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12 **SUPERIOR COURT OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO**

14  
15 DOE BRANDEIS; FIREARMS POLICY  
16 COALITION, INC.; SECOND AMENDMENT  
17 FOUNDATION; CALIFORNIA GUN RIGHTS  
18 FOUNDATION; SAN DIEGO COUNTY GUN  
19 OWNERS PAC; ORANGE COUNTY GUN  
20 OWNERS PAC; and INLAND EMPIRE GUN  
21 OWNERS PAC,

22 Plaintiffs,

23 v.

24 ROB BONTA, in his official capacity as  
25 Attorney General of California,

26 Defendant.

Case No.:

**VERIFIED COMPLAINT FOR  
DECLARATORY, INJUNCTIVE, OR  
OTHER RELIEF**

1 Plaintiffs Doe Brandeis, Firearms Policy Coalition, Inc., Second Amendment Foundation,  
2 California Gun Rights Foundation, San Diego County Gun Owners PAC, Orange County Gun  
3 Owners PAC, and Inland Empire Gun Owners PAC complain of Defendant Rob Bonta, in his  
4 official capacity as Attorney General of California, and allege:

### 5 INTRODUCTION

6 1. Plaintiffs bring this suit to challenge the constitutionality of recently-enacted Penal  
7 Code sections 11106(d) and 30352(b)(2), which for the first time require the California  
8 Department of Justice (“DOJ”) to share extensive personal identifying information of millions of  
9 California gun owners with the California Firearm Violence Research Center for non-law-  
10 enforcement purposes. It also opens the door for this data to be shared with countless other  
11 “researchers.” *See* Assem. Bill 173 (2021-2022 Reg. Sess.).

12 2. The disclosure of such personal information violates the right to privacy protected  
13 by the California Constitution. All purchasers of firearms in California must provide personal  
14 information at the time of the transaction, and that data is stored in DOJ’s Automated Firearms  
15 System (“AFS”). AFS thus houses detailed personal information about millions of Californians,  
16 including their fingerprints, home addresses, phone numbers, driver’s license information, and  
17 other identifying information – all of this along with comprehensive firearm and ammunition  
18 purchase and transfer history. Similar personal information is collected for ammunition  
19 transactions and stored in DOJ’s Ammunition Purchase Records File. Plaintiffs – along with the  
20 over 4 million firearms owners in California – have a legally-protected privacy interest in this  
21 information. And individuals purchasing or transferring firearms and ammunition have a  
22 reasonable expectation that the information provided to and collected by DOJ would not be used  
23 for purposes unrelated to law enforcement, much less be disclosed to a third party for “research”  
24 on them.

25 3. Disclosure of Plaintiffs’ personal identifying information constitutes a severe  
26 privacy intrusion that is not adequately tailored to or justified by the state’s purported research  
27 interest. To the extent some information sharing could be considered appropriate in the abstract,  
28 there are effective and feasible alternatives to accomplish the state’s legitimate research objectives

1 without sacrificing the privacy rights of millions of Californians (such as anonymizing or de-  
2 identifying individual-level data, or providing individuals with notice and the opportunity to opt-  
3 out of having their information shared for research purposes). The existence of such equally  
4 effective yet less intrusive alternatives confirms that the privacy infringement crosses the  
5 constitutional line.

6 4. Because sharing Plaintiffs’ personal identifying information collected in AFS  
7 pursuant to Penal Code section 11106(d) and the Ammunition Purchase Records File pursuant to  
8 Penal Code section 30352(b)(2) violates the right to privacy secured by article I, section 1 of the  
9 California Constitution, Plaintiffs seek declaratory and injunctive relief to enjoin its application  
10 and restrain DOJ from sharing their information with researchers.

11 5. Furthermore, the Legislature exceeded its authority by making personal information  
12 in the DOJ’s statewide ammunition transaction database subject to the same information-sharing  
13 arrangement. *See* Penal Code § 30352(b)(2). When California voters established the ammunition  
14 background-check system by passing Proposition 63, they specified that personal information was  
15 to be kept “confidential” and shared “only for law enforcement purposes” – and restricted the  
16 Legislature’s authority to amend the measure. AB 173 eviscerated these strict privacy protections.  
17 These statutory modifications are invalid because they are inconsistent with Proposition 63.

18 6. By forcing California gun owners to surrender their privacy rights as a condition to  
19 owning a firearm, AB 173 also impermissibly burdens the exercise of the Second Amendment  
20 right to keep and bear arms.

21 **JURISDICTION AND VENUE**

22 7. This Court has jurisdiction over this action and authority to issue declaratory relief  
23 pursuant to Code of Civil Procedure section 1060. This Court likewise has jurisdiction over  
24 Plaintiffs’ federal constitutional claim brought under 42 U.S.C. § 1983. *Ochoa v. Super. Ct.*, 39  
25 Cal.3d 159, 173 n.10 (1985).

26 8. Venue is appropriate in this Court pursuant to Code of Civil Procedure section 401.

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1 **THE PARTIES**

2 9. Plaintiff Doe Brandeis is a California resident who has completed multiple firearm  
3 and ammunition transactions (purchase, loan, sale, or transfer) through a firearms dealership in  
4 California since 2020. Accordingly, Brandeis is informed and believes that their personal  
5 identifying information is contained in AFS and the Ammunition Purchase Records File. Brandeis  
6 is a resident of San Diego County.

7 10. Plaintiff Firearms Policy Coalition (“FPC”) is a non-profit organization that serves  
8 its members and the public through direct and grassroots advocacy, legal efforts, and education.  
9 The purposes of FPC include defending the United States Constitution and the People’s rights,  
10 privileges and immunities deeply rooted in the Nation’s history and tradition, especially the  
11 fundamental right to keep and bear arms. FPC believes AB 173 is unconstitutional. FPC brings  
12 this action on behalf of itself, its members, supporters who possess all the indicia of membership,  
13 and similarly situated members of the public. FPC’s members include individuals throughout the  
14 state who own firearms and ammunition, and whose privacy rights are directly threatened by the  
15 laws and regulations challenged in this case. FPC is informed and believes that the vast majority  
16 of its individual members in this state have personal identifying information in AFS and the  
17 Ammunition Purchase Records File.

18 11. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a 501(c)(3) non-profit  
19 organization incorporated under the laws of Washington with its principal place of business in  
20 Bellevue, Washington. SAF has over 700,000 members and supporters nationwide, including  
21 many in California. The purposes of SAF include education, research, publishing, and legal action  
22 focusing on the constitutional right to privately own and possess firearms under the Second  
23 Amendment, and the consequences of gun control. SAF brings this action on behalf of itself, its  
24 members, supporters who possess all the indicia of membership, and similarly situated members of  
25 the public. SAF’s members include individuals throughout the state who own firearms and  
26 ammunition, and whose privacy rights are directly threatened by the laws and regulations  
27 challenged in this case. SAF has over 23,000 members in California; SAF is informed and  
28 believes that the vast majority of its individual members in this state have personal identifying

1 information in AFS and the Ammunition Purchase Records File.

2 12. Plaintiff California Gun Rights Foundation (“CGF”) is a nonprofit foundation  
3 incorporated under the laws of California with its principal place of business in Sacramento,  
4 California. CGF serves its members, supporters, and the public through educational, cultural, and  
5 judicial efforts to defend and advance Second Amendment and related rights. CGF has thousands  
6 of members and supporters in California. CGF believes AB 173 is unconstitutional. CGF brings  
7 this action on behalf of itself, its members, supporters who possess all the indicia of membership,  
8 and similarly situated members of the public. CGF’s members include individuals throughout the  
9 state who own firearms and ammunition, and whose privacy rights are directly threatened by the  
10 laws and regulations challenged in this case. CGF is informed and believes that the vast majority  
11 of its individual members in this state have personal identifying information in AFS and the  
12 Ammunition Purchase Records File.

13 13. Plaintiff San Diego County Gun Owners PAC (“SDCGO”) is a local political  
14 organization whose purpose is to protect and advance the Second Amendment rights of residents  
15 of San Diego County, California, through their efforts to support and elect local and state  
16 representatives who support the Second Amendment right to keep and bear arms. SDCGO was  
17 formed due to an aggressive and successful legislation and regulatory effort to significantly limit  
18 or eliminate the firearms industry and the general ownership and use of firearms and the firearms  
19 industry in California at the municipal, county, and state level. SDCGO’s membership and donors  
20 consist of Second Amendment supporters, people who own guns for self-defense and sport,  
21 firearms dealers, shooting ranges, and elected officials who want to restore and protect the right to  
22 keep and bear arms in California. The interests that SDCGO seeks to protect in this lawsuit are  
23 germane to the organization’s purposes, and, therefore, SDCGO sues on its own behalf, and on  
24 behalf of its members.

25 14. Plaintiff Orange County Gun Owners PAC (“OCGO”) is a local political  
26 organization whose purpose is to protect and advance the Second Amendment rights of residents  
27 of Orange County, California, through their efforts to support and elect local and state  
28 representatives who support the Second Amendment right to keep and bear arms. OCGO was

1 formed because there is an aggressive and successful effort to significantly limit or eliminate the  
2 ownership and use of firearms and the firearms industry in California at the municipal, county, and  
3 state level through legislation and regulation. OCGO's membership and donors consist of Second  
4 Amendment supporters, people who own guns for self-defense and sport, firearms dealers,  
5 shooting ranges, and elected officials who want to restore and protect the right to keep and bear  
6 arms in California. The interests that OCGO seeks to protect in this lawsuit are germane to the  
7 organization's purposes, and, therefore, OCGO sues on its own behalf, and on behalf of its  
8 members.

9 15. Plaintiff Inland Empire Gun Owners PAC ("IEGO") is a local political organization  
10 whose purpose is to protect and advance the Second Amendment rights of residents of California's  
11 Inland Empire, through their efforts to support and elect local and state representatives who  
12 support the Second Amendment right to keep and bear arms. IEGO was formed because there is  
13 an aggressive and successful effort to significantly limit or eliminate the ownership and use of  
14 firearms and the firearms industry in California at the municipal, county, and state level through  
15 legislation and regulation. IEGO's membership and donors consist of Second Amendment  
16 supporters, people who own guns for self-defense and sport, firearms dealers, shooting ranges, and  
17 elected officials who want to restore and protect the right to keep and bear arms in California. The  
18 interests that IEGO seeks to protect in this lawsuit are germane to the organization's purposes, and,  
19 therefore, IEGO sues on its own behalf, and on behalf of its members.

20 16. Defendant Rob Bonta is the Attorney General of the State of California. The  
21 Attorney General is the chief law enforcement officer of the state, and it is his duty to ensure that  
22 California's laws are uniformly and adequately enforced. The Attorney General is the head of the  
23 Department of Justice, which, among other things, regulates and enforces state law related to the  
24 sales, ownership, and transfer of firearms and ammunition, and is responsible for complying with  
25 Penal Code sections 11106(d) and 30352(b)(2) and any other laws and regulations impacted by  
26 this case. The Attorney General maintains an office in San Diego.

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## GENERAL ALLEGATIONS

**A. California Law Requires Purchasers Of Firearms And Ammunition To Disclose Extensive Personal Information To DOJ, Which, Until AB 173, Was Required To Maintain The Confidentiality Of This Data And Use It Strictly For Law Enforcement Purposes.**

17. In order to buy a firearm or ammunition in California, a purchaser must provide extensive personal information to the vendor, who in turn provides that information to the DOJ at the time of the transaction.

18. Various provisions of California law require the Department of Justice to collect a wide array of data related to firearms ownership, and to maintain such information to assist in criminal and civil investigations. Principal among the DOJ's databases is California's Automated Firearms System, an omnibus repository of firearm records established by Penal Code section 11106. AFS "is populated by way of firearm purchases or transfers at a California licensed firearm dealer, registration of assault weapons (during specified registration periods), an individual's report of firearm ownership to the Department, Carry Concealed Weapons Permit records, or records entered by law enforcement agencies." Cal. Dep't of Justice, *Automated Firearms System Personal Information Update*, <https://oag.ca.gov/firearms/afspi>; *see also* 11 CCR § 4281(d) (defining "Automated Firearm System"). AFS is the state's most comprehensive database of information about the purchase, sale, transfer, and use of firearms and ammunition.

19. The database includes detailed identifying information (fingerprints, addresses, date and place of birth, driver's license or identification card number, citizenship status, immigration information, race, sex, height, weight, hair color, eye color) along with all firearm and ammunition transactions associated with each subject. Penal Code §§ 11106(a)(1)(A) (fingerprints) & (D) (Dealers' Records of Sale of firearms); 28160 (content of register of firearm transfers); 11 CCR § 4283 (information required for basic ammunition eligibility check); *see generally* Cal. Dep't of Justice Bureau of Firearms, *Dealer's Record of Sale (DROS) Worksheet*, [https://des.doj.ca.gov/forms/DROS\\_Worksheet\\_BOF-929.pdf](https://des.doj.ca.gov/forms/DROS_Worksheet_BOF-929.pdf). For private-party sales or transfers, AFS includes this information for the seller as well. *See* Penal Code § 28160(a)(36).

1           20. Purchasers of firearms have had to provide this information since 1996 (for  
2 handgun transactions) and 2014 (for long guns). It is estimated that AFS houses such personal  
3 information for the vast majority of California’s more than 4 million gun owners. Kravitz-Wirtz,  
4 et al., *Firearm ownership and acquisition in California: findings from the 2018 California Safety*  
5 *and Well-being Survey*, 26 *Injury Prevention* 516, 516 (2020) (“Roughly one in four California  
6 adults live in a home with a firearm, including 4.2 million adults—14% of the adult population—  
7 who personally own a firearm. These owners collectively own an estimated 19.9 million firearms  
8 (8.9 million handguns).”).

9           21. In addition to compiling all information obtained in connection with every firearm  
10 and ammunition transaction conducted through a dealer, AFS collects records related to the  
11 possession or use of firearms, including: copies of licenses to carry firearms and carry  
12 applications; firearm records transmitted to the DOJ outside of the electronic DROS process;  
13 reports of stolen, lost, or found property; records relating to the ownership of manufactured or  
14 assembled firearms; and a registry of private-party firearm loans.

15           22. From the creation of AFS in 1996 until September 2021, California law treated AFS  
16 records as confidential and restricted DOJ’s disclosure of personal information in the database  
17 except when it was necessary to share such information with other government officers to further  
18 law-enforcement purposes. The explicit purpose of DOJ’s collection of data in AFS is “to assist in  
19 the investigation of crime, the prosecution of civil actions by city attorneys . . . , the arrest and  
20 prosecution of criminals, and the recovery of lost, stolen, or found property.” Penal Code §  
21 11106(a)(1). Consistent with this purpose, Section 11106 had always imposed strict conditions on  
22 sharing information from within the database. *See* § 11106(a)(2) (providing that the Attorney  
23 General “shall furnish the information” in AFS “upon proper application” to specified state officers  
24 for criminal or civil law enforcement purposes, including peace officers, district attorneys and  
25 prosecutors, city attorneys pursuing civil law enforcement actions, probation and parole officers,  
26 public defenders, correctional officers, and welfare officers).<sup>1</sup> Despite several intervening

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27 <sup>1</sup> The list of officers who may request AFS records is contained in Penal Code section  
28 11105.



1 amendments to Section 11106, this information-sharing limitation had remained consistent since  
2 1996.<sup>2</sup>

3 23. The expectation of privacy in firearm-related records was reaffirmed by the voters'  
4 enactment of Proposition 63 in 2016, which established a background-check requirement for  
5 ammunition transactions. As part of that process, ammunition vendors must collect personal  
6 information from each purchaser or transferee (including their driver's license or identification  
7 information, their full name and signature, address, telephone number, and date of birth) and  
8 transfer that information to DOJ for collection in the "Ammunition Purchase Records File." Penal  
9 Code § 30352(a), (b). Similar to Section 11106, Proposition 63 placed strict limits on the use and  
10 disclosure of personal information in the course of ammunition transactions: As enacted by the  
11 voters, information collected by DOJ "shall remain confidential and may be used by [DOJ and  
12 other law enforcement agencies in Penal Code § 11105] only for law enforcement purposes."  
13 Penal Code § 30352(b).

14 **B. AB 173 Upended This Regime By Now Requiring DOJ To Disclose Detailed Personal**  
15 **Information Of Millions Of California Gun Owners To Non-Law-Enforcement**  
**"Researchers" Without Their Knowledge Or Consent.**

16 24. The California Legislature drastically altered the landscape when it passed  
17 Assembly Bill 173 in 2021. The new law requires DOJ to share firearm-related information with  
18 the recently established California Firearm Violence Research Center at UC Davis and permits  
19 DOJ to share the same information with other accredited research institutions. Assem. Bill 173  
20 (2021-2022 Reg. Sess.).

21 25. In 2016, the Legislature established the California Firearm Violence Research  
22 Center at the University of California, Davis. Assem. Bill 1602 (2015-2016 Reg. Sess.). The  
23 center has three research mandates: to study (1) "[t]he nature of firearm violence, including  
24 individual and societal determinants of risk for involvement in firearm violence, whether as a

25 \_\_\_\_\_  
26 <sup>2</sup> See Penal Code § 11106(a) (West 1997) (providing that "In order to assist in the  
27 investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or  
28 found property, the Attorney General shall keep and properly file" AFS records, "and shall, upon  
proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts  
of those records as photographic, photostatic, and nonerasable optically stored reproductions.").

1 victim or a perpetrator”; (2) “[t]he individual, community, and societal consequences of firearm  
2 violence”; and (3) “[p]revention and treatment of firearm violence at the individual, community,  
3 and societal levels.” Penal Code § 14231(a)(1)(A)–(C).

4 26. AB 173 was spurred by a dispute between the Center and DOJ over DOJ’s  
5 information-sharing policies and procedures, which the Center deemed too restrictive. *See, e.g.,*  
6 *Wiley, California AG office withholding data on gun sales, restraining orders from researchers,*  
7 *Sacramento Bee* (March 4, 2021); *Wiley, Gun violence researchers fight California Department of*  
8 *Justice’s plan to withhold data,* *Sacramento Bee* (March 15, 2021); Beckett, *TheGuardian.com,*  
9 *California attorney general cuts off researchers’ access to gun violence data* (March 11, 2021).  
10 The Center had been subject to the DOJ’s general data-sharing policies, which permit entities to  
11 seek data from certain DOJ databases for research purposes. These databases include criminal  
12 offender record information, juvenile court probation records, controlled substance patient  
13 information, and gun violence restraining orders – but, consistent with Section 11106’s  
14 restrictions, AFS data was not included. *See* Cal. Dep’t of Justice, *Data Request Process,*  
15 <https://oag.ca.gov/research-center/request-process>.

16 27. AB 173 marked a radical and sweeping change to the privacy afforded to all  
17 California firearm and ammunition owners. Among other provisions, AB 173 amended Penal  
18 Code 11106(d) to require DOJ to give the Center access to “all information” in AFS “for academic  
19 and policy research purposes upon proper request and following approval by the center’s  
20 governing institutional review board when required.” And the bill similarly authorizes DOJ to  
21 share this information with “any other nonprofit bona fide research institution accredited by the  
22 United States Department of Education or the Council for Higher Education Accreditation for the  
23 study of the prevention of violence.” Penal Code §§ 11106(d) & 14240(a); *see also* Penal Code  
24 § 30352(b)(2) (providing same information-sharing arrangement for personal information in the  
25 Ammunition Purchase Records File).<sup>3</sup>

26 <sup>3</sup> AB 173 enacted similar information-sharing regimes for several other categories of  
27 information maintained by DOJ, including criminal offender record information (Penal Code  
28 § 13202(a)); information on people prohibited from owning or possessing firearms or  
ammunition based on their criminal or mental health records (Penal Code §§ 30000(c) and  
142315(a); Welf. & Inst. Code § 8106); and information on the sale and transfer of firearm

1           28.     The information-sharing regime in Penal Code sections 11106(d) and 30352(b)(2)  
2 violates Plaintiffs’ right to privacy secured by the California Constitution.

3     **C.     Disclosure Of Personal Identifying Information Collected In AFS And The**  
4     **Ammunition Purchase Records File Violates Plaintiffs’ Right To Privacy Under The**  
5     **California Constitution.**

6           29.     “Unlike the federal Constitution, the California Constitution expressly recognizes a  
7 right to privacy.” *Mathews v. Becerra*, 8 Cal.5th 756, 768 (2019). In 1972, California voters  
8 passed the Privacy Initiative, which added “privacy” to the inalienable enumerated rights set forth  
9 in Article I, Section 1 of the California Constitution.<sup>4</sup> “The principal ‘mischiefs’ that the Privacy  
10 Initiative addressed were: (1) ‘government snooping’ and the secret gathering of personal  
11 information; (2) the overbroad collection and retention of unnecessary personal information by  
12 government and business interests; (3) the improper use of information properly obtained for a  
13 specific purpose, for example, the use of it for another purpose or the disclosure of it to some third  
14 party; and (4) the lack of a reasonable check on the accuracy of existing records.” *Lewis v. Super.*  
15 *Ct.*, 3 Cal.5th 561, 569 (2017) (quoting *White v. Davis*, 13 Cal.3d 757, 775 (1975)). Central to the  
16 right of privacy “is the ability to control circulation of personal information.” *Mathews*, 8 Cal.5th  
17 at 769 (citation omitted).

18           30.     In *White*, the California Supreme Court held that abridging the state-based right to  
19 privacy could be justified depending on the circumstances: Article I “does not purport to prohibit  
20 all incursion into individual privacy but rather that any such intervention must be justified by a  
21 compelling interest.” 13 Cal.3d at 775. And shortly after *White*, the Court firmly established that  
22 the right of privacy is not “absolute,” but must be balanced against the need for disclosure. *Loder*  
23 *v. Mun. Ct.*, 17 Cal.3d 859, 864 (1976) (citing *White* and *Cty. of Nevada v. MacMillen*, 11 Cal.3d

24 precursor parts (Penal Code § 30452(b)(2)). Plaintiffs do not challenge these provisions in this  
litigation.

25 <sup>4</sup> “All people are by nature free and independent and have inalienable rights. Among these  
26 are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and  
27 pursuing and obtaining safety, happiness, and privacy.” Cal. Const., art. 1, § 1. And because  
28 California’s Constitution enumerates a right to privacy, the California Supreme Court has held that  
it is broader and more protective of privacy than the unenumerated federal right. *See City of Santa  
Barbara v. Adamson*, 27 Cal.3d 123, 130 n.3 (1980); *Am. Acad. of Pediatrics v. Lungren*, 16  
Cal.4th 307, 326 (1997) (plurality op. of George, C.J.); *Loder v. City of Glendale*, 14 Cal.4th 846,  
892–83 (1997).

1 662, 672 (1974)).

2 31. The Court set the current framework for a constitutional privacy claim in *Hill v.*  
3 *Nat'l Collegiate Athletic Ass'n*, 7 Cal.4th 1 (1994), which built on *White*. Under *Hill*, a privacy  
4 claim involves three essential elements: (1) the claimant must possess a legally protected privacy  
5 interest; (2) the claimant's expectation of privacy must be objectively reasonable; and (3) the  
6 invasion of privacy complained of must be serious in both its nature and scope. *Id.* at 35–37. If a  
7 claimant establishes all three required elements, the strength of that privacy interest is balanced  
8 against countervailing interests. *Id.* at 37–38. *See also Pioneer Elecs. (USA), Inc. v. Super. Ct.*, 40  
9 Cal.4th 360, 371 (2007) (“Assuming that a claimant has met the . . . *Hill* criteria for invasion of a  
10 privacy interest, that interest must be measured against other competing or countervailing interests  
11 in a ‘balancing test.’”). Specifically, “the party seeking information may raise in response  
12 whatever legitimate and important countervailing interests disclosure serves, while the party  
13 seeking protection may identify feasible alternatives that serve the same interests or protective  
14 measures that would diminish the loss of privacy.” *Williams v. Super. Ct.*, 3 Cal.5th 531, 552  
15 (2017); *see Hill*, 7 Cal.4th at 40 (a privacy claimant “may rebut a defendant’s assertion of  
16 countervailing interests by showing there are feasible and effective alternatives to defendant's  
17 conduct which have a lesser impact on privacy interests”).

18 32. “Legally recognized privacy interests are generally of two classes: (1) interests in  
19 precluding the dissemination or misuse of sensitive and confidential information (‘informational  
20 privacy’); and (2) interests in making intimate personal decisions or conducting personal activities  
21 without observation, intrusion, or interference (‘autonomy privacy’).” *Hill*, 7 Cal.4th at 35. Thus,  
22 “[t]he standard for evaluating the justification for a privacy invasion depends on ‘the specific kind  
23 of privacy interest involved and the nature and seriousness of the invasion and any countervailing  
24 interests.’ ‘Where the case involves an obvious invasion of an interest fundamental to personal  
25 autonomy, . . . a “compelling interest” must be present to overcome the vital privacy interest. If, in  
26 contrast, the privacy interest is less central, or in bona fide dispute, general balancing tests are  
27 employed.’” *Mathews*, 8 Cal.5th at 769 (quoting *Hill*, 7 Cal.4th at 34).

1           33.     Application of the *Hill* framework confirms that AB 173’s information-sharing  
2 regime violates California’s constitutional right to privacy.

3           34.     *Plaintiffs Have A Legally Protected Privacy Interest In The Personal Identifying*  
4 *Information Collected In AFS and the Ammunition Purchase Records File.* Plaintiff Brandeis and  
5 the organizational plaintiffs’ members have a protected privacy interest in the information  
6 collected in AFS and Ammunition Purchase Records File, which includes detailed information  
7 about individuals, including their fingerprints, home addresses, phone numbers, driver’s license  
8 information, and other identifying information – all of this along with comprehensive firearm and  
9 ammunition purchase-and-transfer history. The California Supreme Court has long recognized  
10 that individuals have a legally protected privacy interest in even a modest subset of this  
11 information. *Cty. of Los Angeles v. Los Angeles Cty. Emp. Relations Comm’n*, 56 Cal. 4th 905,  
12 927 (2013) (recognizing that individuals “have a legally protected privacy interest in their home  
13 addresses and telephone numbers” and “a substantial interest in the privacy of their home”).

14           35.     *Plaintiffs Have A Reasonable Expectation Of Privacy In Their Personal Identifying*  
15 *Information Transmitted To DOJ For Law Enforcement Purposes.* Plaintiffs have an objectively  
16 reasonable expectation of privacy in the information contained in AFS and the Ammunition  
17 Purchase Records File, particularly in those records that are not otherwise subject to public  
18 disclosure.<sup>5</sup> Individuals purchasing or transferring firearms and ammunition have a reasonable  
19 expectation that the information provided to and collected by DOJ in the course of a transaction  
20 would not be used for purposes unrelated to law enforcement or disclosed to a third party. This  
21 strikes at the heart of one of the “principal mischiefs” the Privacy Initiative sought to address: “the  
22 improper use of information properly obtained for a specific purpose” and then used “for another  
23 purpose” or disclosed to “some third party.” *White*, 13 Cal.3d at 775. And while some personal  
24 information collected within AFS or the Ammunition Purchase Records File is not private (such as  
25 a person’s physical characteristics or even their birth date), AFS includes a wealth of information  
26

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27 <sup>5</sup> Certain categories of information encompassd within AFS, such as concealed carry licenses  
28 or criminal record information, are subject to public disclosure separate and apart from Section  
11106(d).

1 that most Californians undoubtedly consider highly personal (like fingerprints, home addresses,  
2 and driver’s license numbers). But AFS goes beyond just capturing a snapshot of such personal  
3 information, it represents a compilation of information over time: An individual’s AFS record  
4 contains their entire history of firearm and ammunition transactions – so disclosure also reveals the  
5 subject’s past addresses and, to a certain extent, their associations (by showing the personal  
6 information of every person who engaged in a firearm or ammunition transaction with the subject).

7 36. Plaintiffs’ expectation of privacy is confirmed by the longstanding statutory  
8 restriction limiting DOJ’s disclosure of AFS information except for intragovernmental  
9 information-sharing to further civil and criminal law enforcement purposes. *See* paragraph 22,  
10 *supra*. This expectation was reaffirmed by the voters’ enactment of Proposition 63 in 2016, which  
11 explicitly provided that personal information collected by DOJ for ammunition transactions “shall  
12 remain confidential and may be used by [DOJ and other law enforcement agencies] only for law  
13 enforcement purposes.” Penal Code § 30352(b)(2).

14 37. *Sharing Personal Identifying Information In AFS and the Ammunition Purchase*  
15 *Records File Is A Serious Invasion Of Plaintiffs’ Privacy*. AB 173 mandates a serious privacy  
16 invasion. At a minimum, the data being transferred is going to be actively used, mined, and  
17 manipulated for so-called research and statistical purposes. Strangers at the Center – and other  
18 “bona fide” researchers – will now know intimate details about millions of law-abiding  
19 Californians who were given no advance notice that their personal information would be shared  
20 and had no opportunity to opt out of the disclosure. Indeed, the California Supreme Court has held  
21 that the mere disclosure of contact information is sufficiently “serious” to support a constitutional  
22 claim because it could lead to unwanted contact from a third party. *Cty. of Los Angeles*, 56 Cal.4th  
23 at 929–30. The same prospect exists here, as contacting individuals is entirely consistent with the  
24 broad statutory mandate of “research” – all the more so considering the legislative history’s  
25 statements that the ultimate goal here is to support studies into the “prevention of violence.”

26 38. In fact, the history of a companion bill to AB 173 confirms that the bill’s sponsor  
27 (the Brady Campaign) and affiliated researchers consider individual-level information to be a key  
28 element in “preventing” firearm violence. In supporting Assembly Bill 1237, Brady dismissed

1 opponents' privacy concerns by stating they "betray[] a fundamental lack of understanding of what  
2 constitutes rigorous science," and went on to argue that "[w]e lower suicide rates in the population  
3 . . . by preventing one suicide at a time." Assem. Bill No. 1237 (Reg. Sess. 2021–2022), *Response*  
4 *to Background Information Request* at p. 4, Assembly Committee on Privacy and Consumer  
5 Protection. Claiming that personally identifying information is necessary to *prevent* suicide or  
6 firearm violence at the individual level only makes sense if the researchers intend to use personal  
7 information to contact individuals and violate the privacy of their home by prying into their  
8 personal affairs.

9 39. *AB 173's Information-Sharing Regime Does Not Survive The Interest-Balancing*  
10 *Inquiry*. Balancing the government's research interest against the intrusion on Plaintiffs' privacy  
11 demonstrates that Penal Code sections 11106(d) and 30352(b)(2) are unconstitutional.

12 40. First, there is an insufficient fit between the government's interest in researching  
13 firearm violence and the disclosure of personal identifying information in AFS and the  
14 Ammunition Purchase Record File. DOJ collects and compiles the information in AFS and the  
15 ammunition database for use in criminal or civil investigations. *See* Penal Code § 11106(a)(1)  
16 (directing the Attorney General to compile AFS information "to assist in the investigation of  
17 crime, the prosecution of civil actions . . . , the arrest and prosecution of criminals, and the  
18 recovery of lost, stolen, or found property"); Penal Code § 30352(b)(1) (providing generally that  
19 the ammunition records database "shall remain confidential" and "may be used . . . "only for law  
20 enforcement purposes"). AB 173 requires DOJ to share this information for another purpose  
21 (research) and directs DOJ to share it with third parties (the Center and other "bona fide"  
22 researchers). Disclosure of personal identifying information collected by the government for a  
23 limited and specific purpose with non-governmental actors is not necessary to achieve the  
24 government's interest in firearms research.

25 41. Second, the scope of a potential privacy violation is significant. AFS and the  
26 Ammunition Purchase Records File contain a vast amount of detailed personal identifying  
27 information that AB 173 requires DOJ to share with outside researchers. As Justices Liu and  
28 Kruger observed, when passing the privacy initiative, "[t]he voters were concerned that their

1 privacy was violated whenever their personal information was used or accessed without reason,”  
2 and “[t]his concern is even more pressing today because advances in data science have enabled  
3 sophisticated analyses of curated information as to a particular person.” *Lewis*, 3 Cal.5th at 581–  
4 82 (Liu, J., joined by Kruger, J., concurring). That is precisely the risk guaranteed by AB 173’s  
5 information-sharing regime.

6 42. Third, the State has several equally effective and feasible alternatives to achieve its  
7 interests that have a lesser impact on Plaintiffs’ privacy interests. First, it could restrict sharing of  
8 personal identifying information by requiring DOJ to implement protective procedures that  
9 anonymize or de-identify data shared with researchers. This could include, for example, assigning  
10 subject codes in lieu of sharing names, driver’s license or identification card numbers, or other  
11 unique identifiers; and using higher-level geographic data (such as ZIP Codes or city- or county-  
12 level data) in lieu of home addresses. And where eliminating personal identifying information is  
13 not feasible for a particular research project, individuals should be given notice of the request and  
14 provided with the opportunity to opt out of having their information shared with researchers.

15 43. In short, Penal Code sections 11106(d) and 30352(b) violate the right to privacy  
16 secured by the California Constitution.

17 **D. The Legislature Exceeded Its Authority By Amending Proposition 63.**

18 44. The California Constitution provides that “[t]he Legislature may amend or repeal an  
19 initiative statute by another statute that becomes effective only when approved by the electors  
20 unless the initiative statute permits amendment or repeal without the electors’ approval.” Cal.  
21 Const., art. II, § 10(c). Accordingly, “[t]he Legislature may not amend an initiative statute without  
22 subsequent voter approval unless the initiative permits such amendment, ‘and then only upon  
23 whatever conditions the voters attached to the Legislature’s amendatory powers.’” *People v.*  
24 *Super. Ct. (Pearson)*, 48 Cal.4th 564, 568 (2010) (citation omitted). “The evident purpose of  
25 limiting the Legislature’s power to amend an initiative statute is to protect the people’s initiative  
26 powers by precluding the Legislature from undoing what the people have done, without the  
27 electorate’s consent.” *Cty. of San Diego v. Comm’n on State Mandates*, 6 Cal.5th 196, 211 (2018)  
28 (internal quotation marks and citation omitted). Put simply, when voters impose limitations on the



1 legislature’s power, those limits “must be strictly construed” and “must be given the effect the  
2 voters intended [that they] have.” *Amwest Surety Ins. Co. v. Wilson*, 11 Cal.4th 1243, 1255–56  
3 (1995).

4 45. In 2016, California voters passed Proposition 63, which, among other things,  
5 established established a background-check requirement for ammunition transactions and required  
6 DOJ to maintain a registry of ammunition transactions. The initiative placed strict limits on the  
7 use and disclosure of personal information in the course of ammunition transactions: it “*shall*  
8 remain confidential and may be used by [DOJ and other law enforcement agencies] *only* for law  
9 enforcement purposes.” Penal Code § 30352(b) (emphasis added).

10 46. The voters explicitly restricted the Legislature’s authority to amend Proposition  
11 63’s provisions. In an uncodified amendment clause, the initiative provides that its provisions  
12 “may be amended by a vote of 55 percent of the members of each house of the Legislature and  
13 signed by the Governor so long as such amendments are consistent with and further the intent of  
14 th[e] Act.” Voter Information Guide, Gen. Elec. (Nov. 8, 2016), text of Prop. 63, § 13, p. 178.

15 47. Through AB 173, the Legislature exceeded its power by eviscerating Proposition  
16 63’s voter-mandated privacy restrictions and amending the statute to make personal information in  
17 the Ammunition Purchase Records File available to researchers on the same terms as AFS data.  
18 *See* Penal Code § 30352(b)(2). AB 173’s requirement that this data be shared with researchers to  
19 study the “nature” and “consequences” of firearm violence is not “consistent with,” nor does it  
20 further the purpose of, Proposition 63’s requirement that ammunition background check data  
21 “remain confidential” for use by law enforcement “only for law enforcement purposes.”

22 48. AB 173’s modification of Section 30352 was inconsistent with Proposition 63 and  
23 is therefore invalid.

24 **E. AB 173 Violates The Second Amendment.**

25 49. The Second Amendment provides: “A well regulated Militia, being necessary to the  
26 security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S.  
27 Const. amend. II. The Second Amendment “protects a personal right to keep and bear arms for  
28 lawful purposes, most notably for self-defense within the home.” *McDonald v. City of Chicago*,

1 561 U.S. 742, 780 (2010). The Second Amendment “is fully applicable to the States.” *Id.* at 750.

2 50. In order to secure “the core right to possess a firearm for self-defense,” the Second  
3 Amendment’s protections extend to “necessary,” “ancillary rights,” including the right to acquire  
4 firearms. *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 677–78 (9th Cir. 2017). After all, “the core  
5 Second Amendment right to keep and bear arms for self-defense ‘wouldn’t mean much’ without  
6 the ability to acquire arms.” *Id.* at 677 (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th  
7 Cir. 2011)).

8 51. AB 173 unconstitutionally burdens Plaintiffs’ Second Amendment rights: By  
9 forcing citizens to sacrifice one constitutional right (privacy) in order to exercise another (the right  
10 to keep and bear arms), AB 173 is unconstitutional.

11 \* \* \*

12 52. An actual and judicially cognizable controversy exists between Plaintiffs and  
13 Defendant regarding whether the sharing of personal identifying information in AFS pursuant to  
14 Penal Code section 11106(d) and in the Ammunition Purchase Records File pursuant to Penal  
15 Code § 30352(b)(2) violates the right to privacy secured by article I, section 1 of the California  
16 Constitution, and whether it violates the Second Amendment to the United States Constitution.  
17 Plaintiffs desire a judicial declaration of their rights and Defendant’s duties regarding the  
18 constitutionality of Penal Code sections 11106(d) and 30352(b)(2).

19 53. A further actual and judicially cognizable controversy exists between Plaintiffs and  
20 Defendant regarding whether AB 173’s amendment of Penal Code section 30352 is a valid  
21 amendment of Proposition 63.

22 54. Plaintiffs are entitled to injunctive relief necessary to preserve their rights,  
23 including, but not limited to, an injunction directing Defendant to (1) cease providing any personal  
24 identifying information from AFS or the Ammunition Purchase Records File to the California  
25 Firearm Violence Research Center or any other research institution pursuant to Penal Code §  
26 11106(d) or Penal Code section 30352(b)(2); (2) identify all information that it has shared with the  
27 California Firearm Violence Research Center or any other research institution pursuant to Penal  
28 Code § 11106(d) or Penal Code section 30352(b)(2); (3) identify all parties that it has shared

1 information with pursuant to Penal Code § 11106(d) or Penal Code section 30352(b)(2); and (4)  
2 direct the California Firearm Violence Research Center and any other research institution that has  
3 received personal identifying information in AFS or the Ammunition Purchase Records File  
4 pursuant to Penal Code § 11106(d) or Penal Code section 30352(b)(2) to destroy all such  
5 information in their possession, custody, or control.

6 **CLAIMS FOR RELIEF**

7 **FIRST CAUSE OF ACTION**

8 **Declaratory Relief**

9 **Violation of Cal. Const., art. I, § 1 (Right to Privacy)**

10 55. Plaintiffs incorporate here by reference paragraphs 1 through 54, *supra*, as if fully  
11 set forth herein.

12 56. For the reasons set forth above, the sharing of Plaintiff Brandeis' personal  
13 identifying information, and the personal identifying information of the organizational Plaintiffs'  
14 members, in AFS pursuant to Penal Code section 11106(d) and the Ammunition Purchase Records  
15 File pursuant to Penal Code section 30352(b)(2) violates the right to privacy secured by article I,  
16 section 1 of the California Constitution.

17 **SECOND CAUSE OF ACTION**

18 **Declaratory Relief**

19 **Violation of Cal. Const., art. II, § 10 (Invalid Amendment to Voter Initiative)**

20 57. Plaintiffs incorporate here by reference paragraphs 1 through 54, *supra*, as if fully  
21 set forth herein.

22 58. For the reasons set forth above, the Legislature's amendment of Penal Code section  
23 30352 is inconsistent with Proposition 63's requirement that personal information provided in the  
24 ammunition background check remain confidential absent a use by law enforcement for law  
25 enforcement purposes, and is therefore invalid.

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1 **THIRD CAUSE OF ACTION**

2 **42 U.S.C. § 1983**

3 **Violation of U.S. Const., amend. II (Right to Keep and Bear Arms)**

4 59. Plaintiffs incorporate here by reference paragraphs 1 through 54, *supra*, as if fully  
5 set forth herein.

6 60. For the reasons set forth above, the sharing of Plaintiff Brandeis' personal  
7 identifying information, and the personal identifying information of the organizational Plaintiffs'  
8 members, in AFS pursuant to Penal Code section 11106(d) and the Ammunition Purchase Records  
9 File pursuant to Penal Code section 30352(b)(2) violates the right to keep and bear arms secured  
10 by the Second Amendment to the United States Constitution.

11 61. Furthermore, by forcing citizens to sacrifice one constitutional right (privacy) in  
12 order to exercise another (the right to keep and bear arms), AB 173 is unconstitutional.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiffs pray for judgment as follows:

15 1. For a declaratory judgment stating that sharing Plaintiff Brandeis' personal  
16 identifying information, and the personal identifying information of the organizational Plaintiffs'  
17 members, in AFS pursuant to Penal Code section 11106(d) and the Ammunition Purchase Records  
18 File pursuant to Penal Code section 30352(b)(2) violates the right to privacy secured by article I,  
19 section 1 of the California Constitution.

20 2. For a declaratory judgment stating that the Legislature's amendment of Penal Code  
21 section 30352 is inconsistent with Proposition 63 and is therefore invalid.

22 3. For a declaratory judgment stating that sharing Plaintiff Brandeis' personal  
23 identifying information, and the personal identifying information of the organizational Plaintiffs'  
24 members, in AFS pursuant to Penal Code section 11106(d) and the Ammunition Purchase Records  
25 File pursuant to Penal Code section 30352(b)(2) violates the right to keep and bear arms secured  
26 by the Second Amendment to the United States Constitution.

27 4. For injunctive relief necessary to preserve the rights of Plaintiff Brandeis and the  
28 organizational Plaintiffs' members, including, but not limited to, an injunction directing Defendant

1 to (1) cease providing any personal identifying information from AFS or the Ammunition  
2 Purchase Records File to the California Firearm Violence Research Center or any other research  
3 institution pursuant to Penal Code § 11106(d) or Penal Code section 30352(b)(2); (2) identify all  
4 information that it has shared with the California Firearm Violence Research Center or any other  
5 research institution pursuant to Penal Code § 11106(d) or Penal Code section 30352(b)(2); (3)  
6 identify all parties that it has shared information with pursuant to Penal Code § 11106(d) or Penal  
7 Code section 30352(b)(2); and (4) direct the California Firearm Violence Research Center and any  
8 other research institution that has received personal identifying information in AFS or the  
9 Ammunition Purchase Records File pursuant to Penal Code § 11106(d) or Penal Code section  
10 30352(b)(2) to destroy all such information in their possession, custody, or control.

11 5. For all other injunctive relief necessary to preserve Plaintiff Brandeis' and the  
12 organizational Plaintiffs' members' right to privacy under the California Constitution.

13 6. For all other injunctive relief necessary to preserve Plaintiff Brandeis' and the  
14 organizational Plaintiffs' members' right to keep and bear arms under the United States  
15 Constitution.

16 7. For costs of suit, including reasonable attorney's fees available pursuant to  
17 applicable law.

18 8. For other appropriate relief.

19 Dated: January 28, 2022

BENBROOK LAW GROUP, PC

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21 By 

BRADLEY A. BENBROOK  
Attorneys for Plaintiffs

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**VERIFICATION**

I, Doe Brandeis, declare:

I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. I am a party to this action. The factual matters concerning my experience stated in the foregoing at Paragraph 9 are true of my own knowledge. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed January 28, 2022.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

s/ Doe Brandeis  
Doe Brandeis

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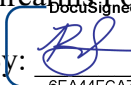
I, Brandon Combs, declare:

I am President of the Firearms Policy Coalition, and am authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. The factual matters set forth in Paragraphs 1–8, 10, and 16–61 are true and accurate based on the organization’s experience. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed January 28, 2022.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Firearms Policy Coalition

By:  \_\_\_\_\_  
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Brandon Combs, President

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**VERIFICATION**

I, Alan Gottlieb, declare:

I am Executive Vice President of the Second Amendment Foundation, and am authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. The factual matters set forth in Paragraphs 1–8, 11, and 16–61 are true and accurate based on the organization’s experience. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed January 28, 2022.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Second Amendment Foundation

By: Alan Gottlieb  
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Alan Gottlieb, Executive Vice President



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**VERIFICATION**

I, Brandon Combs, declare:


I am Executive Director of the California Gun Rights Foundation, and am authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. The factual matters set forth in Paragraphs 1–8, 12, and 16–61 are true and accurate based on the organization’s experience. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed January 28, 2022.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

California Gun Rights Foundation

By:

  
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Brandon Combs, Executive Director

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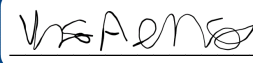
I, Michael Schwartz, declare:

I am an authorized agent of San Diego County Gun Owners PAC, and am authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. The factual matters set forth in Paragraphs 1–8, 13, and 16–61 are true and accurate based on the organization’s experience. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed January 28, 2022.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

San Diego County Gun Owners PAC

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Michael Schwartz

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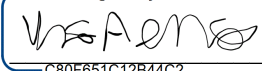
I, Michael Schwartz, declare:

I am an authorized agent of Orange County Gun Owners PAC, and am authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. The factual matters set forth in Paragraphs 1–8, 14, and 16–61 are true and accurate based on the organization’s experience. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed January 28, 2022.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Orange County Gun Owners PAC

By:   
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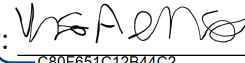
I, Michael Schwartz, declare:

I am an authorized agent of Inland Empire Gun Owners PAC, and am authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. The factual matters set forth in Paragraphs 1–8 and 15–61 are true and accurate based on the organization’s experience. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed January 28, 2022.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Inland Empire Gun Owners PAC

By:   
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Michael Schwartz