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Department of Justice Bureau of Firearms

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12 CIVIL DIVISION

13
14 **JAMES MILLER, et al.,**

15 Plaintiffs,

16 v.

17 **CALIFORNIA ATTORNEY**
18 **GENERAL XAVIER BECERRA, et**
al.,

19 Defendants.

3:19-cv-01537-BEN-JLB

**DEFENDANTS' SUPPLEMENTAL
BRIEF**

Dep't: 5A
Judge: Hon. Roger T. Benitez
Trial Date: January 21, 2021
Action Filed: August 15, 2019

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1 Defendants Xavier Becerra, in his official capacity as Attorney General of the
2 State of California, and Luis Lopez, in his official capacity as Director of the
3 Department of Justice Bureau of Firearms,¹ hereby submit their supplemental brief,
4 as ordered by the Court at the conclusion of the evidentiary hearing on Plaintiffs’
5 then-pending motion for a preliminary injunction, *see* Oct. 22, 2020 Transcript of
6 Evidentiary Hearing – Day 3 (“Oct. 22, 2020 Hrg. Tr.”) at 113:20-114:19, to
7 address certain evidence presented at the hearing.

8 INTRODUCTION

9 As discussed in Defendants’ opposition to Plaintiffs’ motion for preliminary
10 injunction (Dkt. 33), California’s Assault Weapons Control Act (the “AWCA”) is
11 constitutional under the Ninth Circuit’s two-step framework for adjudicating
12 Second Amendment claims. The testimony received by the Court during the
13 evidentiary hearing on Plaintiffs’ preliminary injunction motion does not
14 undermine the constitutionality of the law. To the contrary, the evidence presented
15 at the hearing further shows that the law comports with the Second Amendment.

16 At step one, Plaintiffs have failed to show that assault weapons—and
17 particularly assault pistols and assault shotguns—are in common use for lawful
18 purposes like self-defense. At step two, intermediate scrutiny must apply because
19 the burden of the AWCA on the core Second Amendment right is not severe. Even
20 if the AR-15 and other “modern sporting rifles” are in “common use,” California
21 law does not prohibit the sale or possession of those weapons. Californians are free
22 to acquire semiautomatic, centerfire rifles (and semiautomatic pistols and shotguns)
23 provided those firearms are not configured with certain accessories that facilitate
24 more accurate rapid fire and thus enhance their lethality in mass shootings and
25 violence against law enforcement personnel. Consistent with the weight of federal
26

27 ¹ Pursuant to Federal Rule of Civil Procedure 25(d), Bureau of Firearms
28 Director Luis Lopez, in his official capacity, is substituted for former Interim
Director Brent E. Orick.

1 circuit court authority examining assault-weapon restrictions, the AWCA satisfies
2 intermediate scrutiny and thus does not violate the Second Amendment.

3 ARGUMENT

4 I. STEP ONE: THE AWCA DOES NOT BURDEN CONDUCT PROTECTED BY 5 THE SECOND AMENDMENT

6 At step one of the Ninth Circuit’s Second Amendment framework, which
7 “asks whether the challenged law burdens conduct protected by the Second
8 Amendment,” *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016), Plaintiffs have
9 failed to show that the proscribed weapons are in common use for lawful purposes
10 like self-defense. The Second Amendment “does not protect those weapons not
11 typically possessed by law-abiding citizens for lawful purposes, such as short-
12 barreled shotguns.” *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008); *see*
13 *also Fyock v. Sunnyvale*, 779 F.3d 991, 997 (9th Cir. 2015). This articulation of
14 what is protected by the Second Amendment finds its roots in the “historical
15 tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Heller*,
16 554 U.S. at 627. Dangerous and unusual weapons are not “‘the sorts of weapons’
17 that are ‘in common use’” for lawful purposes. *Silvester*, 843 F.3d at 830 (Thomas,
18 C.J., concurring).

19 At step one, Plaintiffs bear the burden of persuasion of demonstrating that the
20 challenged regulation burdens conduct protected by the Second Amendment. *See*
21 *Binderup v. Att’y Gen. U.S.A.*, 836 F.3d 336, 347 (3d Cir. 2016) (“[I]f the
22 challenger succeeds at step one, the burden shifts to the Government to demonstrate
23 that the regulation satisfies some form of heightened scrutiny . . . at step two . . .”).
24 Assigning the burden to the Plaintiffs is especially warranted where the State would
25 otherwise be obligated to prove a negative—that the regulated arm is *not* commonly
26 possessed for lawful purposes. Here, Plaintiffs failed to show that the challenged
27 provisions of the AWCA burden conduct protected by the Second Amendment.
28

1 And regardless of which party is assigned the burden of persuasion at step one, the
2 evidence in this case shows that assault weapons are not in common use.

3 **A. Assault Pistols and Assault Shotguns Are Not Protected Under**
4 **the Second Amendment**

5 Plaintiffs failed to present evidence showing that assault pistols and assault
6 shotguns are in common use. Even if “[c]ommonality is determined largely by
7 statistics,” where “common use” is established primarily by evidence that a weapon
8 is “overwhelmingly owned and used for lawful purposes,” *Duncan v. Becerra*, 970
9 F.3d 1133, 1147 (9th Cir. Aug. 14, 2020), *petition for reh’g en banc filed*, the
10 statistics offered by Plaintiffs are limited to certain semiautomatic *rifles*, and not
11 assault pistols or assault shotguns. At the hearing, Plaintiffs conceded that they do
12 not have national statistics regarding assault pistols and assault shotguns. *See*
13 Oct. 22, 2020 Hrg. Tr. at 42:3-8 (Plaintiffs’ counsel: “I will concede that the data
14 that we have, that it pertains to modern sporting rifles as described by Mr.
15 Curcuruto . . . that data is much more prevalent and trackable nationwide than it is
16 for shotguns and for AR pistols, or what the State calls assault pistols. That’s a
17 function of its popularity, however.”). Plaintiffs have offered no data to quantify
18 the number of assault pistols and assault shotguns that have been manufactured and
19 sold in the United States, let alone how many such weapons are possessed by law-
20 abiding civilians and for what purposes. *See id.* at 37:14-17 (the Court: “I do have
21 a problem with the idea of these assault pistols, and the same thing with the
22 shotguns, I don’t really have a whole lot of information about how common those
23 may be.”).

24 At the hearing, Defendants noted that the State has information on the number
25 of assault pistols and assault shotguns registered under the AWCA in California.
26 *See* Oct. 22, 2019 Hrg. Tr. at 39:24-40:6. In *Rupp v. Becerra*, the Attorney General
27 submitted evidence indicating that, as of November 2, 2018, approximately 184,552
28 assault weapons were registered with the California Department of Justice under

1 California Penal Code section 30900, of which 166,640 were assault rifles, leaving
2 only 17,912 assault weapons that were not rifles, *e.g.* assault pistols and assault
3 shotguns. *See Rupp v. Becerra*, No. 8:17-cv-00746-JLS-JDE (C.D. Cal.)
4 (Dkt. 76-18) at 6.² These figures may overstate the number of registered firearms,
5 however, because 9,313 of the registered assault weapons were registered by two or
6 more individuals. *Id.* While the number of registered assault pistols and assault
7 shotguns in California might provide at least some indication of the number of such
8 firearms in the State, those statistics do not demonstrate how many assault pistols
9 and assault shotguns may be possessed nationwide. *See Duncan*, 970 F.3d at 1168
10 n.29 (noting that “we look to national statistics to determine common ownership”
11 where a restriction has “been operative for years”). As the Court indicated at the
12 hearing, Plaintiffs should be required to submit national statistics, if they exist, to
13 support their claim that the challenged law burdens protected conduct at step one.
14 *See* Oct. 29, 2020 Hrg. Tr. at 44:22-45:1 (noting that obtaining national statistics is
15 Plaintiffs’ “problem, and I would expect you would look for that, and you would
16 provide that information to the State, just like I expect the State to provide you with
17 the information that they have.”). Plaintiffs have not, however, offered any national
18 statistics concerning assault pistols or assault shotguns, and the absence of such
19 data suggests that those weapons are not in common use for lawful purposes.³

20 To the extent Plaintiffs rely on purported self-defense uses of assault pistols or
21 assault shotguns, such potential uses are not sufficient to establish that those
22 firearms are in common use for self-defense, because any weapon could
23 conceivably be used in self-defense. And the fact that law enforcement agencies
24 use shotguns equipped with pistol grips and collapsible stocks, which would

25 _____
26 ² Defendants will endeavor to obtain more current registration figures
specific to assault pistols and assault rifles, respectively, for trial.

27 ³ Even if Plaintiffs were able to submit sales statistics regarding assault
28 pistols or assault shotguns, “marketing materials and sales statistics” would “not
necessarily show that [they] are in fact commonly possessed by law-abiding
citizens for lawful purposes.” *Fyock*, 779 F.3d at 998.

1 otherwise qualify as assault weapons, plays no role in the analysis; law enforcement
2 use is not considered when determining whether an arm is in common use by law-
3 abiding citizens for lawful purposes. *See* Oct. 22, 2020 Hrg. Tr. at 42:16-21;
4 *Maloney v. Singas*, 351 F. Supp. 3d 222, 229 n.10 (E.D.N.Y. 2018) (excluding sales
5 of arms to law enforcement agencies because “the Second Amendment is only
6 concerned with weapons ‘typically possessed by law-abiding citizens for lawful
7 purposes.’” (quoting *Heller*, 554 U.S. at 625)). Therefore, the evidence shows that
8 assault pistols and assault shotguns are not protected by the Second Amendment.

9 **B. Assault Rifles Are Not Protected by the Second Amendment**

10 Plaintiffs have also failed to show that assault rifles are in common use for
11 lawful purposes like self-defense. While Plaintiffs have provided industry data
12 concerning the manufacturing and sales of “modern sporting rifles,” like the AR-15,
13 those numbers do not necessarily reflect the number of semiautomatic rifles that
14 qualify as assault weapons under the AWCA in the United States. Plaintiffs’
15 witness, Mr. Curcuruto, relies on statistics from the Bureau of Alcohol, Tobacco,
16 Firearms and Explosives’ (“ATF”) Annual Firearms Manufacturers and Exports
17 Reports (“AFMER”), *see* Curcuruto Decl. ¶ 8, Ex. 3, but the AFMER includes
18 semiautomatic rifles manufactured for sale in California and other states that restrict
19 the sale of assault weapons (*e.g.*, rimfire rifles or featureless centerfire rifles).
20 Thus, the AFMER includes weapons that do not qualify as assault weapons under
21 the AWCA. In addition, the AFMER includes data on sales of semiautomatic rifles
22 to law enforcement agencies. *See* ATF, Firearms Commerce in the United States:
23 Annual Statistical Update at 1 (2016) (“The AFMER report excludes production for
24 the U.S. military but includes firearms purchased by domestic law enforcement
25 agencies.”), available at [https://www.atf.gov/resource-center/docs/2016-firearms-](https://www.atf.gov/resource-center/docs/2016-firearms-commerce-united-states/download#:~:text=The%20AFMER%20report%20excludes%20production,incluces%20firearms%20manufactured%20for%20export)
26 [commerce-united-](https://www.atf.gov/resource-center/docs/2016-firearms-commerce-united-states/download#:~:text=The%20AFMER%20report%20excludes%20production,incluces%20firearms%20manufactured%20for%20export)
27 [states/download#:~:text=The%20AFMER%20report%20excludes%20production,in](https://www.atf.gov/resource-center/docs/2016-firearms-commerce-united-states/download#:~:text=The%20AFMER%20report%20excludes%20production,incluces%20firearms%20manufactured%20for%20export)
28 [cluces%20firearms%20manufactured%20for%20export](https://www.atf.gov/resource-center/docs/2016-firearms-commerce-united-states/download#:~:text=The%20AFMER%20report%20excludes%20production,incluces%20firearms%20manufactured%20for%20export) (last visited Nov. 4, 2020).

1 As discussed, sales to law enforcement agencies should not be considered when
2 examining common use by civilians. *See supra* Section I.A. Curcuruto’s other
3 source, sales data from the National Shooting Sports Foundation (“NSSF”), is
4 similarly flawed because it too considers sales of “modern sporting rifles”
5 generally—including rifles that are California-compliant—and not just
6 semiautomatic rifles that would qualify as assault weapons under the AWCA.⁴

7 If there were any doubt that assault rifles are both dangerous *and* unusual, the
8 assault rifles are “like” M-16 rifles, which the Supreme Court has stated “may be
9 banned,” because these weapons have similar features and configurations. *Kolbe v.*
10 *Hogan*, 849 F.3d 114, 136 (4th Cir. 2017) (en banc) (“Because the banned assault
11 weapons and large-capacity magazines are ‘like’ ‘M-16 rifles’—‘weapons that are
12 most useful in military service’—they are among those arms that the Second
13 Amendment does not shield.” (citing *Heller*, 554 U.S. at 627)); *Rupp v. Becerra*,
14 401 F. Supp. 3d 978, 988 (C.D. Cal. 2019) (“[T]he Court concludes that
15 semiautomatic rifles within the AWCA’s scope are virtually indistinguishable from
16 M-16s . . .”). During the evidentiary hearing, Plaintiffs attempted to distinguish
17 assault rifles, like the AR-15, from the M-16 on the basis that the former is only
18 semiautomatic and the latter is select-fire and thus capable of automatic fire. *See*
19 Oct. 19, 2020 Hrg. Tr. at 21:16-22:3. That distinction is not material, however,
20 because semiautomatic rifles can “still fire almost as rapidly as automatics.” *Heller*
21 *v. District of Columbia (Heller II)*, 670 F.3d 1244, 1263 (D.C. Cir. 2011).
22 Plaintiffs’ witness, Mr. Kapelson, testified that “most any of us . . . can fire five to
23 seven rounds per second from a semi-automatic pistol or any semi-automatic rifle”
24 and that a shooter would be able to maintain such rapid fire for “[q]uite a while.”
25 Oct. 19, 2020 Evidentiary Hearing – Day 1 (“Oct. 19, 2020 Hrg. Tr.”) at 23:14-22.⁵

26 ⁴ While statistics may be part of the common-use analysis, the Court should
27 also consider the qualitative attributes of assault weapons, which are not
28 particularly useful for self-defense.

⁵ Mr. Kapelson testified that automatic weapons have a cyclic rate of fire of

1 Plaintiffs’ own evidence confirms that fully automatic M-16s and semiautomatic
2 assault rifles are not materially different with respect to their ability to fire a
3 significant number of rounds rapidly.

4 Accordingly, whether the Court considers statistics of assault-rifle sales or
5 compares assault-rifles to the M-16 in determining whether assault weapons are in
6 common use, the semiautomatic rifles restricted under the AWCA are not protected
7 by the Second Amendment.

8 **II. STEP TWO: CALIFORNIA’S ASSAULT-WEAPON RESTRICTIONS SATISFY**
9 **INTERMEDIATE SCRUTINY**

10 **A. The AWCA Is Subject to Intermediate Scrutiny Because Any**
11 **Burden on the Core Second Amendment Right Is Not Severe**

12 Even assuming the AWCA burdens conduct protected under the Second
13 Amendment, intermediate scrutiny should apply for the same reasons that the five
14 federal circuit courts have selected intermediate scrutiny in upholding substantially
15 identical assault-weapon restrictions. *See Wilson v. Cook Cnty.*, 937 F.3d 1028,
16 1036 (7th Cir. 2019) (following *Friedman v. City of Highland Park, Ill.*, 784 F.3d
17 406, 412 (7th Cir. 2015)), *cert. denied*, __ S.C. __, 2020 WL 3146694 (June 15,
18 2020); *Worman v. Healey*, 922 F.3d 26, 38 (1st Cir. 2019), *cert. denied*, __ S.C. __,
19 2020 WL 3146687 (June 15, 2020); *Kolbe*, 849 F.3d at 138-39; *N.Y. State Rifle &*
20 *Pistol Ass’n v. Cuomo*, 804 F.3d 242, 257-61 (2d Cir. 2015); *Heller II*, 670 F.3d at
21 1261-62. The testimony at the evidentiary hearing further shows that the burden on
22 the core Second Amendment right to use firearms in defense of hearth and home is
23 not severe because the law prohibits possession of only a subset of firearms that are
24 configured with certain features. As Plaintiff Peterson testified, his store is able to
25 sell AR- and AK-platform rifles that are compliant with the AWCA and that the
26 750 to 900 rounds per minute in controlled circumstances—e.g., not accounting for
27 real-world circumstances—which translates into a cyclic rate of between 12.5 and
28 15 rounds per second. *See Oct. 19, 2020 Hrg. Tr.* at 22:17-19. Mr. Kapelson’s
testimony regarding the five- to seven-round per second firing rate of a
semiautomatic firearm concerns the *effective* rate of fire in real-world
circumstances, which would likely be lower than the theoretical cyclic rate for that
same firearm.

1 “overwhelming majority of purchases have been . . . modern sporting guns.” *See*
2 Oct. 22, 2020 Hrg. Tr. at 20:7-8, 21:6-16.

3 The burden on the core right is further minimized by the fact that the AWCA
4 in effect operates as a restriction on the manner in which certain semiautomatic
5 firearms are sold and possessed, rather than a prohibition on the possession of any
6 particular class of firearm. Under the AWCA, Californians may acquire and
7 possess semiautomatic, centerfire rifles and semiautomatic pistols and shotguns,
8 provided the weapons do not have any of the proscribed accessories or features
9 listed in California Penal Code section 30515(a). *See* Oct. 19, 2020 Hrg. Tr. at
10 188:21-24.⁶ Because the challenged provisions of the AWCA regulate the *manner*
11 in which certain rifles, pistols, and shotguns may be configured—without rendering
12 those firearms inoperable—the burden on the core Second Amendment right, if any,
13 is minimal. *See Silvester*, 843 F.3d at 827 (“This court has explained that laws
14 which merely regulate only the ‘*manner* in which persons may exercise their
15 Second Amendment rights’ are less burdensome than those which bar firearm
16 possession completely.” (quoting *United States v. Chovan*, 735 F.3d 1127, 1138
17 (9th Cir. 2013))).⁷

18 The Ninth Circuit’s recent decision in *Duncan v. Becerra* does not require
19 application of strict scrutiny here.⁸ In contrast with *Duncan*, which applied strict

20
21 ⁶ The fact that the AWCA defines firearms with prohibited configurations as
“assault weapons” for regulatory purposes does not create a “class” of arms.

22 ⁷ The Ninth Circuit has indicated that the Second Amendment may protect
the right to possess certain firearm accessories or hardware that may be necessary to
operate the firearm. *See Fyock*, 779 F.3d at 997 (“[O]ur case law supports the
23 conclusion that there must also be some corollary, albeit not unfettered, right to
possess the magazines *necessary to render those firearms operable*.” (emphasis
24 added) (quoting *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 967 (9th
Cir. 2014))). None of the features enumerated in California Penal Code section
25 30515(a) are necessary to operate a firearm.

26 ⁸ Notably, the *Duncan* court did not adopt a “categorical approach” that
would dispense with any means-ends scrutiny, as Plaintiffs have argued in this case.
27 *See* Dkt. 22-1 at 11:11-12:4. Instead, the court selected strict scrutiny based on a
determination that the challenged “law *categorically* bars the possession of
28 magazines that are commonly used in handguns, the ‘quintessential self-defense
weapon.’” *Duncan*, 970 F.3d at 1152 (emphasis added and quotation omitted).

1 scrutiny to a law deemed to “categorically bar[] the possession of magazines” in
2 common use for lawful purposes, the AWCA does not prohibit “an entire class of
3 ‘arms’ that is overwhelmingly chosen by American society for th[e] lawful purpose
4 [of self-defense].” *Heller*, 554 U.S. at 628. The AWCA is not nearly as broad and
5 thus should not be viewed as categorically prohibiting any class of arms, let alone a
6 class of harms that are overwhelmingly chosen for self-defense. Accordingly, the
7 AWCA is subject to intermediate scrutiny at step two.

8 **B. The AWCA Is Reasonably Fitted to Important Government**
9 **Interests**

10 The AWCA exhibits a reasonable fit to the State’s important interests in
11 protecting the public and law enforcement from gun violence. The evidence shows
12 that the features prohibited under the AWCA increase the lethality of
13 semiautomatic weapons by enhancing accuracy when firing rapidly and, in the case
14 of collapsible stocks and semiautomatic rifles that are less than 30 inches in length,
15 enhance the concealability of the firearm.⁹ Assault weapons enable a shooter to fire
16 more rounds rapidly in a given period with greater accuracy, increasing the
17 likelihood that more individuals will be shot and suffer more numerous injuries.
18 The testimony at the hearing confirms that when an individual suffers multiple
19 gunshot wounds it is “far more likely” that the individual will suffer complications
20 and die of those injuries. Oct. 22, 2020 Hrg. Tr. at 35:24-36:5 (testimony of
21 Dr. Colwell).¹⁰ To the extent Plaintiffs claim that the prohibited features do not
22 enhance the lethality of semiautomatic firearms in mass shootings based on the
23 testimony of Mr. Kraut, that testimony undermines any claim that the features are
24 useful for self-defense. *See id.* at 24:20-25:4 (testifying that, “in either

25 ⁹ Plaintiffs have not offered evidence concerning folding stocks. *See* Cal.
26 Penal Code § 30515(a)(1)(C).

27 ¹⁰ Dr. Margulies’ comparison of the lethality of assault weapons and
28 comparable non-assault weapons, Margulies Decl. ¶ 14 (Dkt. 38-1), fails to account
for the fact that, while they may fire the same caliber of ammunition, assault
weapons have features that enable that ammunition to be fired rapidly with greater
accuracy, causing more wounds per victim and thus greater morbidity.

1 configuration,” an individual can shoot a particular target “in rapid succession using
2 either a California featureless rifle or a standard configuration AR”).

3 The evidence shows that more people are injured and killed in mass shootings
4 involving assault weapons. *See* Allen Decl. ¶¶ 26, 33-34 (finding correlation in
5 public mass shootings involving four or more fatalities excluding the shooter);
6 Klarevas Decl. ¶ 17 (finding correlation in gun massacres involving six or more
7 fatalities excluding the shooter). Defendants’ expert witnesses have disclosed the
8 data sets on which they rely and their methodologies, which enables Plaintiffs’
9 experts to replicate their findings, but none of Plaintiffs’ witnesses disputed their
10 calculations and the correlation between the use of assault weapons in mass
11 shootings and greater numbers of average casualties during the hearing. The
12 un rebutted correlation strongly supports the reasonableness of the AWCA’s fit. *See*
13 *Rupp*, 401 F. Supp. 3d at 993 (noting that “‘a correlation between the use of assault
14 weapons and the number of victims injured or killed’ makes it [m]ore likely’ that
15 there is a causal relationship” and that “California is entitled to make ‘reasonable
16 inferences’ from the available data that shows a correlation” (citations omitted)).

17 The evidence also shows that California’s assault-weapon restrictions are
18 effective in mitigating the lethality of mass shootings and can even reduce the
19 incidence of mass shootings. *See* Klarevas Decl. ¶¶ 22-23; Oct. 19, 2020 Hrg. Tr.
20 at 122:4-123:14 (Dr. Klarevas discussing the substitution effect where potential
21 shooters may substitute less lethal weapons).¹¹ Dr. Lott’s testimony based on Dr.
22 Klarevas’ list of gun massacres is flawed. As noted in several of Defendants’
23 declarations, Dr. Lott relied on incorrect data in arguing that assault weapons bans
24 are not effective, *see* Klarevas Decl. ¶ 45 (noting that Dr. Lott incorrectly classified
25 mass shootings as involving assault weapons); Donohue Decl. ¶ 138 (noting that

26 ¹¹ The State is not restricted to examining mass shootings in California to
27 demonstrate a reasonable fit and may “rely on any evidence ‘reasonably believed to
28 be relevant’”—such as mass shootings in other jurisdictions—“to substantiate its
important interests” under intermediate scrutiny. *Fyock*, 779 F.3d at 1000
(quotations omitted).

1 Dr. Lott’s critique of Dr. Klarevas’ findings fails, in part, because “he completely
2 miscalculates mass shootings conducted with weaponry banned by the federal
3 law”). Nevertheless, at the evidentiary hearing, Dr. Lott did not correct any of
4 these flaws or revise his opinions. *See* Oct. 22, 2020 Hrg. Tr. at 107:18-108:5.

5 Consistent with the unanimous view of the five federal circuit courts that have
6 examined assault-weapon restrictions, the AWCA amply satisfies intermediate
7 scrutiny.

8 CONCLUSION

9 For these reasons, and those that will be further adduced at trial, the AWCA is
10 constitutional under the Second Amendment.

11
12 Dated: November 5, 2020

Respectfully submitted,

13 XAVIER BECERRA
14 Attorney General of California
15 MARK R. BECKINGTON
16 Supervising Deputy Attorney General

s/ John D. Echeverria

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18 Deputy Attorney General
19 *Attorneys for Defendants Xavier*
20 *Becerra, in his official capacity as*
21 *Attorney General of the State of*
22 *California, and Luis Lopez, in his*
23 *official capacity as Director of the*
24 *Department of Justice Bureau of*
25 *Firearms*

CERTIFICATE OF SERVICE

Case Name: **James Miller et al. v. Xavier Becerra, et al.**
Case No. **3:19-cv-01537-BEN-JLB**

I hereby certify that on November 5, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS' SUPPLEMENTAL BRIEF

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 5, 2020, at San Francisco, California.

Robert Hallsey

Declarant

/s/ Robert Hallsey

Signature