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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF SAN DIEGO**

13 ASHLEYMARIE BARBA; FIREARMS
14 POLICY COALITION, INC.; SECOND
15 AMENDMENT FOUNDATION;
16 CALIFORNIA GUN RIGHTS FOUNDATION;
17 SAN DIEGO COUNTY GUN OWNERS PAC;
18 ORANGE COUNTY GUN OWNERS PAC;
19 and INLAND EMPIRE GUN OWNERS PAC,

20 Plaintiffs,

21 v.

22 ROB BONTA, in his official capacity as
23 Attorney General of California,

24 Defendant.

Case No.: 37-2022-00003676-CU-CR-CTL

**SUPPLEMENTAL BRIEF RE: *DOE V.*
BONTA, 3:22-cv-00010-LAB-DEB (C.D.
Cal.)**

Status Conference: July 29, 2022

Time: 1:30 p.m.

Judge: Hon. Katherine A. Bacal

Department: C-69

1 In its May 27, 2022 minute order, the Court directed Plaintiffs to provide supplemental
2 briefing regarding *Doe v. Bonta*, 3:22-cv-00010-LAB-DEB (C.D. Cal.).

3 **1. Did the Plaintiffs in *Doe* file a motion for a preliminary injunction?**

4 Yes. As of the date of this filing, the Court has not ruled on the motion.

5 After filing their lawsuit on January 5, 2022, Plaintiffs filed an application for temporary
6 restraining order on January 10. ECF 9. The Attorney General opposed that application on January
7 14. ECF 19. On January 20, the Court denied the application for temporary restraining order and
8 set a briefing schedule for a preliminary injunction and motion to dismiss. ECF 22.

9 On February 8, Plaintiffs filed a motion for preliminary injunction. ECF 26. DOJ filed its
10 opposition on February 22, ECF 29, and Plaintiffs filed their reply on March 1. ECF 32.

11 On April 5 the Court held a hearing on the preliminary injunction and motion to dismiss.

12 On May 12, Plaintiffs filed a notice of supplemental authority regarding the Ninth Circuit’s
13 decision in *Jones v. Bonta*, No. 20-56174, ECF 44, and DOJ responded on May 17. ECF 46.

14 On June 23, the Court directed the parties to file supplemental briefing by July 25
15 regarding *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. ---- (June 23, 2022). ECF 47.

16 On June 30, Plaintiffs filed a motion seeking relief based on a widespread DOJ data breach
17 that leaked personally identifiable information from the state’s firearm databases. ECF 49. *See*,
18 *e.g.*, Yee, *Leak of California concealed-carry permit data is larger than initially reported*, L.A.
19 Times (June 29, 2022), <https://lat.ms/3Pf3njS> (the leak included the “names, dates of birth, gender,
20 race, driver’s license numbers, addresses and criminal histories” for all concealed-carry applicants
21 from 2011–2021, and “data on the Assault Weapon Registry, Handguns Certified for Sale, Dealer
22 Record of Sale, Firearm Safety Certificate and Gun Violence Restraining Order dashboards were
23 ‘also impacted’”); Aguiano, *Leak of California gun owners’ private data far wider than originally*
24 *reported*, The Guardian (June 30, 2022), <https://bit.ly/3yYLMad> (“The California department of
25 justice admitted it had exposed the personal information of as many as hundreds of thousands of
26 gun owners in the state, in a controversial data breach that appears of a far broader scale than the
27 agency first reported.”). The Attorney General opposed the request on July 1, ECF 51, and
28 Plaintiffs replied, ECF 52, and the Attorney General filed a further opposition, ECF 54.

1 **2. Does the *Doe* Plaintiffs’ Motion for Preliminary Injunction Seek The Same or Similar**
2 **Relief as Plaintiffs’ Pending Motion in this Case?**

3 The *Doe* motion for preliminary injunction seeks similar relief to Plaintiffs’ motion in this
4 case, but on different grounds. Specifically, the *Doe* plaintiffs seek an injunction:

5 (i) enjoining enforcement of the AB 173 Amendments until a decision on the
6 merits, and (ii) enjoining any person or entity in active concert with Defendant
7 through their receipt of Plaintiffs’ Personal Information, including CFVRC and
8 Stanford University, from using Plaintiffs’ Personal Information for any purpose.

9 ECF 26 at 35:17–23; *see id.* at 2:7–14 (notice of motion).

10 In this case, Plaintiffs have requested that the Court enter a more specific and tailored
11 injunction:

12 Plaintiffs request that the Court enter a preliminary injunction enjoining the
13 California Department of Justice from transferring to researchers (1) personal
14 identifying information collected in the Automated Firearms System pursuant to
15 Penal Code section 11106(d), and (2) personal identifying information collected in
16 the Ammunition Purchase Records File pursuant to Penal Code section
17 30352(b)(2). Plaintiffs also request that the Court issue an order directing the
18 Department of Justice to retrieve all data containing personal identifying
19 information previously transferred under these statutes to the California Firearm
20 Violence Research Center or any other organization.

21 Plaintiffs’ Notice of Motion and Motion for a Preliminary Injunction, 1:18–25 (March 3, 2022).

22 More critical than the distinction between the scope of injunctive relief sought is the basis
23 for the motions themselves. In *Doe*, plaintiffs’ motion is based on three alternative bases: (1) that
24 AB 173 violates the right to privacy secured by the federal constitution’s Fourteenth Amendment;
25 (2) that AB 173 violates the right to keep and bear arms secured by the Second Amendment, and
26 that it relatedly violates the Fourteenth Amendment by chilling protected conduct; and (3) that AB
27 173 is unconstitutionally retroactive in violation of the Fourteenth Amendment.

28 In this case, by contrast, Plaintiffs seek a preliminary injunction because AB 173’s
29 mandatory data-sharing provisions violate the right to privacy under Article 1, section 1 of the
30 California Constitution. So while the federal court’s analysis of the preliminary injunction in *Doe*
31 may ultimately be instructive, there are several factors confirming that this Court should proceed
32 to the merits on the preliminary injunction independently and without delay.

33 California courts are entrusted with resolving questions of state law. “[T]he California
34 Constitution ‘is, and always has been, a document of independent force,’” and “the rights

embodied in and protected by the state Constitution are not invariably identical to the rights contained in the federal Constitution.” *Am. Acad. of Pediatrics v. Lungren*, 16 Cal.4th 307, 325 (1997) (citation omitted) (plurality op. of George, C.J.); *see* Cal. Const., art. I, § 24. Under this line of authority, “even when the terms of the California Constitution are textually identical to those of the federal Constitution, the proper interpretation of the state constitutional provision is not invariably identical to the federal courts’ interpretation of the corresponding provision contained in the federal Constitution.” *Id.* at 326. The California Supreme Court has emphasized that it “bears the ultimate judicial responsibility for resolving questions of state law, including the proper interpretation of provisions of the state Constitution.” *Comm. To Defend Reprod. Rts. v. Myers*, 29 Cal.3d 252, 261–62 (1981) (plurality op. of Tobriner, J.). Accordingly, California courts “cannot properly relegate [their] task to the judicial guardians of the federal Constitution, but instead must recognize [their] personal obligation to exercise independent legal judgment in ascertaining the meaning and application of state constitutional provisions.” *Id.* at 262.

This Court’s independent role in considering the constitutionality of AB 173 is particularly important because, unlike the federal constitution, California’s constitution explicitly protects the right to privacy. “[N]ot only is the state constitutional right of privacy embodied in explicit constitutional language not present in the federal Constitution, but past California cases establish that, in many contexts, the scope and application of the state constitutional right of privacy is broader and more protective of privacy than the federal constitutional right of privacy as interpreted by the federal courts.” *Am. Acad. of Pediatrics*, 16 Cal. 4th at 326; *see also Myers*, 29 Cal.3d at 262–62; *City of Santa Barbara v. Adamson*, 27 Cal.3d 123, 130 n.3 (1980).

3. Has The Federal Court Ruled On The *Doe* Plaintiffs’ Preliminary Injunction Motion?

As of the date of this filing, the Court has not ruled on the preliminary injunction motion.

Dated: July 15, 2022

BENBROOK LAW GROUP, PC

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