALLENGED LAW IS AN AGE-BASED GUN BAN..... 1
- II. THE STATE’S EXEMPTIONS ARE ILLUSORY..... 1
- III. OVERWHELMING HISTORICAL EVIDENCE SUPPORTS  
YOUNG ADULTS’ SECOND AMENDMENT RIGHTS..... 4
- IV. THE STATE FAILS TO ESTABLISH A  
SUBSTANTIAL INTEREST ..... 6
- V. THE STATE FAILS TO ESTABLISH A  
REASONABLE FIT..... 6
  - A. Section 27510 Will Have No Effect on Reducing  
Gun Crime Committed by Young Adults ..... 6
  - B. Section 27510 Will Have No Effect on  
Reducing Mass Shootings..... 8
  - C. Lethality is Not the Test..... 9
  - D. Other Preliminary Injunction Factors ..... 9
- VI. CONCLUSION ..... 10

**TABLE OF AUTHORITIES**

**Cases**

	<b>Page</b>
<i>Ashcroft v. ACLU</i> 542 U.S. 656 (2004).....	10
<i>District of Columbia v. Heller</i> (2008) 554 U.S. 570.....	1
<i>Doe v. Harris</i> 772 F.3d 563 (9th Cir. 2014) .....	10
<i>Duncan v. Becerra</i> 265 F. Supp. 3d 1106 (S.D. Cal. 2017) .....	9, 10
<i>Duncan v. Becerra</i> 366 F.Supp.3d 1131 .....	6, 8, 9
<i>Dymo Indus., Inc. v. Tapeprinter, Inc.</i> 326 F.2d 141 (9th Cir. 1964) .....	7
<i>Hirschfeld v. BATFE</i> Civil Action No. 3:18CV00103 2019 U.S. Dist. LEXIS 173077 (W.D. Va. Oct. 4, 2019).....	5
<i>Kev, Inc. v. Kitsap County</i> 793 F. 2d 1053 (1986) .....	9
<i>Lydo Enterps., Inc. v. City of Las Vegas</i> 745 F.2d 1211 (9th Cir. 1984) .....	10
<i>Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms &amp; Explosives</i> 700 F.3d 185 .....	1
<i>NRA of Am., Inc. v. McGraw</i> 719 F.3d 338 .....	5
<i>Peruta v. County of San Diego</i> 824 F.3d 919 (9th Cir. 2016) .....	5, 6
<i>Planned Parenthood Arizona, Inc. v. Humble</i> 753 F. 3d 905 (2014) .....	9

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**Cases**

**Page**

*Powell v. Tompkins*  
926 F. Supp. 2d 367 ..... 6

*Rupp v. Becerra*  
401 F. Supp. 3d 978 (C.D. Cal. 2019) ..... 9

*Young v. Hawaii*  
896 F.3d 1044 (9th Cir. 2018) ..... 6

**Statutes**

**Cal. Penal Code**

§ 16960(g) ..... 3

§ 26545 ..... 3

§ 27510 ..... *passim*

§ 27510(b)(1) ..... 2

§ 27510(b)(2) ..... 2

§ 27510(b)(3)(A) ..... 1

§ 27510(b)(3)(B) ..... 2

§ 27510(b)(3)(C) ..... 2

§ 27585 ..... 3

§ 27910 ..... 3

**Other Authorities**

Federal Militia Act of 1792 ..... 4

SB 61 ..... 2, 10

1 **I. THE CHALLENGED LAW IS AN AGE-BASED GUN BAN**

2 Plaintiffs have shown that Penal Code § 27510 (Section 27510) is not a  
3 “modest restriction,” as asserted by the State (Opp. 3), but an age-based firearm ban.  
4 The challenged law constitutes a ban on any firearm purchased or possessed by  
5 ordinary, law-abiding adults over the age 18 and under the age of 21 (Young Adults).  
6 The ban prohibits federally licensed firearms dealers and private parties from  
7 transferring firearms to Young Adults in California. The Plaintiffs are thus precluded  
8 from exercising their Second Amendment rights to keep and bear arms for self-  
9 defense and other lawful purposes — as recognized in *District of Columbia v. Heller*  
10 (2008) 554 U.S. 570, 595-596, 627 because of the challenged law and the State’s  
11 policies and practices in enforcing that law.

12 Using the highest level of generality, the State uses a broad brush to strip  
13 law-abiding Young Adults of their Second Amendment rights by categorizing them  
14 as “disproportionally disposed to violence,” “impulsive,” and “reckless.” Opp. 2.  
15 Even worse, the State, by citing *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol,*  
16 *Tobacco, Firearms & Explosives*, 700 F.3d 185, 200-203 (*NRA I*), categorizes  
17 law-abiding Young Adults as equivalent to felons, the mentally ill, and other  
18 “targeted groups” (Opp. 7-8) — but even these groups are still afforded due process  
19 and a trial before their enumerated constitutional rights are stripped from them. A  
20 preliminary injunction is warranted while this Court considers the constitutionality of  
the State’s under-21 firearm ban.

21 **II. THE STATE’S EXEMPTIONS ARE ILLUSORY**

22 The State relies heavily on the challenged law’s so-called exemptions, with  
23 strong emphasis on the “unexpired hunting license” exemption to say the law is a  
24 “modest restriction.” Opp. 1, 2-4. Not so. The Combs declaration demonstrates that  
25 the “law enforcement” exemption (Section 27510(b)(3)(A)) does not allow law-  
26 abiding Young Adults to exercise their fundamental, individual right to keep and bear  
27 any firearm because the applicants for those jobs must be at least 20 years old *before*  
28 *they are even eligible to apply* for the position. Combs Dec. ¶¶20-24, **Exs. 7-11**. The

1 “active federal” law enforcement exemption (Section 27510(b)(3)(B)) is even less  
2 applicable because federal “agent” applicants must be at least 23 years. *Id.* ¶¶25,  
3 Ex. 12. The “active” military exemption (Section 27510(b)(3)(C)) is likewise  
4 illusory — it requires a binding, lengthy military service contract, physical training,  
5 relocation, and the potential to fight in wars — and, die — for our country.  
6 *Id.* ¶¶26-30, **Exs. 13-14**. All such requirements (and more) must be satisfied before a  
7 Young Adult can access any firearm in California. *Id.* ¶30.

8 Honorably discharged members *were* able to purchase firearms, but the  
9 individual still needed to meet all the above requirements and be honorably  
10 discharged — by then, he or she would almost certainly be over 21 years old,  
11 rendering the exemption an illusion. *Id.* ¶31. Further, the exemption is inapplicable to  
12 ordinary, law-abiding Young Adults. *Ibid.* Now, with the signing of SB 61, however,  
13 the State has further tightened the noose around those Young Adults honorably  
14 discharged because they can no longer access common semiautomatic centerfire  
15 rifles. (Section 27510(b)(2); Combs Dec. ¶¶32, 38, 40.) The amended law has gutted  
16 even the exemption.

17 The only other enumerated exemption in Section 27510 — the one emphasized  
18 by the State due to the obvious illusory nature of *all the other* exemptions for Young  
19 Adults — is the Section 27510(b)(1) “valid, unexpired hunter’s license” exemption.  
20 However, the Section 27510(b)(1) “hunter’s license” exemption — after meeting all  
21 licensing requirements, paying the fees, and passing all the tests — is *useless and*  
22 *inapplicable* to ordinary, law-abiding Young Adults who wish to purchase a firearm  
23 for self-defense in the home or for other lawful purposes. *See* Combs Dec. ¶¶17, 41  
24 and fn. 2, 42; Bogan Dec. ¶¶10-32, **Exs. 2-4**. Moreover, even if Young Adults obtain  
25 a hunting license (each receiving the “training” the State alleges is necessary to safely  
26 purchase firearms), they are *still prohibited* from purchasing all common  
27 semiautomatic rifles. Combs Dec. ¶¶31-42, **Exs. 6, 15-18**. Importantly, Young Adults  
28 should *not* have to “feign” an interest in, pay for, and take hunting safety,

1 conservation and other courses and tests in order to exercise their Second  
2 Amendment rights. Combs Dec. ¶42; Bogan Dec. ¶¶21-23, Ex. 2.

3 Other so-called “ample” options for Young Adults are likewise illusory.  
4 “Loaning” firearms do not allow Young Adults to exercise their right to “keep and  
5 bear” firearms under the Second Amendment for self-defense in the home and for  
6 other lawful purposes. Any argument to the contrary is nonsense. The loans allow for  
7 limited possession (up to 3 days) between private individuals. Opp. 4. Licensed  
8 dealers who own ranges (like Plaintiffs PWG and NCSC) still cannot “loan” firearms  
9 to Young Adults for the purposes of shooting, as Cal. Penal Code sections 27910 and  
10 26545 apply to loans between individuals at a licensed target facility; they do not  
11 authorize the facility to loan. *See* Opp. 4; Cal. Penal Code §§ 27910, 26545; and  
12 Phillips Dec. ¶¶3-8; Prince Dec. ¶¶2-10; and *see* Beebe Dec. ¶¶2-7.

13 The family member transfer is highly dependent on the individual and family  
14 circumstances. Such transfers allow only parents or grandparents to transfer firearms,  
15 not siblings, uncles, or aunts. Further, this type of limited transfer requires a number  
16 of assumptions: (a) the Young Adult has living parents/grandparents; (b) the  
17 parents/grandparents are in contact with the Young Adult; (c) the  
18 parents/grandparents are not prohibited from owning or possessing firearms; (d) the  
19 parents/grandparents possess a firearm to gift; and (e) the parents/grandparents desire  
20 to gift their firearms. As such, this is an *extraordinarily* narrow provision trumped up  
21 by the State to desperately assert Section 27510 is only a “modest restriction.”

22 The spousal provision (Opp. 4) is similarly constrained. It requires the Young  
23 Adult to be married or get married. The spouse also must be over 21 or already be in  
24 possession of a firearm. Cal. Penal Code §§ 27585, 16960(g). The required  
25 “transmutation” of property between spouses is unknown to most ordinary,  
26 law-abiding Young Adults, likely also requiring consultation with an attorney in  
27 order to complete it properly. In short, the enumerated exemptions in Section 27510  
28 and those ginned up by the State (Opp. 1) amount to a ruse and blur the under-21

1 firearm ban enacted by the Legislature and enforced by the State against ordinary,  
2 law-abiding Young Adults. Combs Dec. ¶¶16, 20, 24, 40-42.

3 **III. OVERWHELMING HISTORICAL EVIDENCE SUPPORTS**  
4 **YOUNG ADULTS’ SECOND AMENDMENT RIGHTS**

5 According to the State, its scheme is immune from Second Amendment  
6 scrutiny because it is one of those “laws imposing conditions or qualifications on the  
7 commercial sale of arms” that the Supreme Court described as “presumptively  
8 lawful.” Opp. 5-6. Two reasons render this claim meritless.

9 **First**, Plaintiffs have shown that Section 27510 goes well beyond *commercial*  
10 sales of arms — it affects *private* transfers of firearms, and constitutes a ban on the  
11 purchase, acquisition, transfer, possession, and control of any firearm to ordinary,  
12 law-abiding Young Adults.

13 **Second**, the State fails to object or provide contrary evidence regarding  
14 Plaintiffs’ overwhelming historical analysis of age-based firearms restrictions on  
15 Young Adults. *See* Hardy Dec. ¶¶ 6-77, and exhibits. This historical analysis proves  
16 that Young Adults possess the same protection under the Second Amendment as  
17 adults 21 and over and that age-based restrictions are not “longstanding prohibitions”  
18 or “presumptively lawful regulatory measures” under *Heller*.

19 Mirroring the historical analysis used in *Heller*, Dr. Hardy provides extensive  
20 evidence showing that during the Colonial and Founding Era, “there were no  
21 age-based restrictions on the acquisition, purchase, or possession of firearms.” Hardy  
22 Dec. ¶¶9-15. Further, the firearms safety regulations in place during that time “were  
23 far from anything remotely similar to a categorical firearm ban based solely on age.”  
24 *Id.* ¶15. In 1791 — “the critical year for determining the [Second] amendment’s  
25 historical meaning” — the minimum age for militia service in every state was  
26 eighteen. *Id.* ¶16. In fact, the Federal Militia Act of 1792 required 18-year-olds to  
27 own and possess firearms, and “over 250 Colonial and state militia statues through  
28 1799 mandated that persons,” usually 16 or 18 (and older) serve in the militia using  
their own arms.” *Id.* ¶¶23, 26. Founding Era attitudes supported the fact that Young



1 Adults had full Second Amendment rights. Hardy Dec. ¶¶28-31. Moreover, other laws  
 2 outside of militia service, such as the “hue and cry,” “watch and ward,” and “*posse*  
 3 *comitatus*” prove that Young Adults were not only expected but required to use their  
 4 own arms to help enforce the law. *Id.* at ¶¶ 32-34.

5 Just as in the Colonial period and the Founding era, from 1800 to at least 1850,  
 6 Dr. Hardy confirms that there were no age-based firearms regulations. *Id.* ¶¶35-38.  
 7 After exhaustive research, Dr. Hardy rendered his “conclusions” (Hardy Dec.  
 8 ¶¶66-77), and the State does not question or rebut any of this evidence.

9 Indeed, the State’s only response is to cling primarily to *NRA I* that relies on  
 10 *highly generalized* laws “targeting select groups’ ability to access” firearms, which  
 11 the State then characterizes “presumptively lawful regulatory measures” under  
 12 *Heller*. Opp. 5, 7-8. *NRA I* was thoroughly distinguished in Plaintiffs’ opening brief  
 13 (Dkt. No. 21-1[Mem. 15-17]) and will not be repeated. Plaintiffs add, however, that  
 14 the Fifth Circuit in *NRA I* wholly ignored the numerous Colonial and Founding Era  
 15 militia statutes establishing 18 as the age of militia service and made reference to two  
 16 militia statutes claiming the minimum age was 21 as a basis of upholding the more  
 17 limited federal ban. But the facts are otherwise regarding those two statutes. Hardy  
 18 Dec. ¶¶16-18, 19-22. This Court need not rely on a factually incorrect record.<sup>1</sup> More  
 19 broadly, *NRA I* and other cases cited by the State have been soundly criticized in  
 20 scholarly articles cited by Dr. Hardy. *See* Hardy Dec. **Ex. 16** at 355-377 (*NRA I*);  
 21 372-373 (*McGraw*); 374-376 (*Horsley*); and **Ex. 17** at 470-473 (*NRA I*).

22 Further, *NRA of Am., Inc. v. McGraw*, 719 F.3d 338, is inapposite. *McGraw*  
 23 addresses the separate constitutional question of Young Adults *carrying firearms in*  
 24 *public*. The question of purchasing, acquiring, and possessing firearms is *distinct*  
 25 from the constitutional question of *carrying* firearms in public. *Peruta v. County of*

26 <sup>1</sup> *Hirschfeld v. BATFE*, Civil Action No. 3:18CV00103, 2019 U.S. Dist. LEXIS  
 27 173077, at \*8 (W.D. Va. Oct. 4, 2019) (*Hirschfeld*) is merely a reapplication of  
 28 *NRA I*, as it is a challenge to the federal prohibition on *FFLs* selling *handguns* to  
 Young Adults. *Hirschfeld* also makes clear the regulation in question *only restricts*  
*commercial sales*. *Hirschfeld* at 15-16.

1 *San Diego*, 824 F.3d 919, 924 (9th Cir. 2016); *see also Young v. Hawaii*, 896 F.3d  
 2 1044, 1048 (9th Cir. 2018). As such, *McGraw* provides no precedent.<sup>2</sup> In short, the  
 3 case law relied on by the State is irrelevant and suffers from factual and evidentiary  
 4 flaws. *See Hardy Dec.* ¶¶43-47, **Ex.16** (Greenlee 2018), and **Ex. 17** (Greenlee 2019).

#### 5 **IV. THE STATE FAILS TO ESTABLISH A SUBSTANTIAL INTEREST**

6 The State claims its purported interests are “promoting public safety” and  
 7 “limiting incidents of gun violence.” *Opp.* p. 12. At this level of generality, the State  
 8 would always have a substantial interest in any law it enforces. *See Duncan v.*  
 9 *Becerra*, 366 F.Supp.3d 1131, 1160-1167 (cautioning against relying on “shoddy data  
 10 or reasoning” under intermediate scrutiny inquiry). According to the State, Section  
 11 27510 aims to limit mass shootings committed by Young Adults. The State’s  
 12 evidence shows that mass shootings are rare and “number of mass shootings has  
 13 ebbed and flowed in California since the late 1990s, neither increasing nor decreasing  
 14 dramatically.” *Opp.* 22, *Rosenberg Dec.* **Ex 12**, p. 189.<sup>3</sup> Thus, the State could not  
 15 reasonably have a substantial interest in limiting an almost non-existent issue.  
 16 Further, the State wrongly asserts that Plaintiffs did not “contest” the legitimacy of  
 17 the State’s interests. *Opp.* 13. To the contrary, Plaintiffs’ opening brief and evidence  
 18 (Dkt. No. 21-1[Mem. 18-24]; *Marvell Dec.* ¶¶1-19; *Lott Dec.* ¶¶1-22.) demonstrate  
 19 that no facts support the State’s highly generalized interests. The *point* is the State  
 20 failed to respond or rebut any of that evidence. *Duncan*, 366 F.Supp.3d at 1161  
 (“hard facts and reasonable inferences” are needed] from the State.)

#### 21 **V. THE STATE FAILS TO ESTABLISH A REASONABLE FIT**

##### 22 **A. Section 27510 Will have No Effect on Reducing Gun Crime** 23 **Committed by Young Adults**

24 Section 27510 will have no effect on reducing mass shootings or gun crime in

---

25  
 26 <sup>2</sup> *Powell v. Tompkins*, 926 F. Supp. 2d 367, is a criminal habeas corpus appeal based  
 27 on a conviction for *carrying a firearm without a license*. Like *McGraw*, *Powell* is of  
 no weight.

28 <sup>3</sup> In the Mother Jones Data, 114 mass shootings are identified. *Only 10 shootings in*  
*37 years* involved Young Adult perpetrators resulting in 86 deaths. *Opp.* 23.

1 general. Marvell Dec. ¶5 (“There is no evidence that gun laws banning the purchase  
2 or possession of firearms based on age restrictions have the intended effect of  
3 reducing gun homicides and suicides; I have found no discernable crime-reduction  
4 impact.”). Plaintiffs’ evidence regarding the effectiveness of age-based firearms bans  
5 is entirely unopposed other than three inaccurate claims by the State that omit key  
6 facts. **First**, as stated by expert declarant Thomas Marvell, the 2015 Gius study found  
7 that “state minimum age laws do not have a significant impact on gun suicides or  
8 unintentional deaths for those under 20 years old.” Marvell Dec. ¶ 11. Additionally,  
9 the significant impact found for the 1994 federal minimum age law was “a spurious  
10 finding due to a statistical mistake.” *Id.* Marvell explained this mistake in detail and  
11 the State has offered no rebuttal. **Second**, with regard to the Webster study, Marvell  
12 determined the findings to be highly unlikely, and referenced that “[t]he study itself  
13 identifies several reasons to doubt the validity of the finding...” and most  
14 importantly, the fact that the authors attempted to address autocorrelation through the  
15 “cluster” method, which causes the significance levels to drastically increase with  
16 such a small number of law changes.” *Id.* at ¶ 14, **Ex. 7**. **Third**, the single Rand  
17 Corporation study, which found *insufficient* evidence of age-based laws effect on  
18 reducing crime, does not amount to the “uncertainty” of conflicting evidence cited  
19 *Dymo Indus., Inc. v. Tapeprinter, Inc.*, 326 F.2d 141, 142 (9th Cir. 1964). See also  
20 Marvell Dec. ¶¶18-19 and **Ex. 11**.

21 The State’s “social science” evidence is lacking as it consists of generalized  
22 statements regarding adolescents ages 10-24 and provides no distinction in  
23 development between the various ages. *See also* Plaintiffs’ Objections, filed  
24 concurrently herewith. Further, the State’s evidence is conflicting and makes clear  
25 “*most adolescents* are actually not miserable, and negotiate this potentially difficult  
26 period with relative ease and without lasting problems (Steinberg, 2008).” Rosenberg  
27 Dec. **Ex. 4**, p. 125; *see also* p. 126, 129-131 (emphasis added).<sup>4</sup> Finally, the State’s

28 <sup>4</sup> The State’s other social science evidence is similarly flawed. Plaintiffs’ Objections.

1 social science evidence proves too much, stating that development continues until age  
 2 24 and even into the 30s. Rosenberg Dec. **Ex. 3-5**. Not even the State argues the ban  
 3 in Section 27510 should, therefore, extend next year to persons 18-to-39 years of age.

4 Plaintiffs do not demand that the State’s approach to “curtailing violence ha[s]  
 5 already proved effective, or to guarantee that it would prove effective....” Opp. 18.  
 6 Instead, Plaintiffs demand that the State provide *evidence* beyond pure speculation or  
 7 conjecture, which has not occurred. The simple fact that the federal prohibition on  
 8 handguns has been in effect since 1968 without any evidence of a decrease in  
 9 handgun crime by Young Adults proves that the “experiment” has failed. Marvell’s  
 10 declaration confirms this fact. Marvell Dec. ¶¶6-17. See also *Duncan*, 366 F.Supp.3d  
 11 at 1169 (S.D. Cal. 2019) (commenting on failed experiments).

12 **B. Section 27510 will have No Effect on Reducing Mass Shootings**

13 The Legislature’s intent was to reduce mass school shootings *committed by*  
 14 *Young Adults*, as Section 27510 only prohibits Young Adults from accessing  
 15 firearms.<sup>5</sup> **First**, the State provided no evidence regarding the prevalence of mass  
 16 shootings committed by Young Adults. **Second**, requiring an individual to obtain a  
 17 hunting license does not and will not prevent an individual intent on committing mass  
 18 murder.<sup>6</sup> **Third**, the State’s evidence regarding how guns used in mass shootings  
 19 were procured lacks foundation and is factually wrong. *See* Plaintiffs’ Objections. In  
 20 fact, no credible evidence supports the proposition that raising the age to purchase or  
 21 acquire a firearm will make any difference in curtailing mass school shootings.  
 22 Marvell Dec ¶¶ 5-8; Lott Dec. ¶¶ 6-19, **Ex. 1-7**. This is because (a) shooters buy guns  
 23 from sources other than licensed dealers (Lott Dec. ¶¶ 7-8, **Ex. 2**); (b) criminals are  
 24 still going to obtain guns (Lott Dec. ¶ 9, **Ex. 3**); (c) age is not a significant factor in  
 25 mass public shootings (Lott Dec. ¶ 10, **Ex. 4** [average shooter age is approximately

26 \_\_\_\_\_  
 27 <sup>5</sup> The Legislature’s aim can only be limited to *all mass shootings committed by Young*  
 28 *Adults*, not all mass shootings.

<sup>6</sup> The irony of the hunting license exemption is that this education makes individuals  
 better and more knowledgeable hunters — not a desired trait of a mass murderer.

1 33 years-old]; Dillon Dec. ¶ 9, **Ex. 7** [average age of school attackers is 15]); and  
2 (d) contrary to the State, mass school shootings are *not* generally committed by  
3 people “under 21.” (Lott Dec. ¶ 16). The average age of school attackers is 15. Dillon  
4 Dec. ¶ 9, **Ex. 7.**, at 116.

### 5 **C. Lethality is Not the Test**

6 The State argues Section 27510’s further prohibition on semiautomatic  
7 centerfire rifles on those Young Adults who acquire a valid hunting license or who  
8 are honorably retired is justified by the “lethality” of such firearms. Opp. 24-25.  
9 Lethality is not the test. *See Duncan*, 366 F.Supp.3d at 1145-1146.

10 “[T]he relative dangerousness of a weapon is irrelevant when the weapon  
11 belongs to a class of arms commonly used for lawful purposes.” *Id.* Unquestionably,  
12 semiautomatic rifles are a class of arms commonly used for lawful purposes. The  
13 State’s attempt to categorize *all semiautomatic centerfire rifles* as equivalent to  
14 “assault weapons” is contradictory to its own claims in other Second Amendment  
15 cases in which the State distinguishes “standard” semiautomatic rifles from “assault  
16 weapons.” *Rupp v. Becerra*, 401 F. Supp. 3d 978 (C.D. Cal. 2019).

### 17 **D. Other Preliminary Injunction Factors**

18 The State’s assertion that Section 27510 results in a “temporary”  
19 “inconvenience” is absurd. Prohibiting Plaintiffs’ fundamental rights for years,  
20 preventing Young Adults from acquiring firearms for self-defense is unquestionably  
21 an irreparable harm. *Key, Inc. v. Kitsap County*, 793 F. 2d 1053, 1060 (1986)  
22 (striking down a county’s 5-day waiting period for nude-dancing licenses because it  
23 “unreasonably prevent[ed] a dancer from exercising first amendment rights while an  
24 application [was] pending); *Planned Parenthood Arizona, Inc. v. Humble*, 753 F. 3d  
25 905, 917 (2014) (invalidating law partly because it “delayed” women seeking an  
26 abortion). Further, the State cites no Second Amendment case in which the court  
27 chose to treat the right differently from the First Amendment for purposes of finding  
28 irreparable harm; on the contrary, cases have found such irreparable harm. *Duncan v.*  
*Becerra*, 265 F. Supp. 3d 1106 (S.D. Cal. 2017). The State’s prohibition on Young

1 Adults could be deadly to them and/or their families. *Duncan*, 265 F.Supp.3d at 1135.  
2 With SB 61, Plaintiffs’ harm worsened. Plaintiffs’ extensive motion was timely filed.  
3 Nevertheless, “delay” is merely “a factor to be considered.” *Lydo Enterps., Inc. v.*  
4 *City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984). In fact, the Ninth Circuit  
5 stated it “would loath to withhold relief solely on that ground.” *Id.* at 1214 (noting a  
6 five-year delay weakened an irreparable harm claim but it was not dispositive).

7 The State’s claimed “irreparable injury whenever an enactment of its people or  
8 their representatives is enjoined” cannot overcome the severe harm that the State’s  
9 unconstitutional ban imposes on Young Adults. If a law violates the constitutional  
10 rights of the people, this Court can and should properly enjoin it. *Ashcroft v. ACLU*,  
11 542 U.S. 656, 664-65 (2004); *Doe v. Harris*, 772 F.3d 563, 583 (9th Cir. 2014).  
12 Plaintiffs have shown that age restrictions have no effect on limiting gun violence,  
13 homicides, suicides, or mass shootings. There is no public safety interest concern.

14 **VI. CONCLUSION**

15 For all the foregoing reasons, Plaintiffs request that this Court grant the  
16 requested preliminary injunction.

17 January 24, 2020

Respectfully submitted,

Gatzke, Dillon & Ballance LLP

By:  /s/ John W. Dillon  
John Dillon

22  
23  
24  
25  
26  
27  
28