No. 24-542

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KIM RHODE, ET AL., Plaintiffs-Appellees, v. ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Defendant-Appellant.	:	On Appeal from the United States District Court for the Southern District of California District Court Case No. 3:18-cv-00802-BEN-JLB

BRIEF OF *AMICI CURIAE* OHIO, IDAHO, ALABAMA, ALASKA, ARKANSAS, FLORIDA, GEORGIA, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW HAMPSHIRE, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VIRGINIA, WEST VIRGINIA, AND WYOMING AND THE ARIZONA LEGISLATURE SUPPORTING APPELLEES

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STATEMENT OF *AMICI* INTEREST AND SUMMARY OF ARGUMENT

Governments are instituted among men to secure their fundamental rights, including their right to armed self-defense. *See* Declaration of Independence (U.S. 1776); U.S. Const. amend. II; *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). Such rights "pre-exist[]" government. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). The Fourteenth Amendment prohibits States from infringing upon this fundamental right. *McDonald v. City of Chicago*, 561 U.S. 742, 778–80 (2010).

The California laws at issue here subvert this right by requiring California citizens to request and pay for the State's consent each time they wish to engage in conduct necessary to exercising that fundamental right. *Amici* the States of Ohio, Idaho, Alabama, Alaska, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming, and the Arizona Legislature are interested in preventing all infringements of the fundamental right to armed self-defense. They file this brief to defend that interest.

California's latest attack on the Second Amendment is a two-pronged pincer movement. The first consists of ammunition background-check provisions that require California residents to undergo a background check every time they purchase ammunition. Cal. Penal Code §§30352, 30370. Each background check costs $19 and typically takes five or six days, unless the purchaser submits to registering one or more firearms with the State's "Automated Firearms System," in which case the State will only charge $1 and complete the check within minutes. Apt. Br.7–8. The background-check system erroneously denies the purchaser at least 11% of the time. Dist. Ct. Op., R.105, PageID#3430.

The second pincer is a set of anti-importation provisions that traps Californians in the State's ammunition background-check regime by denying them access to interstate markets. Cal. Penal Code §§30312, 30314, 30365. These provisions require that every ammunition sale to a state resident occur in "a face-to-face transaction" with a California-licensed seller. Cal. Penal Code §30312(b). Ammunition obtained in another State must filter through a California-licensed seller who must conduct a background check before transferring the ammunition. Cal. Penal Code §§30312, 30314. The California-licensed seller may charge an

amount of its own choosing, in addition to the background check fee, for providing this service. Cal. Code Regs. tit. 11, §4263(a).

Two courts have already ruled that these laws unlawfully infringe on the right to armed self defense. Most recently, a panel of this Court, applying *Bruen*'s two-step framework held that the government failed to prove that the regulation here was "consistent with this nation's historical tradition." *Rhode v. Bonta*, 145 F.4th 1090, 1105 (9th Cir. 2025) (quotation omitted). Indeed, the panel majority here spent multiple pages explaining the arcane and burdensome web of California law designed to stop individuals from buying ammunition. It is no wonder why. California's intricate and elaborate regulatory scheme imposes unique burdens on ammunition purchases. And California could not identify any analogous system in the nation's history.

The Southern District of California previously enjoined enforcement of these provisions for three reasons. It found that the ammunition background-check provisions "violate the Second Amendment" because they "have no historical pedigree," and that the anti-importation provisions "violate the dormant Commerce Clause and … are preempted by 18 U.S.C. §926A," the "Firearm Owners' Protection Act," because they

prevent California residents from traveling into the State with ammunition obtained in other States. *Id.* at PageID#3457. A panel of this Court affirmed. And this *en banc* Court should, too.

ARGUMENT

This brief focuses on the Second Amendment because it suffices to resolve this case. The right to armed self-defense identified in the Second Amendment predates government, and it applies to states via the Fourteenth. *McDonald*, 561 U.S. at 750, 757–58. It is well recognized that arms-bearing rights include the right to ammunition. *Jackson v. City & Cnty. of S.F.*, 746 F.3d 953, 967 (9th Cir. 2014). When determining whether regulation of ammunition violates the right to bear arms, history and tradition guide the way. *Bruen*, 597 U.S. at 17. And here, both the ammunition background-check and anti-importation provisions burden the fundamental right to armed self-defense by interfering with ammunition purchases, and both are unprecedented in our Nation's historical tradition of firearm regulation.

I. California's ammunition background-check and anti-importation provisions violate the Fourteenth and Second Amendments.

California's laws flunk the test established in *New York State Rifle & Pistol Association, Inc. v. Bruen* and refined in *United States v. Rahimi*.

That analysis proceeds in two stages. First, this Court must determine whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 17. When it does, "the Constitution presumptively protects that conduct," and the analysis moves to the second stage, in which "the government must demonstrate that the regulation [of that conduct] is consistent with this Nation's historical tradition of firearm regulation." *Id.* Unless the government can meet that burden, the regulation must give way to "the Second Amendment's unqualified command." *Id.* (quotation omitted). Here, both the ammunition background-check and anti-importation provisions burden conduct that the Amendment plainly covers—purchasing ammunition for lawfully owned firearms—and California cannot show that either type of regulation has any grounding in historical tradition. This Court should affirm the injunction preventing enforcement of both sets of provisions for this reason alone.

A. Both sets of provisions burden conduct that the Second Amendment's text plainly covers.

"[W]hen the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to justify its regulation." *United States v. Rahimi*, 602 U.S. 680, 691 (2024) (quotation omitted). California's regulations on ammunition sales

burden conduct that the Constitution presumptively protects. And so, as the panel majority held, California's regime implicates the Second Amendment.

Precedent confirms as much. In *Jackson v. City & County of San Francisco*, this Court held that purchasing ammunition for use in lawfully owned firearms is "conduct historically understood to be protected by the Second Amendment right to keep and bear arms." 746 F.3d 953, 967 (9th Cir. 2014) (quotation omitted), *abrogated on other grounds by Bruen*, 597 U.S. 1. This Court has also recognized that "[t]he Second Amendment guarantees … 'an individual's right to carry a handgun for self-defense outside the home,'" *Baird v. Bonta*, 81 F.4th 1036, 1043 (9th Cir. 2023) (citing *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) and quoting *Bruen*, 597 U.S. at 10), and that this "right … implies a corresponding right to obtain the bullets [that is, the ammunition] necessary to use them," *Jackson*, 746 F.3d at 967 (quotation omitted). For this reason, precedent has rejected attempts to "differentiate between regulations governing ammunition and regulations governing the firearms themselves." *Id.* (citing *Heller*, 554 U.S. at 632). Because both the ammunition background-check provisions and the anti-importation

provisions burden individuals' ability to obtain ammunition, the provisions are presumptively unconstitutional.

Petitioners cannot skirt that simple conclusion by coloring California's regulation as a *de minimis* burden. According to petitioners, the newly required "background checks impose only minor fees and do not impose significant delays." Pet.12. At the same time, they recognize that this law is among those that "govern[] the acquisition of arms or ammunition." Pet.13. So it "regulates arms-bearing conduct." *Rahimi*, 602 U.S. at 691. Characterizing the regulation as *de minimis* accomplishes nothing more than it would to characterize a regulation of speech as too small to call for any scrutiny. *See Bruen*, 597 U.S. at 24. A burden, however small, is just that: a burden on a constitutionally protected right.

For that reason, the ammunition background-check provisions burden Californians' Second Amendment rights because they make the protected conduct of purchasing ammunition for use with lawfully owned firearms more difficult for Californians. They make that conduct harder by prohibiting all ammunition purchases except those made through a California-licensed seller and subject to an unreliable background-check system that the State makes more costly and time-consuming for individuals

who do not submit to the State's registry of firearm owners. *See above* at 2. And the anti-importation provisions make it illegal for anyone in California to possess ammunition sourced from another State unless it was delivered by a California-licensed seller. *See above* at 2–3. These requirements notably prohibit direct-delivery internet sales, imposing inconvenience and expense on Californians who wish to access the unmatched selection that the multi-billion-dollar internet ammunition market offers, *see Online Gun & Ammunition Sales in the US – Market Size (2005–2029)*, IBISWorld (May 30, 2023), https://perma.cc/43MN-VAZZ. California's laws burden the fundamental right to armed self-defense by introducing obstacles to obtaining the ammunition necessary to exercise that right. So, the laws are unconstitutional unless California proves that they are in keeping with historical tradition.

B. California has identified no historical analogue to its new regulations because no analogue exists.

California cannot meet its burden of proving that its regulations are constitutional at *Bruen*'s second stage of analysis because the ammunition background-check and anti-importation provisions are not relevantly similar to any historically accepted regulations. To save its regulations, California must show that each is "relevantly similar" to "a

historical regulation" that is "well-established and representative." *Bruen*, 597 U.S. at 28–30. The central question is "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." *Id.* at 29. In other words, courts must compare "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.*

Modern regulations that do not address distinctly modern social problems need a particularly close historical analogue to survive. As the *Bruen* Court put it, "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional." *Id.* at 26–27.

California's regulations are subject to this closer similarity requirement because they purportedly address the old societal problem of armed violence by "prevent[ing] ammunition from being transferred to those who are [legitimately] prohibited from possessing it." Apt. Br.46. The

possibility of people committing violence with ammunition obtained illegally and without the government's knowledge has existed since the earliest days of colonial history, when there were few government resources to monitor a widely dispersed population. Of course, technological change has made "a dead ringer … historical precursor[]," *Bruen*, 597 U.S. at 30, impossible because there was no Founding-era internet through which to conduct background checks or sell ammunition. But a historical regulation would be relevantly similar to California's ammunition background-check provision if it required individuals to get government permission or prove their good character and pay an administrative fee for every ammunition-related purchase. One would also expect to see late-nineteenth-century laws prohibiting mail-order ammunition purchasing. *Cf.* Apt. Br.31. No historical regulation comes close.

But that has not stopped California from claiming disparate regulations as close ancestors. The government offered "four different historical analogues: [1] loyalty oath requirements and loyalist disarmament provisions at the founding and during Reconstruction, [2] 19th century concealed carry permitting requirements, [3] surety laws imposed at the founding on persons who presented a danger to the community, and [4]

licensing and recordkeeping requirements imposed on vendors of gunpowder and firearms." *Rhode*, 145 F.4th at 1109. But the historical candidates are, in fact, all examples of "earlier generations address[ing] the societal problem … through materially different means," which is "evidence that [the] modern regulation is unconstitutional." *Bruen*, 597 U.S. at 26–27.

At panel stage, California pointed to colonial laws that sought to disarm anyone who would not swear loyalty to their newly independent colony during the Revolutionary War. Apt. Br.29–30. California is correct that these "requirements … were designed to determine whether individuals were prohibited from possessing arms," *id.* at 30, but that only partially covers "why" colonies burdened the right to bear arms and ignores that the "how" is unrecognizably different, *see Bruen* at 597 U.S. at 29. California, unlike the colonies, is not in an existential war against many of its own citizens, which must be relevant to any "why" inquiry. And the challenged provisions do not impose a one-time loyalty oath or even a one-time patriotism background-check as a condition of keeping weapons one already has. So, these historical regulations, which did not address

ammunition sales in any way, do not even register on the "how" metric. The same applies to Reconstruction-Era loyalty oaths. *See* Apt. Br.31.

Comparison to early concealed-carry licensing laws is no more helpful. *See id.* at 31–32. These historical laws, California says, responded to "the rise of handgun mail-order purchasing br[inging] cheap handguns to buyers' doors." *Id.* at 31 (quotation omitted). Notably, however, these laws did not regulate ammunition. They in fact harm California's case to the extent that the impersonal firearms purchases they responded to are similar to the direct-delivery ammunition sales that California prohibits through its anti-importation provisions' face-to-face transaction requirement and out-of-state-purchasing ban. That is because the historical laws are examples of "earlier generations" responding to similar perceived problems "through materially different means." *Bruen*, 597 U.S. at 26–27. They might support California's background-check requirement for concealed-carry. *See* Cal. Penal Code §§26150, 26202. But they provide no support for the new additional regulations California is defending.

California also pointed to historical licensing and recordkeeping requirements imposed on *commercial sellers* of *firearms* and *exporters* of

[extremely volatile early] *gunpowder*. *See* Apt. Br.33. These do not compare with California's requirement that its *private citizens* obtain governmental consent for every *individual purchase* of *shelf-stable, modern ammunition*.

Finally, California's ammunition background-check and anti-importation laws bear no resemblance to the surety and "going armed" laws that the Supreme Court analyzed in *United States v. Rahimi*, 602 U.S. 680 (2024). Surety laws allowed a judge to require rowdy individuals to post a bond to guarantee nonviolent behavior, *id.* at 695–97, while "going armed" laws forbade carrying "dangerous or unusual weapons" in public to "terrify" others, *id.* at 697 (quotation and brackets omitted). The Court emphasized that those historical laws did "not broadly restrict arms use by the public generally," and that their application "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at 698–99. The Court also stressed that "surety bonds" were "of limited duration." *Id.* at 699.

The California laws share none of these key characteristics. They regulate the public generally by interfering with all Californians' ability to purchase the ammunition they need for self-defense. They involve no

individualized judicial determinations of dangerousness, but rather treat all ammunition purchasers as inherently suspect. Unlike surety bonds, they have no durational limits. And unlike "going armed" laws, they do not regulate *carrying* weapons or content themselves with regulating *dangerous or unusual* weapons. They reach much further to regulate an act that poses no threat of imminent violence or public terror—purchasing ammunition. And they restrict all ammunition including the calibers most *common* for use in self-defense, like 9mm and .380 auto, and calibers *least likely* to be used in acts of violence, like the miniscule .22 short cartridges used in shooting galleries and shotgun target loads that contain low powder charges and tiny metal BBs. Given these differences, it is no wonder that California does not even try to liken its laws to the surety and "going armed" laws of historical tradition.

The panel majority correctly held that the government failed to prove that its regulation was consistent with historical tradition. *Rhode*, 145 F.4th at 1116. The district court aptly described the ammunition background-check and anti-importation regime as an "extensive and ungainly" "first-of-its-kind sweeping statewide restriction" of fundamental rights that is "unprecedented" in all American history. Dist. Ct. Op.,

R.105, PageID#3439, 3434. For that reason, the challenged provisions violate the Second Amendment and should remain enjoined.

II. California's attempts to evade the Second Amendment by avoiding *Bruen*'s analogical reasoning analysis fail.

California has made arguments that would exempt its laws from historical comparison, but neither has merit. First, California distorts *Bruen*'s first stage to argue that the challenged provisions do not burden conduct that the Second Amendment protects. This attempt to escape the Second Amendment paints regulations as so lightly burdensome as to avert all scrutiny. Neither *Bruen* nor any other holding allows states to opt out of constitutional guarantees in such a way. The first step of the inquiry simply does not turn on the *weightiness* of the burden.

Before the panel, California tried to define the relevant conduct as "purchas[ing] ammunition without complying with any background check requirements," which, it says, is not plainly covered by the Second Amendment's text. Apt. Br.20. But circuit precedent forecloses that argument by recognizing purchasing ammunition as part of "the right to possess firearms." *Jackson*, 746 F.3d at 967 (quotation omitted). And California itself did "not dispute that the right to keep ammunition" is generally "entitled to protection under the Second Amendment." *Rhode*,

145 F.4th at 1106. Instead, California says that a small-enough burden gets around the Second Amendment. But that runs contrary to *Bruen*'s example of how to define the "proposed course of conduct" at stage one, namely, without reference to the regulations that burden it. *See* 597 U.S. at 32. *Bruen* defined the "proposed course of conduct" in that case as "carrying handguns publicly for self-defense," *id.*, not "carrying handguns publicly for self-defense without showing special need."

Bruen thus rejects attempts to sneak the challenged regulation into the proposed course-of-conduct definition because that tactic, if allowed, would shift the government's burden of showing historical continuity onto the plaintiffs. It would force plaintiffs to prove at the outset of every Second Amendment case that history affirmatively rejects the regulation. But that is precisely the opposite of *Bruen*'s holding. It would also mean that a regulation becomes less constitutionally suspect the more different it is from firearms regulation that came before it. California cannot reverse *Bruen* by wordplay.

Second, California argued that the challenged regulations are presumptively lawful because the Supreme Court approved background checks for concealed-carry permits in *Bruen* and endorsed certain other

pedigreed firearms regulations in *Heller*. Apt. Br.20–24. This argument is irrelevant. California already has a concealed-carry background-check system, and it is not at issue here. Nor are any of the regulations that *Heller* listed as historically acceptable before this Court. *See* 554 U.S. at 626–27. The relevant points are that the Supreme Court has never endorsed ammunition background-checks or anti-importation provisions, and that neither type of regulation is "longstanding"—a prerequisite to presumptive lawfulness. *Id.* at 626.

This argument also reflects a fundamental misunderstanding of *Heller*. *Heller* did not exempt any firearms regulations from "an exhaustive historical analysis." *Id.* It simply gave some examples of regulations that survive that analysis as guideposts because the Court could not "undertake" an explication of "the full scope of the Second Amendment," in one opinion. *Id.* It is this Court's duty to undertake that historical analysis as to California's ammunition background-check and anti-importation provisions. Those regulations cannot withstand it.

This Court should not disrupt this conclusion based on the Second Circuit's post-panel decision upholding New York's background-check provisions for ammunition sales. *See New York State Firearms Ass'n v.*

James, 157 F.4th 232 (2d Cir. 2025). For one thing, the decision is persuasive, not binding. More important, though similar at a superficial level, that case has little relevance here and crumbles on comparison. Indeed, as the Second Circuit itself observed, the New York laws considered in *James* come nowhere close to California's burdensome and intricate regime.

In *James*, the Second Circuit considered whether regulations of the seller of ammunition violated the Second Amendment. *Id.* at 239. The schemes required a seller to (1) conduct a background check on a buyer, (2) pay a fee to the run the background check, and (3) register with the state. *Id.* at 239. The background-check process created an immediate response for applicants. *Id.* at 246. "[A]t most," the plaintiff experienced a "waiting period of … a single day" and only when the "background check system was down that day." *Id.* at 247. *James*, in other words, dealt with a real-time background check performed quickly and with no extended waiting period.

California's laws are of a different breed. The regime involves "four ways that a person can obtain authorization to purchase ammunition": (1) the basic check, (2) the standard check, (3) obtaining a certificate of

eligibility from the state, or (4) purchasing ammunition in a state-approved firearm purchase. *Rhode*, 145 F.4th at 1099–1100. Each route costs money and takes time. "Basic checks," for example, "take an average of five to six days to process" and "[a]pproval for a basic check expires 30 days after it is issued." *Id.* at 1099.

The scheme is complicated. As mentioned, the panel spent multiple pages simply describing the onerous regulations placed on buying ammunition. *James*, on the other hand, was straightforward. And the panel there held that a simple and quick background check survives the Second Amendment. *James* itself recognized the distinction. The panel "emphasize[d] that the California and New York regimes are not the same." 157 F.4th at 250. Unlike California's law, New York did "not require the customer to pay a dime" and "there is no block of time in which the customer must purchase the ammunition once the background check clears." *Id.* As the Court explained, "the record before the Ninth Circuit regarding California's implementation of the background check regime differs starkly from that" in *James*. *Id.* at 250 n.6.

In short, *James* is of little relevance here. The Court examined a different law in a different state with different requirements. And

nothing in *James* even suggests that California's law is analogues to New York's. To the contrary, the Second Circuit explicitly recognized the critical distinctions between the States' laws.

* * *

California's ammunition background-check and anti-importation provisions make firearms unusable to California residents unless they buy the State's renewed permission to reload them every time they run low on ammunition. Both sets of provisions violate the Second Amendment because they are unrecognizable to this Nation's historical tradition of firearms regulation. Both sets of provisions are a prime example of why the Constitution placed certain rights beyond legislative control by enumerating them in the Bill of Rights. This Court's duty is to vindicate that choice.

CONCLUSION

The Court should affirm the judgment below.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CERTIFICATE OF COMPLIANCE FOR BRIEFS

9th Cir. Case Number(s) 24-542

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STATEMENT OF RELATED CASES

There are no related cases currently pending in this Court.

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2026, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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