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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ADAM RICHARDS, an individual;
JEFFREY VANDERMEULEN, an
16 individual; GERALD CLARK, an
individual; JESSE HARRIS, an
17 individual; ON TARGET INDOOR
SHOOTING RANGE, LLC;
18 GAALSWYK ENTERPRISES, INC.
(D/B/A/ SMOKIN’ BARREL
19 FIREARMS); GUN OWNERS OF
CALIFORNIA, INC.; GUN OWNERS OF
20 AMERICA, INC.; GUN OWNERS
FOUNDATION; CALIFORNIA RIFLE &
21 PISTOL ASSOCIATION,
INCORPORATED; and SECOND
22 AMENDMENT FOUNDATION, a
California Corporation,

23 Plaintiffs,

24 v.

25 GAVIN NEWSOM, in his official
26 capacity as Governor of the State of
California; ROBERT BONTA, in his
27 official capacity as Attorney General of
the State of California, and DOES 1-10,
28

Defendants.

Case No.: 8:23-cv-02413

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
TEMPORARY RESTRAINING
ORDER AND ISSUANCE OF
PRELIMINARY INJUNCTION**

Hearing Date: TBD
Hearing Time: TBD
Courtroom: TBD
Judge: TBD

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INTRODUCTION

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2 On January 1, 2024, California will implement a mass surveillance regime
3 designed to catalogue the faces, conversations, whereabouts, and shopping habits of
4 millions of Californians engaged in constitutionally protected conduct. This
5 audiovisual recording scheme will operate 24 hours a day, 7 days a week, and 365
6 days a year, without end. The private citizens commanded to implement this
7 regime on California’s behalf will bear all the costs of constructing the state’s new
8 Panopticon, which will penetrate thousands of private businesses and *homes*
9 throughout the state. To call this prospect of perpetual government-mandated
10 surveillance “Orwellian” is an understatement.

11 The law authorizing this egregious invasion of Californians’ constitutional
12 rights is Cal. Penal Code § 26806 (SB 1384). Effective January 1, 2024, all dealers
13 of firearms throughout the state will be required to install “permanent[.]” and
14 “fixed” cameras inside their premises, which must “continuously record 24 hours
15 per day” all entrances, exits, firearm displays, and points of sale. § 26806(a)(2).
16 These cameras must “clearly record images and ... audio” to “allow for the clear
17 identification of any person.” § 26806(a)(1), (2). Moreover, gun dealers must
18 purchase, install, and subsequently maintain this surveillance infrastructure and its
19 voluminous data at their own cost, “for a minimum of one year,” subject to state
20 inspection, which may occur without limit. § 26806(a)(6). As Plaintiffs Complaint
21 details, compliance is estimated to cost ordinary gun stores tens of thousands of
22 dollars (each). But to make matters worse, California additionally compels its
23 newly commandeered camera operators to display a message of the state’s choosing
24 on their properties(both commercial and residential): “THESE PREMISES ARE
25 UNDER VIDEO AND AUDIO SURVEILLANCE. YOUR IMAGE AND
26 CONVERSATIONS MAY BE RECORDED.” § 26806(c).

27 Again, Section 26806 imposes its perpetual surveillance mandate on all gun
28 dealers doing business in California including, whether negligently or intentionally,

1 *those who conduct their businesses out of their homes.* The specter of such
2 governmental invasion, occupation, and close scrutiny of a disfavored political
3 minority such as gun sellers and gun owners, chills the exercise of some
4 constitutional rights, infringes the exercise of others, and has altogether no place in
5 a free society.

6 Plaintiffs bring suit to preserve the status quo and the constitutional order.
7 They include private individuals, business owners, and public-interest advocacy
8 organizations who face irreparable constitutional harms should Section 26806 be
9 allowed to go into effect. Due to Section 26806's flagrant and truly unprecedented
10 attack on the Bill of Rights, Plaintiffs bring numerous causes of action arising under
11 the federal and state constitutions. However, only a subset of these claims underlies
12 the Plaintiffs' instant motion:

13 First, Section 26806 violates the First and Fourteenth Amendments by
14 chilling the freedom of association, eviscerating the right to speak and criticize the
15 government anonymously, imposing a viewpoint-discriminatory punitive measure
16 on members of a disfavored political minority, and compelling government-
17 approved speech on private property.

18 Second, Section 26806 violates the Second and Fourteenth Amendments by
19 conditioning the right to acquire and sell firearms on submission to pervasive and
20 perverse government surveillance. Such a practice was entirely unknown to our
21 Founders and, accordingly remains odious to our Constitution today.

22 Third, Section 26806 violates the Fourth and Fourteenth Amendments by
23 effectuating an unparticularized, general warrant to "rummage" through citizens'
24 daily lives. Moreover, this surveillance regime constitutes an unlicensed and
25 unwarranted physical invasion on Plaintiffs' private property for the purpose of
26 governmental information gathering and is therefore *per se* unreasonable. Finally,
27 Plaintiffs maintain a reasonable expectation of privacy against perpetual
28 government surveillance of their homes, businesses, whereabouts, conversations,

1 private activities, and shopping habits.

2 Fourth, Section 26806 violates the Fourteenth Amendment Equal Protection
3 Clause by imposing a viewpoint-discriminatory and animus-based restriction on
4 protected political and ideological speech by a disfavored political minority.

5 And fifth, Section 26806 violates the California state constitutional right to
6 privacy, which the citizens passed in order to prevent precisely the sort of nefarious
7 technological intrusions into daily life that Section 26806 imposes.

8 A temporary restraining order is immediately necessary to prevent this
9 myriad of constitutional harm from befalling Plaintiffs and, indeed, all Californians
10 who exercise the enumerated right to keep and bear arms.

11 ARGUMENT

12 The standard for a temporary restraining order is “‘substantially identical’
13 [to] the standard for a preliminary injunction.” *Kingdom Muzic, LLC v. Kingdom*
14 *Muzic Ministries LLC*, 2022 U.S. Dist. LEXIS 213213, at *4 (C.D. Cal. Oct. 3,
15 2022). To “obtain a TRO or a preliminary injunction, the moving party must show:
16 (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the
17 moving party in the absence of preliminary relief; (3) that the balance of equities
18 tips in favor of the moving party; and (4) that an injunction is in the public
19 interest.” *Id.* (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).
20 Section 26806’s Panopticon-like surveillance mandate threatens a myriad of
21 constitutional harms and warrants urgent and necessary injunctive relief.

22 **I. PLAINTIFFS ARE OVERWHELMINGLY LIKELY TO SUCCEED ON THE MERITS** 23 **OF THEIR NUMEROUS CONSTITUTIONAL CLAIMS.**

24 **A. Section 26806 Violates First Amendment Rights to Speech, Association,** 25 **Anonymous Speech, and Freedom from Compelled Speech.**

26 The First Amendment provides that “Congress shall make no law respecting
27 an establishment of religion or prohibiting the free exercise thereof; or abridging
28 the freedom of speech, or of the press; or the right of the people peaceably to

1 assemble, and to petition the government for a redress of grievances.” U.S. Const.
2 amend. I.

3 One of the “most precious freedoms” protected by the First Amendment is
4 “the right of individuals to associate for the advancement of political beliefs.”
5 *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). Section 26806 chills Plaintiffs’
6 (including the members and supporters of the organizational Plaintiffs) rights to
7 free association by imposing a pervasive surveillance regime on locations and
8 activities that the government disfavors, monitoring all who meet at California gun
9 stores to engage in Second Amendment commerce, discuss political issues and
10 advocacy, and criticize the government. *See* Compl. ¶¶ 92-93, 97 (describing
11 California’s “outward animus towards gun owners”); *see also NAACP v. Alabama*
12 *ex rel. Patterson*, 357 U.S. 449, 462 (1958) (“compelled disclosure of affiliation
13 with groups engaged in advocacy may constitute as effective a restraint on freedom
14 of association as [other] forms of governmental action”); *United States v. United*
15 *States Dist. Court*, 407 U.S. 297, 314 (1972) (“The price of lawful public dissent
16 must not be a dread of subjection to an unchecked surveillance power. Nor must the
17 fear of unauthorized official eavesdropping deter vigorous citizen dissent and
18 discussion of Government action in private conversation. For private dissent, no
19 less than open public discourse, is essential to our free society.”).

20 For the organizational Plaintiffs, they are harmed because Section 26806’s
21 onerous surveillance chills the likelihood that prospective new members and
22 interested persons will seek out Plaintiffs’ literature at gun stores, inquire about
23 their activities, have discussions with association staff and trainers on pertinent
24 issues, and sign up to become members. Compl. ¶¶ 26-33, 94, 102-07. Invariably,
25 such surveillance will discourage and undermine the free association of people for
26 fear of government monitoring, publication,¹ or retribution. Indeed, Plaintiffs Clark
27 and Harris regularly visit gun dealers and gun shows throughout California, where

28 ¹ *See* Compl. ¶ 210 (noting how California “government officials display a shocking carelessness with gun owners’ personal information”).

1 they meet with like-minded individuals and engage in political speech about the
2 Second Amendment. Compl. ¶¶ 25-26. Should Section 26806 go into effect, Mr.
3 Clark and Mr. Harris are aware that these “discussi[on]s [of] sensitive issues” will
4 be “constantly monitored,” to the point that they will be forced to discontinue
5 visiting California gun stores for those purposes. *Id.* Such fear of pervasive
6 governmental monitoring of core First Amendment speech chills and violates the
7 freedom of association.

8 Similarly, Section 26806 abridges the freedom of speech by “target[ing] only
9 stores engaged in the exercise of Second Amendment rights to possess and transfer
10 firearms. And it punishes those individuals exercising the right—those with a
11 favorable view of the Second Amendment—with 24/7 surveillance, and not those
12 who disagree with, criticize, or decline to exercise the right themselves.” Compl.
13 ¶ 161. Such blatant viewpoint discrimination of pro-Second Amendment speakers
14 “is an ‘egregious form of content discrimination’ and is ‘presumptively
15 unconstitutional,’” subject to strict scrutiny. *Iancu v. Brunetti*, 139 S. Ct. 2294,
16 2299 (2019). *See Antonyuk v. Chiumento*, 2023 U.S. App. LEXIS 32492, at *155-
17 56 (2d Cir. Dec. 8, 2023) (a law banning carry of firearms only in churches, but not
18 on other private property, “is not neutral because it allows the owners of many
19 forms of private property ... to decide for themselves whether to allow firearms ...
20 while denying the same autonomy to places of worship. By adopting a law that
21 applies differently as to places of worship ... than to most other privately owned
22 businesses and properties, the CCIA is, on its face, neither neutral nor generally
23 applicable.”).

24 Closely related to the right to speak freely is the right to speak anonymously.
25 *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 343 (1995); *Doe v.*
26 *2themart.com Inc.*, 140 F. Supp. 2d 1088, 1092 (W.D. Wash. 2001) (“The Federalist
27 Papers (authored by Madison, Hamilton, and Jay) were written anonymously under
28 the name ‘Publius.’ ... Anonymous speech is a great tradition that is woven into the

1 fabric of this nation’s history.”). By stripping Plaintiffs of their anonymity when
2 engaging in constitutionally protected commerce, speech, and association at
3 California’s gun stores (constitutionally protected establishments), Section 26806
4 eviscerates Plaintiffs’ First Amendment rights to remain anonymous to government
5 officials. *See* Compl. ¶¶ 85, 114-17; *see also* *Antonyuk*, 2023 U.S. App. LEXIS
6 32492 at *112-114 (noting that “[i]t is uncontroversial that the First Amendment
7 protects the right to speak anonymously,” and finding that there is no historical
8 tradition requiring a person to disclose his identity and speech to the government as
9 a condition of receiving a permit to exercise the Second Amendment right to
10 acquire firearms). There is no practical distinction between New York’s statute (a
11 requirement to divulge past speech in order to obtain a firearm) and Section 26806
12 (a requirement to let the government listen to one’s current speech in order to obtain
13 a firearm).

14 Section 26806 impermissibly compels speech by mandating gun dealers to
15 display state-approved messages warning customers of surveillance and thereby
16 discouraging them from ever entering the premises. *See* Compl. ¶¶ 8, 126-39.
17 What is more, California’s compelled message conveniently omits any mention of
18 Section 26806 being the source of gun dealers’ compelled speech, leading to
19 prospective customers’ inferences that the dealers *themselves* are to blame for such
20 widespread surveillance. *Id.* ¶ 128. Of course, compelled speech is odious to the
21 Constitution, and a statute compelling involuntary statements of fact at Plaintiffs’
22 places of business undoubtedly causes irreparable harm. *See Rumsfeld v. F. for*
23 *Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 62 (2006); *Int’l Dairy Foods Ass’n v.*
24 *Amestoy*, 92 F.3d 67, 71 (2d Cir. 1996). *See Antonyuk v. Hochul*, 639 F. Supp. 3d
25 232, 344, 345 (N.D.N.Y. 2022) (citation omitted) (New York’s requirement that
26 private property owners post signage welcoming firearms constitutes compelled
27 speech “by **coercing** them ... to conspicuously speak the state’s controversial
28 message,” and explaining that compelled speech “is not limited to ideological

1 messages; it extends equally to compelled statements of fact”) (emphasis original)
2 (affirmed in part, and reversed in part on other grounds in *Antonyuk*, 2023 U.S.
3 App. LEXIS 32492.

4 **B. Section 26806 Is an Unprecedented Infringement of Second**
5 **Amendment Rights Unsupported by Early American History.**

6 The Second Amendment protects “the right of the people to keep and bear
7 Arms” with the “unqualified command” — “shall not be infringed.” *N.Y. State*
8 *Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2130 (2022). In accordance with this
9 absolutist language, any regulations implicating Second Amendment rights must
10 comport with the original meaning of the constitutional text, as evidenced by
11 Founding-era historical tradition. *Id.* In other words, when the Constitution’s
12 “plain text covers an individual’s conduct, the Constitution *presumptively protects*
13 that conduct,” and only a robust, broad, and enduring historical tradition may rebut
14 that strong presumption. *Id.* at 2129-30 (emphasis added).

15 At the outset, Section 26806 undoubtedly regulates Second Amendment-
16 protected persons, arms, and activities. Unless and until Defendants prove a
17 Founding-era *tradition* of similar firearm-related government mass surveillance,
18 Section 26806 is presumptively *unconstitutional* under the Second Amendment, and
19 immediate injunctive relief is the appropriate interim remedy. *N.Y. State Rifle &*
20 *Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2130 (2022) (emphasis added) (“The
21 government must ... justify its regulation by demonstrating that it is consistent with
22 the Nation’s historical tradition of firearm regulation. ***Only then*** may a court
23 conclude that the individual’s conduct falls outside the Second Amendment’s
24 ‘unqualified command.’”). Plaintiffs’ conduct falls squarely within the Second
25 Amendment’s plain text and therefore is entitled to the stringent protection *Bruen*
26 contemplates.

27 First, Plaintiffs are members of “the people” that the Second Amendment
28 protects, comprising law-abiding individuals who frequent California gun dealers,

1 gun dealers themselves, and several public-interest organizations representing their
2 and their members and supporters’ interests. Compl. ¶¶ 23-33; *see also District of*
3 *Columbia v. Heller*, 554 U.S. 570, 580 (2008) (“the term [‘the people’]
4 unambiguously refers to all members of the political community, not an unspecified
5 subset”). Plaintiffs seek to acquire, or in the case of Plaintiff dealers, sell firearms.
6 The acquisition and attendant sale of firearms is a natural prerequisite to “keep[ing]
7 ... Arms” and is incorporated within the Second Amendment’s text. U.S. Const.
8 amend. II; *see also* Compl. ¶ 192 (collecting cases on the right to acquire arms);
9 ¶ 195 (collecting cases on the right to engage in firearm commerce). Next, the
10 firearms involved are protected “Arms” because “the Second Amendment extends,
11 *prima facie*, to all instruments that constitute bearable arms, even those that were
12 not in existence at the time of the founding,” and in any case, the firearms sold by
13 California gun stores are in “common use.” *Heller*, 554 U.S. at 582, 627. Finally,
14 Section 26806 interferes with (and thus infringes) this textual protection by
15 conditioning the exercise of the right to acquire (and sell) firearms on the
16 acceptance of pervasive surveillance and monitoring. Compl. ¶ 194. Aside from
17 effectively prohibiting the acquisition of firearms altogether *unless* buyers and
18 sellers are surveilled, such surveillance undoubtedly “will chill the purchase of
19 firearms in California in much the same way that the compelled disclosure of
20 association members or charity donors would chill First Amendment rights.” *Id.*
21 ¶ 212.

22 Because the Second Amendment presumptively protects Plaintiffs’ course of
23 conduct, Defendants bear the heavy burden of justifying Section 26806 by
24 proffering a historical record that evinces an early American tradition of similar
25 surveillance of Founding-era gunsmiths, the analogous “gun dealers” of the time.
26 *See* Compl. ¶¶ 186-191, 214-218 (explaining *Bruen*’s methodology, Defendants’
27 burden, the analytical emphasis on Ratification-era traditions, the insufficiency of
28

1 historical “outliers,” and the merely confirmatory relevance of post-Founding
2 historical sources); *see also Bruen*, 142 S. Ct. at 2131-34.

3 Of course, Defendants cannot meet their historical burden. California’s only
4 possible ostensible interests in passing Section 26806, some vague notion of the
5 promotion of “public safety” or the untethered concept of the prevention of theft,
6 have been a concern to all governments throughout all of history. Thus, “the lack of
7 a *distinctly similar* historical regulation addressing that problem is relevant
8 evidence that the challenged regulation is inconsistent with the Second
9 Amendment.” *Bruen*, 142 S. Ct. at 2131 (emphasis added). Of course, the
10 Founders could not have addressed California’s modern concerns with mass
11 audiovisual surveillance, because cameras, microphones, and computers did not
12 exist in 1791. But as Plaintiffs observed, “the Founders knew how to record the
13 likenesses of individuals and the contents of conversations when they wanted to—
14 through the use of sketches, drawings, written descriptions, and transcriptions.”
15 Compl. ¶ 214. If such surveillance measures comported with the Second
16 Amendment’s original meaning, “one would expect to find widespread Founding-
17 era regulations requiring every gunsmith to employ a sketch artist to reproduce or
18 otherwise describe each patron’s appearance, and a reporter to write down the
19 conversations that took place during those transactions.” *Id.* But no such tradition
20 (or any remotely like it) ever existed, and so Section 26806 is not just
21 presumptively unconstitutional under the Second Amendment—it is conclusively
22 unconstitutional when subjected to *Bruen*’s historical framework.

23 **C. Section 26806 Violates the Fourth Amendment’s Protection Against**
24 **General Warrants, Property Invasions, and Violations of Privacy.**

25 The Fourth Amendment provides that “[t]he right of the people to be secure
26 in their persons, houses, papers, and effects, against unreasonable searches and
27 seizures, shall not be violated, and no Warrants shall issue, but upon probable
28 cause, supported by Oath or affirmation, and particularly describing the place to be

1 searched, and the persons or things to be seized.” Plaintiffs’ Complaint alleges
2 three distinct grounds for relief from Section 26806’s oppressive surveillance
3 mandate: (1) the Fourth Amendment’s flat prohibition of general warrants; (2) the
4 prohibition against trespassory invasions of private property; and (3) the protection
5 of reasonable expectations of privacy. As a testament to Section 26806’s sheer
6 Orwellian flagrancy, Plaintiffs succeed under each of these doctrines.

7 First, Section 26806’s surveillance regime operates as a forbidden general
8 warrant. General warrants permit standardless, “unrestrained” “rummag[ing]” of
9 persons, houses, papers, and effects and are *per se* unreasonable and violative of the
10 Fourth Amendment without further analysis. *Riley v. California*, 573 U.S. 373, 403
11 (2014); *Weeks v. United States*, 232 U.S. 383 (1914) (analyzing the generality of a
12 search); *Rush v. Obledo*, 756 F.2d 713, 721, 723 (9th Cir. 1985) (striking down a
13 California statute authorizing “general searches of any home ... at any time of the
14 day or night” as “invalid under the Fourth Amendment as general searches”).

15 Section 26806 bears all the hallmarks of the oppressive writs of assistance
16 the Founding generation suffered at the hands of the British; it grants blanket
17 authority to search all locations associated with a disfavored trade, it operates
18 without expiration, it fails to impose any accountability on government actors via a
19 neutral judicial officer, and it authorizes perpetual intrusions into homes and
20 businesses. Compl. ¶¶ 287-290. With no “subject-matter, locational, [or] temporal
21 boundaries” to be seen, *id.* ¶ 317, Section 26806 sanctions the very sort of
22 widespread, generalized, suspicionless searches of private homes and businesses
23 that shocked the Founders. Section 26806’s digital quartering of troops in private
24 homes and businesses across California violates the Fourth Amendment’s
25 proscription of general warrants.

26 Second, Section 26806 violates the Fourth Amendment’s protection of
27 private property rights. As the Supreme Court made clear in *United States v. Jones*,
28 565 U.S. 400 (2012), and *Florida v. Jardines*, 569 U.S. 1 (2013), a government’s

1 unconsented and unwarranted physical intrusion onto an individual’s property to
2 gather information constitutes an unreasonable search in violation of the Fourth
3 Amendment. *See also Jones*, 565 U.S. at 404-05 (“The Government physically
4 occupied private property for the purpose of obtaining information. We have no
5 doubt that such a physical intrusion would have been considered a ‘search’ within
6 the meaning of the Fourth Amendment when it was adopted.”).

7 Without any claim of a superior property interest to Plaintiffs’ persons,
8 effects, homes, and businesses that would justify such an intrusion, Compl. ¶ 319,
9 Section 26806 mandates a physical intrusion on and occupation of Plaintiffs’
10 private property via the installation and perpetual use of audiovisual recording
11 equipment. *Id.* ¶¶ 324-326. Because “such a physical intrusion would have been
12 considered a ‘search’ within the meaning of the Fourth Amendment when it was
13 adopted,” Section 26806 violates the Fourth Amendment’s proscription of
14 unreasonable searches. *Jones*, 565 U.S. at 404-05.

15 Third, Section 26806 violates Plaintiffs’ reasonable expectations of privacy
16 under *Katz v. United States*, 389 U.S. 347 (1967). *See* Compl. ¶¶ 330-31, 333-34,
17 347. (alleging reasonable expectations of privacy individually). Case law
18 forecloses any argument to the contrary, as individuals undoubtedly “have a
19 reasonable expectation of privacy in the whole of their physical movements,”
20 *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018), and their private
21 conversations, *Alderman v. United States*, 394 U.S. 165, 178 (1969). Indeed, even a
22 transient² video search of a college exam taker’s room fails this constitutional test,
23 as does the prolonged surveillance of one’s backyard. *See Ogletree v. Cleveland*
24 *State Univ.*, 647 F. Supp. 3d 602, 609 (N.D. Ohio 2022); *United States v. Cuevas-*
25 *Sanchez*, 821 F.2d 248, 250 (5th Cir. 1987). Yet Section 26806 reaches even

26
27 ² *See also Katz*, 389 U.S. at 354 (striking down a wiretap *even though*, quite unlike
28 Section 26806, “the surveillance was limited, both in scope and in duration The
agents confined their surveillance to the brief periods during which he used the
telephone booth, and they took great care to overhear only the conversations of the
petitioner himself.”).

1 farther, placing surveillance cameras *inside* homes and businesses on a perpetual,
 2 24/7 basis. *See United States Dist. Court*, 407 U.S. at 312-13 (“physical entry into
 3 the home is the chief evil against which the wording of the Fourth Amendment is
 4 directed ... employment by Government of electronic surveillance” is not “a
 5 welcome development – even when employed with restraint and under judicial
 6 supervision. There is, understandably, a deep-seated uneasiness and apprehension
 7 that this capability will be used to intrude upon cherished privacy of law-abiding
 8 citizens.”).

9 Finally, the so-called “highly regulated industry” exception to the Fourth
 10 Amendment’s warrant requirement cannot save Section 26806. Despite prior
 11 judicial consideration of gun dealers as being “highly regulated,”³ Plaintiffs dispute
 12 the continuing validity of “highly regulated industry” cases as they pertain to gun
 13 dealers.⁴ Moreover, statutes permitting warrantless administrative searches of
 14 *actual* highly regulated businesses “remain susceptible to overbreadth challenges if
 15 they sweep too far.” Compl. ¶ 357. Ninth Circuit precedent dispenses with Section
 16 26806 under this doctrine. *See Rush*, 756 F.2d 713 (invalidating a statute
 17 authorizing warrantless administrative searches of a highly regulated industry
 18 because the statute permitted general searches, day or night); *cf.* Compl. ¶¶ 357-62
 19 (“Section 26806 subjects home-based dealers to searches ‘at any time of the day or
 20 night’—in fact, *at all times*—because surveillance must be continuous and
 21 uninterrupted.”).

22
 23
 24 ³ *See United States v. Hamad*, 809 F.3d 898, 905 (7th Cir. 2016); *Marshall v.*
 25 *Barlow’s, Inc.*, 436 U.S. 307, 313 (1978) (citation omitted) (“Certain industries have
 26 such a history of government oversight that no reasonable expectation of privacy
 could exist for a proprietor over the stock of such an enterprise.”).

27 ⁴ *United States v. Biswell*, 406 U.S. 311, 315 (1972) (emphasis added) (admitting
 28 that “[f]ederal regulation of the interstate traffic in firearms is *not as deeply rooted in*
history as is governmental control of the liquor industry” but citing the governmental
 interests in such regulation); *Bruen*, 142 S. Ct. at 2136 (focusing constitutional
 analysis on early, Founding-era historical traditions and rejecting governmental
 interest balancing entirely).

1 **D. Section 26806 Violates the Fourteenth Amendment’s Guarantee of**
2 **Equal Protection Under the Law.**

3 The imposition of a mass surveillance regime undoubtedly chills protected
4 speech and associational rights. Compl. ¶¶ 23-33, 99-101, 313; *see also NAACP*,
5 357 U.S.at 462. But because Section 26806 subjects only gun owners, prospective
6 gun owners, and gun dealers to its chilling effects, Section 26806 imposes “a
7 viewpoint-discriminatory and/or animus-based restriction on Plaintiffs’ protected
8 political and ideological speech that serves no compelling governmental interest.”
9 Compl. ¶ 457. Such selection of a disfavored (but constitutionally protected) group
10 of people for differential, punitive treatment violates Plaintiffs’ Fourteenth
11 Amendment rights to equal protection of the laws. Consequently, Section 26806 is
12 presumptively unconstitutional and Defendants bear the burden of justifying their
13 selective surveillance regime under Equal Protection analysis. They cannot.

14 **E. Section 26806 Violates California’s State Constitutional Right to**
15 **Privacy.**

16 Finally, Section 26806 violates Article I, Section 1 of the California
17 Constitution, which provides that “[a]ll people are by nature free and independent
18 and have inalienable rights. Among these [rights] are ... pursuing and obtaining ...
19 privacy.” Adopted via ballot initiative in 1972, the public originally understood this
20 state constitutional provision to “create[] a legal and enforceable right of privacy
21 for every Californian” that proscribes “[t]he proliferation of government snooping
22 and data collecting” which “threaten[s] to destroy our traditional freedoms.” *White*
23 *v. Davis*, 533 P.2d 222, 233 (Cal. 1975) (quoting ballot materials urging adoption).
24 As the amendment’s drafters presciently observed, “[g]overnment agencies seem to
25 be competing to compile the most extensive sets of dossiers of American citizens.
26 Computerization of records makes it possible to create ‘cradle-to-grave’ profiles of
27 every American.” *Id.* Section 26806’s pervasive digital surveillance is precisely
28 the sort of governmental ‘dossier compilation’ that Article I, Section 1 was
 amended to prohibit. Indeed, Article I, Section 1 “prevents government and
 business interests from collecting and stockpiling unnecessary information about us

1 and from misusing information gathered for one purpose in order to serve other
2 purposes or to embarrass us.” *Id.* at 233-34.

3 Accordingly, a “plaintiff alleging an invasion of privacy in violation of the
4 state constitutional right to privacy must establish each of the following: (1) a
5 legally protected privacy interest; (2) a reasonable expectation of privacy in the
6 circumstances; and (3) conduct by defendant constituting a serious invasion of
7 privacy.” *Mathews v. Becerra*, 455 P.3d 277, 286 (Cal. 2019). Plaintiffs clearly
8 establish each of these elements.

9 First, Section 26806 impinges on a legally protected privacy interest. Section
10 26806 mandates perpetual audiovisual surveillance of the exercise of several
11 constitutionally protected rights—free association, free exercise, free speech,
12 firearm acquisition, and firearm commerce, to name a few. Compl. ¶¶ 95, 285-302,
13 446. Moreover, such surveillance necessarily creates government records of
14 citizens’ whereabouts, shopping habits, and conversations – not to mention a
15 “dossier” of their exercise of Second Amendment rights, akin to the government
16 creating a list of all the books they read.

17 Yet at the time Californians amended Article I, Section 1, concerns over
18 “government snooping and data collecting” were paramount. *White*, 533 P.2d at
19 233. No doubt, Plaintiffs have both “informational” and “autonomy” privacy
20 interests in “precluding the dissemination or misuse of sensitive and confidential
21 information” relating to constitutionally protected firearm purchases and
22 “conducting personal activities [like shopping] without observation, intrusion, or
23 interference.” *Hill v. Nat’l Collegiate Athletic Ass’n*, 865 P.2d 633, 654 (Cal. 1994).

24 Second, Plaintiffs have a reasonable expectation of privacy in their homes,
25 businesses, conversations, whereabouts, and firearms commerce. Compl. ¶¶ 301,
26 493, 322-324. While Defendants may demur that customers and gun dealers
27 subject to federal and state recordkeeping requirements cannot reasonably expect to
28 remain private in their affairs, California courts “have never held that the existence

1 of a long-standing practice or requirement of disclosure can, by itself, defeat a
2 reasonable expectation of privacy in the circumstances.” *Mathews*, 455 P.3d at 292;
3 *see also id.* (“we held that patients retain a reasonable expectation of privacy in
4 their [medical] records”). On the contrary, Section 26806 poses an unprecedented
5 expansion of governmental surveillance into a realm of constitutionally protected
6 commerce that never before has suffered any intrusion of such magnitude, and
7 Plaintiffs retain an expectation that their constitutionally protected activities remain
8 free from constant warrantless surveillance by government.

9 Third, Section 26806’s invasion is serious—the intrusiveness of a law
10 requiring the installation of numerous cameras inside private businesses *and private*
11 *homes* cannot be understated, or reasonably disputed. Moreover, should Section
12 26806 go into effect, California’s mass-surveillance regime will operate perpetually,
13 on all private properties engaged in firearm dealing throughout the state. Compl.
14 ¶ 313 (“California will physically intrude upon these locations and permanently
15 install its ‘eyes’ and ‘ears’ to observe all that goes on.”); ¶ 303 (“To require 24/7
16 surveillance of the interior of one’s home is Orwellian, to say the least.”).
17 Consequently, Plaintiffs have established a clear violation of their state
18 constitutional rights to privacy.

19 Finally, Defendants’ surveillance regime fails to “substantively further[.]” any
20 “countervailing interest[.]” which constitutionally may justify an invasion of
21 privacy. *Lewis v. Super. Ct. of L.A. Cnty.*, 397 P.3d 1011, 1018 (Cal. 2017). Even if
22 Defendants claimed an amorphous interest in “public safety” and that this interest
23 countervailed Plaintiffs’ interests in the private exercise of their constitutional rights
24 and the private enjoyment of their homes (it does not), “there are feasible and
25 effective alternatives ... which have a lesser impact on privacy interests” and
26 therefore negate any justification of Section 26806 that Defendants could invent.
27 *Id.* Certainly, a business-hours limitation (or an exemption for homes) would have
28

1 a “lesser impact on privacy interests,” yet Section 26806 permits no such thing.⁵
 2 The authors of SB 1384 offered no findings that recording 24 hours per day all
 3 activities going on in a retail establishment, much less someone’s home, meet the
 4 goals of public safety. In fact, we have multiple situations that have evidenced just
 5 the opposite with the increase in retail crime in California and all of the retail
 6 crimes caught on camera. Criminals do not care they are being recorded, law
 7 abiding citizens do, so who is the state trying to really monitor with Section 26806?
 8 More importantly, however, any argument that there *are no* “feasible and effective
 9 alternatives” necessarily admits that California’s panoply of existing gun laws have
 10 proved ineffective at achieving the State’s public safety goals.

11 **II. IRREPARABLE CONSTITUTIONAL HARM IS CERTAIN ABSENT PRELIMINARY
 RELIEF.**

12 As the Ninth Circuit has observed, “a deprivation of constitutional rights, ‘for
 13 even minimal periods of time, unquestionably constitutes irreparable injury.’”
 14 *Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014) (quoting *Elrod v. Burns*, 427 U.S.
 15 347, 373 (1976)). Moreover, in cases where constitutional rights are “being chilled
 16 daily, the need for *immediate injunctive relief* without further delay is, in fact, a
 17 direct corollary of the matter’s great importance.” *Cuviello v. City of Vallejo*, 944
 18 F.3d 816, 833 (9th Cir. 2019) (emphasis added) (discussing this principle in the
 19 First Amendment context); *see also Bruen*, 142 S. Ct. at 2156 (“The [Second
 20 Amendment] is not ‘a second-class right, subject to an entirely different body of
 21 rules than the other Bill of Rights guarantees.’”). Indeed, based on the gravity of
 22 the harms threatened, Ninth Circuit “cases do not [even] require a strong showing
 23 of irreparable harm for constitutional injuries,” *Cuviello*, 944 F.3d at 833, and yet
 24 the strength of Plaintiffs’ showing remains clear.

25 No doubt, Section 26806 will chill (and violate outright) Plaintiffs’ First and
 26 Second Amendment rights. Compl. ¶¶ 4, 23-33, 103-08, 433, 464, 206. Moreover,
 27

28 ⁵ To be sure, Section 26806 still would be unconstitutional multiple times over
 even with such limitations in place.

1 Section 26806’s surveillance regime will harm Plaintiffs’ Fourth Amendment rights
 2 against unreasonable and unwarranted searches, *id.* ¶¶ 95, 297-303, Fifth
 3 Amendment rights against uncompensated takings, *id.* ¶¶ 20, 194, 427, 263,
 4 Fourteenth Amendment rights to equal protection of the laws, *id.* ¶¶ 227, 232. 286,
 5 and state constitutional rights to privacy. *Id.* ¶ 364-67. The irreparable
 6 constitutional harms an Orwellian surveillance regime threatens is beyond
 7 reasonable argument (although California no doubt will try).

8 **III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR PLAINTIFFS.**

9 When a governmental defendant is the opposing party, the balance-of-
 10 equities and public-interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435
 11 (2009). These factors militate strongly in Plaintiffs’ favor, as “public interest
 12 concerns are implicated when a constitutional right has been violated, because all
 13 citizens have a stake in upholding the Constitution.” *Preminger v. Principi*, 422
 14 F.3d 815, 826 (9th Cir. 2005). In contrast, California has absolutely no legitimate
 15 interest in recording the identities and interactions of people on the grounds that
 16 they are exercising their Second Amendment rights, any more than California could
 17 mandate installation of pervasive surveillance devices in book stores in order to
 18 record which books Californians buy.⁶ California has no legitimate interest in
 19 surveilling anyone who visits the home of a home-based FFL or the family
 20 interactions there, but that is exactly what Section 26806 does. No state can claim
 21 an interest in chilling the exercise of constitutional rights, the very negative rights
 22 that the state is tasked with *not* violating.

23 **CONCLUSION**

24 For the reasons stated, this Court should enter a temporary restraining order,

25 _____
 26 ⁶ *See United States Dist. Court*, 407 U.S. at 314 (“History abundantly documents
 27 the tendency of Government—however benevolent and benign its motives—to view
 28 with suspicion those who most fervently dispute its policies ... the targets of official
 surveillance may be those suspected of unorthodoxy in their political beliefs. The
 danger to political dissent is acute where the Government attempts to act under so
 vague a concept as the power to protect ‘domestic security [*i.e.*, public safety].”).

1 followed by a preliminary injunction, enjoining enforcement of Section 26806.

2

3 Dated: December 20, 2023

MICHEL & ASSOCIATES, P.C.

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s/ C.D. Michel

C.D. Michel

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Jeffrey Vandermeulen, Gerald Clark, Jesse

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Harris, On Target Indoor Shooting Range,
LLC, Gaalswyk Enterprises, Inc. (D/B/A/

7

Smokin' Barrel Firearms), Gun Owners of
California, Inc., Gun Owners of America, Inc.,

8

Gun Owners Foundation, and California Rifle
& Pistol Association, Incorporated

9

10 Dated: December 20, 2023

LAW OFFICES OF DONALD KILMER, APC

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s/ Donald Kilmer

Donald Kilmer

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Attorney for Plaintiff Second Amendment
Foundation

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ATTESTATION OF E-FILED SIGNATURES

16

I, C.D. Michel, am the ECF User whose ID and password are being used to
file this MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND
ISSUANCE OF PRELIMINARY INJUNCTION. In compliance with Central
District of California L.R. 5-4.3.4, I attest that all signatories are registered
CM/ECF filers and have concurred in this filing.

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Dated: December 20, 2023

s/ C.D. Michel

C.D. Michel

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs Adam Richards, Gerald Clark, Jesse Harris, Jeffrey Vandermeulen, On Target Indoor Shooting Range, LLC, Smokin’ Barrel Firearms, Gun Owners of California, Inc., Gun Owners of America, Inc., Gun Owners Foundation, and California Rifle & Pistol Association, Incorporated, certifies that this brief contains 5,365 which complies with the word limit of L.R. 11-6.1.

Dated: December 20, 2023

s/ C.D. Michel

C.D. Michel

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CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Richards, et al. v. Newsom, et al.*
Case No.: 8:23-cv-02413

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS’ MOTION FOR TEMPORARY RESTRAINING ORDER AND ISSUANCE OF PRELIMINARY INJUNCTION

on the following parties by the following means:

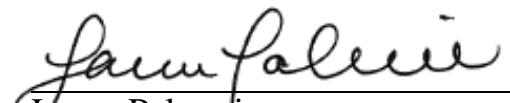
Robert Bonta, California Attorney General
Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013-1230

Governor Gavin Newsom
1021 O Street, Suite 9000
Sacramento, CA 95814

X (**BY OVERNIGHT MAIL**) As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.

I declare under penalty of perjury that the foregoing is true and correct.

Executed December 20, 2023.



Laura Palmerin