

No. 25-693

United States Court of Appeals for the Ninth Circuit

ADAM RICHARDS; GERALD CLARK; JESSE HARRIS; GUN OWNERS OF
CALIFORNIA, INC.; GUN OWNERS OF AMERICA, INC.; GUN OWNERS
FOUNDATION; CALIFORNIA RIFLE & PISTOL ASSOCIATION; SECOND
AMENDMENT FOUNDATION; ON TARGET INDOOR SHOOTING RANGE,
LLC; GAALSWYK ENTERPRISES, INC.; JEFFREY VANDERMEULEN,

Plaintiffs-Appellants,

— v. —

GAVIN NEWSOM; ROB BONTA; DOES,

Defendants-Appellees.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA IN NO. 8:23-CV-02413-JVS-KES,
HONORABLE JAMES V. SELNA

AMICUS BRIEF OF KNOX WILLIAMS, AMERICA FIRST POLICY INSTITUTE, AND NATIONAL RIFLE ASSOCIATION OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING *EN BANC*

JOSEPH G.S. GREENLEE
NRA – INSTITUTE FOR LEGISLATIVE
ACTION
11250 Waples Mill Road
Fairfax, Virginia 22030
(703) 267-1161
jgreenlee@nrahq.org

TYLER COCHRAN
Counsel of Record
GINA D'ANDREA
ANDREW ZIMMITTI
AMERICA FIRST POLICY INSTITUTE
1455 Pennsylvania Avenue, NW,
Suite 225
Washington, DC 20004
(703) 637-2548
tcochran@americafirstpolicy.com

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

America First Policy Institute has no parent corporation, nor is there any publicly held corporation that owns more than 10% of its stock.

National Rifle Association of America has no parent corporation, nor is there any publicly held corporation that owns more than 10% of its stock.

/s/ Tyler Cochran

Counsel for Amici Curiae

/s/ Joseph Greenlee

Counsel for Amici Curiae

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INTEREST OF THE *AMICI CURIAE*¹

Knox Williams serves as a Senior Fellow for American Justice Policy at the America First Policy Institute (AFPI), a 501(c)(3) non-profit, non-partisan research institute. Mr. Williams is the nation's foremost authority on firearm suppressors, serving as the President and Executive Director of the American Suppressor Association, a 501(c)(6) non-profit association representing the firearm suppressor industry and consumer base. Mr. Williams is also a leading expert on the Second Amendment, the Co-Founder of The Cylinder, a 501(c)(3) non-profit, non-partisan firearms training and education organization, and a member of the Board of Directors of the National Rifle Association of America.

AFPI exists to advance policies that put the American people first. Its guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities. AFPI believes the Founding Fathers enshrined in the

¹ No counsel for a party authored this brief in any part. No party or counsel contributed money intended to fund its preparation or submission. Only *amici* and their members contributed money intended to fund its preparation or submission.

Second Amendment of the Constitution the critical right to self-defense. It believes this right is the primary means of resistance and self-preservation against the volatile threat of tyranny. Yet, states across this nation look to erode this important right through burdensome, nonsensical regulations. AFPI opposes regulations that target law-abiding gun owners and seek to limit access to commonly owned firearms and accessories. Such regulations are clear infringements of the Second Amendment, and if courts do not reject them as such, millions of responsible gun owners are at risk of losing their rights.

The National Rifle Association of America (NRA) is America's oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union veterans—a general and a colonel—who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise among the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has roughly four million members, and its programs reach millions more.

SUMMARY OF THE ARGUMENT

The enactment of California Senate Bill 1384 (“SB 1384”) on January 1, 2024, ushered in a new era of constitutional infringements in the Golden State. *See* S.B. 1384, 2021-2022 Reg. Sess. (Cal. 2022). Designed as an asymmetrical deterrent to the inalienable right to keep and bear arms, this Orwellian law intentionally chills Second Amendment rights by trampling on the First Amendment to the United States Constitution, as well as the inalienable right to privacy as enumerated in Article 1, § 1 of the California Constitution.²

The law does so by requiring every Federal Firearms Licensee (FFL) in California to record and maintain 24/7 audio and video surveillance inside its premises for at least one year. Cal. Penal Code § 26806(a)(6). No exceptions are granted, even for home-based “kitchen table” FFLs.³ The intrusions do not stop there. The law also authorizes state agents to conduct warrantless inspections of the licensee’s premises

² Cal. Const. art. I, § 1.

³ “Kitchen table” FFL is the colloquial term for federally licensed firearms dealers that operate out of a residence rather than a commercial storefront.

at any time “for the purpose of inspecting the system for compliance.”
Cal. Penal Code § 26806(b)(1).

Because “all firearms purchases and transfers. . . must be made through a California licensed dealer,” an ordinary, law-abiding citizen in the state now has no plausible way to purchase a firearm legally without being recorded.⁴ This is not only unparalleled in its level of intrusion, but it also directly inhibits the free exchange of ideas and political discourse at all times within every FFL.

California’s surveillance law makes a mockery of the First Amendment rights of law-abiding gun purchasers in its unabashed quest to curtail firearms transactions. Accordingly, this Court should grant a rehearing *en banc* and hold California’s mass surveillance regime violates the rights of those seeking to legally exercise their right to bear arms.

⁴ Cal. Dep’t of Just., Frequently Asked Questions, <https://oag.ca.gov/firearms/pubfaqs> (last visited Oct. 14, 2026).

ARGUMENT

I. Section 26806 Chills Core First Amendment Speech and Association Rights.

Section 26806’s mass surveillance mandate infringes on the free speech and association protections guaranteed by the First Amendment. The First Amendment states: “Congress shall make no law. . .abridging the freedom of speech. . .or the right of the people peaceably to assemble.” U.S. Const., amend. I. Yet by targeting lawful gun buyers and sellers with an unprecedented mass-surveillance regime,⁵ California violates both of these rights and makes clear the Second Amendment and its advocates are unfavored by the state. Not only does the law subject *home-based* FFLs to constant audio-video surveillance, but as Judge Lee recognized, “gun stores are a hub of political activism where owners and patrons

⁵ “California’s surveillance law is unprecedented in its sweeping and shocking scope. Neither the federal government nor the other 49 states have ever enacted such an intrusive audio-recording requirement for any business activity.” *Richards v. Newsom*, No. 25-693, 2026 WL 2529326, at *25 (9th Cir. Aug. 27, 2026) (Lee, J., dissenting in part). *Compare* § 26806 regulating FFLs *with* § 15044 of the California Code of Regulations regulating marijuana dispensaries. Unlike FFLs, marijuana dispensaries are not required to record audio, must only keep video surveillance recordings for 90 days as opposed to one year, and certain premises, such as those of microbusinesses, are exempted while home-based “kitchen table” FFLs are not.

discuss their Second Amendment rights and their involvement in political activities.” *Richards v. Newsom*, No. 25-693, 2026 WL 2529326, at *24 (Lee, J., dissenting in part). And as this very court has recognized, surveillance is the type of government conduct that chills speech. *Ariz. Students’ Ass’n v. Ariz. Bd. of Regents*, 824 F.3d 858, 868 (9th Cir. 2016); *The Presbyterian Church v. United States*, 870 F.2d 518, 522–23 (9th Cir. 1989).

The First Amendment protects the freedom to associate and to do so anonymously. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–63 (1958). The Supreme Court has held that the government can infringe upon the freedom of association in varied ways including “requir[ing] a group to accept members it does not want, deny[ing] benefits to an organization based on its message, or punish[ing] individuals for their affiliation.” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1123 (2026). However, the Supreme Court has not limited infringement to merely overt targeting of disfavored associations but has held that a government requirement can burden freedom of association through a deterrent effect even when the requirement does not expressly prohibit speech or compel disclosure of a membership list. *Ams. for*

Prosperity Found. v. Bonta, 594 U.S. 595, 617–18 (2021). Continuous audio and video recording of conversations and identities at the very places where people commonly exercise a politically contested constitutional right predictably deters people from speaking candidly, asking questions, or associating with others. That concern is especially significant when recording is continuous, captures audio as well as video, and the recordings are retained for one year. *See* Cal. Penal Code § 26806(a)(6).

The statutory prohibition on dealers sharing or releasing the recordings, *id.* § 26806(b), does not eliminate the deterrent effect of knowing that one’s words and presence are being recorded and preserved for potential use by state actors. *See First Choice Women’s Res. Ctrs.*, 146 S. Ct. at 1130 (“[e]ven if there [is] no disclosure to the general public” the pressure of an “official demand” for private information is enough to encourage reasonable people to avoid ties and speech “which might displease” officials.). Undoubtedly, without “the ability of individuals to work together free from governmental oversight and intrusion. . .the freedom to associate may become no freedom at all.” *Id.* at 1123. Therefore, because California’s mass-surveillance regime mandates the

ever-searching eye of the state be placed even in people's homes, it chills freedom to associate and warrants "the closest scrutiny." *Alabama ex rel. Patterson*, 357 U.S. at 460–61.

The panel majority concluded that the First Amendment claim failed because the complaint did not plausibly allege that the statute regulates speech, that the government would take adverse action against speakers, or that the alleged chilling effect was supported by concrete facts. *Richards*, 2026 WL 2529326, at *19–22. But the Supreme Court has recognized that "the freedom of individuals to associate for the collective advocacy of ideas.... 'are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.'" *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 309–10 (1964) (quoting *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960)). The Court has also recognized that governmental requirements that burden associational privacy may themselves deter the exercise of First Amendment rights. *Alabama ex rel. Patterson*, 357 U.S. at 462–63; *Ams. for Prosperity Found.*, 594 U.S. at 617–18. Although those cases involved compelled disclosure rather than continuous recording, they demonstrate that the absence of an express prohibition on speech is not

dispositive. Section 26806 requires continuous recording at the very places where people acquire firearms and discuss the constitutional right to keep and bear them.

California asserts that the recording requirement helps deter theft and straw purchasing. Those are legitimate objectives, but they do not resolve whether the panel's treatment of the chilling-effect claim is consistent with Supreme Court precedent. As the dissent observed, "California's surveillance law is unprecedented in its sweeping and shocking scope," *Richards*, 2026 WL 2529326, at *25 (Lee, J., dissenting in part), extending even to home-based FFLs, and authorizing warrantless compliance inspections of recording systems. *Id.*

The Second Amendment does not exist in isolation from the other guarantees of the Bill of Rights. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality opinion)). The Court should grant rehearing *en banc* to consider whether California's sweeping surveillance mandate impermissibly burdens the speech and associational interests that accompany lawful firearm acquisition.

CONCLUSION

The surveillance requirements of California Penal Code § 26806 directly violate law-abiding Californians' First Amendment rights. To address a constitutional question of this magnitude, *amici curiae* respectfully urge this Court to grant rehearing *en banc*.

Respectfully submitted,

/s/ Tyler Cochran

TYLER COCHRAN

Counsel of Record

GINA D'ANDREA

ANDREW ZIMMITTI

AMERICA FIRST POLICY INSTITUTE

1455 Pennsylvania Avenue NW,
Suite 225

Washington, DC 20004

(703) 637-2548

tcochran@americafirstpolicy.com

/s/ Joseph Greenlee

JOSEPH G.S. GREENLEE

NRA – INSTITUTE FOR LEGISLATIVE
ACTION

11250 Waples Mill Rd.

Fairfax, VA 22030

(703) 267-1161

jgreenlee@nrahq.org

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Circuit Rule 29-2(c)(2) because this brief contains 1,724 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in 14-point, proportionally spaced Century Schoolbook font.

/s/ Tyler Cochran

Counsel for Amici Curiae

/s/ Joseph Greenlee

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on October 23, 2026, I filed the foregoing brief with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Tyler Cochran

Counsel for Amici Curiae

/s/ Joseph Greenlee

Counsel for Amici Curiae