

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the State of
California, and DOES 1-10,

Defendants.

CASE NO. 8:17-cv-00746-JLS-JDE

**ORDER GRANTING ATTORNEY
GENERAL'S MOTION FOR
SUMMARY JUDGMENT (Doc. 73)
AND DENYING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT (Doc. 77)**

On May 9, 2018, the Court granted the Attorney General's motion to dismiss Plaintiffs' due process and takings claims and denied Plaintiffs' motion for a preliminary injunction. (May 2018 Order, Doc. 49.) The issue now before the Court is whether California's Assault Weapons Control Act ("AWCA") violates the Second Amendment.¹

¹ As discussed below, the Court's May 2018 Order gave Plaintiffs limited leave to amend their due process and takings claims. Plaintiffs' Third Amended Complaint fails to plead any new facts to support the due process and takings claims, and Plaintiffs' Motion for Summary Judgment ignores the due process and takings claims altogether.

1 After considering the papers, holding oral argument, and taking the matter under
 2 submission, the Court DENIES Plaintiffs' Motion for Summary Judgment and GRANTS
 3 the Attorney General's Motion for Summary Judgment.

4 **I. BACKGROUND²**

5 **A. The AWCA**

6 The AWCA, originally passed in 1989, makes it a felony to manufacture assault
 7 weapons within the State of California, or to possess, sell, transfer, or import such weapons
 8 into the state without a permit. (May 2018 Order at 2; Cal. Penal Code §§ 30600, 30605.)
 9 At the time of its passage, the AWCA included a list of specific assault weapons identified
 10 by their make and model. Cal. Penal Code § 30510. The legislature found that each of
 11 these firearms "has such a high rate of fire and capacity for firepower that its function as a
 12 legitimate sports or recreational firearm is substantially outweighed by the danger that it
 13 can be used to kill and injure human beings." Cal. Penal Code § 30505(a).

14 After the AWCA was enacted, gun manufacturers began to produce weapons that
 15 were "substantially similar to weapons on the prohibited list but different in some
 16 insignificant way, perhaps only the name of the weapon, defeating the intent of the ban."
 17 (See S.B. 880 Report, 2015–2016 Reg. Sess., Assembly Committee on Public Safety (June
 18 14, 2016) at 4, attached as Ex. 29 to Chang Decl., Doc. 76-29.) Thus, in 1999, the AWCA
 19 was amended to allow legislators to define a new class of restricted weapons according to
 20 their features rather than by model. Under the 1999 amendments, a weapon was an
 21 "assault rifle" if it had "the capacity to accept a detachable magazine," *and* any of the
 22 following features: a pistol grip that protrudes conspicuously beneath the action of the
 23

24 ² The parties each filed numerous, largely boilerplate evidentiary objections. (See Docs. 91, 93,
 25 & 100.) In such instances, it is "unnecessary and impractical for a court to methodically scrutinize
 26 each objection and give a full analysis of each argument raised." *Doe v. Starbucks, Inc.*, 2009 WL
 27 5183773, at *1 (C.D. Cal. Dec. 18, 2009). To the extent that the Court relies on objected-to
 28 evidence, the relevant objections are overruled. *Capitol Records, LLC v. BlueBeat, Inc.*, 765 F.
 Supp. 2d 1198, n.1 (C.D. Cal. 2010).

1 weapon; a thumbhole stock; a folding or telescoping stock; a grenade launcher or flare
 2 launcher; a flash suppressor; or a forward pistol grip. (*See* S.B. 23, § 7, attached as Ex. 34
 3 to Chang Decl., Doc. 76-34.) If a magazine required a “tool” to detach a magazine, the
 4 magazine was not considered detachable, and thus gun manufacturers developed
 5 technology, referred to as “bullet buttons,” that enabled a magazine to be “removed and
 6 replaced in seconds” while not being technically “detachable.” (S.B. 880 Report at 5.)

7 In 2016, the California legislature again amended the AWCA to close the bullet
 8 button “loophole” in response to a December 2015 mass shooting in San Bernardino where
 9 two assailants used weapons equipped with bullet buttons to shoot 36 people in less than
 10 four minutes. (S.B. 880 Report at 8.) S.B. 880 amends the definition of assault weapons
 11 so that, rather than referring to a weapon “with the capacity to accept a detachable
 12 magazine,” it refers to a weapon “that does not have a fixed magazine” in combination
 13 with other features. Cal. Penal Code § 30515. A fixed magazine is defined as “an
 14 ammunition feeding device contained in, or permanently attached to, a firearm in such a
 15 manner that the device cannot be removed without disassembly of the firearm action.”
 16 Cal. Penal Code § 30515(b).

17 To summarize, there are two avenues by which a semiautomatic rifle can be defined
 18 as an “assault weapon” and thus banned pursuant to the AWCA: first, if it is listed by
 19 make and model in California Penal Code § 30510; and second, if it has certain features
 20 described in § 30515. As is relevant to this action, § 30515 classifies a semiautomatic,
 21 centerfire rifle as an “assault weapon” if it does not have a fixed magazine and has one of
 22 the following features: a pistol grip that protrudes conspicuously beneath the action of the
 23 weapon; a forward pistol grip; a thumbhole stock; a folding or telescoping stock; or a flash
 24 suppressor. Cal. Penal Code § 30515(a)(1)(A)-(F). These features are defined by
 25 regulation as follows:

- 26 • A pistol grip that protrudes conspicuously beneath the action of the weapon
 27 “allows for a pistol style grasp in which the web of the trigger hand (between
 28

the thumb and index finger) can be placed beneath or below the top of the exposed portion of the trigger while firing.” Cal. Code Regs. tit. 11, § 5471(z).

- A forward pistol grip is “a grip that allows for a pistol style grasp forward of the trigger.” Cal. Code Regs. tit. 11, § 5471(t).
- A thumbhole stock is “a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.” Cal. Code Regs. tit. 11, § 5471 (qq).
- A flash suppressor is “any device attached to the end of the barrel, that is designed, intended, or functions to perceptibly reduce or redirect muzzle flash from the shooter’s field of vision.” Cal. Code Regs. tit. 11, § 5471(r).
- A telescoping stock is one that “is shortened or lengthened by allowing one section to telescope into another portion.” Cal. Code Regs. tit. 11, § 5471(oo).
- A folding stock is one that “is hinged in some fashion to the receiver to allow the stock to be folded next to the receiver to reduce the overall length of the firearm.” Cal. Code Regs. tit. 11, § 5471(nn).

Further, per § 30515(3), a semiautomatic, centerfire rifle that is less than 30 inches in overall length is an “assault weapon,” and “[f]olding and telescoping stocks shall be collapsed prior to measurement.” *See* Cal. Code Regs. tit. 11, § 5471(x).

B. The Litigation

The Individual Plaintiffs—Rupp, Dember, Johnson, Jones, Seifert, Valencia, Willis, and Martin—all reside in California and are legally eligible to possess firearms. (Plaintiffs’ Statement of Undisputed Facts (“SUF”) ¶¶ 1–3, Doc. 77-2.) Plaintiffs Valencia, Dember, and Johnson do not currently own rifles within the AWCA’s scope but would immediately acquire one if not for their fear of prosecution under the AWCA. (*Id.* ¶ 13.) Plaintiffs Rupp, Jones, Seifert, and Martin have parts that they would immediately

1 assemble into a rifle within the AWCA's scope if not for their fear of prosecution under
 2 the AWCA. (*Id.* ¶¶ 7, 9–10.) Plaintiffs Willis, Siefert, and Martin all own weapons within
 3 the AWCA's scope and wish to be free from the AWCA's transfer and use penalties. (*Id.*
 4 ¶¶ 5–6, 8.) Plaintiff Rifle & Pistol Association, Inc., represents its members who are
 5 similarly situated to the individual Plaintiffs. (*Id.* ¶¶ 18–28.)

6 Plaintiffs bring a facial Second Amendment challenge to the “AWCA's restrictions
 7 on all rifles, whether listed as ‘assault weapons’ by their make and model or defined as
 8 ‘assault weapons’ by their features.” (Plaintiffs’ Mem. at 4, Doc. 86.) Specifically,
 9 Plaintiffs challenge the following California Penal Code sections: 30510(a) (list of assault
 10 weapons by make and model);³ 30515(a)(1)(A-C) and (E-F) (defining the additional
 11 features which, in combination with a non-fixed magazine, render a weapon an “assault
 12 weapon”); 30515(a)(3) (defining as an assault rifle any semiautomatic, centerfire rifle that
 13 has an overall length of less than 30 inches); 30520 (“duties of Attorney General,”
 14 allowing the California Attorney General to designate and/or describe weapons); 30600
 15 (prohibiting the manufacture, distribution, transportation, importation, sale, gift, or loan of
 16 assault weapons); 30605 (penalties for possession); section 30925 (required actions for
 17 those bringing an assault weapon into the state); and section 30945 (conditions for
 18 possessing a registered assault weapon). (Third Amended Complaint, Prayer for Relief ¶¶
 19 1–2, Doc. 60.) The prayer for relief asks the Court to declare the code sections
 20 “unconstitutional facially and to the extent they apply to ‘assault weapons’ or,
 21 alternatively, to the extent they prohibit any semi-automatic, centerfire rifle with a
 22 detachable magazine having a ‘pistol grip,’ ‘flash suppressor,’ ‘thumbhole stock,’ or
 23 ‘telescoping’ stock, or any semi-automatic, centerfire rifle that is over 26 inches in overall
 24 length.” (*See* Third Amended Complaint, Prayer for Relief ¶ 1.)

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 26
 27 ³ Plaintiffs also challenge California Code of Regulations, title 11, section 5499, which,
 28 pursuant to California Penal Code section 30510(f), prohibits more assault weapons by model.

1 **II. LEGAL STANDARD**

2 In deciding a motion for summary judgment, the Court must view the evidence in
 3 the light most favorable to the non-moving party and draw all justifiable inferences in that
 4 party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Summary
 5 judgment is proper "if the [moving party] shows that there is no genuine dispute as to any
 6 material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R.
 7 Civ. P. 56(a). A factual dispute is "genuine" when there is sufficient evidence such that a
 8 reasonable trier of fact could resolve the issue in the non-movant's favor, and a fact is
 9 "material" when it might affect the outcome of the suit under the governing law.
 10 *Anderson*, 477 U.S. at 248. But "credibility determinations, the weighing of evidence, and
 11 the drawing of legitimate inferences from the facts are jury functions, not those of a
 12 judge." *Acosta v. City of Costa Mesa*, 718 F.3d 800, 828 (9th Cir. 2013) (quoting *Reeves*
 13 *v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) (internal quotation marks
 14 omitted)).

15 The role of the Court is not to resolve disputes of fact but to assess whether there
 16 are any factual disputes to be tried. The moving party bears the initial burden of
 17 demonstrating the absence of a genuine dispute of fact. *Celotex Corp. v. Catrett*, 477 U.S.
 18 317, 323 (1986). "Once the moving party carries its initial burden, the adverse party 'may
 19 not rest upon the mere allegations or denials of the adverse party's pleading,' but must
 20 provide affidavits or other sources of evidence that 'set forth specific facts showing that
 21 there is a genuine issue for trial.'" *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir.
 22 2001) (quoting Fed. R. Civ. P. 56(e)).

23 "When, as in this case, both parties file cross-motions for summary judgment, each
 24 must carry its own burden under the applicable legal standard." *Ehrman v. U.S.*, 429 F.
 25 Supp. 2d 61, 67 (D.D.C. 2006) (citing *Rains v. Cascade Indus., Inc.*, 402 F.2d 241, 245 (3d
 26 Cir. 1968) ("Cross-motions are no more than a claim by each side that it alone is entitled to
 27 summary judgment, and the making of such inherently contradictory claims does not
 28

1 constitute an agreement that if one is rejected the other is necessarily justified.”). Further,
 2 the Court “must consider each party’s evidence, regardless under which motion the
 3 evidence is offered.” *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532 (9th Cir. 2011).

4 **III. DISCUSSION**

5 **A. Due Process and Takings Claims**

6 The Court’s May 2018 Order dismissed Plaintiffs’ due process and taking claims
 7 and gave Plaintiffs leave to amend “only to the extent Plaintiffs can allege additional facts
 8 to show standing and ripeness of their as-applied challenges to the date-and-source
 9 requirement and conditions on devisees.” (May 2018 Order at 19.) Plaintiffs’ Third
 10 Amended Complaint reasserts these claims without *any* new facts. Indeed, rather than
 11 plead additional facts to support these claims, Plaintiffs have removed the allegations
 12 relating to the registration requirements. (*Compare* First Amended Complaint ¶¶ 107–112,
 13 Doc. 16 *with* Third Amended Complaint ¶¶ 105–109.) Further, Plaintiffs’ briefing ignores
 14 the existence of these claims in the Third Amended Complaint and focuses only on the
 15 Second Amendment claim. The Attorney General notes that Plaintiffs’ due process and
 16 takings claims should be dismissed for the same reasons expressed in the Court’s May
 17 2018 Order. (*See* AG Mem. at 6.)

18 Accordingly, in that Plaintiffs have failed to amend their due process and takings
 19 claims in conformity with the Court’s May 2018 Order and have not responded to the
 20 Attorney General’s argument for dismissal, the Court DISMISSES Plaintiffs’ due process
 21 and takings claims with prejudice.

22 **B. Second Amendment Claim**

23 In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that
 24 the Second Amendment confers an individual right to keep and bear arms. *Id.* at 595. The
 25 Ninth Circuit applies a two-step inquiry to Second Amendment challenges: “(1) the court
 26 ‘asks whether the challenged law burdens conduct protected by the Second Amendment,’;
 27 and (2) if so, what level of scrutiny should be applied.” *Fyock v. Sunnyvale*, 779 F.3d 991,
 28

1 996 (9th Cir. 2015) (quoting *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir.
2 2013)). If the challenged law falls outside the scope of the Second Amendment, then the
3 law “may be upheld without further analysis.” *Silvester v. Harris*, 843 F.3d 816, 821 (9th
4 Cir. 2016). “Intermediate scrutiny is appropriate if the regulation at issue does not
5 implicate the core Second Amendment right *or* does not place a substantial burden on that
6 right.” *Fyock*, 779 F.3d at 998–99 (citing *Jackson v. City and County of S.F.*, 746 F.3d,
7 953, 964 (9th Cir. 2013)).

8 While they acknowledge that the Court is bound by the Ninth Circuit’s two-step
9 inquiry (Plaintiffs’ Mem. at 17 n.10), Plaintiffs devote a significant portion of their
10 briefing to arguing that the AWCA violates the Second Amendment under a “scope-based
11 analysis” derived largely from then-Judge Kavanaugh’s dissent in *Heller v. District of*
12 *Columbia (Heller II)*, 670 F.3d 1244, 1269–96 (D.C. Cir. 2011) (Kavanaugh, J.,
13 dissenting). (See Plaintiffs’ Mem. at 11–17.) Essentially, Plaintiffs’ proposed test requires
14 a “historical justification” for firearm regulations. (See *id.* at 11.) If there is no historical
15 justification, the regulation is *per se* invalid. (*Id.*) The Court rejects Plaintiffs’ proposed
16 test for two reasons. First, it does not find it persuasive for the reasons expressed by the
17 majority opinion in *Heller II*. See 670 F.3d at 1265 (“If the Supreme Court truly intended
18 to rule out any form of heightened scrutiny for all Second Amendment cases, then it surely
19 would have said at least something to that effect.”); *id.* (“[T]he idea that *Heller* precludes
20 heightened scrutiny has eluded every circuit to have addressed that question since *Heller*
21 was issued.”); *id.* at 1267 (“Although *Heller* renders longstanding regulations
22 presumptively constitutional, it nowhere suggests a law must be longstanding or rooted in
23 text, history, and tradition to be constitutional.”). Second, and more simply, the Court is
24 bound by the Ninth Circuit’s two-step inquiry.

25 Accordingly, the Court applies the Ninth Circuit’s two-step inquiry to determine the
26 constitutionality of the AWCA under the Second Amendment.

1 **1. Whether the AWCA Burdens Conduct Protected by the Second**
 2 **Amendment**

3 In its May 2018 Order, the Court noted that “[t]he Ninth Circuit has not specifically
 4 addressed this issue post-*Heller*, but other circuits have questioned whether bans on certain
 5 assault weapons implicate the Second Amendment. *See, e.g., Heller II*, 670 F.3d at 1262;
 6 [*Kolbe v. Hogan*, 849 F.3d 114, 137 (4th Cir. 2017)].” (May 2018 Order at 22 & n.9.)
 7 However, because *Kolbe* and *Heller II* were decided “at summary judgment when the
 8 deciding district courts had a full factual record available for review,” the Court assumed
 9 without deciding that the first step of the Ninth Circuit’s test was met. (*Id.*) However,
 10 now that this action is at the summary judgment stage, the issue is appropriate for the
 11 Court to examine.⁴

12 “The Supreme Court has emphasized that nothing in its recent opinions is intended
 13 to cast doubt on the constitutionality of longstanding prohibitions traditionally understood
 14 to be outside the scope of the Second Amendment.” *Fyock*, 779 F.3d at 996 (citing *Heller*,
 15 554 U.S. at 626–27). “Importantly, the Second Amendment does not ‘protect those
 16 weapons not typically possessed by law-abiding citizens for lawful purposes.’” *Id.* at 996–
 17 97. “Thus, longstanding prohibitions on the possession of ‘dangerous and unusual
 18 weapons’ have uniformly been recognized as falling outside the scope of the Second
 19 Amendment.” *Id.* at 997 (citing *United States v. Henry*, 688 F.3d 637, 639–40 (9th Cir.
 20 2012) (machineguns are “dangerous and unusual” weapons and outside scope of the
 21 Second Amendment)). “In determining whether a given regulation falls within the scope
 22 of the Second Amendment under the first step of this inquiry, ‘we ask whether the
 23

24 ⁴ The Ninth Circuit has “discouraged bypassing the historical analysis step and assuming
 25 without deciding that conduct burdens the Second Amendment” at the summary judgment stage.
 26 *See Fyock*, 779 F.3d at 997 n.3. Thus, the Court examines whether the AWCA burdens conduct
 27 protected by the Second Amendment even though the Court ultimately concludes that the AWCA
 28 survives intermediate security.

1 regulation is one of the ‘presumptively lawful regulatory measures’ identified in *Heller*, or
2 whether the record includes persuasive historical evidence establishing that the regulation
3 at issue imposes prohibitions that fall outside the historical scope of the Second
4 Amendment.” *Bauer v. Becerra*, 858 F.3d 1216, 1221 (9th Cir. 2017) (quoting *Jackson*,
5 746 F.3d at 960).

6 Here, the Attorney General argues that (1) “[a]ssault rifles may be banned because
7 they are, like the M-16, ‘weapons that are most useful in military service’”; and (2) “they
8 are also not ‘in common use’ for lawful purposes like self-defense.” (AG Reply at 2, Doc.
9 99 (quoting *Heller*, 554 U.S. at 624, 627).) Because the Court concludes that
10 semiautomatic assault rifles are essentially indistinguishable from M-16s, which *Heller*
11 noted could be banned pursuant to longstanding prohibitions on dangerous and usual
12 weapons, the Court need not reach the question of whether semiautomatic rifles are
13 excluded from the Second Amendment because they are not in common use for lawful
14 purposes like self-defense.⁵ Moreover, such an inquiry is better suited to determine the
15 level of scrutiny to apply. *See Bauer*, 858 F.3d at 1222 (noting that how much a regulation
16 burdens the “core” of the Second Amendment—self-defense in the home—determines the
17 level of scrutiny to apply).

18 *Heller* noted that the “Second Amendment is not unlimited” and recognized the
19 “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” 554
20 U.S. at 627. *Heller* then addressed a counterargument: “It may be objected that if weapons
21 that are most useful in military service—M-16 rifles and the like—may be banned, then
22 the Second Amendment right is completely detached from the prefatory clause.” *See id.*

23
24 ⁵ The Court notes, however, that analyzing the constitutionality of the AWCA based “on how
25 common a weapon is at the time of the litigation would be circular.” *Friedman v. City of*
26 *Highland Park, Illinois*, 784 F.3d 406, 409 (7th Cir. 2015) (noting that “[m]achine guns aren’t
27 commonly owned for lawful purposes today because they are illegal” and “semi-automatic
28 weapons with large-capacity magazines are owned more commonly because, until recently (in
some jurisdictions), they have been legal”).

1 The prefatory clause, of course, reads: “A well regulated Militia, being necessary to the
2 security of a free State.” U.S. Const. amend. II. Ultimately, *Heller* concluded that “the fact
3 that modern developments have limited the degree of fit between the prefatory clause and
4 the protected right cannot change our interpretation of the right.” *Id.*

5 In *Kolbe*, the Fourth Circuit, reviewing a nearly identical ban on assault weapons,
6 concluded that the above-quoted passage in *Heller* creates a “dispositive and relatively
7 easy inquiry: Are the banned assault weapons and large-capacity magazines ‘like’ ‘M-16
8 rifles,’ *i.e.*, ‘weapons that are most useful in military service,’ and thus outside the ambit of
9 the Second Amendment?” 849 F.3d at 136; *see also Worman v. Healey*, 293 F. Supp. 3d
10 251, 266 (D. Mass. 2018) (granting summary judgment because “the undisputed facts
11 convincingly demonstrate that AR-15s and [large-capacity magazines] are most useful in
12 military service, they are beyond the scope of the Second Amendment”). The Court,
13 however, reads *Heller* more narrowly—it merely provides the M-16 as an example of a
14 historically banned “dangerous and unusual weapon,” and does not endeavor to create a
15 test whereby any weapon that is “most useful in military service” is outside the scope of
16 the Second Amendment. *Heller* sought to justify the fact that some dangerous and unusual
17 weapons that are most useful in military service—such as the M-16—can be banned
18 despite the prefatory clause’s ostensible mandate that the right to bear arms be connected
19 to a well-regulated militia. Given this context, the Court hesitates to read *Heller* to hold
20 that *any* weapon that is most useful in the military is outside the scope of the Second
21 Amendment.

22 *Heller*, however, does plainly provide that the M-16—and weapons “like” it—can
23 be banned as dangerous and unusual weapons. Accordingly, the proper question is: are the
24 semiautomatic rifles at issue here “like” the military’s M-16, a historically banned
25 dangerous and unusual weapon? If so, the semiautomatic rifles are similarly outside the
26 scope of the Second Amendment. This test makes practical sense. It is undisputed that the
27 M-16 is outside the scope of the Second Amendment—thus, if a weapon is essentially the
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1 same as the M-16, it is not protected by the Second Amendment merely because gun
2 manufacturers have given it a different model number and dubbed it a “civilian rifle.” Gun
3 manufacturers cannot determine the scope of Second Amendment protection; they cannot,
4 for example, develop a grenade launcher, dub it a “civilian” model, and thereby bring it
5 within the scope of the Second Amendment.

6 As to whether the semiautomatic rifles at issue are “like” the M-16, the Court
7 agrees with *Kolbe*’s conclusion that “AR-15-type rifles are ‘like’ M16 rifles under any
8 standard definition of that term.” 849 F.3d at 136 (citing *Webster’s New International*
9 *Dictionary* 1431 (2d ed. 1948) (defining “like” as “[h]aving the same, or nearly the same,
10 appearance, qualities, or characteristics; similar”)). Indeed, the Court concludes that
11 semiautomatic rifles are virtually indistinguishable from M-16s.

12 The difference between the M-16 and semiautomatic rifles like the AR-15 is that
13 the M-16 allows the shooter to fire in either automatic or semiautomatic mode, while
14 semiautomatic rifles fire only in semiautomatic mode. (Plaintiffs’ Response to AG’s SUF
15 ¶¶ 7, 10, Doc. 92-1.) However, based on the evidence presented by the Attorney General,
16 this is a distinction without a difference. In enacting the now-defunct federal ban on
17 assault rifles, Congress found that their rate of fire—300 to 500 rounds per minute—makes
18 semiautomatic rifles “virtually indistinguishable in practical effect from machineguns.”⁶
19 (*Id.* ¶ 11.) See *Henry*, 688 F.3d at 639–40 (holding that machine guns are “dangerous and
20 unusual” weapons and outside scope of the Second Amendment). Reviewing similar
21 evidence, other courts have noted that semiautomatic rifles’ rate of fire is almost the same
22 as the M-16’s. See *Kolbe*, 849 F.3d at 136 (“Although an M16 rifle is capable of fully
23 automatic fire and the AR-15 is limited to semiautomatic fire, their rates of fire (two
24 seconds and as little as five seconds, respectively, to empty a thirty-round magazine) are

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26 ⁶ M-16s are considered machineguns. See 26 U.S.C. § 5845(b) (defining machinegun as “any
27 weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more
28 than one shot, without manual reloading, by a single function of the trigger”).

1 nearly identical.”); *Heller II*, 670 F.3d at 1263 (“[S]emi-automatics still fire almost as
2 rapidly as automatics.”).

3 Further, the Attorney General points to a United States Army manual instructing
4 soldiers on the use of the M-16. The manual notes that, although the M-16 is capable of
5 automatic fire, “[t]he most important firing technique during fast-moving, modern combat
6 is rapid *semiautomatic fire*.” (Ex. 19 to Chang Decl. at 3, Doc. 76-19 (emphasis added).)
7 This is because automatic fire “is inherently less accurate than semiautomatic fire.” (*Id.* at
8 7.) Thus, the military is trained to use M-16s as if they were semiautomatic rifles because
9 the semiautomatic mode is more effective. Reviewing similar evidence, *Kolbe* concluded
10 that “in many situations, the semiautomatic fire of an AR-15 is more accurate and lethal
11 than the automatic fire of an M16.” *Kolbe*, 849 F.3d at 136.

12 Moreover, even if the ability to fire in automatic mode were significant, Congress
13 found that “it is a relatively simple task to convert a semiautomatic weapon to automatic
14 fire.” (H.R. Rpt. No. 103-489 at 18, Ex. 27 to Chang Decl., Doc. 76-27.) The Attorney
15 General’s evidence shows that a semiautomatic weapon can easily be converted to
16 automatic fire by installing certain parts, such as bump stocks or multiburst trigger
17 activators. (Plaintiffs’ Response to AG’s SUF ¶ 13.) The Supreme Court in *Staples v.*
18 *United States*, 511 U.S. 600 (1994) is in accord with the Attorney General’s evidence, as it
19 noted that “[m]any M-16 parts are interchangeable with those in the AR-15 and can be
20 used to convert the AR-15 into an automatic weapon.” *Id.* at 603.⁷

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22
23 ⁷ Plaintiffs argue that *Staples* supports the proposition that semiautomatic rifles are *not* like the
24 M-16. (Plaintiffs’ Opp. at 11.) In *Staples*, an individual possessed an AR-15 that had been
25 modified to fire automatically, like the M-16. 511 U.S. at 603. The Supreme Court’s holding was
26 merely that, to charge him for illegal possession of an unregistered machinegun, the government
27 had to prove that he *knew* that the weapon had the capability to fire automatically. *Id.* at 619
28 (emphasizing narrowness of holding). That the Court found the similarities between the AR-15
and M-16 insufficient to impute *mens rea* for criminal prohibition on the possession of
machineguns is irrelevant to the question presented here: whether semiautomatic rifles are within
the scope of the Second Amendment. Nothing in *Staples* suggests, for example, that Congress
(footnote continued)

1 Finally, gun manufacturers carried over from the M-16 and other military assault
2 rifles the enumerated features that bring a weapon within the AWCA's scope. The
3 Attorney General points to a 1989 Report from the Bureau of Alcohol Tobacco & Firearms
4 (ATF) which notes that "semiautomatic assault rifles" are a "distinctive type of rifle
5 distinguished by certain general characteristics which are common to the modern military
6 assault rifle . . . such as the *U.S. M16*, German G3, Belgian FN/FAL, and Soviet AK47 . .
7 .." (ATF Report at 6, Doc. 76-22 (emphasis added).) The ATF Report identifies the
8 ability to accept detachable magazines, folding and telescoping stocks, pistol grips, and
9 flash suppressors, as "military features and characteristics . . . carried over to the
10 semiautomatic versions of the original military rifle." (*Id.*; see also Plaintiffs' Response to
11 AG's SUF ¶ 22 (admitting that flash suppressor is a standard feature of the M-16).)

12 Plaintiffs present no evidence to meaningfully distinguish the semiautomatic rifles
13 at issue from the M-16. Accordingly, the Court concludes that semiautomatic rifles within
14 the AWCA's scope are virtually indistinguishable from M-16s and thus are not protected
15 by the Second Amendment. Thus, the AWCA does not burden conduct protected by the
16 Second Amendment.

17 **2. Level of Scrutiny to Apply**

18 Alternatively, assuming that the AWCA *does* burden conduct protected by the
19 Second Amendment, the Court must decide the appropriate level of scrutiny to apply.
20 "[C]ourts determine the appropriate level by considering '(1) how close the challenged law
21 comes to the core of the Second Amendment right, and (2) the severity of the law's burden
22 on that right.'" *Bauer*, 858 F.3d at 1221–22 (quoting *Silvester*, 843 F.3d at 821). "*Heller*
23 identified the core of the Second Amendment as 'the right of law-abiding, responsible
24 citizens to use arms in defense of hearth and home.'" *Id.* at 1222 (quoting *Heller*, 554 U.S.
25 at 635). "Guided by this understanding, our test for the appropriate level of scrutiny

26
27 could not ban semiautomatic rifles just as it had banned M-16s—indeed, Congress did so four
28 months later. (See AG Reply at 6.)

1 amounts to ‘a sliding scale.’” *Id.* “A law that imposes such a severe restriction on the
2 fundamental right of self defense of the home that it amounts to a destruction of the
3 Second Amendment right is unconstitutional under any level of scrutiny.” *Id.* (quoting
4 *Silvester*, 843 F.3d at 821). “Further down the scale, a ‘law that implicates the core of the
5 Second Amendment right and severely burdens that right warrants strict scrutiny.
6 Otherwise, intermediate scrutiny is appropriate.” *Id.* (quoting *Silvester*, 843 F.3d at 821).

7 As the Court noted in its May 2018 Order, “[e]very circuit to have encountered
8 statewide bans on semi-automatic weapons designated as assault weapons has applied
9 intermediate scrutiny.” (May 2018 Order at 22.) *See Heller II*, 670 F.3d at 1262
10 (prohibition on possession of certain semiautomatic weapons merited intermediate scrutiny
11 as it “left a person ‘free to possess any otherwise lawful firearm’” (quoting *United States v.*
12 *Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010))); *Kolbe*, 849 F.3d at 138 (4th Cir. 2017) (ban
13 on certain assault weapons and detachable magazines left “citizens free to protect
14 themselves with a plethora of other firearms and ammunition”); *N.Y.S. Rifle and Pistol*
15 *Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 260 (2d Cir. 2015) (holding that a prohibition on some
16 semiautomatic weapons identified by feature was not a ban on an entire class of arms
17 therefore “[t]he burden imposed by the challenged legislation [was] real, but . . . not
18 ‘severe’”); *Friedman*, 784 F.3d at 411 (applying intermediate scrutiny as the ban on assault
19 weapons “leaves residents with many self-defense options”). Since the Court’s Order, the
20 chorus of circuits applying intermediate scrutiny to assault weapon bans has only grown,
21 as the First Circuit applied intermediate scrutiny to an assault weapon ban in April of this
22 year. *See Worman v. Healey*, 922 F.3d 26, 38 (1st Cir. 2019).

23 Indeed, as the Court noted in its May 2018 Order, the AWCA does not severely
24 burden the core of the Second Amendment right because individuals “remain free to
25 choose any weapon that is *not* restricted by the AWCA or another state law.” (*See* May
26 2018 Order at 23.) The AWCA leaves individuals “with myriad options for self-defense—
27 including the handgun, the ‘quintessential’ self-defense weapon per *Heller*.” (*Id.*) Further,
28

1 the Attorney General’s evidence reflects that the semiautomatic rifles within the AWCA’s
2 scope are ill-suited for self-defense. (*See* Brady Center to Prevent Gun Violence, *Assault*
3 *Weapons “Mass Produced Mayhem”* (2008) at 16, Ex. 20 to Chang Decl., Doc. 76-20 (“In
4 addition to utilizing military features useful in combat, but which have no legitimate
5 civilian purpose, assault weapons are exceedingly dangerous if used in self defense,
6 because the bullets many of the weapons fire are designed to penetrate humans and will
7 penetrate structures, and therefore pose a heightened risk of hitting innocent bystanders.”);
8 Donohue Rpt. ¶ 107, Ex. 1 to Chang Decl., Doc. 76-1 (according to Maryland’s Police
9 Superintendent, “in many home defense situations assault weapons are likely to be less
10 effective than handguns because they are less maneuverable in confined areas”).)
11 Moreover, Plaintiffs’ own evidence shows that while individuals may sometimes purchase
12 assault rifles for self-defense, it is not the primary purpose for doing so. (*See, e.g.*, Ex. 21
13 to Brady Decl. at 10, Doc. 78-3 (noting that 30% of AR-style rifles were sold in 2016 for
14 “personal-protection purposes,” compared to 59.5% of handguns for that purpose); Ex. 2.
15 Brady Decl. at 4, Doc. 78 (“Recreational target shooting was the most prevalent reason
16 cited for owning a [modern sporting rifle], followed by home defense.”).)

17 Accordingly, because the Court’s prior reasoning is bolstered by the evidence
18 presented at summary judgment, the Court applies intermediate scrutiny to the AWCA.

19 **3. Application of Intermediate Scrutiny**

20 The Ninth Circuit’s test for intermediate scrutiny instructs that “(1) the
21 government’s stated objective must be significant, substantial, or important; and (2) there
22 must be a ‘reasonable fit’ between the challenged regulation and the asserted objective.”
23 *Silvester*, 843 F.3d at 821–22 (quoting *Chovan*, 735 F.3d at 1139). The state need not
24 “show that [the regulation] is the least restrictive means of achieving its interest.” *Fyock*,
25 779 F.3d at 1000 (citation omitted). Rather, the state is “required to show only that [the
26 regulation] promotes a ‘substantial government interest that would be achieved less
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1 effectively absent the regulation.” *Id.* (quoting *Colacurcio v. City of Kent*, 163 F.3d 545,
2 553 (9th Cir. 1998)).

3 As the Court noted in its May 2018 Order, “it is beyond question that the
4 government’s interest in promoting public safety and reducing gun violence is important or
5 substantial.” (May 2018 Order at 24 (citing *Fyock*, 779 F.3d at 1000; *Silvester*, 843 F.3d at
6 827; *Kolbe*, 849 F.3d at 139; *N.Y.S. Rifle and Pistol Ass’n, Inc.*, 804 F.3d at 261).) Indeed,
7 Plaintiffs admit (as they must) that California has an important interest in promoting public
8 safety and preventing crime. (Plaintiffs’ Mem. at 19.)

9 Thus, the issue is whether there is a “reasonable fit” between the AWCA and
10 California’s public safety interests. *Fyock*, 779 F.3d at 1000. A reasonable fit is
11 established if the government’s objective will be achieved “less effectively absent the
12 regulation.” *Id.* (quoting *Colacurcio*, 163 F.3d at 553.). “In reviewing the
13 constitutionality of a statute, ‘courts must accord substantial deference to the predictive
14 judgments of Congress.’” *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997). “In
15 the context of firearm regulation, the legislature is ‘far better equipped than the judiciary’
16 to make sensitive public policy judgments (within constitutional limits) concerning the
17 dangers in carrying firearms and the manner to combat those risks.” *Kachalsky v. County*
18 *of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012). Thus, the Court’s role is only “to assure
19 that, in formulating its judgments, [California] has drawn reasonable inferences based on
20 substantial evidence.” *Id.* The Court “may consider ‘the legislative history of the
21 enactment as well as studies in the record or cited in pertinent case law.’”⁸ *Fyock*, 779
22 F.3d at 1000. Indeed, California is “entitled to rely on any evidence ‘reasonably believed
23 to be relevant’ to substantiate its important interests.” *Id.*

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25
26 ⁸ *Fyock* squarely rejects Plaintiffs’ argument, on which they heavily relied at the hearing, that
27 the Attorney General can rely only on evidence that the California legislature considered when it
28 passed the AWCA.

1 Here, in conformity with the “unanimous weight of circuit authority analyzing
2 Second Amendment challenges to similar laws,” the Court concludes that there is a
3 reasonable fit between the AWCA and California’s public safety interests. *See Worman*,
4 922 F.3d at 39. The Attorney General provides ample evidence to establish a reasonable
5 fit between the AWCA and California’s public safety interest.

6 For example, in passing the federal assault weapons ban, Congress found that
7 “semiautomatic assault weapons are the weapons of choice among drug dealers, criminal
8 gangs, hate groups, and mentally deranged persons bent on mass murder.” (H.R. Rpt. No.
9 103-489 at 13.) Indeed, as justification for the federal ban, the Director of the ATF noted
10 that assault weapons are disproportionately used in crimes. (*Id.* at 13; *see also* Giffords
11 Mem. at 6–7, Doc. 81-1.) In enacting the AWCA, California made similar findings, noting
12 the alarming rate of drive-by shootings in Southern California, the number of police-
13 officer victims of semi-automatic weapons, and the many occasions when semiautomatic
14 weapons are confiscated during arrests. *See Kasler v. Lockyer*, 23 Cal. 4th 472, 482 (2000)
15 (citing 1 Assem. J. (1989–1990 Reg. Sess.) at 437).

16 The California legislature was particularly concerned with semiautomatic rifles’ use
17 in mass shootings. (*See* S.B. 880 Report at 3, 7–8.) The analysis by the Attorney
18 General’s expert, Lucy Allen,⁹ shows that, of 109 public mass shootings examined, an
19 assault rifle was used in 26 of them. (*See* Ex. 6 to Chang Decl., Doc. 76-6.) Further, in the
20 public mass shootings where an assault rifle was utilized, there were twice as many
21 fatalities (12 with assault rifles, 6 without any assault weapon), and six times as many
22

23 ⁹ Plaintiffs challenge the reliability of Allen’s analysis. (Plaintiffs’ Opp. at 20–21.) First,
24 other courts have rejected similar challenges to Allen. *See, e.g., Kolbe v. O’Malley*, 42 F. Supp.
25 3d 768, 781 & n.17 (D. Md. 2014) (“To the extent the plaintiffs challenge Allen’s reliance on the
26 Mother Jones data, their challenge must fail. . . . [T]he data was subject to independent review by
27 Koper and his graduate student.”), *aff’d by Kolbe*, 849 F.3d 114. Second, even if the Court were
28 to disregard Allen’s analysis, the Attorney General, amici, and relevant caselaw provide more than
enough other evidence to show that assault weapons are often used in mass shootings and, when
they are used, there are more injuries and casualties.

1 injuries (30 with and 5 without). (*Id.*) Everytown for Gun Safety’s amicus brief notes
2 similar findings: “[W]hen assault weapons are used, more than twice as many people are
3 killed on average (10.1 per shooting versus 4.9) and more than ten times as many are shot
4 and injured (11.4 per shooting versus 1.1).” (Everytown Mem. at 16, Doc. 82-1 (citing
5 Everytown, *Mass Shootings in the United States: 2009-2016*, Appendix (Mar. 2017))).
6 Moreover, Everytown points to a study finding that “between 1981 and 2017 . . . assault
7 weapons accounted for 86% of the 501 fatalities reported in 44 mass-shooting incidents.”
8 (*Id.* at 19 (citing Charles DiMaggio et al., *Changes in U.S. Mass Shooting Deaths*
9 *Associated with the 1994-2004 Federal Assault Weapons Ban: Analysis of Open-Source*
10 *Data*, 86 J. of Trauma and Acute Care Surgery 11, 13 (2018))).¹⁰ Other courts have noted
11 that semiautomatic weapons are often used in mass shootings and that, when they are, such
12 shootings are deadlier. *See, e.g., Worman*, 922 F.3d at 39 (“ . . . AR-15s equipped with
13 [large-capacity magazines] have been the weapons of choice in many of the deadliest mass
14 shootings in recent history, including horrific events in Pittsburgh (2018), Parkland (2018),
15 Las Vegas (2017), Sutherland Springs (2017), Orlando (2016), Newtown (2012), and
16 Aurora (2012).”); *see also Gallinger v. Becerra*, 898 F.3d 1012, 1019 (9th Cir. 2018)
17 (“[W]hen ‘assault weapons and large capacity magazines are used, more shots are fired
18 and more fatalities and injuries result than when shooters use other firearms and
19 magazines.’”)

20 The increased casualty rate is likely due, at least in part, to the fact that “[g]unshot
21 wounds from assault rifles, such as AR-15s and AK-47s, tend to be higher in complexity
22 with higher complication rates than such injuries from non-assault weapons, increasing the
23 likelihood of morbidity in patients that present injuries from assault rifles.” (Ex. 4 to
24 Chang Decl. at 3, Doc. 76-4; *see* Everytown Mem. at 18 (“[Assault weapons] are designed
25

26 ¹⁰ The Brady Center also notes that mass shootings “carry tremendous social and economic
27 costs, incurred by both individuals and taxpayers.” (Brady Mem. at 14–18, Doc. 97-1.)
28

1 to fire far more bullets, at a far faster rate than other firearms, with each round from an
2 assault weapon having up to four times the muzzle velocity of a handgun round—and thus
3 able to inflict much greater damage.”¹¹ Indeed, assault rifle rounds can penetrate the soft
4 body armor worn by police that is designed to stop common handgun rounds. (Plaintiffs’
5 Response to AG’s SUF ¶ 33.)

6 Plaintiffs argue that none of the challenged features that bring a firearm within the
7 AWCA’s scope—pistol grips, non-fixed magazines, thumbhole stocks, folding or
8 telescoping stocks, and flash suppressors—have “any effect on the power of the projectile
9 it discharges and thus the trauma that projectile causes on impact.” (Plaintiffs’ Opp. at 20.)
10 Plaintiffs miss the point—the enumerated features increase the capabilities of
11 semiautomatic rifles and thereby enhance their capacity for mass violence. A pistol grip
12 increases a shooter’s ability to control the rifle and reload rapidly while firing multiple
13 rounds. (Plaintiffs’ Response to AG’s SUF ¶¶ 16–18.) The ability to accept detachable
14 magazines makes semiautomatic rifles “capable of killing or wounding more people in a
15 shorter amount of time.” (S.B. 880 Report at 6.) Indeed, AR-platform rifles capable of
16 accepting detachable magazines take 3 to 5 seconds less to reload than the same rifle with
17 a fixed magazine. (Plaintiffs’ Response to AG’s SUF ¶ 15.) The Attorney General’s
18 expert notes that “[a]djustable stocks also contribute to the control of the rifle in that they
19 allow the shooter to optimize the rifle to their arm length.” (*See Mersereau Report* ¶ 10,
20 Ex. 3 to Chang Decl., Doc. 76-3.) “This increases the shooter’s ability to rapidly send
21 rounds down range with increased accuracy.” (*Id.*) Further, the shorter the rifle, the easier
22 it is to conceal, as might be necessary to gain access to areas where a shooter wishes to
23 inflict mass violence, such as a school or concert. Thus, the AWCA understandably bans
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25 ¹¹ Plaintiffs argued at the hearing, with no evidentiary support, that shots fired from
26 semiautomatic rifles are no more powerful than shots fired from standard rifles. However, even
27 assuming Plaintiffs’ unsupported assertion is correct, as the above-quoted passage from
28 Everytown’s brief notes, semiautomatic weapons fire more bullets at faster rates, and thus inflict
greater and more complex damage than a standard rifle.

1 semiautomatic rifles under 30 inches in length, and folding stocks that allow individuals to
2 collapse the weapon to a shorter length. Finally, flash suppressors reduce the flash emitted
3 upon firing and aid a shooter in low-light conditions while also concealing his or her
4 position, especially at night. (Plaintiffs’ Response to AG’s SUF ¶¶ 22–24.)

5 Further, bans on assault weapons appear to be effective means for reducing
6 violence. For example, during the period in which the federal assault weapons ban was in
7 effect, Plaintiffs’ own expert admits that the use of assault weapons in crimes was reduced.
8 (*Id.* ¶ 38.) Plaintiffs dispute the efficacy of the federal assault weapons ban by pointing to
9 a 2004 study commissioned by the U.S. Department of Justice which found that, ten years
10 after the law was enacted, “there [had been] no discernible reduction in the lethality and
11 injuriousness of gun violence.” (*See* Koper 2004 Study, Ex. 25 to Brady Decl. at 96, Doc.
12 78-11.) However, as the Attorney General notes, Plaintiffs conveniently exclude the
13 disclaimer at the beginning of the study: “it is premature to make definitive assessments of
14 the ban’s impact on gun crime.” (*Id.* at 2 (capitalization removed).) Further, immediately
15 following the sentence cited by Plaintiffs, the study notes that “the grandfathering
16 provision of the [federal ban] guaranteed that the effect of this law would occur only
17 gradually over time.” (*Id.* at 96.) Thus, the “effects are still unfolding and may not be
18 fully felt for several years into the future.” (*Id.*) Indeed, the 2004 study’s principal author,
19 Christopher Koper, published an updated study in 2017. (Koper 2017 Study, Ex. 23 to
20 Chang Decl., Doc. 76-23.) The updated study confirmed that the criminal use of assault
21 weapons and large-capacity magazines declined during the years of the federal ban and
22 increased after its expiration in 2004. (*Id.* at 8–9.) Koper concluded that “the federal ban
23 curbed the spread of high-capacity semiautomatic weapons when it was in place, and in so
24 doing, may have had preventive effects on gunshot victimization.” (*Id.* at 9; *see also* Ex.
25 26 to Chang Decl. at 1, Doc. 76-26 (“‘I was skeptical that the [federal] ban would be
26 effective, and I was wrong,’ said Garen Wintemute, head of the Violence Prevention
27 Research Program at the University of California at Davis School of Medicine. The
28

1 database analysis offers ‘about as clear an example as we could ask for of evidence that the
2 ban was working.’”).) Indeed, *Worman* noted studies finding that “the majority of
3 individuals who have perpetrated mass shootings obtain their semiautomatic assault
4 weapons legally,” suggesting that a “law proscribing semiautomatic assault weapons . . .
5 will help curtail outbreaks of mass violence.” *Worman*, 922 F.3d at 40 (citing Larry
6 Buchanan et al., *How They Got Their Guns*, N.Y. Times (updated Feb. 16, 2018),
7 [https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-](https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html)
8 [guns.html](https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html); Mayors Against Illegal Guns, Analysis of Recent Mass Shootings (2013)).

9 In short, the Attorney General has more than met his burden to show that there is a
10 reasonable fit between the AWCA and protecting public safety. Plaintiffs do not truly
11 dispute any of the Attorney General’s evidence, nor do they even attempt to distinguish the
12 AWCA from the laws upheld by other circuits. Instead, they argue that California cannot
13 “isolate” the rifles within the AWCA’s scope as the “culprit” for mass shootings and
14 higher casualty counts. (Plaintiffs’ Opp. at 21.) However, the Court is “weighing a
15 legislative judgment, not evidence in a criminal trial.” *See Pena v. Lindley*, 898 F.3d 969,
16 979 (9th Cir. 2018). Even assuming there is not direct *causal* evidence between mass
17 shootings and higher casualty rates and rifles within the scope of the AWCA, California is
18 entitled to make “reasonable inferences” from the available data that shows a correlation.
19 *See Worman*, 922 F.3d at 40. Indeed, Plaintiffs’ expert admits the obvious—that “a
20 correlation between the use of assault weapons and the number of victims injured or
21 killed” makes it “[m]ore likely” that there is a causal relationship. (*See Kleck Deposition*
22 *at 159:15–16, Ex. 15 to Chang Decl., Doc. 76-15.*)

23 More fundamentally, Plaintiffs argue that California is “depriving the public of
24 more accurate rifles that are easier to control.” (*See, e.g., Plaintiffs’ Opp. at 15.*) Plaintiffs
25 miss the point. As discussed throughout, that the rifles are more accurate and easier to
26 control is precisely why California has chosen to ban them. Semiautomatic rifles with
27 non-fixed magazines, along with the other enumerated features, are incredibly effective
28

1 killing machines, and the Attorney General's evidence strongly suggests that such weapons
2 are disproportionately used in mass shootings and that, when they are used, more people
3 are injured and killed. To be sure, Plaintiffs may have legitimate interests in possessing
4 semiautomatic rifles within the AWCA's scope. However, California has permissibly
5 weighed those interests against the weapons' propensity for being used for mass violence
6 and concluded that the weapons' lawful value is drastically outweighed by the danger they
7 pose to California citizens.

8 Accordingly, the Court concludes that the AWCA withstands intermediate scrutiny.

9 **V. CONCLUSION**

10 For the foregoing reasons, the Court GRANTS the Attorney General's Motion for
11 Summary Judgment and DENIES Plaintiffs' Motion for Summary Judgment. The
12 Attorney General is ORDERED to submit a proposed judgment no later than five (5) days
13 from the date of this Order.

14
15 Dated: July 22, 2019



HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE