

*In The*  
**Supreme Court of the United States**

—◆—  
IVAN PENA; DONA CROSTON; ROY VARGAS;  
BRETT THOMAS; SECOND AMENDMENT  
FOUNDATION, INC.; CALGUNS FOUNDATION, INC.,

*Petitioners,*

v.

MARTIN HORAN, DIRECTOR, CALIFORNIA  
DEPARTMENT OF JUSTICE BUREAU OF FIREARMS,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

—◆—  
**BRIEF OF AMICI CURIAE PROFESSORS OF  
SECOND AMENDMENT LAW, CITIZENS  
COMMITTEE FOR THE RIGHT TO KEEP AND  
BEAR ARMS, MOUNTAIN STATES LEGAL  
FOUNDATION, JEWS FOR THE PRESERVATION  
OF FIREARMS OWNERSHIP, INDEPENDENCE  
INSTITUTE, AND MILLENNIAL POLICY CENTER  
IN SUPPORT OF PETITIONERS**

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**INTEREST OF THE *AMICI CURIAE***<sup>1</sup>

***Amici professors*** are law professors who teach and write on the Second Amendment: Randy Barnett (Georgetown), Royce Barondes (Missouri), Robert Cottrol (George Washington), Nicholas Johnson (Fordham), Nelson Lund (George Mason), Joyce Malcolm (George Mason), George Mocsary (Southern Illinois), Joseph Olson (Mitchell Hamline), Glenn Reynolds (Tennessee), and Gregory Wallace (Campbell). As described in Appendix I, the above professors were cited extensively by this Court in *District of Columbia v. Heller* and *McDonald v. City of Chicago*. Oft-cited by lower courts as well, these professors include authors of the first law school textbook on the Second Amendment, as well as many other books and law review articles on the subject.

**The Citizens Committee for the Right to Keep and Bear Arms** is a non-profit organization dedicated to protecting firearms rights through grassroots organizing.

**Mountain States Legal Foundation** is a non-profit, public interest legal foundation dedicated to the preservation of individual liberty through litigation aimed at securing and protecting constitutional freedoms and the rule of law. The Foundation's *amicus*

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<sup>1</sup> All parties were timely notified and consented to the filing of this brief. No counsel for any party authored it in whole or in part. No person or entity other than *amici* funded its preparation or submission.

brief in *District of Columbia v. Heller* was cited in this Court's opinion.

**Jews for the Preservation of Firearms Ownership** is a non-profit educational civil rights corporation that focuses on firearms ownership and responsibility. Its work centers on the history of gun control.

**Independence Institute** is a non-partisan public policy research organization. The Institute's *amicus* briefs in *Heller* and *McDonald v. City of Chicago* (under the name of lead *amicus* Int'l Law Enforcement Educators & Trainers Association (ILEETA)) were cited in the opinions of Justices Breyer (*Heller*), Alito (*McDonald*), and Stevens (*McDonald*).

**Millennial Policy Center** is a research and educational center that develops and promotes policy solutions to advance freedom and opportunity for the Millennial Generation.



## SUMMARY OF ARGUMENT

Since 2013, California has outlawed all new models of semiautomatic handguns.

The mechanism for prohibition is a requirement that all new models include microstamping features; microstamping in general is feasible, but the conditions of California's particular requirements are literally impossible to satisfy. Thus, this case presents the novel issue of whether a constitutional right can be

conditioned on meeting an impossible government requirement.

The law grandfathered some handgun models from before 2013 but prohibits all new models. According to *District of Columbia v. Heller*, constitutional rights cannot be fossilized at some particular moment in time. 554 U.S. 570 (2008). The notion that the Second Amendment can be limited to only the types of arms in existence in a given year “border[s] on the frivolous.” *Id.* at 582.

The court below disregarded *Heller’s* express language. Moreover, to review a law banning the commercial sale of all new models of semiautomatic handguns, the court applied a special, feeble version of intermediate scrutiny. Contrary to this Court’s instructions in *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 438 (2002), the court refused to consider rebuttal evidence and upheld the ban by relying on speculation.

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## ARGUMENT

### **I. California’s ban on new models of semiautomatic handguns is unprecedented.**

There have been many Second Amendment challenges since this Court’s ruling in *District of Columbia*

*v. Heller*, 554 U.S. 570 (2008). Nearly all have challenged laws that regulate persons,<sup>2</sup> arms,<sup>3</sup> or places.<sup>4</sup>

This case is unique. No other law has categorically prohibited new handgun models. Incremental improvements from one model to another are typical for handguns, as for other consumer products. Today, no

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<sup>2</sup> Including felons (*United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009)); domestic violence misdemeanants (*United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010) (en banc)); persons subject to domestic violence protection orders (*United States v. Bena*, 664 F.3d 1180 (8th Cir. 2011)); juveniles (*United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2009)); young adults (*Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (5th Cir. 2012)); illegal aliens (*United States v. Meza-Rodriguez*, 798 F.3d 664 (7th Cir. 2015)); users of illegal drugs (*United States v. Carter*, 750 F.3d 462 (4th Cir. 2014)); and the formerly mentally ill (*Tyler v. Hillsdale Cty. Sheriff's Dep't*, 837 F.3d 678 (6th Cir. 2016) (en banc)).

<sup>3</sup> Including ammunition (*Jackson v. City & Cty. of San Francisco*, 746 F.3d 953 (9th Cir. 2014)); magazines (*Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) ("*Heller II*")); semiautomatic rifles (*New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) ("*NYSRPA I*")); machine guns (*Hollis v. Lynch*, 827 F.3d 436 (5th Cir. 2016)); suppressors (*United States v. Cox*, 906 F.3d 1170 (10th Cir. 2018)); grenades (*U.S. v. McCartney*, 357 F. App'x 73 (9th Cir. 2009) (unpublished)); and pipe bombs (*United States v. Tagg*, 572 F.3d 1320 (11th Cir. 2009)).

<sup>4</sup> In public (*Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012)); in a National Park parking lot (*United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011)); on U.S. Postal Service property (*Bonidy v. U.S. Postal Service*, 790 F.3d 1121 (10th Cir. 2015)); on Army Corps of Engineers land (*GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Engineers*, 788 F.3d 1318 (11th Cir. 2015)); and on private property (*GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244 (11th Cir. 2012)).

Californian can take advantage of the last six years of advances in ergonomics, safety, accuracy, or durability.

For example, Ruger’s Lightweight Compact Pistol (LCP) was introduced in 2007. A superior model, the LCP II, was introduced in 2016 and therefore cannot be sold in California. The new model has a better grip and improved sights—making the gun safer and more accurate for self-defense and other lawful purposes. See Ben Findley, *Ruger LCP II—Improvements to a Classic Carry Pistol*, USA CARRY, Nov. 11, 2016.<sup>5</sup>

Modern firearms increasingly incorporate adjustable ergonomics, in order to accommodate physical differences. For example, the Sig Sauer P320 handgun, which first debuted in 2014, allows users to switch between large, medium, and small grips. See James Tarr, *SIG Sauer P320 Review*, HANDGUNS, Mar. 7, 2016.<sup>6</sup> Thus, a small woman can use well-fitted grips that help her maintain a strong and firm hold on the pistol.

The amount of force necessary to rack the slide on a semiautomatic pistol has long been a problem for some users, namely, people with “physical impairments, weak hand and finger strength, mostly females, but some males, and older students with frailties (but also others).” Ben Findley, *Smith-Wesson M&P 380 Shield EZ*, USA CARRY, Feb. 27, 2018.<sup>7</sup> The problem is

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<sup>5</sup> <https://www.usacarry.com/review-ruger-lcp-2/>.

<sup>6</sup> <https://www.handgunsmag.com/editorial/sig-sauer-p320-review/137787>.

<sup>7</sup> <https://www.usacarry.com/smith-wesson-mp-380-shield-ez-review/>. For illustration of how to rack the slide, see *Racking the*

solved by an innovative new pistol from Smith & Wesson, the M&P 380 Shield EZ. *Id.*

The same problem is solved by different inventions in the new Walther CCP M2 (introduced in 2018). Its “SoftCoil” technology reduces recoil, thus allowing the gun to use a lighter recoil spring, so that the user does not have to push so hard to compress the spring. *See J. Scott Rupp, Review: Walther CCP M2, HANDGUNS, Oct. 23, 2018.*<sup>8</sup>

Californians are not allowed to purchase these new and safer guns. They may not purchase any semi-automatic handgun model introduced after May 2013. As new guns become better-fitting, more reliable, and safer, Californians are stuck with the lower-quality handguns of the past.

Thus, this case presents the novel issue of whether a constitutional right can be conditioned on meeting an impossible government requirement. *See Pena v. Lindley*, 898 F.3d 969, 1000 (9th Cir. 2018) (Bybee, J., concurring in part and dissenting in part) (“Plaintiffs’ challenge to the microstamping provision raises a novel question. The majority does not cite—nor was I able to discover—any case in which the public’s ability to exercise a constitutional right was dependent on the

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*Slide of Your Gun*, THE WELL-ARMED WOMAN, <https://thewellarmedwoman.com/training-handling/racking-the-slide-of-your-gun/>.

<sup>8</sup> <http://www.handgunsmag.com/editorial/review-walther-ccp-m2/326581>.

technological feasibility of a requirement imposed by the government.”).

Since 2013, California has prohibited any new models of semiautomatic handguns from being sold commercially unless the handgun is “designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired.” Cal. Penal Code § 31910(b)(7)(A).

Yet California produced no evidence that the requirement can be met. It was enough for the majority below that California “predict[ed] as a policy judgment that gun manufacturers are capable” of meeting the requirement. *Pena*, 898 F.3d at 984.

To the majority, legislative speculation was more important than “evidence that gun manufacturers have not produced a functioning, commercially available semiautomatic pistol equipped with the microstamping technology.” *Id.* at 983 (quotations omitted). No one has been able to make even a prototype that complies with California’s particular standards. “So far as we can tell from the meager record before us, no one—including CDOJ—has ever tested any weapon against California’s protocol to see whether it is technologically feasible.” *Id.* at 988 (Bybee, J., concurring in part and dissenting in part).

By banning all new firearms that lack impossible features, California has frozen firearms technology in 2013. “The result of CDOJ’s restrictive testing protocol is undisputed: since at least 2013, no new handguns have been sold commercially in California.” *Id.* at 989 (Bybee, J., concurring in part and dissenting in part).

This Court in *Heller* spoke directly to Second Amendment technology. Rejecting the argument that firearms technology could be frozen in time, this Court explained that all bearable arms are *prima facie* protected:

Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications, *e.g.*, *Reno v. American Civil Liberties Union*, 521 U.S. 844, 849, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997), and the Fourth Amendment applies to modern forms of search, *e.g.*, *Kyllo v. United States*, 533 U.S. 27, 35–36, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001), the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.

*Heller*, 554 U.S. at 582.<sup>9</sup>

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<sup>9</sup> This Court determined that communications over the Internet are free speech protected by the First Amendment in *Reno*, 521 U.S. at 849. It would thus be unconstitutional for California



The Second Amendment applies just the same to arms from 2008 as to arms from 1791. Thus, the Amendment also applies equally to firearms from 2014 as from 2012. “It is hard to imagine language speaking more directly to the point” than *Heller* did. *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1030 (2016) (Alito, J., concurring).

The closest comparison to California’s technological freeze was the Massachusetts approach that this Court rejected in *Caetano*.

In *Caetano*, this Court reversed the Supreme Judicial Court of Massachusetts’s decision upholding a ban on electric stun guns “after examining ‘whether a stun gun is the type of weapon contemplated by Congress in 1789 as being protected by the Second Amendment.’” *Id.* at 1027 (quoting *Com. v. Caetano*, 470 Mass. 774, 777 (2015)). The Massachusetts court upheld the stun gun ban in part because stun guns “were not in common use at the time of the Second Amendment’s enactment,” and because stun guns are “a thoroughly modern invention.” *Id.* at 781.<sup>10</sup>

This Court held that the Massachusetts court’s restriction on modern technology was “inconsistent with *Heller*’s clear statement that the Second Amendment

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to ban all new political speech over the Internet that is transmitted at anything less than an infeasible 300 terabits-per-second.

<sup>10</sup> The same approach was also taken in *Friedman v. City of Highland Park*, 784 F.3d 406, 410 (7th Cir. 2015) (“we think it better to ask whether a regulation bans weapons that were common at the time of ratification”).

‘extends . . . to . . . arms . . . that were not in existence at the time of the founding.’” *Id.* at 1027–28 (quoting *Heller*, 554 U.S. at 582).

Notably, the unconstitutional Massachusetts test allowed for new technology under some circumstances—by using “a contemporary lens” to determine whether stun guns “are readily adaptable to use in the military.” *Id.* at 1028. The California microstamping law, conversely, provides no exception. No new semiautomatic handgun is allowed under any condition without the impossible microstamping feature.

The majority below believed it found an analog in *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010). The Third Circuit in *Marzzarella* upheld 18 U.S.C. § 922(k)’s ban on firearms with a “removed, obliterated, or altered” serial number. The majority below reasoned that “California law does not go so far—it does not ban possession or use of guns manufactured without microstamping features”; it merely prohibits the commercial manufacture and sale of such arms. *Pena*, 898 F.3d at 985. Therefore, the majority determined, the microstamping requirement “implicate[s] the rights of gun owners far less than laws directly punishing the possession of handguns.” *Id.* at 986.

The majority overstated the burden of § 922(k). The serial number requirement “was neither designed to nor has the effect of prohibiting the possession of any class of firearms.” *Marzzarella*, 614 F.3d at 97. Indeed, “§ 922(k) does not come close to this level of infringement. It leaves a person free to possess any

otherwise lawful firearm he chooses—so long as it bears its original serial number.” *Id.* In that sense, § 922(k)’s serial number requirement “is more accurately characterized as a regulation of the manner in which persons may lawfully exercise their Second Amendment rights.” *Id.* No one has ever denied that manufacturers can easily stamp a serial number somewhere on a gun.

In contrast, no one has ever shown that the micro-stamping of ammunition in the manner that California demands is possible. Thus, the microstamping requirement effectively prohibits all new semiautomatic handguns and “has the effect of prohibiting the possession of [a] class of firearms.” *Marzzarella*, 614 F.3d at 97. Consequently, it is more like the District of Columbia’s handgun ban struck down in *Heller*: “an example of a law at the far end of the spectrum of infringement on protected Second Amendment rights.” *Marzzarella*, 614 F.3d at 97.

## **II. The Ninth Circuit applied a feeble, watered-down version of intermediate scrutiny.**

Striking down the handgun ban in *Heller*, this Court declared that it “would fail constitutional muster” “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights.” 554 U.S. at 628–29. Like the handgun ban in *Heller*, California’s de facto ban “extends . . . to the home, where the need for defense of self, family, and property is most acute,” and it applies to “the most preferred firearm in

the nation to ‘keep’ and use for protection of one’s home and family.” *Id.*<sup>11</sup>

Nonetheless, the majority below applied only intermediate scrutiny. If intermediate scrutiny had been applied properly, the law would fail under even that generous standard. But the majority applied a special, feeble version of intermediate scrutiny that resembles rational basis review.

Under intermediate scrutiny, “[t]he requirement of narrow tailoring is satisfied so long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation, and the means chosen are not substantially broader than necessary to achieve that interest.” *Ward v. Rock Against Racism*, 491 U.S. 781, 782–83 (1989). The microstamping law satisfies neither requirement.

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<sup>11</sup> Although the ban does not formally encompass home possession, the ban on commercial sales makes it essentially impossible to acquire a new model handgun to keep in the home (except in rare circumstances, such as inheritance from a relative in another state).

Among all firearms, handguns are “overwhelmingly chosen by American society for” self-defense. *Heller*, 554 U.S. at 628 (citation omitted). Among handguns, semiautomatic handguns are most popular.

In 2017, 3,601,431 semiautomatic handguns were manufactured, compared with 713,577 revolvers, 2,486,941 rifles, and 635,239 shotguns. *Annual Firearms Manufacturing and Export Report: Year 2017 Interim*, ATF, July 27, 2018, <https://www.atf.gov/file/130851/download>.

**A. The State’s interests would be achieved just as effectively without the microstamping requirement.**

California’s microstamping requirement is remarkable not only because of its extraordinary burden, but also because it does nothing to further the governmental interests—in fact, it is counterproductive.

“California’s two stated objectives for the microstamping requirement [are] public safety and crime prevention.” *Pena*, 898 F.3d at 981–82. Specifically, the majority below found that “limiting the availability of untraceable bullets serves a substantial government interest.” *Id.* at 982. Maybe so. But California’s microstamping law has not limited the availability of untraceable bullets in any manner. Nor has it done anything to enhance public safety or prevent crime. Because no manufacturer has been able to produce a firearm that meets the criteria, the law has had no effect whatever, aside from burdening the constitutional rights of law-abiding citizens:

If the legislature (or CDOJ, seeking to implement the legislature’s instructions) has adopted safety requirements that no gun manufacturer can satisfy, then the legislature has effectively banned the sale of new handguns in California. The effect of this result on our intermediate-scrutiny analysis is clear: the fit between California’s interest in solving handgun crimes and the microstamping requirement would not only fail to be reasonable, it would be non-existent. The requirement

would severely restrict what handguns Californians can purchase without advancing the State’s interest in solving handgun crimes—or any government interest—one iota.

*Id.* at 989 (Bybee, J., concurring in part and dissenting in part).

Since the microstamping feature has not had any effect on the State’s interests, the State’s interests would be achieved just as effectively without it. Thus, the law fails intermediate scrutiny.

Rather than acknowledge the law’s futility, the majority below speculated that manufacturers were capable of complying with the requirement but were refusing to do so. *Id.* at 982–83 (“The reality is not that manufacturers cannot meet the standard but rather that they have chosen not to.”); *id.* at 983 (“We thus find it odd, indeed, that the manufacturers . . . refuse to modernize their firearms by installing microstamping features.”).

There was no evidence that manufacturers can comply with the California microstamping regime but choose not to. With about a ninth of the U.S. population, California is a very large market for firearms sales. See *NICS Firearm Background Checks: Month/Year by State*, FBI.<sup>12</sup> By not selling new handgun models in California, manufacturers lose out on substantial revenue.

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<sup>12</sup> [https://www.fbi.gov/file-repository/nics\\_firearm\\_checks\\_-\\_month\\_year\\_by\\_state.pdf/view](https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year_by_state.pdf/view).

While the Ninth Circuit speculated that firearms manufacturers prefer to forego enormous revenue rather than cater to California, manufacturer behavior is just the opposite. California has other laws that impose unusual restrictions on semiautomatic rifles. These laws prohibit rifles from having certain useful features, such as adjustable stocks or detachable magazines. In order to sell into the California market, many rifle makers have modified their rifles to comply with California standards. Other rifle makers already made guns that lacked the features that California forbids. So there are hundreds of models of rifles that are touted as “California legal.” Appendix II lists these many rifles. *See also California Compliant: LWRCI Patent-Pending California Solution For All Rifles Models*, LWRCI (describing how LWRCI modifies normal rifles in order to prevent the magazine from being detached);<sup>13</sup> *California Legal Compliance Parts*, ATLANTIC FIREARMS (parts and kits to make rifles “California legal” by disabling various standard features of rifles);<sup>14</sup> *Frequently Asked Questions*, DANIEL DEFENSE (“We do manufacture a California Compliant version of each of our carbines that comes complete with a Mag Lock as well as a limited capacity magazine.”).<sup>15</sup>

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<sup>13</sup> <https://www.lwrci.com/pdfs/lwrci-cac-sellsheet.pdf>.

<sup>14</sup> <https://www.atlanticfirearms.com/taxons/california-legal-compliance-parts>.

<sup>15</sup> <https://danieldefense.com/faq/>.

Manufacturers can—and do—comply with the California rifle standards, such as by replacing an adjustable stock with an (inferior) fixed stock. Their willingness to comply with California laws is not an issue. But handgun manufacturers cannot make handguns that comply with the terms of the double microstamping law.

There is no evidence that anyone can satisfy California’s microstamping protocol. Indeed, the majority acknowledged as much. *Pena*, 898 F.3d at 985 (“Even if microstamping proves technologically infeasible . . .”).

Consequently, no firearm with the microstamping feature is on the market, as all parties admit. *Id.* at 989 (Bybee, J., concurring in part and dissenting in part) (“The result of CDOJ’s restrictive testing protocol is undisputed: since at least 2013, no new handguns have been sold commercially in California”).

Perversely, the microstamping requirement substantially nullifies the other safety requirements the Plaintiffs challenge. Since 2007, California has required that any new semiautomatic handgun contain a chamber load indicator (“CLI”) and a magazine disconnect mechanism (“MDM”). Cal. Penal Code § 31910(b)(5). But since the microstamping requirement has prevented any new handgun from being sold since 2013, “[t]he only guns commercially sold in California are grandfathered from these provisions.” *Pena*, 898 F.3d at 989 (Bybee, J., concurring in part and dissenting in part). “The consequence is obvious. Today, no one in California can purchase handguns that have the



safety features the legislature thought critical for saving lives. . . . This is a totally perverse result.” *Id.* (Bybee, J., concurring in part and dissenting in part).<sup>16</sup>

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<sup>16</sup> The CLI and MDM requirements are problematic—although unlike the microstamping requirement, CLIs and MDMs do exist and can be incorporated into handgun manufacture.

To be precise, older model handguns with CLIs and MDMs are available to some degree in California. First, they were always available in pre-2007 guns, to the limited extent that there was consumer demand for these features. Second, CLIs and MDMs exist on models introduced after the 2007 California mandate but before the May 2013 freeze on all new models. *See, e.g., Kahr Arms Releases California-Legal P380*, KAHR ARMS, Jan. 3, 2011, <https://www.kahr.com/kahr-arms-releases-california-legal-p380/>.

As the Plaintiffs argue, the MDM and CLI mandates are unconstitutional. The magazine disconnect requirement strikes at “the core lawful purpose of self-defense,” *Heller*, 554 U.S. at 630, by rendering a semiautomatic handgun useless unless a magazine is inserted. Hence, although MDMs have long been available, Americans overwhelmingly prefer guns without them. In a defensive situation, if a magazine is malfunctioning, the defender can remove the magazine, and still be able to fire the one round that remains in the handgun’s firing chamber. Similarly, if a magazine is removed or dislodged, in a struggle or inadvertently, the pistol will still fire at least the round in the chamber. California acknowledges that magazine disconnects impair self-defense, since California exempts law enforcement guns from the magazine disconnect requirement. Cal. Penal Code § 32000(b)(4). *See generally* Cynthia Leonardatos, Paul H. Blackman, & David B. Kopel, *Smart Guns/Foolish Legislators: Finding the Right Public Safety Laws, and Avoiding the Wrong Ones*, 34 CONN. L. REV. 157, 167 (2001).

The requirement for chamber load indicators does not impair the defensive function of a handgun. But it too can be contrary to safety. CLIs have generally been disfavored by buyers because they encourage people to ignore the fundamental rule of gun safety: treat every gun as if it is loaded. *Id.* at 217. California’s

**B. The Ninth Circuit ignored rebuttal evidence.**

The majority below explained that under the Ninth Circuit’s Second Amendment intermediate scrutiny, “California’s evidence need only ‘fairly support’ its conclusions.” *Id.* at 982 (quoting *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 969 (9th Cir. 2014)) (brackets omitted). But this Court’s precedent requires more.

In *City of Los Angeles v. Alameda Books*, this Court established that the *first* step of intermediate scrutiny analysis is whether the State’s evidence “fairly support[s]” its rationale. 535 U.S. 425, 438 (2002). If the State meets its initial burden, the plaintiffs have an opportunity to “cast direct doubt on this rationale, either by demonstrating that the [government’s] evidence does not support its rationale or by furnishing evidence that disputes the [government’s] factual findings.” *Id.* at 438–39. “If plaintiffs succeed in casting doubt on a [government] rationale in either manner, the burden shifts back to the [government] to supplement the record with evidence renewing support for a theory that justifies its ordinance.” *Id.* at 439.

Had the Ninth Circuit applied *Alameda Books*, the microstamping requirement would have been struck down. After the Plaintiffs cast doubt on the State’s

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own gun safety instruction wisely tells users not to rely on CLIs. Pet. Br. at 7.

evidence and purported facts, the State offered nothing in return.

“The critical factual question raised by Plaintiffs is whether any handgun is capable of satisfying the testing protocol for microstamping set out in the UHA and its regulations.” *Pena*, 898 F.3d at 990 (Bybee, J., concurring in part and dissenting in part).

“The State relies solely on a declaration from microstamping’s inventor, Todd Lizotte.” *Id.* at 993. Lizotte stated that in 2007, he equipped a Smith & Wesson .40 caliber handgun with a microstamped firing pin and fired 2,500 rounds. He declared that “all eight microstamped digits from the firing pin were legible 97% of the time,” while “breech face markings transferred to cartridge casings were legible 96% of the time.” *Id.* (Bybee, J., concurring in part and dissenting in part). There was no evidence—or even contention—however, that these results would satisfy California’s microstamping requirement.

Nonetheless, the majority below concluded that “California has gone well beyond this threshold requirement” of showing that its evidence fairly supports its rationale for the law. *Id.* at 982.

After finding that the State had met the “threshold requirement,” the majority should have considered whether the Plaintiffs’ evidence “cast direct doubt on this rationale, either by demonstrating that the [State’s] evidence does not support its rationale or by furnishing evidence that disputes the [State’s] factual findings.” *Alameda Books*, 535 U.S. at 438–39.

The Plaintiffs cited “several studies regarding microstamping’s technological feasibility.” *Pena*, 898 F.3d at 992 (Bybee, J., concurring in part and dissenting in part). One of these was a study co-authored by Lizotte that notes several problems with microstamping technology and “acknowledges that the alphanumeric characters microstamped on a casing can become ‘deformed, or partially removed due to the firing and cartridge ejection process.’” *Id.* (quoting T. Grieve, et al., *Gear Code Extraction from Microstamped Cartridges*, 45 AFTE J. 64, 64 (2013)). Lizotte’s own study further noted that “the ability to identify characters imprinted on a casing may depend on the use of a scanning electron microscope.” *Id.* at 993 (Bybee, J., concurring in part and dissenting in part) (citing Grieve, *Gear Code Extraction from Microstamped Cartridges*, at 68).

The admission of the need for an electron microscope reveals a significant flaw in California’s protocol: “this equipment is not currently permitted under the [State’s] testing protocol and the use of only an optical microscope is unaccounted for in the State’s evidence.” *Id.* Indeed, “Lizotte’s declaration never explains how often imprints are legible using only the equipment allowed for in the microstamping protocol.” *Id.*

Additionally, the Plaintiffs introduced declarations from CEOs of two of the nation’s leading firearms manufacturers, Michael Fifer of Sturm, Ruger & Co., Inc. and James Debney of Smith & Wesson Corp. “Fifer states that ‘Ruger believes that California’s microstamping regulations make compliance impossible. Quite simply, the state law requires the technology to

perform at a level that Ruger cannot practically implement and, to our knowledge, has never been achieved by any manufacturer.’” *Id.* at 992 (Bybee, J., concurring in part and dissenting in part).

Similarly, “Debney states that ‘Smith & Wesson does not believe it is possible currently to comply with California’s microstamping regulations. Quite simply, the state law requires the technology to perform at a level that it cannot. . . . As it appears infeasible to comply with the CA DOJ microstamping regulations, Smith & Wesson does not have the ability or plans to incorporate microstamping in its semiautomatic handguns.’” *Id.*

As discussed in Part II.A, firearms manufacturers do comply with special California laws when they *can* comply; they make hundreds of models of “California legal” semiautomatic rifles. Although the court below was puzzled about why handgun manufacturers are not selling in California, the fact that they are not selling is evidence that they cannot sell.

Because the Plaintiffs successfully cast doubt on the State’s rationale, the burden should have shifted back to the State to produce additional evidence justifying the microstamping requirement. *Alameda Books*, 535 U.S. at 439. Of course, “the question of technological feasibility—in the sense of whether a manufacturer can satisfy the testing protocol—is one that can be readily answered in a laboratory.” *Pena*, 898 F.3d at 1001 (Bybee, J., concurring in part and dissenting in part). In other words, if the microstamping

requirement could possibly be complied with, California could have quickly proven so and thereby satisfied its burden under *Alameda Books*. California's failure to do so is a tacit admission that compliance is impossible.

“Given the conflict of evidence on this very point, the majority should not [have] conclude[d] that the microstamping requirement survives intermediate scrutiny.” *Pena*, 898 F.3d at 1002 (Bybee, J., concurring in part and dissenting in part).

### **III. The Ninth Circuit treated the Second Amendment as a second-class right.**

The Second Amendment is not a “second-class right” to be “singled out for special—and specially unfavorable—treatment.” *McDonald v. City of Chicago*, 561 U.S. 742, 778–79, 780 (2010).

By applying a special, feeble version of heightened scrutiny for the Second Amendment, the Ninth Circuit treats the Second Amendment as a second-class right.

Other circuits do the same, allowing the government to prevail on thin or conclusory evidence and ignoring rebuttal evidence. *See, e.g., NYSRPA I*, 804 F.3d at 261 (upholding bans on common arms by looking only at government evidence that “fairly supports” the bans, and ignoring contrary evidence); David B. Kopel & Joseph G.S. Greenlee, *The Federal Circuits’ Second Amendment Doctrines*, 61 ST. LOUIS L.J. 193, 294–95 (2017) (criticizing one-sided view of evidence); *New*

*York State Rifle & Pistol Ass’n, Inc. v. City of New York*, 883 F.3d 45, 63–64 (2d Cir. 2018) (“*NYSRPA II*”), cert. granted sub nom. *New York State Rifle & Pistol Ass’n, Inc. v. City of New York*, No. 18-280, 2019 WL 271961 (U.S. Jan. 22, 2019) (ban on taking registered handguns outside of New York City upheld on basis of conclusory affidavit of government official, with no data or details).

Justices of this Court have lamented the lower courts’ disregard for its Second Amendment precedents. See *Jackson v. City & Cty. of San Francisco*, 135 S. Ct. 2799, 2799 (2015) (Thomas, J., joined by Scalia, J., dissenting from denial of certiorari) (“Despite the clarity with which we described the Second Amendment’s core protection for the right of self-defense, lower courts, including the ones here, have failed to protect it.”); *Friedman v. City of Highland Park*, 136 S. Ct. 447, 447 (2015) (Thomas, J., joined by Scalia, J., dissenting from denial of certiorari) (denouncing “non-compliance with our Second Amendment precedents” by “several Courts of Appeals”); *Peruta v. California*, 137 S. Ct. 1995, 1999 (2017) (Thomas, J., joined by Gorsuch, J., dissenting from denial of certiorari) (noting “a distressing trend: the treatment of the Second Amendment as a disfavored right.”); *Caetano*, 136 S. Ct. at 1033 (Alito, J., joined by Thomas, J., concurring) (admonishing “[t]he lower court’s ill treatment of *Heller*”).

Justice Thomas’s previous condemnation of the Ninth Circuit’s treatment of the Second Amendment as a second-class right is especially relevant here:

The Ninth Circuit claimed to be applying intermediate scrutiny, but its analysis did not resemble anything approaching that standard. It allowed California to prove a governmental interest with speculation instead of evidence. . . . The Ninth Circuit would not have done this for any other constitutional right, and it could not have done this unless it was applying rational-basis review.

*Silvester v. Becerra*, 138 S. Ct. 945, 948 (2018) (Thomas, J., dissenting from denial of certiorari).

This case presents an especially flagrant violation of the right. The court below violated the rules of intermediate scrutiny in order to uphold a law that strikes at the core of the Second Amendment. By de facto banning all handgun models created since 2013, the court flouted *Heller*'s rule against technological freezes.

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## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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**Appendix I: *Amici* Professors**

Randy E. Barnett is Carmack Waterhouse Professor of Legal Theory at the Georgetown University Law Center and is Director of the Georgetown Center for the Constitution. He is the author of 12 books, including the textbook *Constitutional Law: Cases in Context* (3d ed. 2018). Among the cases he has litigated are *NFIB v. Sebelius* and *Gonzales v. Raich*. His scholarship has been cited by the D.C., Third, Sixth, Seventh, Ninth, and Eleventh Circuits; the supreme courts of New Jersey, Oklahoma, Oregon, Washington, and Wisconsin; and federal district courts in six states.

Royce de R. Barondes is James S. Rollins Professor of Law at the University of Missouri School of Law. He teaches firearms law and business law. His research on firearms law is published by the *Houston Law Review* and University of Virginia *Journal of Law & Politics*.

Robert J. Cottrol is Harold Paul Green Research Professor of Law at George Washington. His scholarship was cited in Justice Thomas's concurring opinions in *McDonald v. Chicago* and *Printz v. United States*, and by the Fourth Circuit in *Kolbe v. Hogan*, 849 F.3d 114 (2017) (Traxler, J., dissenting). Prof. Cottrol is author of four legal history books on race and law, and editor of a three-volume anthology of the right to arms. He wrote the entries for "The Right to Bear Arms" in *The Oxford International Encyclopedia of Legal History* and "The Second Amendment" in *The Oxford Companion to the Supreme Court of the United States*. His Second Amendment scholarship has been published in

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the *Yale Law Journal*, *Georgetown Law Journal*, and *Journal of American Legal History*.

Nicholas J. Johnson is Professor of Law at Fordham University, School of Law. He is co-author of the first law school textbook on the Second Amendment, *Firearms Law and the Second Amendment: Regulation, Rights, and Policy* (Aspen Pub. 2d ed. 2017) (with David B. Kopel, George A. Mocsary, and Michael P. O’Shea). The casebook has been cited by majorities in *People v. Chairez* (Supreme Court of Illinois) and *Grace v. District of Columbia* (D.C. Cir.), and by dissents in *Drake v. Filko* (3d Cir.) and *Heller II* (D.C. Cir.). Professor Johnson is also author of *Negroes and the Gun: The Black Tradition of Arms* (2014). His articles on the right to arms have been published by the *Hastings Law Review*, *Ohio State Law Journal*, and *Wake Forest Law Review*. Other courts citing his right to arms scholarship include the Seventh Circuit, Eastern District of New York, and Washington Court of Appeals.

Nelson Lund is University Professor at George Mason University, Antonin Scalia Law School. He is author of the entry on “District of Columbia v. Heller,” in *The Oxford Guide to United States Supreme Court Decisions* (2d ed. 2009). His Second Amendment scholarship has appeared in the *UCLA Law Review*, *Hastings Law Journal*, *Georgetown Journal of Law and Policy*, and *Constitutional Commentary*. That scholarship has been cited by the D.C., Third, Fifth, Seventh, Eighth, and Ninth Circuits; federal district courts in Illinois and Virginia; and the Illinois Appellate Court,

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the Virginia Court of Appeals, the Washington Supreme Court, and the Wyoming Supreme Court.

Joyce Malcolm is Patrick Henry Professor of Constitutional Law and the Second Amendment at George Mason University, Antonin Scalia Law School. She is author of seven books on British and American history, most notably *To Keep and Bear Arms: The Origins of an Anglo-American Right* (Harvard Univ. Pr. 1994). The book was cited by the majority opinions in *District of Columbia v. Heller* and *McDonald v. City of Chicago*, by Justice Thomas's concurrence in *Printz v. United States*, and by the D.C., Fourth, and Ninth Circuits; by federal district courts in Oregon, Pennsylvania, Texas, and West Virginia; and by the Oregon Supreme Court, Oregon Court of Appeals, and Washington Supreme Court.

George A. Mocsary is Associate Professor of Law, Director of Faculty Development, and Director of the Law and Economics Program at Southern Illinois University School of Law. He is co-author of the textbook *Firearms Law and the Second Amendment*, described more fully in conjunction with Professor Johnson. His articles have appeared in the *BYU Law Review*, *George Washington Law Review*, and *Duke Law Journal Online*. His Second Amendment scholarship was cited by this Court in *McDonald v. Chicago*, and by the Fourth and Seventh Circuits.

Joseph E. Olson is emeritus Professor of Law at Mitchell Hamline School of Law, where he taught Second Amendment, business law, and tax law. His

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scholarship on the right to arms was cited by *District of Columbia v. Heller*, and also by the Ninth Circuit, Eastern District of New York, and Washington Supreme Court. His articles on the right to arms have appeared in the *Stanford Law and Policy Review*, *Georgetown Journal of Law & Public Policy*, and *Michigan Journal of Law Reform*.

Glenn H. Reynolds is Beauchamp Brogan Distinguished Professor of Law at the University of Tennessee College of Law, where he teaches constitutional law and technology law. His constitutional scholarship has been published in the *Columbia Law Review*, *Virginia Law Review*, *University of Pennsylvania Law Review*, *Wisconsin Law Review*, and *Northwestern University Law Review*. The Seventh Circuit cited his scholarship as a model of “originalist interpretive method as applied to the Second Amendment.” *Ezell v. City of Chicago*, 651 F.3d 684, 699 n.11 (7th Cir. 2011). In addition, his right to arms scholarship has been cited by the First, Third, Fourth, Fifth, Seventh, Eighth, and Ninth Circuits; by federal district courts in Wisconsin, Illinois, and Texas; and by the Supreme Courts of Kentucky and Oregon.

E. Gregory Wallace is Professor of Law at Campbell University School of Law, where his constitutional law courses include the Second Amendment. He recently supervised a Campbell Symposium on the anniversary of the *Heller* decision, and is author of an article on “assault weapons” in a recent symposium of the *Southern Illinois Law Journal*. He is co-author

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of forthcoming online supplemental chapters in the  
Johnson et al. *Firearms Law* textbook.

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## **Appendix II: California Compliant Semiautomatic Rifles**

The following are listed in order of caliber, starting with the smallest.<sup>1</sup> Caliber is a measure of cartridge diameter. Calibers may be identified by fractions of an inch (e.g., .22 = 22/100 of an inch. .223 = 223/1000 of an inch). Or the caliber may be identified by millimeters (e.g., 5.56, 9). A second number, when preceded by an “x”, is casing length. So 5.45x39 is 5.45 millimeters wide and 39 millimeters long.

### **5.45x39**

1. Molot/FIME VEPR 16in
2. Molot/VEPR AK-74-11-Side Folder

### **.22 LR**

(“.22 long rifle.” As distinct from other .22 caliber cartridges, such as .22 Short.)

1. ATI GSG MP-40
2. ATI GSG STG-44
3. Colt M4
4. GSG 522 SD
5. HK G36
6. HK 416 D145RS

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<sup>1</sup> This list was compiled from the website of Wilde Built Tactical, a San Diego gun store. All of the semiautomatic rifles are listed as “California legal.” <https://wbtguns.com/categories/California-Legal-semi-auto-rifles.html>.

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7. HK MP5 A5
8. ISSC MK22

**.22 MAG/WMR**

1. Kel-Tec CMR-30
2. Kel-Tec CMR-30 Titanium

**.223/5.56**

(This is the most common caliber for rifles based on the AR-15 platform.)

1. Adams Arms Agency Rifle
2. Adams Arms Base Carbine
3. Adams Arms Base Mid-Length
4. Adams Arms C.O.R. Ultra Lite
5. Adams Arms Mid Tactical Evo
6. Adams Arms Mid Tactical Evo XLP
7. Adams Arms Ultra Lite
8. Anderson AM-15 BR
9. Anderson AM-15
10. APF Carbine with Vortex StrikeFire
11. APF Carbine with EOTech 512.A65
12. Armalite M15 "3 Gun" 13.5in Barrel
13. Armalite M15 "3 Gun" 18in Carbine
14. ATI OMNI Hybrid
15. Barrett REC7 DI



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16. BCM 5.56 RECCE-14in KMR-A
17. Bravo Company M4 Carbine Mod 0
18. Bravo Company M4 Carbine Mod 2
19. Bravo Company M4 Mid-Length Mod 0
20. Bravo Company M4 Mid-Length Mod 2
21. Bravo Company MK12 MOD O-A5 FDE
22. Bravo Company RECCE 16 Mod 0 W/KMR-A RAIL
23. Bravo Company RECCE 16 Mod 0 W/Rail
24. Bushmaster ACR Basic
25. Bushmaster ACR DMR
26. Bushmaster ACR enhanced
27. LWRC IC-A5
28. LWRC IC-SPR
29. CMMG Mk4 LE
30. CMMG Mk4 RCE
31. CMMG Mk4 S
32. CMMG Mk4 T
33. Colt Enhanced Patrol
34. Colt Expanse M4 Carbine
35. Colt LE6920 HBPW M4 Carbine
36. Colt LE6920 M4 Carbine
37. Colt LE6920 M4 Magpul
38. Colt LE6920 M4 Magpul MOE SL
39. Colt LE6920 M4 Socom

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40. Colt LE6960 Combat Unit Carbine
41. Colt M4 LE6920 OEM1
42. Colt M4 LE6920 OEM2
43. Colt Trooper Optic Ready Carbine LE6920-R
44. CORE 15 Scout
45. CZ Bren 805 Carbine
46. Daniel Defense DDM4 V7 Pro
47. Daniel Defense M4 V11 (M-LOK)
48. Daniel Defense M4 V11 LW (M-LOK)
49. Daniel Defense M4 V11 PRO (M-LOK)
50. Daniel Defense M4 V11(Keymod)
51. Daniel Defense M4 V5
52. Daniel Defense M4 V5S
53. Daniel Defense M4 V1
54. Daniel Defense M4 V5
55. Daniel Defense M4 V7 LW (M-LOK)
56. Daniel Defense M4 V7 PRO (M-LOK)
57. Daniel Defense M4 V7 SLW (M-LOK)
58. Daniel Defense M4 V7 (M-LOK)
59. Daniel Defense Mk 12
60. Daniel Defense V9
61. Del-Ton DT Sport Mod2
62. Del-Ton Echo 316 B5 Systems
63. Del-Ton Echo 316
64. Diamondback DB15-CCB

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65. Diamondback DB15-CMLB
66. Diamondback DB15E-FDE
67. Diamondback DB15EB
68. Diamondback DB15USB
69. DPMS Oracle
70. FIME VEPR Super 223REM 21.6in
71. Fire For Effect M109
72. FN FN15 M16 Collector
73. FN FN15 M4 Collector
74. FN M249 Para-FDE
75. FNH FN15 Carbine
76. FNH FN15 Competition
77. FNH FN15 DMR II
78. FNH FN15 Patrol Carbine
79. FNH FN15 Sporting
80. FNH FN15 SRP Tactical
81. FNH FN15 Tactical II Carbine
82. FNH M249S Paratrooper
83. FNH M249S SAW
84. FNH M249S SAW-FDE
85. FNH USA SCAR 16S
86. HK MR556A1
87. IWI GALIL
88. IWI Tavor SAR 16
89. IWI Tavor SAR 18

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90. IWI Tavor X95 16in
91. IWI Tavor X95 16in-FDE
92. IWI Tavor X95 16in-OD
93. IWI Tavor X95 16in Left-Handed
94. IWI Tavor X95 18in
95. IWI Tavor X95 18in-FDE
96. IWI Tavor X95 18in-OD
97. Kel-Tec RDB
98. Kel-Tec SU16 CA
99. Kel-Tec SU16A
100. Kel-Tec SU16B
101. Kel-Tec SU16B-FDE
102. LWRC DI Rifle
103. LWRC IC DI
104. Molot/FIME VEPR 16in
105. Noveske Infidel
106. Noveske Infidel Gen I
107. Noveske Recon Gen III
108. Noveske Recon Rogue Hunter
109. Noveske SPR 18in
110. POF P415 Edge Gen4
111. POF P415 Edge Gen4-NP3
112. POF Renegade DI
113. POF Renegade PLUS DI
114. PWS MK114 Mk1Mod2 14.5in Barrel

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115. PWS MK116 Mk1Mod2 16in Barrel
116. PWS MK118 Mk1Mod2 18in Barrel
117. Rock River Arms LAR15 Varmint A4
118. Ruger AR556
119. Ruger AR556-FDE
120. Ruger AR556 MPR
121. Ruger Mini 14 Tactical
122. Ruger SR556 Takedown
123. Sig Sauer P556XI 223REM
124. Sig Sauer 516 Patrol
125. Sig Sauer M400 Elite
126. Sig Sauer M400 Elite with ROMEO5
127. Sig Sauer M400 Elite Titanium
128. Sig Sauer MCX
129. Sig Sauer MCX Virtus Patrol
130. Sig Sauer MCX Virtus Patrol-FDE
131. Sig Sauer SIGM400 Enhanced
132. Smith and Wesson M&P15 Sport II
133. Smith and Wesson M&P15
134. Smith and Wesson M&P15 MOE MID
135. Smith and Wesson M&P15 VTAC II
136. Smith and Wesson M&P15T
137. Smith and Wesson M&P15X
138. Spike's A2 Retro
139. Spike's M4LE

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140. Spike's Spartan
141. Spike's Tactical Crusader
142. Spike's Tactical Pipe Hitters Union  
Skull
143. Springfield Saint EDGE
144. Springfield Saint
145. Stag Arms STAG-15 M1 with carry handle
146. Stag Arms STAG-15 M2
147. Stag Arms STAG-15 M3
148. Stag Arms STAG-15 M3G
149. Stag Arms STAG-15 M3TM
150. Stag Arms STAG-15 M4
151. Steyr Arms AUG A3 M1 (Long Rail)
152. Steyr Arms AUG A3 M1 (Long Rail) NATO  
Stock
153. Steyr Arms AUG A3 M1 (1.5x Optic) NATO  
Stock
154. Steyr Arms AUG A3 M1 (1.5x Optic)
155. Steyr Arms AUG A3 M1 (3.0x Optic)
156. Steyr Arms AUG A3 M1 (High Rail)
157. Steyr Arms AUG A3 M1 (Long Rail)
158. Steyr Arms AUG A3 M1 (Long Rail) NATO  
Stock
159. Steyr Arms AUG A3 M1 (Short Rail)
160. Steyr Arms AUG A3 M1 (Short Rail) NATO  
Stock

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161. Windham MPC M4
162. Windham SRC M4
163. Windham Weaponry R16M4 Dissipator
164. Windham Weaponry R20 Vex SA
165. Windham Weaponry RCNS-3 Multi Caliber
166. WMD Beast
167. Zenith Firearms Z-43 (HK Style)

### **.224 Valkyrie**

1. CMMG Mk4 DTR
2. Windham Weaponry R22 22in Fluted Barrel

### **5.7x28**

1. FN USA PS90
2. Masterpiece Arms Defender DMG
3. PW Arms AR57 LEM

### **6.5 Creedmoor**

1. CMMG MK3
2. Diamond Back DB1065CB 20in
3. Smith & Wesson M&P10
4. Springfield Armory M1A-Precision Adjustable Rifle-NM
5. Alex Pro Hunter 22in

App. 15

**6.8 SPC**

1. Rock River Arms LAR CAR A4
2. Stag Arms STAG-15 M5

**.30 Carbine**

1. Auto Ordnance M1 Carbine

**.30-06**

(A .30 caliber cartridge invented in 1906.)

1. Noreen BN36 Long Range Assassin
2. Ohio Ordnance Works 1918A3 SLR
3. OOW HCAR

**.300 BLKOUT**

1. CMMG Mk4 LE
2. CMMG Mk4 T
3. FNH FN15 Tactical Carbine II
4. Noveske One More Wave
5. Noveske Recon Rogue Hunter
6. PWS MK116 Mk1 Mod2 16in Barrel
7. Ruger Mini 14 Tactical
8. Sig Sauer MCX
9. Sig Sauer MCX Virtus Patrol



App. 16

**7.62x39**

1. Arsenal SAM7R Quad Rail
2. Arsenal SAM7R
3. Arsenal SAM7SF
4. Century Arms Zastava N-PAP AK-47
5. Century Arms RH-10 Romanian
6. Century Arms AK63DS Underfolder AK-47
7. Century Arms C39v2 AK-47
8. Century Arms C39v2 MOE Magpul
9. Century Arms C39v2 Tactical
10. Century Arms C39v2 Zhukov Magpul
11. Century Arms GP WASR-10
12. Century Arms GP WASR-10 Underfolder
13. Century Arms RAS47
14. Century Arms RAS47 MOE Magpul
15. Century Arms RAS47 Zhukov Magpul
16. Century Arms RH10
17. Century Arms VSKA
18. Century Arms Zastave NPAP Single Stack
19. Century Arms N-PAP DF
20. Chinese SKS Paratrooper Type 56 (16in barrel)
21. CMMG MK47 AKM Mutant
22. CMMG MK47 AKM2 Mutant
23. CMMG MK47T Mutant

App. 17

24. CMMG MK3 3 CBR
25. CMMG MK47 AKS13
26. DS Arms RPD 16in
27. S Arms RPD
28. IWI GALIL ACE
29. Lee Armory Military Classic AKM
30. M+M Industries M10X
31. Molot VEPR AK-47
32. Molot VEPR AK-47 side folder
33. Molot/FIME VEPR 16in
34. POF Renegade DI
35. PTR 32KFM4R Gen 2
36. Ruger Mini 30 Tactical Stainless
37. Ruger PC-9 Carbine (Non-Threaded Barrel)
38. Special Edition Century Arms RAS47
39. Windham Weaponry R16M4FTT
40. Yugo SKS 59/66

**7.62x54R**

1. Century Arms Romanian PSL
2. FIME VEPR 20.5in

**.308/7.62x51**

(Another common caliber for the AR-15 platform.)

1. Adams Arms Alpha

App. 18

2. Adams Arms Patrol Rifle
3. Adams Arms Patrol (Sampson Rail)
4. Alex Pro Firearms 308
5. APF 308 Carbine
6. Armalite AR-10 308 WIN 13.5in 3 Gun with turnable brake
7. Bushmaster ORC
8. Century Arms C308
9. Century Arms C308-FDE
10. Century Arms C308 Wood Furniture
11. Closeout LWRC REPR
12. CMMG Mk3 3GR
13. CMMG Mk3 T
14. Colt CM 762-16S Carbine
15. Colt MARC 901
16. Daniel Defense DD5 Kyptek Highlander
17. Daniel Defense DD5 Realtree Xtra
18. Daniel Defense DD5 V1
19. Daniel Defense DD5 V2
20. Del-Ton Echo 308
21. Desert Tech MDR S-762N-16
22. Diamondback Tactical DB10 CKMB
23. Diamondback Tactical DB10 ELB
24. DPMS RFLR-G2AP4
25. DS Arms FAL SA58 CP

App. 19

26. DS Arms FAL SA58 Tactical
27. DS Arms FAL SA58 Voyager 16in
28. DS Arms FAL SA58 Voyager 18in
29. DS Arms FAL SA58 Voyager 21in
30. FN USA FNAR Competition
31. FNH SCAR 17S
32. FNH SCAR 17S-FDE
33. FNH SCAR 20
34. HK MR762-A1
35. IWI GALIL 308
36. Kel-Tec RFB 18in
37. LWRC CSASS
38. LWRC CSASS-FDE
39. LWRC REPR MKII
40. M240 SLR Semi Auto Belt Fed
41. M5E1 Complete Rifle, 16in CMV Mid-Length Barrel
42. Molot/FIME VEPR 23in
43. Noveske N6 Gen3 SB
44. POF P308 G4 Burnt Bronze
45. POF GEN 4 308WIN 14.5in BLACK 11.5in RAIL
46. POF P-308 Edge Gen4 16in
47. POF P-308 Edge Gen4 16in-NP3
48. POF P-308 Edge Gen4 18.5in

App. 20

49. POF Revolution 308 16in
50. PTR 91 A3S
51. PTR 91 FR
52. PTR 91 GI
53. PTR 91 GI with Top Rail
54. PTR 91 KFM4R
55. PTR 91 MSG
56. PTR 91 Squad Carbine
57. PWS MK2 MOD1 20in
58. PWS MK2 MOD1 16in
59. Ruger SR762
60. Sig Sauer 716 DMR
61. Sig Sauer 716 Patrol G2
62. Smith and Wesson M&P10 Sport
63. Springfield Armory M1A-Precision Adjustable Rifle
64. Springfield M1A Socom CQB
65. Springfield M1A Standard
66. Stag Arms STAG 10S
67. Windham Weaponry R16FST
68. Windham Weaponry R16FTT
69. Windham Weaponry R18FSFSM
70. Windham Weaponry R18FSFST
71. WMD Big Beast

App. 21

**.338 Lapua**

1. Alexander Arms Ulfberht

**9mm**

1. ATI MIL-SPORT RFL Carbine
2. Beretta CX4 Storm
3. Chiappa Firearms M1-9
4. CMMG Mk9 LE
5. CMMG Mk9 M4LE
6. CMMG Mk9 T M4LE
7. CMMG MkGs Guard DRB
8. CMMG MkGs Guard T
9. CZ Scorpion EVO Carbine 3 S1
10. CZ Scorpion EVO Carbine 3 S1 FAUX
11. CZ Scorpion EVO Carbine Extended Rail
12. Diamondback DB9RBE
13. Hi-Point Carbine 995TS
14. Kel-Tec Sub2000 Gen2 (M&P 9) (parentheticals for Kel-Tec identify magazine types)
15. Kel-Tec Sub2000 Gen2 (Beretta 92/M9)
16. Kel-Tec Sub2000 Gen2 (GLOCK 17)
17. Kel-Tec Sub2000 Gen2 (GLOCK 17) Romeo 5 Package
18. Kel-Tec Sub2000 Gen2 (GLOCK 19)
19. Kriss Vector 9mm, Alpine White
20. Kriss Vector CRB G2

## App. 22

21. Sig Sauer MPX-Carbine
22. Sig Sauer MPX-Carbine-9mm-FDE
23. Taurus CT9 9MM Carbine
24. Zenith Firearms Z-5 (MP5 Type)
25. Zenith Firearms Z-5 (MP5 Type, Non-Sporter)

### **.380 ACP**

1. Hi-Point Carbine

### **10mm**

1. Kriss Vector
2. Kriss Vector CRB G2

### **.40 S&W**

1. Hi-Point Carbine 4095TS
2. Kel-Tec Sub2000 Gen2 (40 S&W) (parenthetical for Kel-Tec identify magazine types).
3. Kel-Tec Sub2000 Gen2 (Beretta 96)
4. Kel-Tec Sub2000 Gen2 (Glock 22)
5. Kel-Tec Sub2000 Gen2 (Glock 23)
6. Kel-Tec Sub2000 Gen2 (M&P40)
7. Kriss Vector CRB G2
8. Kriss Vector Gen2

**.416**

1. Barrett M82A1

**.45 ACP**

1. Auto Ordnance Thompson 1927A1 Commando
2. Auto Ordnance 100th Anniversary 1927A-1
3. Auto Ordnance Thompson 1927A1 Deluxe
4. Auto Ordnance Thompson 1927A1 Deluxe  
Lightweight
5. Auto Ordnance Thompson TM1
6. CMMG Guard MKG-45 DRB
7. CMMG Guard MKG-45 DRB2
8. CMMG Guard MKG-45 T
9. Hi-Point Carbine 4595TS
10. Kriss Vector G2

**.450 Bushmaster**

1. Windham Weaponry R16 Thumper

**.458 SOCOM**

1. CMMG MkW-15 T ANVIL .458 SOCOM
2. CMMG MkW-15 XBE ANVIL .458
3. CMMG MkW-15 XBE2 ANVIL .458



App. 24

**.50 Beowulf**

1. Alexander Arms Advanced Weapons System
  2. Alexander Arms Entry Rifle
  3. Alexander Arms Tactical
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