

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

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 California
28 et al.,

Defendants.

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

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

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Complaint Filed: July 1, 2019

Second Amended Complaint Filed:
November 8, 2019

Date: Monday, December 16, 2019

Time: 10:30 a.m.

Place: Department 5B (5th Floor)

No oral argument should be heard unless
ordered by the Court

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1 **I. INTRODUCTION**

2 The U.S. Supreme Court held in *District of Columbia v. Heller*, (2008) 554 U.S.
3 570, 595 (2008) that the Second Amendment’s text, structure, and history confirm it
4 “confer[s] an individual right to keep and bear arms.” Since then, the Supreme Court
5 concluded in *McDonald v. City of Chicago*, (2010) 561 U.S. 742 that this individual
6 right is fundamental and applies with full force to the states. *Id.* at 748 (plurality
7 opinion); *id.* at 805 (Thomas, J., concurring in part and concurring in the judgment).
8 Further, “self-defense is a basic right” and the “central component” of the Second
9 Amendment’s guarantee of an individual’s right to keep and bear arms. *Id.* at 767.
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13 Against this backdrop, in 2019, California expanded its prohibition on the sale,
14 supply, delivery, possession, or control of *any* firearm to *any* person under 21 years of
15 age. Cal. Penal Code § 27510(a). The ban encompasses all licensed persons, including
16 those with a valid federal firearms license (commonly called “FFL dealers”). *Id.* §§
17 27510(a), 26700. It applies to any FFL firearm sale or transfer and all private party
18 firearm transfers to persons 18-to-20 years of age. See Cal. Penal Code § 27545. The
19 ban precludes licensed gun ranges from renting firearms to those 18-to-20, and from
20 allowing young adults to use or handle firearms during firearms safety classes. The
21 result – Penal Code section 27510 prohibits an entire class of law-abiding adults —
22 18-to-20-years-old (Young Adults) — from obtaining *any* firearm.
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27 This ban on Young Adults’ acquisition and possession of any firearm in
28 California hits directly at the Second Amendment’s core right of self-defense. It

1 represents a ban on acquisition, and a ban on possession. It is an under-21 firearm ban.
2 The ban is applicable to all ordinary law-abiding Young Adults¹ and its so-called
3 “exemptions” are inapplicable, illusory, and irrelevant (hereafter, “California
4 age-based gun ban” or “Section 27510”).²
5

6 California’s age-based gun ban goes farther than did the District of Columbia’s
7 ordinance struck down in *Heller* — a citizen was required to keep his or her firearm
8 inoperable, but he or she could at least acquire and possess a rifle. *Heller*, 554 U.S. at
9 630; and see *Jackson v. City & County of San Francisco*, 135 S. Ct. 2799 (2015)
10 (Thomas, J., dissenting from denial of certiorari). (“But nothing in our decision in
11 *Heller* suggested that a law must rise to the level of the absolute prohibition at issue in
12 that case to constitute a “substantial burden” on the core of the Second Amendment
13 right.”) (citing *Heller*, 554 U.S. at 628-635); Similarly, the California’ age-based gun
14 ban, which categorically prohibits the purchase, transfer, acquisition, possession, use,
15 or control of *any* firearm by *any* Young Adult fails under *Heller*. Simply stated, the
16 ban flunks the *Heller* standards.
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21 Based on *Heller*, the Ninth Circuit employs a two-step analysis when evaluating
22 Second Amendment claims. *Silvester v. Harris*, 843 F.3d 816, 820-822 (9th Cir. 2016)
23

24
25 ¹ In California, “[a]n adult is an individual who is 18 years of age or older.” Cal. Fam.
26 Code § 6501; and see § 6502.

27 ² For all practical purposes, as explained below, California’s law is a complete,
28 categorical ban because it only provides a handful of so-called “exemptions”
inapplicable to ordinary, law-abiding Young Adults. See Declaration of Brandon
Combs (Combs Dec.), ¶¶ 16-32, **Exhibits 6** through **13**, filed concurrently herewith.

1 *cert. denied*, 138 S. Ct. 945 (2018). Courts ask whether the challenged law “falls
2 within a ‘well-defined and narrowly limited’ category of prohibitions ‘that have been
3 historically unprotected.’” *Jackson v. City & County of San Francisco*, 746 F.3d 953,
4 960 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2799 (2015) (citations omitted.) This
5 limited category may involve “one of the ‘presumptively lawful regulatory measures’
6 identified in *Heller*,” or a prohibition where “*persuasive historical evidence*”
7 demonstrates falls outside the *historical scope* of the Second Amendment.” *Id.*
8 (citations omitted; emphasis added).

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12 *Heller* states the government may continue to impose laws on the sale,
13 possession, or use of firearms that are traditional, “longstanding” prohibitions. *Id.* 554
14 U.S. at 626-627. The *Heller* Court listed examples of such longstanding (and, thus,
15 presumptively permissible) laws such as those prohibiting the possession of guns by
16 felons and the mentally ill. *Id.* at 626. The Supreme Court added that the analysis of
17 whether other firearm restrictions are permissible must be based on their “historical
18 justifications.” *Id.* at 635.

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21 Here, there are no “historical justifications” for banning the acquisition and
22 possession of firearms by law-abiding Young Adults. Indeed, the text and historical
23 evidence mandated by *Heller* demonstrates that Young Adults always have been
24 considered part of both the “organized” and “unorganized” militia in the United
25 States. No age-based firearm acquisition/possession restrictions existed during the pre-
26 colonial and founding-era of the United States. In fact, during the founding era,
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1 numerous militia and other acts (both federal and state) explicitly *required* Young
2 Adults to be armed and keep guns in the home.³

3
4 Further, because the Second Amendment right to keep and bear arms is not
5 limited to militia service, Young Adults maintain the *individual right* to keep and bear
6 arms for self-defense and all other lawful purposes. *Heller*, 554 U.S. at 627.
7
8 Accordingly, California’s age-based gun ban is an impermissible restriction under the
9 Second Amendment, destroying such rights. *Silvester v. Harris*, 843 F.3d at 821
10 (“A law that imposes such a severe restriction on the fundamental right of self defense
11 of the home that it amounts to a destruction of the Second Amendment right is
12 unconstitutional under any level of scrutiny.”) (citation omitted).

13
14 The proper analysis for Second Amendment challenges is found in the text of
15 the Constitution itself, using history, tradition, and other indicia of original public
16 meaning to clarify the meaning and scope of such text. Although *Heller* may have left
17 open the precise analytical framework court are to apply to *certain* Second
18 Amendment challenges *that do not* apply firearm “hardware regulations,” affect
19 weapons’ function, or impair self-defense (e.g., gun store zoning laws or serial
20 number requirements), the Supreme Court provided an explicit test for regulations that
21 ban firearms and impair one’s ability to keep and bear arms. (“*Heller* and *McDonald*

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³ See Declaration of David T. Hardy (Hardy Dec.) filed concurrently herewith, **Ex. 17**, at 383-391, 413-465, 480. Kopel & Greenlee 2019, provides exhaustive — indeed, overwhelming — historical evidence that when the Second Amendment was ratified, Young Adults had the right to keep and bear arms.

1 leave little doubt that courts are to assess gun bans and regulations based on text,
2 history, and tradition, not by a balancing test such as strict or intermediate scrutiny.”
3
4 *Heller v. District of Columbia*, 670 F.3d 1244, 1271 (D.C. Cir. 2011) (Kavanaugh, J.,
5 dissenting)). Section 27510 bans ordinary law-abiding Young Adults’ core Second
6 Amendment rights to purchase, transfer, acquire, and possess *all firearms* for lawful
7
8 purposes. Just as in *Heller*, Section 27510’s ban is unconstitutional; there is no need to
9 apply any form of scrutiny analysis and the challenged law must be enjoined.
10
11 *Cf. Wrenn v. District of Columbia*, 864 F.3d 650, 666 (D.C. Cir. 2017) (“*Heller*’s
12 categorical approach is appropriate here even through our previous cases have always
13 applied tiers of scrutiny to gun laws.”)⁴ However, since the decisions in *Heller* and
14 *McDonald*, the Ninth Circuit has applied a two-part test when considering Second
15 Amendment challenges to state law. First, a court must evaluate the burden and apply
16 the correct scrutiny. *United States v. Torres*, 911 F.3d 1253, 1258 (9th Cir. 2019);
17 *Jackson*, 746 F.3d at 960 (citing *United States v. Chovan*, 735 F.3d 1127, 1136-37
18 (9th Cir. 2013)). This two-part inquiry asks ““(1) how close the challenged law comes
19 to the core of the Second Amendment right, and (2) the severity of the law’s burden
20 on that right.”” *Bauer v. Becerra*, 858 F.3d 1216, 1222 (9th Cir. 2017), *cert. denied*,
21 138 S. Ct. 982 (2018) (quoting *Silvester*, 843 F.3d at 821).

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27 ⁴ See also *McDonald v. City of Chicago*, (2010) 561 U.S. 742, which analyzed a
28 Second Amendment challenge based on history and tradition, rather than a means-end
scrutiny analysis.

1 Applying the Ninth Circuit two-part test, an historical analysis of Young Adults
2 Second Amendment rights unquestionably establishes that Section 27510 strikes at the
3 core of the Second Amendment. Further, Section 27510 is a categorical ban on all
4 types of *any* firearm for Young Adults and severely burdens their right to keep and
5 bear arms for self-defense and other lawful purposes; and thus, should tiered scrutiny
6 be applied, it should be *strict* scrutiny.
7

8
9 However, even if this Court applies intermediate scrutiny, the challenged law
10 must fail. The Ninth Circuit precedents demand that even under intermediate scrutiny,
11 “(1) the government’s stated objective ... be significant, substantial, or important; and
12 (2) there be ... a ‘reasonable fit’ between the challenged regulation and the asserted
13 objective.” *Silvester*, 843 F.3d at 821-822 (citation omitted). “[The government] must
14 demonstrate that the recited harms are real, not merely conjectural, and that the
15 regulation will in fact alleviate these harms in a direct and material way”. *Turner*
16 *Broad. Sys., Inc. v. F.C.C.*, (1994) 512 U.S. 622, 664. As shown below, the State of
17 California made no showing of any substantiated legitimate objective — let alone a
18 “significant, substantial, or important” one — for the challenged ban. Further, the
19 state’s attempt to do so does not satisfy the *additional* “reasonable fit” requirement as
20 they cannot show that Section 27510 “will in fact alleviate these harms in a direct and
21 material way.” *Id.*
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26 Thus, Plaintiffs are likely to succeed on the merits. They also satisfy all other
27 preliminary injunction requirements. California’s age-based gun ban has denied an
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1 enumerated constitutional right, which represents an irreparable injury per se. There is
2 no public interest in denying otherwise legally eligible people a constitutional right,
3 especially since California has allowed Young Adults to purchase, at the very least,
4 rifles and shotguns up until December 31, 2018. Moreover, the prior status quo can be
5 preserved with no demonstrable harm to anyone. The State of California must not be
6 allowed to eliminate the fundamental, individual rights of law-abiding Young Adults
7 based on conjecture. California’s age-based ban on Young Adults, Penal Code
8 § 27510(a), should be declared unconstitutional and enjoined.
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11 **II. THE CHALLENGED CALIFORNIA AGE-BASED GUN BAN**

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13 In 1917, California law contained no age restrictions on firearm sales or
14 transfers. Hardy Dec. ¶ 51. In 1923, California largely adopted the Uniform Firearms
15 Act requiring, and imposed a requirement that receiving individuals to be 18 years of
16 age or older for the sale, delivery, or transfer of “any pistol, revolver or other firearm
17 capable of being concealed upon the person” Hardy Dec. ¶ 51; *See also Fiscal v.*
18 *City and County of San Francisco*, (2008) 158 Cal.App.4th 895, 906. Even then,
19 there was no state law ban on the sale, supply, delivery, possession, or control of any
20 “long guns” (e.g., shotguns, rifles) based on age — *none. Ibid.*
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24 However, effective January 1, 2019, then-Governor Edmund G. Brown, Jr.,
25 signed into law Senate Bill 1100 (“SB 1100,” 2017-2018 Reg. Sess.), amending
26 Section 27510 to provide that a person licensed under Penal Code sections 26700 to
27 26915, inclusive — *i.e.*, a person with a “valid federal firearms license” — “shall not
28

1 sell, supply, deliver, or give possession or control of a firearm to any person under
 2 21 years of age.” *See* Cal. Penal Code § 27510 and § 26700.

3
 4 Prior to enactment of SB 1100, California law prohibited the sale or transfer of
 5 a *handgun*, except as exempted, to any person under the age of 21, but expressly
 6 *allowed* a person at least 18 years of age to buy or transfer “long guns” (e.g., all rifles
 7 and shotguns). *See* Hardy Dec. ¶ 52. Existing federal law also already prohibited
 8 Young Adults from purchasing handguns *only* from licensed federal firearms dealers.
 9 18 U.S.C. § 922(b)(1). Thus, under federal law, Young Adults are permitted to
 10 purchase, transfer, and acquire rifles and shotguns through licensed dealers and
 11 private party transactions, and to purchase, transfer, and acquire handguns through
 12 private party transactions.

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 16 With enactment of SB 1100, however, California’s ban applies to all types of
 17 firearms. There can be *no* sale, supply, delivery, possession, or control of *any firearm*
 18 *to any person under 21 years of age* in California (both private party transactions and
 19 dealer transactions) — except for a few so-called “exemptions” that are illusory,
 20 inapplicable, and irrelevant to virtually all ordinary, law-abiding Young Adults. *See*
 21 Cal. Penal Code § 27510(b)(1), (b)(2)(A)-(E);⁵ *See also* Combs Dec. ¶¶ 16-32.

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 25 ⁵ Plaintiffs have no desire to hunt, join law enforcement, or enlist in military purely
 26 in order to exercise their constitutional rights. They simply wish to acquire firearms
 27 for self-defense and other lawful purposes. *See* Plaintiff Declarations filed
 28 concurrently herewith — Declarations of Matthew Jones (Jones Dec.) ¶¶ 2-8; Thomas
 Furrh (Furrh Dec.) ¶¶ 2-11; Kyle Yamamoto (Yamamoto Dec.) ¶¶ 2-10 filed
 concurrently herewith. Also, it is no answer that some may be able to get a hunter’s

1 On October 11, 2019, only 10 months after the ban went into effect, California
2 Governor Gavin Newsom signed Senate Bill 61 (SB 61), which placed even more
3 restrictions on Section 27510's so-called "exemptions." Now, even if a Young Adult
4 were to go through the significant time and expense of obtaining a hunting license
5 (even if they have no interest in hunting), they are still prohibited from purchasing all
6 handguns and now *all semiautomatic centerfire rifles*. Additionally, this new
7 restriction on all semiautomatic centerfire rifles applies to honorably retired military,
8 if they are under 21. The licensed firearms dealers and ranges face substantial criminal
9 penalties if they violate the current law. Penal Code section 27510(a); Penal Code
10 § 27590.⁶ Make no mistake, California's age-based gun ban does not impose
11 reasonable *conditions and qualifications* on the commercial sale of firearms. Instead,
12 it is a ban on the sale or transfer of *any* firearms to *any* person under age 21.

17 **III. FACTUAL BACKGROUND**

18 The individual Plaintiffs are lawful, ordinary, law-abiding Young Adults, not
19 otherwise prohibited from acquiring and possessing firearms. Jones Dec. ¶ 2-8; Furrh
20 Dec. ¶ 2-11; Yamamoto Dec. ¶ 2-10; Williams Dec. ¶ 2-11. Each Plaintiff attempted
21 to purchase a firearm in California, and each was denied their Second Amendment
22 rights *based solely on their age. Id.* As Young Adults, each Plaintiff can vote, enter
23 license, as that license is not "easy" to obtain or a relevant gun-safety program. *See*
24 Declaration of David Bogan (Bogan Dec.) ¶¶ 1-30.

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27 ⁶ *See* Declarations John Phillips, (Phillips Dec.) ¶¶ 2-8; Darin Prince, (Prince Dec.)
28 ¶¶ 2-10; Matthew Beebe, (Beebe Dec.) ¶¶ 2-7; Anthony Williams, (Williams Dec.) ¶¶
2-12, filed concurrently herewith.

1 into contracts, get married, enter the military voluntarily, be selected for and inducted
2 for service into the military — all without restriction on the basis of their age. Hardy
3 Dec. ¶ 25, **Ex. 17**, at 478-480.

4
5 Plaintiffs Poway Weapons and Gear (PWG), Beebe Family Arms and
6 Munitions (Beebe Arms), and North County Shooting Center (NCSC) have been
7 forced to stop all sales and firearm transfers to Young Adults. Phillips Dec. ¶ 2-8;
8 Beebe Dec. ¶ 2-7; Prince Dec. ¶ 2-10. Plaintiffs PWG and NCSC are licensed
9 shooting ranges. Each entity has been forced to deny Young Adults the ability to rent,
10 use, and train for proficiency and safety with firearms at their ranges. Phillips Dec. ¶
11 3-8; Prince Dec. ¶ 2-10. Even if a Young Adult is accompanied by an individual over
12 21, PWG, NCSC, and other gun ranges cannot rent or provide firearms to them for
13 fear of violating Section 27510. *Id.* Further, PWG and NCSC have been forced to
14 prevent Young Adults from attending and taking part in firearms and hunter education
15 courses, as each course calls for attendees to handle, use, and control firearms. Phillips
16 Dec. ¶ 3-8; Prince Dec. ¶ 2-10.

17
18 Plaintiffs Firearms Policy Coalition (FPC), Firearms Policy Foundation (FPF),
19 California Gun Rights Foundation (CGF), and Second Amendment Foundation (SAF)
20 represent Young Adult members that have been denied their Second Amendment
21 rights and that would otherwise purchase and acquire firearms but for Section 27510.
22 Combs Dec. ¶ 2-10; Declaration of Alan Gottlieb (Gottlieb Dec.) ¶ 2-5, filed
23 concurrently herewith. Some Young Adults own their own homes, others rent. Some
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1 are married, others are single parents raising children. Some are alone, at college. To
2 deprive these Young Adults the right to acquire and possess a firearm for self-defense
3 and other lawful purposes infringes on the “core” of their Second Amendment rights.

4 **IV. LEGAL STANDARD**

6 “The purpose of a preliminary injunction is to preserve the status quo pending a
7 determination of the action on the merits.” *Chalk v. U.S. Dist. Ct. (Orange Cty.*
8 *Superin. Of Schs.)*, 840 F.2d 701, 704 (9th Cir. 1998). To obtain such relief, the
9 moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of
10 irreparable harm absent preliminary relief; (3) that the balance of equities tips in his
11 favor; and (4) that an injunction is in the public interest. *Am. Trucking Assn’s,*
12 *Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting
13 *Winter v. Nat. Res. Def. Council, Inc.*, (2008) 55 U.S. 7, 20.

17 **V. ARGUMENT – LIKELIHOOD OF SUCCESS**

18 **A. California’s Age-Based Gun Ban Cannot Stand** 19 **under the Textual and Historical Analysis Mandated by *Heller***

20 The original text and historical understanding of the Second Amendment
21 confirm that law-abiding, 18-to-20-year-olds were part of the militia since both the
22 colonial and founding periods. *See Hardy Dec.* ¶¶ 25, 71; **Ex. 17**, at 413-465. In fact,
23 “over 250 colonial and state militia statutes through 1799 mandated that persons,”
24 “usually 16 or 18 (and older) serve in the military using *their own* arms. *Id.* **Ex. 17**, at
25 413-414.
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1 “[M]assive and uncontradictory evidence from the Founding era” shows that
2 “18-to-20-year-olds *did* have the right to keep and bear arms, and indeed were
3 required by law to exercise that right.” See Hardy Dec. ¶¶ 9-77, **Ex. 16**, at 354-360.
4 For example, only months after the Second Amendment was ratified, Congress took
5 steps to “provide for organizing, arming, and disciplining, the Militia” (U.S. Const.
6 art. I, § 8, cl. 16), by enacting the Militia Act of 1792, requiring that every citizen of
7 each respective state, “*who is or shall be of the age of eighteen years, and under the*
8 *age of forty-five years ... shall severally and respectively be enrolled in the militia[.]*”
9 Hardy Dec. ¶¶ 16, 23; **Ex. 17**, at 460-462; **Ex. 15** (emphasis added). The original
10 Militia Act provides powerful evidence that Second Amendment rights vest at age 18.
11 The legislative history of the Militia Act further supports this contention.
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16 In 1790, Secretary of War Henry Knox submitted a militia plan to Congress
17 stating that “all men of the legal military age should be armed,” and that [t]he period
18 of life in which military service shall be required of [citizens] [was] to commence at
19 eighteen.” 1 ANNALS OF CONG. app. 2141, 2145-2146; Hardy Dec. ¶¶ 28-31,
20 **Ex. 17**, at 462. Representative Jackson agreed “that from *eighteen to twenty-one* was
21 found to be the *best* age to make soldiers of.” *Ibid.* (emphasis added). Eighteen was
22 the age that George Washington recommended for militia enrollment. See Hardy Dec.
23 ¶¶ 28-31, **Ex. 17**, at 463; 26 WRITINGS OF GEORGE WASHINGTON 389 (John C.
24 Fitzpartick ed., 1938). Further, that “18-year-olds should be part of the militia was
25 hardly controversial,” as they “had been part of every colonial and state militia from
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1 the very beginning, except for a nineteen-year period in Virginia in the middle of the
2 eighteenth century.” Hardy Dec. ¶ 17, **Ex. 17**, at 463. Indeed, numerous state militia
3 laws enacted shortly before the Second Amendment provide additional evidence that
4 the right to arms encompassed 18-year-olds. *Id.* ¶ 16, **Ex. 17**, at 413-460.

6 Able-bodied 18-to-20-year-olds not only were entrusted with the responsibility
7 of bearing arms in defense of their country but were also required by law to keep their
8 own arms to do so. See Hardy Dec. ¶¶ 26-27, 32-34, **Ex. 15** (Militia Act, 1 Stat. 271
9 [requiring each enrollee, regardless of age, to “provide himself with a good musket or
10 firelock”]); *United States v. Miller*, (1939) 307 U.S. 174, 179 (“when called for
11 service these men were expected to appear bearing arms supplied by themselves”).
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14 *Heller* may not have “clarif[ied] the entire field” of Second Amendment
15 analysis, 554 U.S. at 634, but it surely foreclosed any argument that the Second
16 Amendment does not protect individuals who, at the time of ratification, were
17 *required* by both state and federal law to keep and bear arms in service of the militia.
18 While the right protected by the Second Amendment is by no means limited to militia
19 service, “the threat that the new Federal Government would destroy the citizens’
20 militia by taking away their arms was the reason that the right ... was codified in the
21 written Constitution.” *Heller*, 554 U.S. at 559. Unsurprisingly, there are no colonial or
22 founding era laws prohibiting the acquisition or possession of firearms by Young
23 Adults due solely to age. Hardy Dec. ¶¶ 35, 67 **Ex. 16**, at 354-360. Similarly, “there
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1 were no age-based arms restrictions in the early republic or the Jacksonian period.”

2 *Id.*, **Ex. 17**, at 465.

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4 Even present day, able-bodied male citizens at least 17 years of age (and under
5 45 years of age) are designated members of the U.S. militia pursuant to federal statute,
6 (10 U.S.C. § 246(a)), and may be selected and inducted for training and service into
7 the United States armed forces (50 U.S.C. § 3803(a)). As such, they are eligible to
8 serve in the military and to die for their country based on their age. In addition, the
9 “militia of the State” consists of both the organized and unorganized militia. The
10 State’s *organized* militia encompasses the National Guard, State Military Reserve and
11 Naval Militia. Cal. Mil. and Vet. Code § 120. The *unorganized* militia “consist of all
12 persons liable to service in the militia, but not members of the National Guard, the
13 State Military Reserve, or the Naval Militia.” *Id.* § 121. Accordingly, both the State’s
14 organized and unorganized militia consist of “all able-bodied male citizens ... who are
15 *between the ages of eighteen and forty-five*” *Id.* § 122 (emphasis added).
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20 **B. Under *Heller*, California’s Age-Based Gun Ban Abridges**
21 **Young Adults’ Second Amendment Right**

22 Under *Heller*, “the Second Amendment right is exercised individually and
23 belongs to all Americans.” 554 U.S. at 581. ““The right of the whole people, *old and*
24 *young*, men, women and boys, *and not militia only*, to keep and bear arms of every
25 description, and not just such merely as are used by the militia, shall not be infringed,
26 curtailed, or broken in upon, in the smallest degree.”” *Id.* at 612-613 (quoting *Nunn v.*
27 *State*, 1 Ga. 243, 250 (1846) (emphasis added).
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1 Accordingly, Young Adults’ right is not limited to keeping and bearing arms for
2 militia service; it also embraces an individual’s right for self-defense and other lawful
3 purposes. *Heller*, 554 U.S. at 629, 635; and *McDonald*, 561 U.S. at 780. Thus, in
4 addition to the militia right, the Second Amendment guarantees the personal right to
5 keep and bear arms. Under both interpretations, Young Adults have the right to keep
6 and bear arms. California’s age-based gun ban destroys that right.
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9 Now, the Fifth Circuit decision in *Nat’l Rifle Ass’n. v. Bureau of Alcohol,*
10 *Tobacco, Firearms, and Explosives (NRA I)*, 700 F.3d 185 (5th Cir. 2012), rejected
11 the Second Amendment rights of Young Adults in response to a challenge to the
12 federal statute prohibiting *licensed dealers* from selling *handguns* to 18-to-20-year-
13 olds; however, it is not controlling, nor persuasive; it has been roundly criticized; and
14 it is easily distinguished. First, the Fifth Circuit itself emphasised that the federal law
15 was “[f]ar from a total prohibition on handgun possession and use” because, among
16 other things, Young Adults may purchase long-guns (e.g., shotguns, rifles) through
17 licensed dealers and through private transfers. *NRA I*, 700 F.3d at 206-207 (citations
18 omitted). Second, unlike California’s age-based gun ban, the Fifth Circuit decision
19 still allowed private transfers of handguns to Young Adults. In short, the Fifth Circuit
20 was *not* presented with a ban on all sales or transfers of *all* firearms by Young Adults.
21 But cf. *Heller*, 554 U.S. at 629 (“it is no answer to say, ... that it is permissible to ban
22 the possession of handguns so long as the possession of other firearms (i.e., long guns)
23 is allowed”); *Parker v. District of Columbia*, 478 F.3d 370, 400 (D.C. Cir. 2007).
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1 Third, the Fifth Circuit relied on inapplicable, generalized gun safety
2 regulations; dubious laws disarming and prohibiting sales of arms to certain groups —
3 such as Indians, slaves, Loyalists, felons, and the mentally ill — and wrongly tied
4 those laws to Young Adults. *NRA I*, 700 F.3d at 200, 206-207; *See also* Hardy Dec.
5 ¶¶ 44-47, **Ex. 16**, at 354-360. Further, subsequent successful challenges to the federal
6 law by various groups continue to raise significant doubts as to the constitutionality of
7 age-based restrictions.⁷

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10 Fourth, the Fifth Circuit declined (by a one-vote margin) to consider en banc
11 the constitutionality of the federal law, but Judge Edith H. Jones, joined by five of her
12 colleagues, issued a compelling dissent in which she contended that the law was an
13 unconstitutional infringement on Second Amendment rights. *Nat'l Rifle Ass'n v.*
14 *Bureau of Alcohol, Tobacco, Firearms, and Explosives (NRA II)*, 714 F.3d 334, 336
15 (5th Cir. 2013) (Jones, J., dissenting from denial of rehearing en banc). “History and
16 tradition yield proof that 18-to-20-year olds had full Second Amendment rights.” *Id.* at
17 339. Moreover, “using the 1968 Omnibus Crime Control gun regulations against this
18 age group to *contradict* the original meaning of the Second Amendment is contrary to
19 *Heller*.... Drawing analogies between this age group and felons and the mentally ill is

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25 ⁷ *See Tyler v. Hillsdale County Sheriff's Dep't (Tyler II)*, 837 F.3d 678, 699 (6th Cir.
26 2016); *Binderup v. Attorney General*, 836 F.3d 336, 356-357 (3d Cir. 2016); *Keyes v.*
27 *Lynch*, 195 F. Supp.3d 702, 722 (M.D. Pa. 2016); *and see* Hardy Dec. ¶¶ 44-47, **Ex.**
28 **16**, Christopher M. Johnson, *Second-Class: Heller, Age, and the Prodigal*
Amendment, *Columbia Law Review*, Vol. 117, No. 6 (Oct. 2017), at 1585-1586,
1594-1595 (Johnson 2017).

1 not only offensive but proves too much.” *Id.* at 343. Secondary authorities support this
2 analysis. *See Hardy Dec.* ¶¶ 44-47, **Ex. 16**, at 342, 355-372.

3 4 **C. California’s Age-Based Gun Ban Flunks Strict** 5 **Scrutiny and Intermediate Scrutiny**

6 As shown above, the challenged law abridges conduct that falls within the
7 historical core of the Second Amendment right. Thus, like *Heller* and *McDonald*, the
8 focus should be on the “history and tradition” of the right to keep and bear arms
9 rather than a balancing test because Section 27510 is a firearm ban for Young Adults
10 eliminating their Second Amendment rights. *Heller II*, 670 F.3d 1244, 1269-70, 1280,
11 1284 (D.C. Cir. 2001) (Kavanaugh, J. dissenting). As such, Section 27510 is
12 unconstitutional and should be enjoined.
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15 If, however, a means-end review is selected by this Court, strict scrutiny is the
16 test. Strict scrutiny requires the government to prove the restriction on a
17 constitutional right furthers a compelling interest and is narrowly tailored to achieve
18 that interest. *Silvester*, 843 F.3d at 821 (“A law that implicates the core of the Second
19 Amendment right and severely burdens that right warrants strict scrutiny”). Without
20 waiving its contentions, however, Plaintiffs note that the Ninth Circuit has previously
21 applied an intermediate scrutiny two-step analysis in other Second Amendment
22 challenges, *see, e.g., Chovan*, 735 F.3d at 1138-1139. Thus, to prevent duplicative
23 analysis, Plaintiffs present their contentions under intermediate scrutiny, as any law
24 that fails intermediate scrutiny necessarily fails strict scrutiny.
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1 First, to uphold a statute under intermediate scrutiny, the Ninth Circuit has
2 identified two requirements: “(1) the government’s stated objective must be
3 significant, substantial, or important; *and* (2) there must be a ‘reasonable fit’ between
4 the challenged regulation and the asserted objective.” *Silvester*, 843 F.3d at 821-822
5 (citation omitted). Second, intermediate scrutiny requires that the government
6 “demonstrate that the harms it recites are real,” beyond “mere speculation or
7 conjecture” (*Edenfield v. Fane*, (1993) 507 U.S. 761, 770-771), and will “in fact
8 alleviate” the government’s concerns. *Lorillard Tobacco Co. v. Reilly*, (2001) 533
9 U.S. 525, 555. Third, “the burden of justification is demanding and it rests entirely on
10 the State.” *Tyler v. Hillsdale County Sheriff’s Dept.*, 837 F.3d 678, 694 (6th Cir.
11 2016), quoting *United States v. Virginia*, (1996) 518 U.S. 515, 533. Defendants’
12 cannot meet their burden.
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17 **1. Section 27510 is not “Substantially Related” to the**
18 **State’s Interests, nor a “Reasonable Fit”**

19 The State of California has generally identified the following state interests in
20 passing California’s age-based gun ban: (1) “mass school shootings,” such as those
21 that occurred at Stoneman Douglas High School in Parkland, Florida, Sandy Hook
22 Elementary School in Newtown, Connecticut, and Columbine High School in
23 Colorado (Combs Dec. ¶¶ 12-15, **Ex. 5**, at 23); (2) Young Adults are immature,
24 impulsive, and reckless (*id.* **Ex. 2**, at 12 and **Ex. 4**, at 20); (3) crime reduction/reduced
25 gun violence (*id.* **Ex. 3**, at 15); and (4) Young Adults are disproportionately linked to
26 crime. *Id.* **Ex. 4**, at 20. Each are important concerns, but none are supported by facts
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1 and reasonable inferences based on relevant data. Further, the California age-based
2 ban is not a “reasonable fit” for achieving the stated interests. *See* Declaration of
3 Thomas B Marvell (Marvell Dec.) ¶¶ 1-19; and Declaration of John Lott (Lott Dec.)
4 ¶¶ 1-22, filed concurrently herewith

6 **a. “Mass School Shootings”**

8 Although horrific, mass school shootings are rare, and those shootings
9 committed by Young Adults are even rarer. *See* Marvell Dec. ¶¶ 18-19 and **Ex. 10**, at
10 238-244; Lott Dec. ¶ 16. In fact, no credible evidence supports the proposition that
11 raising the age to purchase or acquire a firearm will make any difference in curtailing
12 mass school shootings. Marvell Dec ¶¶ 5-8; Lott Dec. ¶¶ 6-19, **Ex. 1-7**. This is
13 because (1) shooters buy guns from sources other than licensed dealers (Lott Dec. ¶¶
14 7-8, **Ex. 2**); (2) criminals are still going to obtain guns (Lott Dec. ¶ 9, **Ex. 3**); (3) age
15 is not a significant factor in mass public shootings (Lott Dec. ¶ 10, **Ex. 4** [average
16 shooter age is approximately 33 years-old] and Declaration of John W. Dillon (Dillon
17 Dec.) ¶ 9, **Ex. 7** [average age of school attackers is 15]); and (4) contrary to
18 government statements, mass school shootings are *not* generally committed by people
19 “under 21.” (Lott Dec. ¶ 16).⁸ Further, the other government-referenced shooting in
20 California was in San Bernardino (a *non-school* shooting by people *older* than 21
21 years of age). *See* Dillon Dec., ¶ 9, **Ex. 6**.

26 Though an attempt to reduce mass school shootings is an understandable
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28 ⁸ *See also* Dillon Dec., ¶ 9, **Ex. 7.**, at 116 (average age of school attackers is 15)

1 interest, Section 27510's ban is *also* not a "reasonable fit." There is no connection, no
2 "fit." In short, the Legislature did not analyze the purported issue (mass school
3 shootings committed by Young Adults) and the proposed solution (banning Young
4 Adults from all lawful firearms sales, transfers, use, rentals). *See also* Marvell Dec. ¶¶
5 18-19, **Ex. 11**.

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8 **b. "Maturity, Impulsive, Reckless"**

9 Supporters of the California age-based gun ban assert that "[m]aturity,
10 impulsive, or reckless behavior, and responsibility vary greatly among
11 18-20-year-olds" and that other laws prohibit those under 21 from buying alcohol or
12 renting a car, so that the same age restriction should apply to ban the purchase or
13 acquisition of all firearms. Combs Dec. ¶ 10, **Ex. 2**, at 11-12. The author of SB 1100
14 echoed the above-sentiments, claiming "there are a number of instances when
15 lawmakers have limited the ability of persons under the age of 21 to engage in
16 activities which are otherwise lawful (e.g., under 21 bans on alcohol, cigarettes, and
17 marijuana). *Id.* at 11. This comparison is *extraordinarily flawed*; fundamental rights
18 are not vices, nor can they be treated as vices. Lott Dec. ¶ 14. Additionally, no
19 evidence or data was provided to support such assertions. These same Young Adults
20 "are considered mature enough to vote, contract, marry, and register to train and serve
21 in the U.S. armed forces." Lott Dec. ¶ 17. Also contrary to supporter's anecdotal
22 statements is the relatively low revocation rates of college age students that have
23 concealed carry permits. *Id.* at ¶¶ 18-19.

1 Further, Section 27510 is not closely drawn to the State’s interest as it prevents
2 lawful Young Adults from even becoming proficient in the safe handling and use of
3 firearms. Section 27510’s ban prevents Young Adults from even going to a licensed
4 shooting range and renting any firearm or using an FFL’s rented firearm in a firearms
5 safety or self-defense class. See Phillips Dec., ¶¶ 5-8; See Prince Dec., ¶¶ 5-9.
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8 The Second Amendment protects the right to learn and practice firearm use at
9 shooting ranges. *Ezell v. City of Chicago*, 846 F.3d 888, 890 (7th Cir. 2017). Age
10 restrictions *on minors* preventing this protected activity already have failed
11 intermediate scrutiny. *Id.* The Seventh Circuit held “that the core individual right of
12 armed defense — as recognized in *Heller* and incorporated against the stated in
13 *McDonald* — includes a corresponding right to acquire and maintain proficiency in
14 firearm use through target practice at a range.” *Id.* at 892, citing *Ezell I*, 651 F.3d at
15 704. “The core right to possess firearms for protection “wouldn’t mean much without
16 the training and practice that make it effective.” *Id.* Range training “lies close to the
17 core of the individual right of armed defense.” *Id.* at 893. *Ezell* held this limitation
18 unconstitutional *on minors* under intermediate scrutiny. Section 27510 is
19 unconstitutionally restricting Young Adults’ “core individual right of armed defense,”
20 which includes the “corresponding right to acquire and maintain proficiency in
21 firearm use through target practice at a range.” *Id.* at 892.
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27 Moreover, the Section 27510 ban is not narrowly tailored, nor substantially
28 related to the perceived problem. The ban applies to lawful dealer sales and transfers,

1 not illegal transfers. The ban applies to Young Adults with and without criminal
2 histories. It applies to Young Adults with mental health issues and those without. It
3 applies to Young Adults who live with their parents and those who live alone. It also
4 applies to those who are married with children. But to ban sales and transfers of all
5 guns to all Young Adults based on speculation that some of them might be immature
6 goes way too far and it not a reasonable fit solution to any supposed problem.
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9 **c. “Reduce Crime/Gun Violence”**

10 The “author’s statement” justifying California’s age-based gun ban states it is a
11 “proper step toward public safety” and responsive to requests to reduce “gun
12 violence.” Combs Dec. ¶ 13, **Ex. 3**, at 15. No evidence or data is offered, but certainly
13 they are laudable interests — public safety and reduced gun violence. However, with
14 this level of generality, the interests could justify any law and virtually any statutory
15 ban. Importantly, “there is no evidence that gun laws banning the purchase or
16 possession of legal firearms based on age restrictions have the intended effect of
17 reducing gun homicides and suicides.” Marvell Dec. ¶ 5. After undertaking an in-
18 depth analysis, Marvell concludes: “I have found no discernable crime-reduction
19 impact.” *Id.* Moreover, despite the federal law prohibiting gun dealers from selling
20 handguns to persons under 21, an important study tested whether arrests for three
21 violent crimes trended downward or upward *after* the law went into effect. Study
22 results show that “the federal law had *no impact* on the 18-to-20-year-old share of
23 arrests for violent crime.” *Id.* ¶ 9, **Ex. 2**. Moreover, the ban is a *categorical ban*, the
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1 opposite of a narrowly tailored, or a “reasonable fit.” Marvell Dec. ¶ 17, **Ex. 10**.

2 **d. “Disproportionality”**

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4 Supporters of SB 1100 cite statistics that those under 21-years-old are
5 “disproportionally linked to crime.” Combs Dec. ¶ 14, **Ex. 4**, at 20. This data is badly
6 skewed. Yes, persons 18-to-20 commit murders at a higher rate comparatively. But
7 the same can be said of persons 21-to-25, who commit murders at a higher rate than
8 people in the 26-30 age range. Persons 36-45 commit crimes at a considerably higher
9 rate than those 46-50, but this finding does *not* mean we ought to ban firearms from
10 people 36 through 45. Lott ¶ 11-12; *and see* Hardy Dec. ¶ 25, **Ex. 17**, at 472. The
11 *same* flawed point can be made based on race. Americans of some races commit
12 violent crimes at higher rates than persons of other races. Lott Dec. ¶¶ 12; Hardy Dec.
13 ¶¶ 25, 69-70, **Ex. 17**, at 472. Likewise, males perpetuate violent crimes at a much
14 higher rate than females. Lott Dec. ¶ 13; Hardy Dec. ¶¶ 25, 69-70, **Ex. 17**, at 472.
15 Rights of the overwhelming majority of law-abiding citizens in a particular group
16 cannot be destroyed because of irresponsible behavior by other persons of the same
17 age, race, or sex.
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22 Further, *Heller* already rejected the notion that protected arms could be banned
23 because criminals might misuse them. The Supreme Court concluded that a ban on
24 possession by law-abiding citizens is not a permissible means of preventing misuse by
25 criminals. *Heller* at 628-29 (maj. op.). The State’s “fit” is grossly over broad.
26 Prohibiting lawful conduct of all Young Adults is contrary to the fundamental
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1 principle, “deeply etched in our law [that] a free society prefers to punish the few who
2 abuse rights ... *after* they break the law *than to throttle them and all others*
3 *beforehand.*” *Vicenty v. Bloomberg*, 476 F.3d 74, 85 (2nd Cir. 2007) quoting
4 *Southeastern Promotions, Ltd. V. Conrad*, 420 (1975) U.S. 546, 559 (upholding
5 injunction against ban on sale to and possession of spray paint and broad-tipped
6 markers by person under 21 to combat graffiti); *and see Ashcroft v. Free Speech*
7 *Coal.*, 535 U.S. 234, 245 (2002) (government cannot ban virtual child pornography
8 because it might lead to child abuse because “[t]he prospect of crime” “does not
9 justify laws suppressing protected speech”); *Edenfield*, 507 U.S. at 770-71 (state
10 cannot impose a “flat ban” on solicitations by public accountants because solicitations
11 “create[] the dangers of fraud, overreaching, or compromised independence”); *Stanley*
12 *v. Georgia*, (1969) 394 U.S. 557, 567 (“the State may no more prohibit mere
13 possession of obscene matter on the ground that it may lead to antisocial conduct than
14 it may prohibit possession of chemistry books [because] they may lead to the
15 manufacture of homemade spirits”).

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21 **e. Section’s 27510’s So-Called “Exemptions”**

22 On October 11, 2019, SB 61 amended Section 27510 by placing even more
23 restrictions on the law’s already illusory so-called “exemptions.” The amended
24 portions of Section 27510 now provide:
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27 (b) (1) Subdivision (a) does not apply to or affect the sale, supplying,
28 **delivery, or giving possession or control of a firearm that is not a handgun or a semiautomatic centerfire rifle** to a person 18 years of

1 age or older who possesses a valid, unexpired hunting license issued by
2 the Department of Fish and Wildlife.

3 (2) Subdivision (a) does not apply to or affect the sale, supplying,
4 delivery, or giving possession or control of a firearm **that is not a**
5 **handgun or a semiautomatic centerfire rifle** to a person who is 18
6 years of age or older and provides proper identification of being an
7 honorably discharged member of the United States Armed Forces, the
8 National Guard, the Air National Guard, or the active reserve
9 components of the United States.... SB 61 (2019-2020 Reg. Sess.), Cal.
10 Penal Code § 27510(a)-(b) (bold added).

11 Thus, even if a Young Adult obtained a hunting license in order to exercise
12 their Second Amendment rights, under the new law, they are *still prohibited* from
13 acquiring all semiautomatic, centerfire rifles *and* handguns of any kind. Moreover,
14 this burden is not one that can be immediately remedied. *Wilson v. Lynch* 835 F.3d
15 1083, 1093 (9th Cir. 2016). (Plaintiff “could acquire firearms and exercise her right to
16 self-defense at any time by surrendering her [medical marijuana] registry card, timely
17 demonstrating to a firearms dealer that there is no reasonable cause to believe she is
18 an unlawful drug user.”).

19 To obtain a hunter’s license, an individual must first sign up, pay a fee, and
20 complete an online hunter’s education course. Applicants also must pay another fee
21 and attend a 4-hour in-person hunter’s education class. See Bogan Dec. at ¶¶ 11-12,
22 **Ex. 2.** Only after completing and passing this course can applicants then purchase a
23 hunting license. *Id.* at ¶¶ 18-19. This process can take over a month to complete.
24 Compare *Planned Parenthood Arizona, Inc. v. Humble*, 753, F.3d 905, 917 (2014)
25 (Ninth Circuit invalidated an Arizona law, for example, partly because it “delayed”
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1 women seeking an abortion.) Similarly, the Ninth Circuit struck down a county’s 5-
2 day waiting period for nude-dancing licenses because it “unreasonably prevent[ed] a
3 dancer from exercising first amendment rights while an application [was] pending.”
4 *Kev, Inc., v. Kitsap County*, 793 F.2d 1053, 1060 (9th Cir. 1986). Further, even a 10-
5 minute delay of a traffic stop is considered a substantial burden. *Cf. Rodriguez v.*
6 *United States*, 575 U.S. ___ (2015) (holding that the Fourth Amendment prohibits the
7 police from delaying a traffic stop seven or eight minutes to conduct a dog sniff.)
8 Finally, the additional fees associated with taking a hunter’s education course have
9 been held invalid in other constitutional contexts. *Cf. Forsyth County v. Nationalist*
10 *Movement*, (1992) 505 U.S. 123 (holding that the First Amendment forbids a county
11 from charging even a small permitting fee to offset the costs of providing security for
12 a white-nationalist rally).

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17 Section 27510’s “exemptions under Section 27510(b) are entirely illusory and
18 unconstitutional. Section 27510 permits the sale, supplying, delivery, or giving
19 possession or control of a firearm to an active peace officer, federal officer, or reserve
20 peace officer 18 or older. However, no person should be *required* to enter into a
21 highly dangerous career of law enforcement or military in which they could easily die
22 in order to exercise a constitutional right. Further, to even apply for many law
23 enforcement positions, applicants must be at least 19 and even 20 years old; and, to be
24 active and permitted to carry a firearm, most agencies require the individual to be 21.
25 Combs Dec. ¶¶ 20-25, Exs. 7-12. Thus, law enforcement minimum age requirements
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1 do *not* allow Plaintiffs or others similarly situated to take part in this “exemption.” *Id.*
2 Additionally, in order to apply for a law enforcement position, applicants are required
3 to go through vigorous testing which can last up to a year, even before P.O.S.T.
4 training, rendering the “exemption” illusory. *Id.*

6 Section 27510’s last so-called “exemption” proves that Section 27510 has
7 nothing to do with safety instruction or training as it prohibits a person honorably
8 discharged from the military 18 or older from acquiring *any handgun and any*
9 *semiautomatic centerfire rifles*. Honorably retired military receive and passed the
10 same training as active military in the use of firearms — however Section 27510 still
11 bans them from acquiring common firearms. In other words, an 18 year old who is
12 prohibited from acquiring firearms could enter the military and become exempt, then,
13 if he retires before 21, the person would be banned again. Section 27510 is a ban; it
14 does not have “ample” exemptions. The so-called “exemptions” are illusory,
15 inapplicable, and contradict the State’s own “reasoning” for the law. See Combs Dec.

16 ¶¶ 26-32, Exs. 13-14.

21 **D. The Other Preliminary Injunction Factors Warrant**
22 **Relief**

23 Plaintiffs also satisfy the other preliminary injunction factors. “It is well
24 established that the deprivation of constitutional rights ‘unquestionably constitutes
25 irreparable injury.’ *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
26 *Elrod v. Burns*, (1976) 427 U.S. 347, 373); 11A Charles Alan Wright et al., *Federal*
27 *Practice and Procedure* § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a
28

1 constitutional right is involved, most courts hold that no further showing of irreparable
2 injury is necessary.”). Plaintiffs have been deprived of their Second Amendment
3 rights.
4

5 Further, the Ninth Circuit has applied the First Amendment’s
6 “irreparable-if-only-for-a-minute” rule to cases involving other rights and, in doing so,
7
8 has held a deprivation of these rights represents irreparable harm per se. *Monterey*
9 *Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997). See also *Ezell v. Chicago*,
10 651 F.3d 684, 700 (7th Cir. 2011) (a deprivation of the right to arms is “irreparable,”
11 with “no adequate remedy at law”).
12

13 When challenging government action that affects the exercise of constitutional
14 rights, “[t]he public interest ... tip[s] sharply in favor of enjoining the” law. *Klein v.*
15 *City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). Plaintiffs seek to restore
16 their Second Amendment rights and continue to be able to acquire firearms for self-
17 defense and all other lawful purposes. Thus, not only are Plaintiffs’ rights at stake, but
18
19 so are the rights of all Young Adults in California — as well as those who will
20 become Young Adults in the future. Thus, the public interest tips sharply in Plaintiffs’
21 favor. *Id.* at 1208.
22
23

24 Defendants have no plausible argument that enjoining enforcement of
25 California’s age-based gun ban will endanger public safety or lead to an increase in
26 mass school shootings. Marvell Dec. ¶¶ 1-19, Exs. 1-10; Lott Dec. ¶¶ 1-19, Exs. 1- 8.
27 Young Adults were able to purchase/acquire all long guns up until January 1, 2019;
28

1 and those that did can keep them.

2 Further, if properly enjoined, all firearm purchases must still go through federal
3 and state background checks; they also must still: (a) take and pass the firearms safety
4 test (Bogan Dec., ¶¶ 24-32, **Exs. 3-4**); (b) present a valid firearm safety certificate for
5 any such purchase; (c) provide multiple proofs of age and residency; (d) complete a
6 ten-day waiting period; (e) complete a safe handling demonstration of the firearm
7 being purchased; (f) sign a gun safe affidavit or purchase a firearm cable lock; and (g)
8 complete a background check for ammunition. This list is not exhaustive but provides
9 a brief summary of the vast array of firearms regulations already in place that,
10 according to Defendants, ensure public safety.
11
12
13

14 Further, Defendants have cited no evidence that Young Adults who pass and
15 complete the above conditions are more prone to commit an act of violence with that
16 firearm than any other lawful adult. Again, all evidence suggests that age-based
17 firearm restrictions have no effect on homicides, suicides, and mass shootings. See
18 Marvell Dec. ¶¶ 5-19, **Exs. 2-11**. On the other hand, continuing to allow Young
19 Adults to purchase firearms serves the public interest as it allows this class — one that
20 is most likely to fall victim to violent crime — to protect themselves. Lott Dec. ¶ 21.⁹
21
22
23

24 The final factor considers “the balance of hardships between the parties.”
25 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1137 (9th Cir. 2011). The
26

27
28 ⁹ See also Dillon Dec., ¶ 3, **Ex. 1** (Bureau of Justice Statistics, Special Report, Age
Patterns of Victims of Serious Violent Crime at 1-7).

1 state “cannot suffer harm from an injunction that merely ends an unlawful practice or
2 reads a statute as required to avoid constitutional concerns.” *Rodriguez v. Robbins*,
3 715 F.3d 1127, 1145 (9th Cir. 2013); *see also Valle del Sol Inc. v. Whiting*, 732 F.3d
4 1006, 1029 (9th Cir. 2013) (“[I]t is clear that it would not be equitable... to allow the
5 state... to violate the requirements of federal law.”) (citations omitted).
6
7

8 The balance of harms tips sharply in Plaintiffs’ favor. Prohibiting *lawful sales*,
9 transfers, acquisitions, use, handling, and rentals of any firearm does not increase
10 public safety, especially where, as here, all such purchases must comply with a vast
11 array of regulations, identified as “the most stringent gun laws in the country.” Combs
12 Dec. ¶ 12, Ex. 2, at 8. Plaintiffs merely seek to “preserve, rather than alter, the status
13 quo while they litigate the merits of th[eir] action.” *Rodde v. Bonta*, 357 F.3d 988, 999
14 n. 14 (9th Cir. 2004). Granting Plaintiffs’ request for an injunction will merely allow
15 law-abiding Young Adults to purchase/acquire firearms in compliance with state law.
16 By enjoining Section 27510, Plaintiffs, as well as those similarly situated, will be free
17 to exercise their fundamental Second Amendment right.
18
19
20

21 VI. CONCLUSION

22 For the foregoing reasons, Plaintiffs’ request that the Court declare the law to
23 be unconstitutional and enjoined.
24

25 November 12, 2019

Respectfully submitted,

Gatzke, Dillon & Ballance LLP

27
28 By: 

John Dillon