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13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 15 CIVIL DIVISION
 16

17 **JAMES MILLER, et al.,**
 Plaintiffs,
 18
 19 v.
 20 **CALIFORNIA ATTORNEY**
GENERAL XAVIER BECERRA,
 21 **et al.,,**
 Defendants.
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Case No. 19-cv-1537-BEN-JLB
DEFENDANTS’ MEMORANDUM
OF CONTENTION OF FACT AND
LAW
[LOCAL RULE 16.1(f)(2)]
 Pre-Trial Conference:
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1 In accordance with Local Rule 16.1(f)(2)(a), Defendants Xavier Becerra, in his
2 official capacity as Attorney General of the State of California, and Luis Lopez, in
3 his official capacity as Director of the Department of Justice Bureau of Firearms¹
4 (together, “Defendants”), respectfully contend that the trial of this case, set by the
5 Court pursuant to Federal Rule of Civil Procedure 65(a)(2), involves the following
6 material facts and issues of law.

7 INTRODUCTION

8 The Assault Weapons Control Act (the “AWCA”) is constitutional under the
9 Second Amendment. The AWCA is constitutional at both steps of the Ninth
10 Circuit’s two-step framework for adjudicating Second Amendment claims, which
11 asks (1) “whether the challenged law burdens conduct protected by the Second
12 Amendment,” and if so, (2) “what level of scrutiny should be applied” and whether
13 the challenged law satisfies that level of scrutiny, *Fyock v. Sunnyvale*, 779 F.3d
14 991, 996 (9th Cir. 2015). At step one, the AWCA does not burden conduct
15 protected by the Second Amendment. And even if the AWCA is assumed to
16 burden protected conduct, intermediate scrutiny must apply at step two because any
17 burden of the AWCA on the core Second Amendment right to defense of hearth
18 and home is not severe. The AWCA satisfies intermediate scrutiny because it is
19 reasonably fitted to important government interests in reducing gun violence,
20 particularly mitigating the incidence and lethality of mass shootings and violence
21 against law enforcement personnel. This determination is consistent with the
22 decisions of the five federal circuits and a sister district court in this circuit that
23 have examined the constitutionality of substantially identical assault-weapon
24 restrictions.

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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.

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CONTENTIONS OF FACT AND LAW

I. STEP ONE: THE AWCA DOES NOT BURDEN CONDUCT PROTECTED UNDER THE SECOND AMENDMENT

The Second Amendment provides, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects an individual right to keep and bear arms. 554 U.S. 570, 595 (2008). This right is incorporated against the states through the Fourteenth Amendment. *See McDonald v. City of Chicago*, 561 U.S. 742, 790-91 (2010) (plurality opinion).

Under the Ninth Circuit’s two-step approach adopted following *Heller* and *McDonald*, the first step considers whether the challenged law burdens conduct protected by the Second Amendment based on a “historical understanding of the scope of the right.” *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016) (quoting *Heller*, 554 U.S. at 625). If it does not, then the law “may be upheld without further analysis.” *Id.* (citation omitted). However the burden of persuasion is assigned, the AWCA is constitutional at step one of the framework.

A. Assault Weapons Are Not Protected Under the Second Amendment Because They Are Dangerous and Unusual

While the Court in *Heller* and *McDonald* invalidated strict laws that effectively prohibited the possession of all handguns—which the Court characterized as “the quintessential self-defense weapon,” *Heller*, 554 U.S. at 629—the Court made clear that “the right secured by the Second Amendment is not unlimited” and does not extend to “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,” *id.* at 626 (citations omitted). The Second Amendment “does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.” *Heller*, 554 U.S. at 625; *see also Fyock*, 779 F.3d at 997. This

1 articulation of what is protected by the Second Amendment finds its roots in the
2 “historical tradition of prohibiting the carrying of ‘dangerous and unusual
3 weapons.’” *Heller*, 554 U.S. at 627. Dangerous and unusual weapons are not “‘the
4 sorts of weapons’ that are ‘in common use’” for lawful purposes. *Silvester*, 843
5 F.3d at 830 (Thomas, C.J., concurring).

6 **1. Assault Weapons Are Dangerous**

7 Assault-weapon configurations that qualify a rifle, pistol, or shotgun as an
8 assault weapon under the AWCA increase the dangers posed by those firearms.
9 Each of the prohibited features or configurations in California Penal Code section
10 30515(a) serves specific, combat-oriented functions, which increase the lethality of
11 firearms and enhance their effectiveness in certain types of crime, particularly mass
12 shootings and violence against law enforcement personnel.

13 **a. Detachable Magazines**

14 The capability to accept detachable magazines is a threshold requirement for
15 certain rifles and pistols to qualify as an assault weapon, Cal. Penal Code
16 § 30515(a)(1), (4), and it is sufficient to designate a shotgun as an assault weapon,
17 *id.* § 30515(a)(7). Detachable magazines enhance the ability of a semiautomatic
18 firearm to fire a large number of rounds quickly, by eliminating the need to
19 manually reload each round.

20 The ability to accept detachable magazines “provides the soldier with a fairly
21 large ammunition supply and the ability to rapidly reload.” Defs.’ Ex. H (Bureau of
22 Alcohol, Tobacco & Firearms, Report and Recommendation on the Importability of
23 Certain Semiautomatic Rifles (1989) (“ATF Rifle Importability Report”)) at 6.²
24 The ability to accept detachable magazines renders a semiautomatic weapon

25 _____
26 ² In accordance with Local Rule 16.1(f)(2)(c), Defendants organize their
27 exhibits alphabetically. A complete list of Defendants exhibits and witnesses is
28 being filed concurrently with this memorandum. Defendants’ citation to evidence
herein is not intended to be exhaustive, and Defendants reserve the right to cite
additional evidence from their exhibit list and other evidence adduced at trial in
support of their contentions of fact.

1 “capable of killing or wounding more people in a shorter amount of time.” Defs.’
2 Ex. F (S.B. 880 Report, 2015-2016 Reg. Sess., Assembly Committee on Public
3 Safety (June 14, 2016)) at 6. Additionally, a pistol capable of accepting a
4 detachable magazine at some location other than the pistol grip, Cal. Penal Code
5 § 30515(a)(4)(D), can help a shooter reload a pistol quicker and maintain aim
6 during rapid fire. Defs.’ Ex. D (Graham Decl.) ¶ 29. A weapon lacking a fixed
7 magazine is also capable of accepting detachable large-capacity magazines
8 (“LCMs”), which “allow a shooter to fire more than ten rounds without having to
9 pause to reload.” *Kolbe v. Hogan*, 849 F.3d 114, 125 (4th Cir. 2017) (en banc).
10 LCMs “are particularly designed and most suitable for military and law
11 enforcement applications” and “are a feature common, but not unique, to the
12 banned assault weapons, many of which are capable of accepting magazines of
13 thirty, fifty, or even 100 rounds.” *Id.* Shotguns capable of firing more than five
14 shotgun rounds without reloading, such as those with a revolving cylinder, are also
15 “most appropriate for military or law enforcement use” and “are not particularly
16 suitable for nor readily adaptable to generally recognized sporting purposes.”
17 Defs.’ Ex. O (Bureau of Alcohol, Tobacco, Firearms & Explosives, Study on the
18 Importability of Certain Shotguns (2011) (“ATF Shotgun Importability Study”)) at
19 iv.

20 The use of LCM-equipped firearms in mass shootings results in a substantially
21 greater number of fatalities and injuries than mass shootings not involving LCMs
22 (27 vs. 9), and especially when LCMs are used in conjunction with assault weapons
23 (43 vs. 8). Defs.’ Ex. A (Allen Decl.) ¶¶ 33-34; *see also* Defs.’ Ex. E (Klarevas
24 Decl.) ¶ 17 (discussing higher death toll for gun massacres involving LCMs).
25 LCMs also feature prominently in gun violence against law enforcement, as LCM-
26 equipped assault weapons can enable a shooter to engage law enforcement in
27 prolonged standoffs, and such weapons fire ammunition that is capable of
28 penetrating police body armor. *See* Defs.’ Ex. D (Graham Decl.) ¶¶ 22-23, 41.

1 **b. Fixed LCMs**

2 Certain rifles and pistols qualify as assault weapons if they have fixed LCMs.
3 Cal. Penal Code § 30515(a)(2), (5). LCMs enable a shooter to fire more rounds in a
4 given period of time by reducing reload frequency.

5 An LCM enables a shooter to fire more than 10 rounds in a shorter period of
6 time than a firearm with a fixed or detachable 10-round magazine. *See Gallinger v.*
7 *Becerra*, 898 F.3d 1012, 1019 (9th Cir. 2018) (quoting *Kolbe*, 849 F.3d at 127);
8 *Fyock*, 779 F.3d at 1000 (citing “evidence that the use of [LCMs] results in more
9 gunshots fired, results in more gunshot wounds per victim, and increases the
10 lethality of gunshot injuries”). Even if an LCM is incorporated into a rifle or pistol
11 as a fixed magazine, the weapon would still be capable of firing more than 10
12 rounds repeatedly without needing to reload, enhancing that weapon’s lethality.
13 And rifles and pistols can be modified to allow a shooter to reload a fixed magazine
14 nearly as quickly as a detachable magazine. Defs.’ Ex. D (Graham Decl.) ¶ 42.

15 **c. Pistol Grips, Thumbhole Stocks, and Barrel Shrouds**

16 Certain rifles, pistols, and shotguns can qualify as assault weapons if they have
17 pistol grips (either beneath the action or located in a forward position) or thumbhole
18 stocks. Cal. Penal Code § 30515(a)(1)(A), (1)(B), (1)(F), (4)(B), (6)(B). Pistol
19 grips and thumbhole stocks enable a shooter to maintain accuracy during rapid fire.

20 A pistol grip “allows for a pistol style grasp in which the web of the trigger
21 hand (between the thumb and index finger) can be placed beneath or below the top
22 of the exposed portion of the trigger while firing,” which can help counteract
23 muzzle rise during repeated firing, and a forward pistol grip can similarly help a
24 shooter stabilize a weapon during repeated semiautomatic fire. Defs.’ Ex. D
25 (Graham Decl.) ¶¶ 28-30, 38; Defs.’ Ex. H (ATF Rifle Importability Report) at 6
26 (“[Pistol] grips were designed to assist in controlling machineguns during automatic
27 fire.”). A pistol grip can enable a shooter to maintain aim and even fire while
28 reloading a detachable magazine. Defs.’ Ex. D (Graham Decl.) ¶ 29. A forward

1 pistol grip on any firearm can also help insulate the non-trigger hand from heat
2 during rapid fire. *Id.* ¶ 53. As with forward pistol grips, a “barrel shroud” on
3 assault pistols, Cal. Penal Code § 30515(a)(4)(C), “serve a combat-functional
4 purpose” by cooling the barrel and insulating the non-trigger hand during rapid fire.
5 Defs.’ Ex. J (H.R. Rep. No. 103-489) at 19.

6
7 **d. Folding and Telescoping Stocks and Rifles Shorter
than 30 Inches in Length**

8 Certain rifles and shotguns may qualify as an assault weapon if it has an
9 adjustable stock. Cal. Penal Code § 30515(a)(1)(C), (6)(A). A folding or
10 telescoping stock enhances the portability and concealability of a rifle. *See* Cal.
11 Code Regs. tit. 11, § 5471(nn), (oo).

12 The “main advantage” of a folding or telescoping stock is “portability,” and
13 “its predominant advantage is for military purposes, and it is not normally found on
14 the traditional sporting rifle.” Defs.’ Ex. H (ATF Rifle Importability Report) at 6.
15 Moreover, in military and law enforcement contexts, an adjustable stock may
16 enable law enforcement personnel to conduct room-to-room searches and maintain
17 a tactical element of surprise. Defs.’ Ex. D (Graham Decl.) ¶ 32. As with
18 adjustable stocks, semiautomatic centerfire rifles with lengths of less than 30
19 inches, Cal. Penal Code § 30515(a)(3), are more concealable and may allow a
20 shooter to smuggle a rifle undetected in public. Defs.’ Ex. D (Graham Decl.) ¶¶ 43,
21 59; Defs.’ Ex. M (Mersereau Decl.) ¶ 10.

22 **e. Flash Suppressors**

23 A flash suppressor is a listed feature in the definition of an assault rifle. Cal.
24 Penal Code § 30515(a)(1)(E). A flash suppressor can enable a shooter to maintain
25 accuracy during rapid fire enhancing the concealability of a shooter in low-light
26 settings.

1 A flash suppressor is a device attached to the muzzle of a rifle to reduce the
2 flash emitted upon firing. Cal. Code Regs. tit. 11, § 5471(r). It is a standard feature
3 of the M-16 that can aid a shooter to maintain accurate, rapid fire in low-light
4 conditions, and can also counteract “muzzle climb” during rapid fire. Defs.’ Ex. H
5 (ATF Rifle Importability Report) at 7; Defs.’ Ex. D (Graham Decl.) ¶ 37. A flash
6 suppressor can help conceal the shooter’s position, especially at night. Defs.’ Ex. H
7 (ATF Rifle Importability Report) at 7; Defs.’ Ex. D (Graham Decl.) ¶ 37.

8 **f. Threaded Pistol Barrels**

9 A semiautomatic, centerfire pistol without a fixed magazine qualifies as an
10 assault weapon if it has a threaded barrel capable of accepting a flash suppressor,
11 forward pistol grip, or silencer. Cal. Penal Code § 30515(a)(4)(A). A threaded
12 barrel enables a shooter to quickly attach a flash suppressor, forward handgrip, or
13 silencer, which enhance the pistol’s lethality and concealability. Defs.’ Ex. D
14 (Graham Decl.) ¶ 53.

15 A flash suppressor and forward pistol grip enhance the lethality or
16 concealability of a firearm. Defs.’ Ex. H (ATF Rifle Importability Report) at 6-7.
17 And a silencer can be affixed to a pistol to reduce the sound it emits upon firing,
18 which can help a shooter maintain a tactical advantage by concealing the shooter’s
19 position or the fact that a shot was even fired. Defs.’ Ex. D (Graham Decl.) ¶ 53
20 (noting Virginia Beach workplace shooting that involved a silencer-equipped
21 handgun). Silencers are not protected by the Second Amendment, *United States v.*
22 *Cox*, 906 F.3d 1170, 1186 (10th Cir. 2018) (“[B]ecause silencers are not ‘bearable
23 arms,’ they fall outside the Second Amendment’s guarantee.”), *cert denied*, 139 S.
24 Ct. 2690 (June 10, 2019), so prohibiting threaded barrels capable of accepting a
25 silencer would not offend the Second Amendment.

26 **g. Grenade and Flare Launchers**

27 A semiautomatic, centerfire rifle without a fixed magazine qualifies as an
28 assault rifle if it is equipped with a grenade launcher or a flare launcher. Cal. Penal

1 Code § 30515(a)(1)(D). Neither serve any legitimate civilian need on a rifle.
2 Defs.’ Ex. D (Graham Decl.) ¶¶ 34-35.

3 2. Assault Weapons Are Unusual

4 In addition to being dangerous, assault weapons regulated under the AWCA
5 are not “in common use” for lawful purposes like self-defense. The Ninth Circuit
6 has observed that “[c]ommonality is determined largely by statistics,” with
7 “common use” being established primarily by evidence that a weapon is
8 “overwhelmingly owned and used for lawful purposes,” *Duncan v. Becerra*, ___
9 F.3d ___, 2020 WL 4730668, at *7 (9th Cir. Aug. 14, 2020), *petition for reh’g en*
10 *banc filed*. It is Plaintiffs’ burden to show that assault weapons are in “common
11 use” by law-abiding citizens for lawful purposes. *See Binderup v. Att’y Gen.*
12 *U.S.A.*, 836 F.3d 336, 347 (3d Cir. 2016) (“[I]f the challenger succeeds at step one,
13 the burden shifts to the Government to demonstrate that the regulation satisfies
14 some form of heightened scrutiny . . . at step two . . .”). Plaintiffs have failed to
15 demonstrate that assault weapons are widely possessed by law-abiding civilians for
16 lawful purposes.

17 Even if Plaintiffs are able to present evidence of marketing materials or sales
18 figures for assault rifles, assault pistols, and assault shotguns, such evidence would
19 not show that the weapons are in common use by law-abiding citizens for lawful
20 purposes. For one, “marketing materials and sales statistics” do “not necessarily
21 show that [particular weapons] are in fact commonly possessed by law-abiding
22 citizens for lawful purposes.” *Fyock*, 779 F.3d at 998. Moreover, evidence of a
23 firearm’s prevalence alone is insufficient to show that the weapon is in “common
24 use” for lawful purposes. *See Kolbe*, 849 F.3d at 141-42 (noting that “the *Heller*
25 majority said nothing to confirm that it was sponsoring the popularity test”);
26 *Worman v. Healey*, 922 F.3d 26, 35 n.5 (1st Cir. 2019) (noting that “measuring
27 ‘common use’ by the sheer number of weapons lawfully owned is somewhat
28 illogical” (citing *Friedman*, 784 F.3d at 409)), *cert. denied*, ___ S.C. ___, 2020 WL

1 3146687 (June 15, 2020). The evidence here shows that assault weapons restricted
2 under the AWCA are not well-suited for lawful uses, particularly self-defense. The
3 prohibited features enhance a firearm’s ability to fire more rounds in a given period
4 of time, to maintain accuracy during rapid-fire, or to be more readily concealable.
5 These attributes are not necessary for lawful self-defense, as the evidence shows
6 that individuals fire 2.1 shots on average when firearms were used in self-defense in
7 the home, firing no shots in 16.1% of incidents. Defs.’ Ex. A (Allen Decl.) ¶ 15;
8 *see also id.* ¶ 23 (finding of Ms. Allen that an average number of 2.34 shots are
9 fired in self-defense in the home, with a median of 2.03, based on review of news
10 stories nationwide).

11 While assault weapons might be used in self-defense, they are more useful for
12 offensive purposes or combat. The fact that law enforcement agencies may use
13 weapons that would otherwise qualify as assault weapons under the AWCA plays
14 no role in the analysis; law-enforcement use is not considered when determining
15 whether an arm is in common use by law-abiding citizens for lawful purposes. *See*
16 *Maloney v. Singas*, 351 F. Supp. 3d 222, 229 n.10 (E.D.N.Y. 2018) (excluding sales
17 of arms to law enforcement agencies because “the Second Amendment is only
18 concerned with weapons ‘typically possessed by law-abiding citizens for lawful
19 purposes.’” (quoting *Heller*, 554 U.S. at 625)).

20 **B. Assault Weapons Are “Like” the M-16 and Most Useful in**
21 **Military Service**

22 Assault weapons fall outside the scope of the Second Amendment because
23 they are like the M-16 and most useful in military service. In *Heller*, the Supreme
24 Court made clear that the Second Amendment does not protect weapons that are
25 “most useful in military service,” such as the “M-16 and the like.” *Heller*, 554 U.S.
26 at 627; *Kolbe*, 849 F.3d at 136. Assault weapons are “most useful in military
27 service” due to their ability to accept ammunition from fixed or detachable LCMs
28 and their combat-oriented features. *See Kolbe*, 849 F.3d at 137 (“Whatever their

1 other potential uses—including self-defense—the AR-15, other assault weapons,
2 and large-capacity magazines . . . are unquestionably most useful in military
3 service.”); *see also Gallinger*, 898 F.3d at 1018 (referencing “mass shootings
4 perpetrated by individuals with *military-style rifles*” (emphasis added)).

5 The Supreme Court has highlighted the M-16 as exemplifying a “dangerous
6 and unusual” weapon that falls outside the protection of the Second Amendment.
7 *Heller*, 554 U.S. at 627. Assault weapons have a military pedigree and are nearly
8 identical to the M-16. *Staples v. United States*, 511 U.S. 600, 612 (1994) at 603
9 (“The AR-15 is the civilian version of the military’s M-16 rifle”); *Kolbe*, 849
10 F.3d at 136 (“Because the banned assault weapons and large-capacity magazines
11 are ‘like’ ‘M-16 rifles’—‘weapons that are most useful in military service’—they
12 are among those arms that the Second Amendment does not shield” (citing *Heller*,
13 554 U.S. at 627)); *Rupp v. Becerra*, 401 F. Supp. 3d 978, 988 (C.D. Cal. 2019)
14 (Staton, J.) (“[T]he Court concludes that semiautomatic rifles within the AWCA’s
15 scope are virtually indistinguishable from M-16s”); Defs.’ Ex. H (ATF Rifle
16 Importability Report) at 6 (describing “military features and characteristics . . .
17 carried over to semiautomatic versions of the original military rifle”); Defs.’ Ex. D
18 (Graham Decl.) ¶ 44; Defs.’ Ex. C (Donohue Decl.) ¶¶ 83-89.

19 The primary difference between the M-16 and an assault weapon is that the
20 M-16 is a select-fire weapon that allows the shooter to fire in either automatic or
21 semiautomatic mode, while an assault weapon fires only in semiautomatic mode.
22 Defs.’ Ex. I (Violence Policy Center, *Key Points About Assault Weapons*) at 1.
23 This is not a material difference. Semiautomatic weapons can “still fire almost as
24 rapidly as automatics.” *See Heller v. District of Columbia (Heller II)*, 670 F.3d
25 1244, 1263 (D.C. Cir. 2011); Defs.’ Ex. J (H.R. Rep. No. 103-489, Public Safety
26 and Recreational Firearms Use Protection Act (“H.R. Rep. No. 103-489”))
27 (“[S]emiautomatic weapons can be fired at rates of 300 to 500 rounds per minute,
28 making them virtually indistinguishable in practical effect from machineguns.”);

1 Defs.’ Ex. K (Brady Ctr. to Prevent Gun Violence, *Assault Weapons “Mass*
2 *Produced Mayhem”* (2008)) at 1 (a 30-round magazine empties in less than two
3 seconds on automatic, while the same magazine empties in just five seconds on
4 semiautomatic). In fact, soldiers issued M-16 rifles are instructed to generally use
5 “rapid semiautomatic fire,” because fully automatic fire is “inherently less
6 accurate.” Defs.’ Ex. L (Excerpt of United States Army, *Rifle Marksmanship*
7 *M16/M4 - Series Weapons* (2008)) at 7-12. And assault rifles, such as the AR-15,
8 are easily converted to fire automatically. *Staples*, 511 U.S. at 603 (noting that
9 “[m]any M-16 parts are interchangeable with those in the AR-15 and can be used to
10 convert the AR-15 into an automatic weapon”); Defs.’ Ex. J (H.R. Rep. No. 103-
11 489) at 18 (“[I]t is a relatively simple task to convert a semiautomatic weapon to
12 automatic fire”); Defs.’ Ex. M (Mersereau Decl.) ¶ 20.

13 As with assault rifles, assault pistols and assault shotguns are most useful in
14 military service and are not well-suited for civilian self-defense. *See Kolbe*, 849
15 F.3d at 136 (holding that “the banned assault weapons” are most useful in military
16 service); *Friedman v. City of Highland Park*, 68 F. Supp. 3d 895, 908 (N.D. Ill.
17 2014) (noting that submachine guns are “the analog for a civilian assault pistol” and
18 “facilitate the assault and capture of a military objective” (citation omitted)); Defs.’
19 Ex. N (Violence Policy Ctr., *The Militarization of the U.S. Civilian Firearms*
20 *Market* (2011)) at 28 (noting that assault pistols are “for the most part simply
21 semiautomatic versions of submachine guns”); Defs.’ Ex. O (ATF Shotgun
22 Importability Study) at iv (discussing shotgun features that “are most appropriate
23 for military or law enforcement use,” including adjustable stocks and forward pistol
24 grips). Indeed, manufacturers of assault weapons advertise them to civilians as
25 military-grade firearms. *See Kolbe*, 849 F.3d at 125 (“Several manufacturers of the
26 banned assault weapons, in advertising them to the civilian market, tout their
27 products’ battlefield prowess.”); Defs.’ Ex. C (Donohue Decl.) ¶¶ 72-82; Defs.’
28 Ex. P (Colt.com, AR15A4 Advertisement) at 1; Defs.’ Ex. Q (Colt.com, About Colt

1 Rifles) at 1. Beginning in the 1980s, the gun industry began to market heavily
2 military-style rifles to the civilian gun market, Defs.’ Ex. N (Violence Policy Ctr.,
3 *The Militarization of the U.S. Civilian Firearms Market* (2011)) at 1, using the term
4 “assault rifles” to describe these military-style weapons, Defs.’ Ex. R (Guns &
5 Ammo (July 1981)) at 48, 54 (July 1981 Guns & Ammo Magazine) (variously
6 describing a “new breed of assault rifles” as “[s]pawned in the crucible of war,”
7 “military-type,” “military-style,” and “military autoloaders”).

8
9 **C. The AWCA Is Analogous to Longstanding Firing-Capacity
Regulations.**

10 Plaintiffs are also unlikely to succeed on the merits at the first step of the
11 Second Amendment analysis because the AWCA is a “presumptively lawful
12 measure[]’ falling outside the scope of Second Amendment protection.” *Silvester*,
13 843 F.3d at 830 (Thomas, C.J., concurring) (quoting *Heller*, 554 U.S. at 626,
14 627 n.26). In restricting firearms capable of firing numerous rounds without
15 reloading—either because they can accept detachable LCMs or have fixed LCMs—
16 the AWCA is analogous to “regulations from the early twentieth century that
17 restricted the possession of firearms based on the number of rounds that the firearm
18 could discharge automatically or semi-automatically without reloading.” *Fyock*,
19 779 F.3d at 997. In the 1920s and 1930s, Michigan, Rhode Island, and Ohio
20 enacted restrictions on semiautomatic weapons capable of firing sixteen, twelve,
21 and eighteen shots, respectively, without reloading. Defs.’ Ex. S (Mich. Public
22 Acts, 1927 – No. 372); Defs.’ Ex. T (R.I. Public Acts, 1927 – Ch. 1052); Defs.’
23 Ex. U (Ohio General Code, 1933 – § 12819-3). And in 1932, Congress enacted a
24 twelve-shot restriction on semiautomatic weapons in the District of Columbia—one
25 of the few jurisdictions subject to the Second Amendment at that time, before it was
26 incorporated into the Fourteenth Amendment in 2010—and this restriction has
27 remained in effect ever since. Defs.’ Ex. V (Pub. L. No. 275, 1932 – 72d Cong.,
28

1 Sess. I, chs. 465, 466). While most of the firing-capacity laws were repealed by the
2 1970s, *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Attorney General N.J. (ANJRPC)*,
3 910 F.3d 106, 117 n.18 (3d Cir. 2018), the District of Columbia has maintained its
4 restrictions.

5 In regulating firearms based on their capacity for enhanced firepower, these
6 laws provide a historical analog to the AWCA. *See United States v. Skoien*, 614
7 F.3d 638, 641 (7th Cir. 2010) (en banc) (noting that the challenged regulation need
8 not “mirror” the historical regulation); *see, e.g., Silvester*, 843 F.3d at 823-24, 831
9 (Thomas, C.J., concurring) (citing original iteration of California’s waiting-period
10 law, which provided a *single-day* waiting period, in determining that California’s
11 longer, ten-day waiting period was presumptively lawful). And these laws are
12 sufficient analogs despite their adoption by “several states.” *See id.* at 831
13 (Thomas, C.J., concurring) (citing just three states that enacted waiting-period
14 statutes in the 1920s). In sum, the political debate concerning the regulation of
15 assault weapons “was presaged by the successful, and at the time obviously
16 uncontroversial, regulation of semi-automatic weapons in the 1920s and 1930s.”
17 Defs.’ Ex. W (Robert J. Spitzer, *Gun Law History in the United States and Second*
18 *Amendment Rights*, 80 *Law & Contemporary Problems* 55 (2017)) at 69; *see also*
19 Defs.’ Ex. X (Br. of *Amicus Curiae* Everytown for Gun Safety in Supp. of Def.’s
20 Mot. for Summ. J., *Rupp v. Becerra*, No. 8:17-cv-00746-JLS-JDE (C.D. Cal. Apr.
21 1, 2019) (Dkt. 82-1)) at 7-9. For this additional reason, the AWCA does not burden
22 the Second Amendment.

23 24 **II. STEP TWO: THE AWCA IS SUBJECT TO AND SATISFIES INTERMEDIATE 25 SCRUTINY**

26 **A. The AWCA Is Subject to Intermediate Scrutiny Because Any 27 Burden on the Core Second Amendment Right Is Not Severe**

28 Even if the AWCA is assumed to burden conduct protected under the Second
Amendment at step one, the Court proceeds to select an appropriate level of

1 scrutiny at step two, depending on “(1) how close the law comes to the core of the
2 Second Amendment right, and (2) the severity of the law’s burden on that right.”
3 *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 960-61 (9th Cir. 2014)
4 (quotation omitted). Intermediate scrutiny applies unless the challenged law
5 severely burdens that core Second Amendment right of “law-abiding, responsible
6 citizens to use arms in defense of hearth and home.” *Bauer v. Becerra*, 858 F.3d
7 1216, 1222 (9th Cir. 2017) (quoting *Heller*, 554 U.S. at 635).

8 Every federal circuit court that has selected a level of scrutiny to apply to
9 assault-weapon restrictions, like the AWCA, has determined that intermediate
10 scrutiny applies because they do not rise to the level of a “substantial burden” on
11 the core right protected by the Second Amendment. *See Wilson v. Cook Cnty.*, 937
12 F.3d 1028, 1036 (7th Cir. 2019) (following *Friedman v. City of Highland Park, Ill.*,
13 784 F.3d 406, 412 (7th Cir. 2015)), *cert. denied*, ___ S.C. ___, 2020 WL 3146694
14 (June 15, 2020); *Worman*, 922 F.3d at 38; *Kolbe*, 849 F.3d at 138-39; *N.Y. State*
15 *Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 257-61 (2d Cir. 2015); *Heller II*, 670
16 F.3d at 1261-62. Similarly, the district court in *Rupp* determined that intermediate
17 scrutiny is appropriate because the AWCA does not severely burden the core
18 Second Amendment right, given the range of other firearms available to
19 Californians that are not restricted by the AWCA, including a variety of handguns.
20 *Rupp*, 401 F. Supp. 3d at 989. Indeed, the court determined that assault rifles—the
21 focus of Plaintiffs’ claims in this action—are “ill-suited for self-defense” and that
22 self-defense is not the reason why most “modern sporting rifles” are acquired. *Id.*
23 Consistent with *Rupp* and the federal circuit cases upholding similar assault-
24 weapon restrictions, intermediate scrutiny applies to the AWCA.

25 The AWCA does not impose a severe burden on the core Second Amendment
26 right because, except for the small subset of firearms that qualify as assault
27 weapons under the AWCA when configured with certain particularly dangerous
28 features, Californians are free to possess a range of rifles, pistols, and shotguns to

1 engage in lawful self-defense. *See Jackson*, 746 F.3d at 961 (“[F]irearm regulations
2 which leave open alternative channels for self-defense are less likely to place a
3 severe burden on the Second Amendment right than those which do not.”). The
4 AWCA does not ban all rifles, pistols, or shotguns, or even all semiautomatic
5 versions of those firearms. To the contrary, Californians may lawfully acquire an
6 array of semiautomatic rifles for lawful purposes, such as a centerfire
7 semiautomatic rifle without a fixed magazine, provided it is not a prohibited make
8 and model and does not have any of the prohibited features, a centerfire
9 semiautomatic rifle with any of the militaristic features and with a fixed magazine
10 of 10 rounds or less, or a rimfire semiautomatic rifle with any of the listed features.
11 They may also possess a range of handguns and shotguns, including semiautomatic
12 versions that lack any of the prohibited features or configurations.

13 The burden on the core right is further minimized by the fact that the AWCA,
14 in effect, operates as a restriction on the manner in which certain semiautomatic
15 firearms are sold and possessed, rather than a prohibition on the possession of any
16 particular class of firearm. *See Silvester*, 843 F.3d at 827 (“This court has
17 explained that laws which merely regulate only the ‘*manner* in which persons may
18 exercise their Second Amendment rights’ are less burdensome than those which bar
19 firearm possession completely.” (quoting *United States v. Chovan*, 735 F.3d 1127,
20 1138 (9th Cir. 2013))). Under the AWCA, Californians may acquire and possess
21 semiautomatic, centerfire rifles and semiautomatic pistols and shotguns, provided
22 the weapons do not have any of the proscribed accessories or features listed in
23 California Penal Code section 30515(a). The Ninth Circuit has indicated that the
24 Second Amendment may protect the right to possess certain firearm accessories or
25 hardware that may be necessary to operate the firearm. *See Fyock*, 779 F.3d at 997
26 (“[O]ur case law supports the conclusion that there must also be some corollary,
27 albeit not unfettered, right to possess the magazines *necessary to render those*
28 *firearms operable.*” (emphasis added) (quoting *Jackson*, 746 F.3d at 967). But

1 none of the features enumerated in California Penal Code section 30515(a) are
2 necessary to operate a firearm. Because the challenged provisions of the AWCA
3 regulate the *manner* in which certain rifles, pistols, and shotguns may be
4 configured—without rendering those firearms inoperable—the burden on the core
5 Second Amendment right, if any, is minimal.

6 Plaintiffs fail to show that assault weapons with any of the prohibited features
7 or configurations are necessary for effective self-defense. On average,
8 approximately *two rounds* are fired when firearms are used in self-defense, Defs.’
9 Ex. A (Allen Decl.) ¶¶ 15, 22, confirming that assault weapons—particularly those
10 with LCMs—are not necessary to engage in lawful self-defense. Because the
11 AWCA restricts a “subset” of particularly lethal rifles, pistols, and shotguns that are
12 not necessary for effective self-defense, intermediate scrutiny applies. *Fyock*, 779
13 F.3d at 999-1000 (applying intermediate scrutiny to LCM restrictions); *see also*
14 *Rupp*, 401 F. Supp. 3d at 988-89.

15 **B. The AWCA Satisfies Intermediate Scrutiny Because It Is**
16 **Reasonably Fitted to Important Government Interests**

17 A regulation satisfies intermediate scrutiny if (1) the government’s stated
18 objective is “significant, substantial, or important”; and (2) there is a “‘reasonable
19 fit’ between the challenged regulation and the asserted objective.” *Silvester*, 843
20 F.3d at 821-22 (citation omitted). Intermediate scrutiny does not require the fit
21 between the challenged regulation and the stated objective to be perfect, nor does it
22 require that the regulation be the least restrictive means of serving the interest.
23 *Jackson*, 746 F.3d at 969. Rather, the government “‘must be allowed a reasonable
24 opportunity to experiment with solutions to admittedly serious problems.” *Id.* at
25 969-70 (quoting *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 52 (1986)).

26 In determining whether a law survives intermediate scrutiny, courts “afford
27 substantial deference to the predictive judgments of the legislature.” *Pena v.*
28 *Lindley*, 898 F.3d 969, 979 (9th Cir. 2018) (quotation omitted). Even when the

1 record contains “conflicting legislative evidence,” intermediate scrutiny “allow[s]
2 the government to select among reasonable alternatives in its policy decisions.” *Id.*
3 (quotation omitted). Deferential review is particularly appropriate here because
4 “the legislature is ‘far better equipped than the judiciary’ to make sensitive public
5 policy judgments (within constitutional limits) concerning the dangers in carrying
6 firearms and the manner to combat those risks.” *Kachalsky v. Cnty. of Westchester*,
7 701 F.3d 81, 97 (2d Cir. 2012) (quotation omitted). Under intermediate scrutiny,
8 the government may “rely on any evidence ‘reasonably believed to be relevant’ to
9 substantiate its important interests,” and the Court “may consider ‘the legislative
10 history of the enactment as well as studies in the record or cited in pertinent case
11 law.’” *Fyock*, 779 F.3d at 1000 (quotations omitted). Such “evidence need only
12 ‘fairly support[]’ [the government’s] conclusions.” *Pena*, 898 F.3d at 982
13 (quotation omitted).

14 “It is beyond question that the government’s interest in promoting public
15 safety and reducing gun violence is important or substantial.” *Rupp*, 401 F. Supp.
16 3d at 990 (quotation omitted); *see, e.g., Fyock*, 779 F.3d at 1000; *Chovan*, 735 F.3d
17 at 1135. The AWCA satisfies intermediate scrutiny because it furthers the State’s
18 important interests by restricting a particularly dangerous subset of firearms that
19 pose an acute danger to the public and law enforcement.

20 **1. Assault Weapons Are Used Disproportionately in Crime,**
21 **Mass Shootings, and Against Law Enforcement, Resulting**
22 **in More Casualties**

23 In passing the federal assault weapons ban, Congress found that
24 “semiautomatic assault weapons are the weapons of choice among drug dealers,
25 criminal gangs, hate groups, and mentally deranged persons bent on mass murder.”
26 Defs.’ Ex. J (H.R. Rep. No. 103-489) at 13. It further found that “[t]he carnage
27 inflicted on the American people [by] criminals and mentally deranged people
28

1 armed with . . . semi-automatic assault weapons has been overwhelming and
2 continuing,” and the use of those weapons by “criminal gangs, drug-traffickers, and
3 mentally deranged persons continues to grow.” *Id.* at [1089-90].

4 Assault weapons are used disproportionately in crime. Defs.’ Ex. J (H.R. Rep.
5 No. 103-489) at 18; Defs.’ Ex. E (Klarevas Decl.) ¶ 16; Defs.’ Ex. C (Donohue
6 Decl.) ¶ 115. Generally, assault weapons and semiautomatic weapons with LCMs
7 account for 22 to 36 percent of crime guns, and “appear to be used in a higher share
8 of firearm mass murders (up to 57% in total),” Defs.’ Ex. Y (Christopher S. Koper
9 et al., *Criminal Use of Assault Weapons and High-Capacity Semiautomatic*
10 *Firearms: An Updated Examination of Local and National Sources*, 95 J. of Urban
11 Health 313 (2017) (“Koper 2017”)) at 1, far greater than their prevalence in the
12 market, *see* Defs.’ Ex. E (Klarevas Decl.) ¶ 16. Such weapons are also used
13 disproportionately against law enforcement personnel. Defs.’ Ex. Y (Koper 2017) at
14 1, 7 (finding that 13 to 16 percent of guns used in the murder of police are assault
15 weapons); *see also* Defs.’ Ex. AA (Violence Policy Ctr., “*Officer Down*”: *Assault*
16 *Weapons and the War on Law Enforcement* (2003)) at 5; Defs.’ Ex. C (Donohue
17 Decl.) ¶ 117. Victims of assault-weapons generally suffer more extensive and more
18 numerous gunshot wounds, resulting in higher morbidity and mortality than victims
19 of shootings from other weapons. *See* Defs.’ Ex. B (Colwell Decl.) ¶¶ 9, 12; Defs.’
20 Ex. AB (Panagiotis K. Stefanopoulos et al., *Gunshot Wounds: A Review of*
21 *Ballistics Related to Penetrating Trauma*, J. of Acute Disease, 178 (2014)) at 181-
22 82 (discussing cavitation of small-caliber bullets from M-16 and AK-47 rifles).

23 When used in mass shootings, assault weapons cause substantially more
24 fatalities and injuries than non-assault weapons. *See Gallinger*, 898 F.3d at 1019
25 (“[W]hen ‘assault weapons and large capacity magazines are used, more shots are
26 fired and more fatalities and injuries result than when shooters use other firearms
27 and magazines.’” (quoting *Kolbe*, 849 F.3d at 127)); *Rupp*, 401 F. Supp. 3d at 991
28 (citing Defs.’ Ex. X); Defs.’ Ex. AC (Adam Lankford & James Silver, *Why Have*

1 *Public Mass Shootings Become More Deadly? Assessing How Perpetrators’*
2 *Motives and Methods Have Changed Over Time*, Criminology & Pub. Pol’y 1
3 (2019)) at 12 (“Strong empirical evidence shows that weapon choice affects
4 lethality.”). The use of assault weapons in public mass shootings involving four or
5 more fatalities has resulted in an average of 38 fatalities or injuries compared to 10
6 without assault weapons, *see* Defs.’ Ex. A (Allen Decl.) ¶ 31—a 280 percent
7 increase in average casualties. The disparity is more pronounced when comparing
8 public mass shootings with assault weapons *and* LCMs (an average of 43 fatalities
9 or injuries) with mass shootings not involving assault weapons or LCMs (an
10 average of 8 fatalities or injuries), *id.* ¶ 34—an approximately 440 percent increase.
11 This correlation holds when examining mass shootings involving six or more
12 fatalities (regardless of the location of the shooting). *See* Defs.’ Ex. E (Klarevas
13 Decl.) ¶ 17 (finding a 159 percent increase in casualties in the past ten years).

14 Such correlative evidence is sufficient to show a reasonable fit under
15 intermediate scrutiny. *See Rupp*, 401 F. Supp. 3d at 993 (“Even assuming there is
16 not direct *causal* evidence between mass shootings and higher casualty rates and
17 rifles within the scope of the AWCA, California is entitled to make ‘reasonable
18 inferences’ from the available data that shows a correlation.” (quoting *Worman*, 922
19 F.3d at 40)); *S.F. Veteran Police Officers Ass’n v. City & Cnty. of San Francisco*,
20 18 F. Supp. 3d 997, 1003 (N.D. Cal. 2014) (holding that LCM restrictions satisfied
21 intermediate scrutiny where “[t]he record demonstrates that there is a very high
22 correlation between mass shootings and the use of [LCMs]”); *see also Fantasyland*
23 *Video, Inc. v. Cnty. of San Diego*, 505 F.3d 996, 1002 (9th Cir. 2007) (upholding
24 law under First Amendment based on “studies and reports, reported court decisions,
25 and anecdotal testimony” supporting a “correlation between adult establishments
26 and negative secondary effects” under intermediate scrutiny).

1 **2. The AWCA Furthers the State’s Important Public Safety**
2 **Interests**

3 Restricting the possession of assault rifles has had and will continue to have a
4 significant impact on public safety. Evidence shows that assault weapons
5 restrictions are effective in reducing gun violence, particularly violence associated
6 with mass shootings. For example, the federal assault weapons ban was effective in
7 reducing the prevalence of the banned assault weapons in gun crime. Defs.’ Ex. Y
8 (Koper 2017) at 7; Defs.’ Ex. C (Donohue Decl.) ¶ 119. The federal ban was also
9 effective in reducing the incidence and lethality of mass shootings. *See* Defs.’
10 Ex. E (Klarevas Decl.) ¶¶ 23-24 & tbl. 3 (finding a 37 percent decline in gun
11 massacres during the federal ban, and a 49 percent decline in gun-massacre
12 fatalities, followed by a 183 percent increase in gun massacres after its expiration,
13 and a 209 percent increase in gun-massacre fatalities). This trend has been
14 replicated in states that have enacted assault-weapon restrictions, like California.
15 *Id.* ¶ 27; Defs.’ Ex. AE (Law Ctr. to Prevent Gun Violence, *The California Model:*
16 *Twenty Years of Putting Safety First* (2013)) at 4.

17 The AWCA exhibits a reasonable fit to the State’s important interests in
18 protecting the public and law enforcement from gun violence. The evidence shows
19 that the features prohibited under the AWCA increase the lethality of
20 semiautomatic weapons by enhancing accuracy when firing rapidly and, in the case
21 of collapsible stocks and semiautomatic rifles that are less than 30 inches in length,
22 enhance the concealability of the firearm. Assault weapons enable a shooter to fire
23 more rounds rapidly in a given period with greater accuracy, increasing the
24 likelihood that more individuals will be shot and suffer multiple injuries, making it
25 “far more likely” that the individual will suffer complications and die of those
26 injuries. Defs.’ Ex. B (Colwell Decl.) ¶ 8.

27 The evidence shows that more people are injured and killed in mass shootings
28 involving assault weapons. *See* Defs.’ Ex. A (Allen Decl.) ¶¶ 26, 33-34 (finding

1 correlation in public mass shootings involving four or more fatalities excluding the
 2 shooter); Defs.’ Ex. E (Klarevas Decl.) ¶ 17 (finding correlation in gun massacres
 3 involving six or more fatalities excluding the shooter); Defs.’ Ex. B (Colwell Decl.)
 4 ¶¶ 9 (describing personal experiences treating victims of the Columbine and Aurora
 5 mass shootings). The unrebutted correlation strongly supports the reasonableness
 6 of the AWCA’s fit. *See Rupp*, 401 F. Supp. 3d at 993 (noting that “‘a correlation
 7 between the use of assault weapons and the number of victims injured or killed’
 8 makes it ‘[m]ore likely’ that there is a causal relationship” and that “California is
 9 entitled to make ‘reasonable inferences’ from the available data that shows a
 10 correlation” (citations omitted)). The evidence also shows that California’s assault-
 11 weapon restrictions are effective in mitigating the lethality of mass shootings and
 12 can even reduce the incidence of mass shootings. *See* Defs.’ Ex. E (Klarevas Decl.)
 13 ¶¶ 22-23.³

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

17 **C. The AWCA Alternatively Satisfies Strict Scrutiny**

18 While Defendants maintain that intermediate scrutiny is the appropriate
 19 standard to apply to the AWCA, the AWCA is constitutional even under strict
 20 scrutiny. The State’s public-safety interests in reducing the incidence and lethality
 21 of gun violence are compelling. *See* Defs.’ Ex. C (Donohue Decl.) ¶¶ 28-36; Defs.’
 22 Ex. E (Klarevas Decl.) ¶¶ 9-11. The AWCA is narrowly tailored to those interests
 23 by restricting certain military-style configurations that enhance the lethality of
 24 firearms and their effectiveness in mass shootings and violence against law
 25 enforcement personnel. *See supra* Section II.A & B. While the AWCA is broader

26 ³ 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 than the federal assault weapons ban in defining a firearm as an assault weapon if it
2 has only one qualifying feature, the AWCA is narrower than the federal ban in
3 being limited to centerfire rifles. *See* Defs.’ Ex. J (H.R. Rep. No. 103-489) at 2
4 (defining any semiautomatic rifle as an assault weapon if it has the ability to accept
5 a detachable magazine and at least two qualifying features).

6 **III. ABANDONED ISSUES (LOCAL RULE 16.1(f)(2)(b))**

7 Defendants have not abandoned any issues that were raised by the pleadings.

8 **IV. OTHER LEGAL ISSUES**

9 Plaintiffs lack standing to challenge California Penal Code sections 30800,
10 30915, 30945, 30950, 31000, and 31005.

11 Plaintiffs James Miller, Patrick Russ, Wendy Hauffen, Neil Rutherford,
12 Adrian Sevilla, Ryan Peterson, and John Phillips (collectively, the “Individual
13 Plaintiffs”) and Plaintiffs Gunfighter Tactical, LLC and PWGG, L.P. (together, the
14 “Entity Plaintiffs”) do not have standing to challenge Penal Code sections 30800,
15 30915, 30945, 30950, 31000, and 31005). The operative complaint does not allege
16 that any of the Individual Plaintiffs or Entity Plaintiffs have or will suffer any
17 cognizable injury from the enforcement of these provisions.

18 Plaintiffs San Diego County Gun Owners PAC, California Gun Rights
19 Foundation, Second Amendment Foundation, and Firearms Policy Coalition, Inc.
20 (collectively, the “Organizational Plaintiffs”) do not have standing to challenge
21 Penal Code sections 30800, 30915, 30945, 30950, 31000, and 31005. The
22 operative complaint does not allege that any members of the Plaintiffs San Diego
23 County Gun Owners PAC or Second Amendment Foundation have been injured by
24 any of those challenged provisions. And the generalized allegations that the other
25 two Organizational Plaintiffs’ “members and supporters have been adversely and
26 directly harmed by Defendants’ enforcement of the laws, regulations, policies,
27 practices, and customs challenged herein,” Pls.’ First Am. Compl. ¶¶ 11-12, fail to
28 demonstrate that any of their members have been injured by these particular statutes

1 and thus would have standing to challenge them in their own right. The
2 Organizational Plaintiffs also fail to allege direct standing to challenge these
3 statutes, as the complaint fails to allege that any of these statutes has caused a
4 “drain on [their] resources from both a diversion of [their] resources and frustration
5 . . . of [their] mission.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir.
6 2013) (quoting *Fair Hous. Council of San Fernando Valley v. Roomate.com, LLC*,
7 666 F.3d 1216, 1219 (9th Cir. 2012)).

8 If, at the conclusion of trial, the Court determines that the AWCA violates the
9 Second Amendment and that a permanent injunction of some or all of the
10 challenged provisions is warranted, Defendants respectfully request that the Court
11 stay enforcement of any such injunction pending appeal to preserve the status quo
12 that has existed for the past twenty years. *See Duncan v. Becerra*, No. 17-cv-1017-
13 BEN-JLB, 2019 WL 1510340, at *2-3 (S.D. Cal. Apr. 4, 2019).

14 **CONCLUSION**

15 For these reasons, and those that will be further adduced at trial, the AWCA is
16 constitutional.

17 Dated: November 18, 2020

Respectfully submitted,

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