

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

LAWRENCE HARTFORD; DOUGLAS
MITCHELL; BRETT BASS; SPORTING
SYSTEMS VANCOUVER, INC.; SECOND
AMENDMENT FOUNDATION, INC.; AND
FIREARMS POLICY COALITION, INC.,

Plaintiffs,

v.

BOB FERGUSON, in his official capacity as
Washington State Attorney General, et al.,

Defendants.

NO. 3:23-cv-05364-RJB

STATE DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

NOTED FOR: May 26, 2023

I. INTRODUCTION

Responding to an epidemic of gun violence, the Washington Legislature enacted Substitute House Bill (SHB) 1240 to limit the manufacture and sale of firearms that have a disproportionate and deadly role in mass shootings: assault weapons. Even though assault weapons make up less than five percent of all guns owned by Americans, they caused *over half* of mass shooting fatalities in the past decade.

Plaintiffs seek to overturn this common-sense law, and request the extraordinary remedy of a preliminary injunction, but their legal theory lacks merit. As the Supreme Court reiterated in *Bruen*, the Second Amendment does not guarantee civilians the “right to keep and carry any

1 weapon whatsoever in any manner whatsoever and for whatever purpose.” *New York State Rifle*
 2 *& Pistol Association, Inc. v. Bruen*, ___ U.S. ___, 142 S. Ct. 2111, 2128 (2022). Just like bazookas,
 3 machine guns, and grenade launchers, assault weapons are not covered by the Second
 4 Amendment because they are not tools of self-defense; rather, they are designed to injure and
 5 kill as many people as possible as quickly as possible in a military-style assault. Moreover,
 6 Washington’s regulation of assault weapons fits comfortably within the long historical tradition
 7 of regulating dangerous and unusual weapons to promote public safety.

8 Following *Bruen*, federal courts have overwhelmingly rejected Second Amendment
 9 challenges to assault weapons restrictions (and the closely related restrictions on large capacity
 10 magazines (LCMs)). *See Bevis v. City of Naperville*, 2023 WL 2077392, *16 (N.D. Ill. Feb. 17,
 11 2023) (“Because assault weapons are particularly dangerous weapons ..., their regulation
 12 accords with history and tradition.”); *Herrera v. Raoul*, 2023 WL 3074799, at *4 (N.D. Ill. Apr.
 13 25, 2023) (concluding Illinois’ prohibition on assault weapons is “consistent with ‘the Nation’s
 14 historical tradition of firearm regulation,’ namely the history and tradition of regulating
 15 particularly ‘dangerous’ weapons”); *Del. State Sportsmen’s Ass’n v. Del. Dep’t of Safety &*
 16 *Homeland Sec.*, 2023 WL 2655150, at *13 (D. Del. Mar. 27, 2023) (concluding Delaware’s
 17 prohibition on assault weapons is “consistent with the Nation’s historical tradition of firearm
 18 regulation”); *see also Hanson v. District of Columbia.*, 2023 WL 3019777, at *12 (D.D.C.
 19 Apr. 20, 2023) (“[Large capacity magazines] fall outside of the Second Amendment’s scope
 20 because they are most useful in military service and because they are not in fact commonly used
 21 for self-defense.”); *Ocean State Tactical, LLC v. Rhode Island*, 2022 WL 17721175, at *15
 22 (D.R.I. Dec. 14, 2022) (“[P]laintiffs have failed to establish that they have a likelihood of success
 23 in demonstrating that LCMs are weapons of self-defense, such that they would enjoy Second
 24 Amendment protection.”); *Ore. Firearms Fed’n, v. Brown*, 2022 WL 17454829, at *11 (D. Or.
 25 Dec. 6, 2022) (“while large-capacity magazines are rarely used by civilians for self-defense, they
 26 are often used in law enforcement and military situations” and “disproportionately used in crimes

involving mass shootings”); *see also Kolbe v. Hogan*, 849 F.3d 114, 144 (4th Cir. 2017) (pre-*Bruen* case holding that “[b]ecause ... assault weapons ... are most useful in military service, they are not protected by the Second Amendment”); *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015) (pre-*Bruen* casing upholding ban on assault weapons based on legislature’s conclusion they are not “appropriate for self-defense”). Plaintiffs’ challenge is nothing new. Just as court after court has already done, this Court should reject Plaintiffs’ dangerous misinterpretation of the Second Amendment and their effort to undermine the common-sense regulation of military-style weapons.

Plaintiffs are also not entitled to an injunction because they fail to demonstrate irreparable harm: Plaintiffs may continue to possess their existing collections of assault weapons under Washington’s law, and Plaintiffs’ ability to purchase many other alternative firearms with which to defend themselves remains intact. Nor can Plaintiffs show that the public interest favors a statewide injunction: to the contrary, SHB 1240 was enacted to save lives and prevent gun violence, and does not in any way affect Plaintiffs’ right to self-defense or to use the assault weapons they already own. Plaintiffs fail to meet their burden, and their request for a preliminary injunction should be denied.

II. BACKGROUND

A. SHB 1240 Prohibits the Manufacture and Sale of Assault Weapons

The Legislature passed Substitute House Bill 1240 to address the epidemic of gun violence that “threat[ens] ... the public health and safety of Washingtonians.” 2023 Wash. Sess. Laws, ch. 162, § 1. The Legislature found assault weapons are not “well-suited for self-defense, hunting, or sporting purposes,” but “are designed to kill humans quickly and efficiently.” *Id.* Citing the use of assault weapons “in the deadliest mass shootings in the last decade,” the Legislature found that “[a]n assailant with an assault weapon can hurt and kill twice the number of people [as] an assailant” without, and “during the period the federal assault weapon ban was in effect, mass shooting fatalities were 70 percent less likely to occur.” *Id.* Accordingly, the

Legislature concluded restricting the sale of assault weapons, “while allowing existing legal owners to retain the assault weapons they currently own,” “is likely to have an impact on the number of mass shootings committed in Washington” without interfering with lawful self-defense. *Id.*

To achieve this goal, SHB 1240 prohibits the “manufacture, importation, distribution, offer for sale, or sale [of] any assault weapon.” *Id.* § 3. “Assault weapon” is specifically defined, as discussed below, to encompass firearms with combat-specific features. *Id.* § 2(2). SHB 1240 does not prohibit the possession of assault weapons. Thus, current owners can still keep and use these firearms for lawful purposes. *See generally* 2023 Wash. Sess. Laws, ch. 162.

B. Assault Weapons Are Uniquely Deadly Military-Style Weapons

Assault weapons’ disproportionate role in the deadliest mass shootings in recent memory stems directly from their uniquely deadly capabilities. Assault weapons are designed to be “more accurate, more portable, and more specifically tailored to produce lethal outcomes.” Busse Decl., ¶ 29. According to Marine Corps combat veteran and military policy analyst, Kyleanne Hunter, the M-16—the fully automatic version of the AR-15—is a “near perfect weapon of war” due to its light weight, maneuverability, and ability to accept lightweight, high-velocity ammunition. Kyleanne Hunter, *An American Problem: Weapons of War in Places of Peace*, TEDxBend (May 14, 2018), https://www.ted.com/talks/kyleanne_hunter_an_american_problem_weapons_of_war_in_places_of_peace. M-16s and AR-15s are equally deadly: for example, bullets shot from either can shoot through both sides of a standard-issue military helmet at 500 meters. *Id.* Further, the ammunition used in both guns is designed so bullets ricochet upon entering the body causing far more damage than handgun ammunition. *Id.*

“The difference between the fully automatic and semiautomatic versions of those firearms is slight.” *Kolbe*, 849 F.3d at 125. For example, “the automatic firing of all the ammunition in a large-capacity thirty-round magazine takes about two seconds, whereas a

semiautomatic rifle can empty the same magazine in as little as five seconds.” *Id.* Assault weapons can be easily converted into fully automatic weapons, virtually indistinguishable in practice from weapons actually in use by the U.S. military. *See Bevis*, 2023 WL 2077392, at *15. “Some of these ‘fixes’ are as simple as stretching a rubber band from the trigger to the trigger guard of an AR-15.” *Id.* (cleaned up). Other “conversion devices” include “bump stocks and trigger cranks, both of which allow an assault weapon to fire at a rate several times higher than it could otherwise.” *Id.*; *see also* Busse Decl., ¶ 47. Indeed, “in many cases, U.S. civilians can now outfit rifles in a manner more lethal than the rifles carried by the military.” Busse Decl., ¶ 47.

The features that define assault weapons in SHB 1240 (and that distinguish them from other semiautomatic firearms) are specifically designed to “increase the effectiveness of killing enemy combatants in offensive battlefield situations”—or, in the hands of a mass shooter, innocent civilians. *Id.* ¶ 32; *see* 2023 Wash. Sess. Laws, ch. 162, § 1. These include:

- Pistol grips. These grips, located beneath the action of a rifle or shotgun, permit “the shooter to control and aim the rifle during periods of rapid fire.” Busse Decl., ¶ 34. A pistol grip is “useful during military operations because it helps the shooter stabilize the weapon and reduce muzzle rise during rapid fire” but “is not necessary to operate a firearm safely in self-defense situations.” *Id.*

- Forward grips. These grips “aid in firearm stabilization during the rapid firing of assault rifles and assault pistols.” *Id.* ¶ 35. “[F]orward grips can be an effective feature for troops charged with fast and efficient killing of enemy combatants in warfare” but are unnecessary for self-defense. *Id.*

- Folding, telescoping, and thumbhole stocks. Folding and telescoping stocks permit a portion of a rifle to collapse, and shorten its length. *Id.* ¶ 36. A thumbhole stock, meanwhile, permits the shooter’s trigger hand to extend through the stock (effectively creating a pistol grip, described above). These stocks are unnecessary for self-defense. *Id.*

1 • Barrel shrouds. A barrel shroud enables “the shooter to grasp the barrel during
2 firing without burning the non-trigger hand and as the rifle heats up in rapid-fire and continuous-
3 fire situations.” *Id.* ¶ 37. Barrel shrouds are unnecessary for self-defense. *Id.*

4 • Flash suppressors, muzzle brakes, and muzzle compensators. These devices
5 reduce recoil and muzzle rise in rapid-fire situations, prevent night blindness during nighttime
6 firefights, and help misdirect enemy forces in nighttime battlefield scenarios, but lack self-
7 defensive applications. *Id.* ¶ 38

8 • Detachable magazines, or fixed magazines with capacities larger than 10 rounds.
9 These devices are designed to permit a shooter to fire rapidly in succession, which is unnecessary
10 for self-defensive purposes. Allen Decl., ¶ 12; Busse Decl., ¶ 39.

11 **C. Assault Weapons Are Not Commonly Used in Self-Defense**

12 While the AR-15 dates to the 1950s, assault weapon sales in the United States remained
13 very low until the aftermath of the Sandy Hook Elementary massacre, when a shooter used an
14 AR-15 to murder 26 people, including 20 children. *Id.* at 5, ¶ 12; *Access to weapons made*
15 *tragedy possible*, CT POST (Mar. 28, 2013), [https://www.ctpost.com/news/article/Access-to-](https://www.ctpost.com/news/article/Access-to-weapons-made-tragedy-possible-4392681.php)
16 [weapons-made-tragedy-possible-4392681.php](https://www.ctpost.com/news/article/Access-to-weapons-made-tragedy-possible-4392681.php). Before Sandy Hook, the gun industry considered
17 AR-15s to be military assault weapons, not suitable for sale or marketing to civilians. Busse
18 Decl., ¶¶ 7-8, 18, 20-22. In the last decade, however, the gun industry has undertaken aggressive
19 marketing to sell more assault weapons to civilians. Busse Decl., ¶¶ 17-31; 2023 Wash. Sess.
20 Laws, ch. 162, § 1.

21 As the Legislature found, this aggressive marketing has led to an uptick in assault
22 weapons sales, even though they are not “well-suited for self-defense, hunting, or sporting
23 purposes” and “not commonly used in self-defense.” 2023 Wash. Sess. Laws, ch. 162, § 1; *see*
24 *also* Busse Decl., ¶¶ 23, 30-39. As discussed above, the combat-specific features that define
25 assault weapons are, at best, unhelpful for self-defense, and, at worst, actively *increase* the
26 danger to innocent bystanders. For example, just as bullets fired from assault rifles pierce

1 military helmets, they also pierce walls and can strike people beyond attackers, including
 2 responding law enforcement and innocent bystanders. Hunter, *supra* § II.B.

3 Unsurprisingly, then, data confirms that assault weapons are not commonly used for self-
 4 defense. An analysis of The Heritage Foundation’s “Defensive Gun Uses in the U.S.” database—
 5 a database designed to *promote* the notion that guns are necessary for self-defense— shows that
 6 of the 1,241 recorded incidents of armed self-defense nationwide between 2019 and 2022 in
 7 which the type of gun used is known, only 4% involved some type of rifle (of which assault
 8 rifles are only a subset). Allen Decl., ¶¶ 23-28.

9 The gun industry understands assault weapons are assaultive/offensive—not defensive—
 10 weapons, and they market them as such. Despite faddish claims that “assault weapon” is a
 11 misnomer made up by anti-gun activists, “[t]he firearms industry openly referred to these ...
 12 weapons as ‘assault weapons’ and ‘assault rifles’ as late as 2008.” Busse Decl., ¶ 27 (citing Gun
 13 Digest’s “Buyer’s Guide to Assault Weapons”). To this day, the ads for these guns stress their
 14 appropriateness for use in wartime, civil unrest, or vigilante scenarios. *Id.* ¶¶ 50-55;
 15 2023 Wash. Sess. Laws, ch. 162, § 1. One typical advertisement by the weapons company Daniel
 16 Defense—whose gun was used in the Uvalde massacre—features a soldier and prominently
 17 encourages consumers to “use what they use”:

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Busse Decl., ¶¶ 50-51.

Smith & Wesson—whose assault weapons were used in, among others, the Parkland massacre and the Highland Park 4th of July shooting—sells civilians an AR-15 variant called the “Military and Police AR-15.” *Id.* ¶ 52. Bushmaster, whose rifle was used in the Sandy Hook shooting, “describes its Adaptive Combat Rifle as ‘the ultimate military combat weapons system’ that is ‘[b]uilt specifically for law enforcement and tactical markets.’” *Kolbe*, 849 F.3d at 125 (quoting record). Wilson Combat markets one AR-15 as the “Urban Super Sniper.”

1 Busse Decl., ¶ 56. “[S]maller AR-15 manufacturers now regularly seek to grow their market by
2 advertising in ways that depict young men with AR-15s inciting or engaging in armed urban
3 warfare” and “armed offensive vigilante actions.” *Id.* ¶¶ 53-54.

4 Firearms manufacturers market assault weapons based on their offensive and military
5 style characteristics because that is what separates them from other arms more suited for self-
6 defense. Busse Decl., ¶¶ 13, 20, 38, 50, 56

7 **D. Assault Weapons Are Dangerous Weapons Used in Mass Shootings and in the**
8 **Deaths of Police Officers**

9 Assault weapons “are often used in public mass shootings.” Allen Decl., ¶ 34. At least
10 31% of all public mass shootings in the last 25 years, and 50% in the last five years, involved an
11 assault weapon. Klarevas Decl., ¶ 12. This is highly disproportionate since assault weapons
12 make up, at most, around five percent of all guns owned by Americans. *Id.* ¶ 13.

13 And because assault weapons are so much deadlier than other weapons, their use in mass
14 shootings leads to much higher casualty rates. Over the past decade, six people on average have
15 been killed in public mass shootings that do not involve an assault weapon, but that number *more*
16 *than doubles* to almost 13 deaths for public mass shootings involving assault weapons. *Id.* ¶ 15.
17 In fact, all seven of the deadliest acts of criminal violence since the September 11, 2001, terrorist
18 attack were mass shootings, and six of those were perpetrated with assault weapons. *Id.* ¶ 14.

19 Unfortunately, “the problem of mass shooting violence is on the rise.” *Id.* ¶ 11. Since the
20 1980s, “the rise in mass shooting violence has far outpaced the rise in national population.” *Id.*
21 The first mass shooting incident that resulted in ten or more deaths in America’s history
22 happened in 1949, the next in 1966, then in 1975. *Id.* ¶¶ 17-18. After the 1994 federal Assault
23 Weapons Ban expired in 2004, the average rate of these incidents increased “over six-fold” when
24 compared to the time period of 1949 to 2004. *Id.* ¶ 20.

25 The danger of assault weapons is not limited to mass shootings. “Criminals armed
26 with ... assault weapons possess a military-style advantage in firefights with law enforcement

1 officers, as such weapons allow criminals to effectively engage law enforcement officers from
 2 great distances and their rounds easily pass through the soft body armor worn by most law
 3 enforcement officers.” *Kolbe*, 849 F.3d at 127 (cleaned up). Accordingly, “assault weapons are
 4 used disproportionately in ... police killings...” *Bevis*, 2023 WL 2077392 at *15. “About 20
 5 percent of officers were killed with assault weapons from 1998 to 2001 and again from 2016 to
 6 2017.” *Id.* Again, this is despite assault weapons making up only five percent of guns owned by
 7 Americans. Klarevas Decl., ¶ 13.

8 The recent mass shooting in Uvalde, Texas, provides a gut-wrenching case-in-point on
 9 the unique dangers of assault weapons. After an active shooter entered the local elementary
 10 school, ultimately shooting and killing 19 children and two teachers, the Uvalde Police
 11 Department was unwilling to enter the school for an hour because the destructive power of the
 12 shooter’s assault weapon rendered police intervention *too dangerous*. Zach Despart, “*He has a*
 13 *battle rifle*”: *Police feared Uvalde gunman’s AR-15*, The Texas Tribune (March 20, 2023),
 14 <https://www.texastribune.org/2023/03/20/uvalde-shooting-police-ar-15/>. Police had to wait for
 15 more protective body armor, stronger shields, and units with more tactical training. *Id.* Uvalde
 16 Police Department Sgt. Donald Page told investigators later: “You knew that it was definitely an
 17 AR ... There was no way of going in. ... We had no choice but to wait and try to get something
 18 that had better coverage where we could actually stand up to him.” *Id.*

19 **E. This Lawsuit**

20 Governor Inslee signed SHB 1240 into law on April 25, 2023. That same day, Plaintiffs
 21 filed this lawsuit challenging SHB 1240 on its face. Plaintiffs now seek to preliminarily enjoin
 22 this lifesaving and common-sense safety measure in its entirety.

III. ARGUMENT

A. Legal Standard

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Its purpose is “to preserve the status quo ante litem,” and “it is not usually proper to grant the moving party the full relief to which he might be entitled if successful at the conclusion of a trial.” *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (9th Cir. 1963). Plaintiffs seeking a preliminary injunction must establish that: (1) their claims are likely to succeed on the merits; (2) they will likely suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 20. To succeed, Plaintiffs must satisfy all four *Winter* factors, even under the Ninth Circuit’s alternative sliding scale test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132, 1135 (9th Cir. 2011).

To carry the “heavy burden” of their facial challenge, Plaintiffs must “establish that no set of circumstances exists under which [SHB 1240] would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). Where a statute has a “plainly legitimate sweep,” a facial challenge must fail. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008).

B. Plaintiffs Are Unlikely to Succeed on the Merits

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court announced a new test for evaluating firearm regulations under the Second Amendment. 142 S. Ct. 2111 (2022). *Bruen* rejected the intermediate-scrutiny analysis adopted by nearly every Circuit (including the Ninth Circuit), in lieu of a text-and-history analysis. *Id.* at 2126. Under the new test, a plaintiff challenging a firearm regulation must first show that “the Second Amendment’s plain text covers an individual’s conduct” as relevant to the regulation. *Id.* If a plaintiff can make this showing, the burden then shifts to the defendant to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2130.

1 Plaintiffs cannot prove a likelihood of success on the merits because their claim fails at
 2 both steps. First, the Second Amendment does not guarantee the right to keep or bear military-
 3 style weapons that are not appropriate for lawful self-defense. Second, Washington’s law is part
 4 of a robust historical tradition of limiting the manufacture and sale of the weapons most
 5 commonly and destructively used for lawless interpersonal violence.

6 **1. The Second Amendment does not protect military-style assault weapons**

7 Plaintiffs’ Second Amendment claim fails at *Bruen*’s first step because the Second
 8 Amendment does not afford a right to keep and bear military-style weapons that are not
 9 commonly used for self-defense. Under the first step of the *Bruen* analysis, Plaintiffs must show
 10 that “the Second Amendment’s plain text” protects their possession of assault weapons.
 11 142 S. Ct. at 2129-30. Thus, in *Bruen*, before turning to whether New York’s restriction was
 12 “consistent with the Nation’s historical tradition of firearm regulation,” *id.* at 2130, the Court
 13 confirmed that “handguns are weapons in common use today for self-defense.” *Id.* at 2134
 14 (cleaned up). Plaintiffs fail to show, however, that assault weapons are “commonly used” for
 15 self-defense, *id.* at 2128, skipping this step entirely aside from a breezy discussion of the word
 16 “arms.” Mot. at p. 5.

17 Plaintiffs primarily try to shift their burden to the State. *See, e.g.*, Mot. at pp. 10-11. But
 18 as *Bruen* makes clear, Second Amendment plaintiffs, just like any other plaintiffs asserting
 19 constitutional violations, must first show their claims implicate the constitutional provision at
 20 issue. *Bruen*, 142 S. Ct. at 2126, 2134; *see also Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct.
 21 2407, 2421 (2022). Because the Second Amendment does not protect military-style weapons
 22 that are not suitable for self-defense, SHB 1240 does not implicate the Second Amendment.

23 “[L]ike most rights, the right secured by the Second Amendment is not unlimited ... [it]
 24 was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for
 25 whatever purpose.” *Bruen*, 142 S. Ct. at 2128 (quoting *District of Columbia v. Heller*, 554 U.S.
 26 570, 626 (2008)). Textually, the *Heller* Court held, “self-defense” is the “central component of”

1 the Second Amendment right to “bear arms.” 554 U.S. at 599. As such, “the Second Amendment
 2 right ... extends only to certain types of weapons.” *Id.* at 623; *see also id.* at 625. As the *Heller*
 3 Court explained, at the time of the Founding, “[t]he traditional militia was formed from a pool
 4 of men bringing arms ‘in common use at the time’ for lawful purposes like self-defense.” 554
 5 U.S. at 624. It was “these kinds of weapons (which have changed over the years) [that] are
 6 protected by the Second Amendment in private hands, while military-grade weapons (the sort
 7 that would be in a militia’s armory), such as machine guns, and weapons especially attractive to
 8 criminals ... are not.” *Friedman v. City of Highland Park*, 784 F.3d 406, 408 (7th Cir. 2015)
 9 (citing *Heller*, 554 U.S. at 624-25). Thus, as *Heller* made clear, “weapons that are most useful
 10 in military service—M-16 rifles and the like—may be banned.” 554 U.S. at 627; *see also Kolbe*,
 11 849 F.3d at 131 (same; upholding ban on assault weapons).

12 This textual-historical limitation is fatal to Plaintiffs’ argument. *Kolbe*, 849 F.3d at 135;
 13 *Friedman*, 784 F.3d at 412; *see also Bevis v. City of Naperville*, 22 C 4775, 2023 WL 2077392,
 14 at *9 (N.D. Ill. Feb. 17, 2023) (“The text of the Second Amendment is limited to only certain
 15 arms, and history and tradition demonstrate that particularly ‘dangerous’ weapons are
 16 unprotected.”).¹

17 Assault weapons are not merely “like” M-16s: they are fundamentally the same sort of
 18 gun. Indeed, the most popular assault weapon, the AR-15, *is* an M-16, just without the ability to
 19 fire automatically or in three-round bursts. Busse Decl., ¶ 12. AR-15s preserve the features that
 20 make the M-16 such a devastating combat weapon, and can easily be converted to near-automatic
 21 rates of fire. *Supra* at II.B. Plaintiffs’ focus on automatic fire as the *sine qua non* of military
 22 weapons, Mot. at p. 13, is misplaced because “the line that *Heller* drew” is “not ... between fully
 23 automatic and semiautomatic firearms, but between weapons that are most useful in military
 24

25 ¹ The *Kolbe* court held “[i]n the alternative” that even if assault weapons were covered by the Second
 26 Amendment’s plain text, as informed by its history, Maryland’s assault weapons ban was justified under
 intermediate scrutiny. *Kolbe*, 849 F.3d at 138. While this alternative holding was abrogated by *Bruen*, the court’s
 primary holding anticipates and survives *Bruen*.

1 service and those that are not.” *Kolbe*, 849 F.3d at 137. And indeed, “soldiers and police officers
 2 are often advised to choose and use semiautomatic fire, because it is more accurate and lethal
 3 than automatic fire in many combat and law enforcement situations.” *Kolbe*, 849 F.3d at 125.
 4 Assault weapons regulated by SHB 1240, and especially the AR-15, are the types of the weapons
 5 the Supreme Court has specifically identified as outside the protection of the Second
 6 Amendment.

7 Beyond their functional equivalence to M-16s, assault weapons are not covered by the
 8 Second Amendment because they are not “in common use ... for lawful purposes like self-
 9 defense.” *Heller*, 554 U.S. at 624; *see also Bruen*, 142 S. Ct. at 2134. This “important limitation
 10 on the right to keep and carry arms” remains a critical part of the Second Amendment following
 11 *Bruen*. *See Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring). Befitting their role as tools of
 12 war, designed to kill as many enemies as possible, assault weapons have limited—if any—utility
 13 for self-defense. Assault weapons are essentially military weapons of war and are designed for
 14 offensive use. 2023 Wash. Sess. Laws, ch. 162, § 1; Hunter, *supra* § II.B.; Busse Decl., ¶¶ 32-41.
 15 They are not commonly used for self-defense. To the contrary, assault weapons are almost never
 16 used in self-defense. Allen Decl., ¶¶ 23-28. A study of active shooter incidents using FBI data
 17 shows that, of the 456 active shooter situations between 2000 and 2022, only 18 involved
 18 defensive gun uses by a private citizen, and only *one*—0.2%—is known to have involved an
 19 assault weapon. Klarevas Decl., ¶ 24. This makes sense: as one court found, in the type of close-
 20 range encounters in which one is likely to need to defend oneself, “handguns are most useful.”
 21 *Bevis*, 2023 WL 2077392, at *16; *see also id.* (quoting expert testimony that “shotguns and 9mm
 22 pistols are generally recognized as the most suitable and effective choices for armed defense.”).
 23 Indeed, as the Legislature found, the recent increase in sales of assault weapons stems not from
 24 their utility in self-defense, but from aggressive marketing by gun makers touting their combat
 25
 26

1 capabilities. Busse Decl., ¶¶ 49-55; 2023 Wash. Sess. Laws, ch. 162, § 1.² By contrast, assault
 2 weapons *are* disproportionately used in mass shootings and other high-profile criminal activity,
 3 and they make those shootings vastly more lethal. *Supra* § II.D.; *see also* Klarevas Decl.,
 4 Table 2, at 13.

5 Assault weapons are combat weapons designed to kill as many enemies on the battlefield
 6 as quickly as possible. And it is “[t]he very features that qualify a firearm as a[n] ... assault
 7 weapon—such as flash suppressors, barrel shrouds, folding and telescoping stocks, pistol grips,
 8 grenade launchers, night sights, and the ability to accept bayonets and large-capacity
 9 magazines”—that give them a “capability for lethality—more wounds, more serious, in more
 10 victims—far beyond that of other firearms[.]” *Kolbe*, 849 F.3d at 137 (cleaned up). Accordingly,
 11 following *Bruen*, federal courts considering assault weapons restrictions have had no difficulty
 12 concluding that assault weapons are especially dangerous weapons that fall outside the text of
 13 the Second Amendment, as informed by history. *Herrera*, 2023 WL 3074799, at *4; *Bevis*, 2023
 14 WL 2077392, at *16; *see also* *Hanson v. D.C.*, CV 22-2256 (RC), 2023 WL 3019777, at *12
 15 (D.D.C. Apr. 20, 2023) (“[Large capacity magazines] fall outside of the Second Amendment’s
 16 scope because they are most useful in military service and because they are not in fact commonly
 17 used for self-defense.”); *Ocean State Tactical*, 2022 WL 17721175, at *15 (“[P]laintiffs have
 18 failed to establish ... that LCMs are weapons of self-defense, such that they would enjoy Second
 19 Amendment protection.”); *Oregon Firearms Fed’n, v. Brown*, 2:22-CV-01815-IM, 2022 WL
 20 17454829, at *11 (D. Or. Dec. 6, 2022) (concluding LCMs are not covered by the Second
 21 Amendment because they “are rarely used by civilians for self-defense”).³

22 ² To the extent Plaintiffs might suggest that assault weapons are used for lawful purposes *besides* self-
 23 defense, that is irrelevant to the constitutional question because “individual self-defense is ‘the *central component*’
 24 of the Second Amendment right.” *Bruen*, 142 S. Ct. at 2133 (quoting *McDonald v. City of Chicago*, 561 U.S. 742,
 767 (2010) (emphasis in original)).

25 ³ The State Defendants are aware of only a single post-*Bruen* district court concluding that restrictions on
 26 assault weapons likely violate the Second Amendment, but that opinion—*Barnett v. Raoul*, 2023 WL 3160284 (S.D.
 Ill. Apr. 28, 2023), on which Plaintiffs rely (Mot. at pp. 6, 14)—was stayed by the Seventh Circuit. *Barnett v. Raoul*,
 No. 23-1825 (7th Cir. May 4, 2023) (Dkt. # #9). Plaintiffs cite another order—*Rocky Mountain Gun Owners v.*

1 Plaintiffs respond with the same handful of arguments that every prior, unsuccessful
 2 plaintiff has raised. They assert assault weapons should be protected by the Second Amendment
 3 simply because there are a lot of them. Mot. at pp. 9-10. Yet “only 5 percent of firearms” in the
 4 U.S. “are assault weapons,” and—according to a survey on which Plaintiffs rely—“[a]s a
 5 percentage of the total population, less than 2 percent of all Americans own assault weapons.”
 6 *Bevis*, 2023 WL 2077392, at *16; Mot. at p. 9 (citing the same source); *see also* Klarevas Decl.,
 7 ¶ 26.⁴ And as Plaintiffs admit, of the tiny percentage of Americans who own assault weapons,
 8 only a fraction cite self-defense as a major reason. Mot. at p. 10. Meanwhile, almost a third of
 9 Americans live in states that restrict them. Klarevas Decl., ¶ 37. In any case, whether assault are
 10 commonly *possessed* is irrelevant. The question under *Heller* and *Bruen* is whether assault
 11 weapons are “in common use ... for self-defense today.” *Bruen*, 142 S. Ct. at 2143 (emphasis
 12 added). Here, the evidence shows they are not. Allen Decl., ¶¶ 23-28.

13 Besides being factually overstated, Plaintiffs’ popularity-contest argument also fails as a
 14 legal matter. As the Seventh Circuit pointed out in *Friedman*, Tommy guns were “all too
 15 common” during Prohibition, but this “popularity d[oes]n’t give” dangerous military weapons
 16 “constitutional immunity.” 784 F.3d at 408. Rather, *Heller* makes clear “[t]here is no Second
 17 Amendment protection for ‘weapons that are most useful in military service’”; it does not
 18 “make[] an exception for such weapons if they are sufficiently popular.” *Kolbe*, 849 F.3d at 142
 19 (quoting *Heller*, 554 U.S. at 627). Plaintiffs’ argument leads to the absurd conclusion that a
 20 firearm’s constitutional status turns on whether the gun industry chooses to engage in mass
 21 campaigns to flood the market. *See* Busse Decl., ¶¶ 31 (quoting a Palmetto Armory
 22

23 *Town of Superior, Colo.*, No. 1:22-cv-01685 (D. Col. July 22, 2022)—but that was a TRO granted without briefing
 24 by defendants, and plaintiffs voluntarily dismissed that case less than three months later, before the Court could
 25 consider whether to convert the TRO to a preliminary injunction.

26 ⁴ Plaintiffs, like other anti-gun-control litigants, rely on the “2021 National Firearms Survey” by William
 English, which has never been accepted for publication anywhere. Among other issues, Mr. English has never
 disclosed his survey questions or his funding source, casting significant doubt on the credibility of his findings.
 Klarevas Decl., ¶ 26 fn.18. The State Defendants do not concede that the survey or any data therein are reliable.

1 advertisement: “we want to sell as many AR-15 and AK-47 rifles as we can and put them into
2 common use in America today”). Moreover, “relying on how common a weapon is at the time
3 of litigation would be circular” because a weapon’s popularity (or not) often depends on whether
4 it is banned or not. *Friedman*, 784 F.3d at 409; *see also Kolbe*, 849 F.3d at 141.

5 Additionally, like the unsuccessful plaintiffs in *Kolbe* and other cases, Plaintiffs attempt
6 to read *Caetano v. Massachusetts*, 577 U.S. 411 (2016)—a five-paragraph, *per curiam* opinion
7 about non-lethal stun guns—as conclusively establishing an unbounded right to acquire as many
8 assault weapons as they want. Mot. at pp. 11-12. *Caetano* is irrelevant: it is a narrow opinion
9 that rejects three arguments no one makes here. Plaintiffs rely on the concurring opinion of
10 Justice Alito, joined by only one other Justice, asserting that “the relative dangerousness of a
11 weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful
12 purposes.” *See Caetano*, 136 S. Ct. at 1031 (Alito, J., concurring). “Of course, that reading of
13 *Heller* failed to garner a Court majority in *Caetano*.” *Kolbe*, 849 F.3d at 142.

14 Adopting a new standard whereby any weapon would be immune from regulation as long
15 as enough people bought one would also “upend settled law” because the number of stun guns
16 owned by Americans is roughly equal to the number of “legal civilian-owned machine guns in
17 the United States.” *Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*,
18 2023 WL 2655150, at *5 (D. Del. Mar. 27, 2023). Thus, under Plaintiffs’ reasoning, “the
19 National Firearms Act’s restrictions on machineguns” would be unconstitutional, a suggestion
20 the Supreme Court itself called “startling.” *Heller*, 554 U.S. at 624.

21 Beyond *Caetano*, Plaintiffs also rely on Justice Thomas’ lone dissent from denial of
22 certiorari in *Friedman*, but that opinion suffers the same infirmity as *Caetano*’s two-Justice
23 concurrence, as the eight other Justices *declined* to reverse the Seventh Circuit’s opinion
24 upholding a ban on assault weapons. *Contra* Mot. at pp. 12-13.

25 In short, none of Plaintiffs’ arguments establish that assault weapons are the type of
26 commonly used self-defense weapons covered by the Second Amendment. Rather, like M-16s,

1 assault weapons are the type of “weapons that are most useful in military service” that “may be
2 banned” consistent with the Second Amendment. *Heller*, 554 U.S. at 627.

3 **2. SHB 1240 Fits Well Within the Robust History and Tradition of Regulating**
4 **Weapons Used in Interpersonal Violence in the United States**

5 Even if assault weapons were covered by the Second Amendment’s text, Plaintiffs’
6 challenge would fail at *Bruen* step two because SHB 1240 “is consistent with the Nation’s
7 historical tradition of firearm regulation.” 142 S. Ct. at 2126. In a case like this, where
8 government regulation responds to technological change and unprecedented social concerns, this
9 analysis requires a “nuanced approach,” focusing on “whether modern and historical regulations
10 impose a comparable burden on the right of armed self-defense and whether that burden is
11 comparably justified.” *Id.* at 2132-33. The “analogical reasoning requires only that the
12 government identify a well-established and representative historical *analogue*, not a historical
13 *twin*.” *Id.*

14 SHB 1240 responds to the recent proliferation of assault weapons, driven primarily by
15 aggressive gun-industry marketing over the past decade. This proliferation has increased the rate
16 of mass shootings and, even more dramatically, increased mass shooting lethality. Even at this
17 early stage, on a preliminary record, it is apparent that the history and tradition of the United
18 States is replete with examples of government regulation responding to new social harms by
19 restricting the use of weapons disproportionately used in criminal violence. Thus, courts around
20 the country have repeatedly concluded that even if assault weapons were protected by the text
21 of the Second Amendment (which they are not) prohibiting their manufacture, import, and sale
22 is well within the historical tradition of the United States. Plaintiffs entirely fail to grapple with
23 this historical tradition. *See* Mot. at pp. 5-14.

a. SHB 1240 responds to dramatic technological developments and unprecedented social change

Obviously, the sort of weapon regulated by SHB 1240 did not exist in 1791 when the Second Amendment was ratified, or in 1868 when the Fourteenth Amendment was ratified. Semi-automatic weapons, of which assault weapons are a sub-group, first became technologically feasible in the early twentieth century, and were sold primarily to the military. Spitzer Decl., at p. 25. The AR-15, which typifies the sort of weapon regulated by SHB 1240, was invented in the late 1950s. Busse Decl., ¶ 8. But it was not until the late 2000s, and after the massacre at Sandy Hook Elementary, that assault weapons gained significant market share in America. Busse Decl., ¶ 15. This proliferation was the direct result of marketing efforts by gun manufacturers and retailers to sell firearms that were previously considered too dangerous for civilian use. *Id.* ¶¶ 17-23.

These developments, which enabled civilians to wield weaponry capable of killing more people more quickly than ever before, contributed directly to unprecedented increases in frequency and lethality of mass shootings. Klarevas Decl., ¶¶ 13-18.

The creation of assault weapons in the second half of the 20th century, their proliferation in the civilian market through gun industry efforts, and the consequent prevalence of mass shooting deaths that now terrorize Americans are the kind of technological and social changes that warrant a “nuanced approach” under *Bruen*. 142 S. Ct. at 2132; *see Herrera*, 2023 WL 3074799 at *7; *Del. State Sportsmen’s Ass’n*, 2023 WL 2655150 at *10; *Hanson*, 2023 WL 3019777 at *13; *Ore. Firearms Fed’n*, 2022 WL 17454829 at *12-13.

b. States have long regulated weapons used for lawless violence

SHB 1240 follows a long American tradition of regulating weapons associated with interpersonal violence. Since the Founding, the same basic pattern has repeated itself. First, someone invents a weapon which initially has no significant impact on society. Spitzer Decl., at pp. 2-3. If the technology can be readily manufactured and works as intended, the military will

1 often adopt it. *Id.* Afterward, military-style weapons often wind up on the commercial market
 2 and pass into civilian use. *Id.* If so, they sometimes contribute to criminal violence that terrorizes
 3 the public. *Id.* Here is where, time and again, states decide to regulate the weapons. *Id.* at pp.
 4 33-47 (firearms capable of automatic and semi-automatic fire), 7-14 (Bowie knives), 14-17
 5 (clubs and other blunt weapons); 18-19 (pistols); 19-20 (trap guns).

6 This pattern shows how weapons have typically been regulated when their proliferation
 7 leads to widespread societal problems. Weapons regulations that follow this pattern are useful
 8 analogues because they are “comparably justified” as a response to changing technology and
 9 new threats of violence and terror, and they “impose a comparable burden on the right of armed
 10 self-defense” by regulating especially dangerous weapons while leaving law-abiding citizens
 11 free to possess other weapons appropriate for self-defense. *Bruen*, 142 S. Ct. at 2133.

12 (1) Regulations on trap guns and clubs

13 Some of America’s earliest weapons regulations concerned “trap guns,” which were
 14 “devices or contraptions rigged in such a way as to fire when the owner need not be present.”
 15 Spitzer Decl., at p. 19. New Jersey prohibited setting trap guns in 1771, and 15 more states
 16 followed between then and 1925. *Id.*, Ex. B. New Jersey enacted its early law because the “most
 17 dangerous Method of setting Guns has too much prevailed in this Province,” and set a penalty
 18 of six pounds or six months’ incarceration for violating the law. *Id.* at p. 19.

19 Even older are laws regulating clubs and other bludgeoning instruments. Perhaps the
 20 simplest weapon technologically, these sorts of arms include billy clubs (a heavy hand-held rigid
 21 club), slungshots (a flexible strap with rock or piece of metal at one end), and sandbags (a fabric
 22 bag filled with sand or rocks). *Id.* at pp. 15-17. American restrictions on these sorts of weapons
 23 date to 1664 at the latest, when the Colony of New York prohibited their public carry. *Id.* at p.
 24 16; Ex. C. In the following centuries, “every state in the nation had laws restricting one or more
 25 types of clubs,” owing to their widespread use in criminality and interpersonal violence. *Id.* at
 26 p. 14; Ex. C. Slungshots in particular “were viewed as especially dangerous or harmful when

1 they emerged in society, given the ubiquity of state laws enacted after their invention and their
 2 spreading use by criminals and as fighting implements.” *Id.* at p. 16.

3 (2) Regulations on Bowie knives and pistols

4 The history and tradition of regulating weapons associated with interpersonal violence
 5 continued into the 19th and 20th centuries with regulations of Bowie knives and pistols, among
 6 others.

7 Knives are obviously very old, with a wide variety of knives having been utilized
 8 throughout human history for various purposes. But in the 1830s, the “Bowie knife” became
 9 popular in the U.S. after Jim Bowie used the distinctive knife to kill one man and injure another
 10 in a duel. Spitzer Decl., at p. 7; Rivas Decl., ¶ 13. The knives “were widely used in fights and
 11 duels, especially at a time when single-shot pistols were often unreliable and inaccurate.” Spitzer
 12 Decl., at p. 7; *see also* Rivas Decl., ¶ 14. Like assault weapons today, the demand for Bowie
 13 knives was partly fueled by their notorious reputation. Spitzer Decl., at p. 8. The proliferation of
 14 the knives, and their subsequent widespread criminal usage, prompted states to restrict them. *Id.*
 15 Starting in the 1830s and ending around the start of the twentieth century, “every state” except
 16 New Hampshire “restricted Bowie knives.” *Id.* at p. 9. Fifteen states “all but banned the
 17 possession of Bowie knives outright (by banning both concealed and open carry),” while others
 18 taxed their acquisition or possession, often prohibitively. *Id.*; *see also id.*, Exs. C, E, H. “[T]hese
 19 taxes were clearly designed to discourage trade in and public carry of” Bowie knives. Rivas
 20 Decl., ¶ 26.

21 The regulatory pattern repeated when multi-shot revolvers appeared. While Colt’s
 22 revolver achieved the technological capability of firing multiple shots without reloading as early
 23 as the 1830s, the gun did not become popular until after the Civil War, once it reached the civilian
 24 market. Spitzer Decl., at pp. 26-27; Rivas Decl., ¶ 16. When that happened, and Colt revolvers
 25 became associated with increasing rates of interpersonal violence and crime, states passed laws
 26 regulating them. Spitzer Decl., at p. 27; Rivas Decl., ¶ 29. Tennessee and Arkansas completely

1 prohibited the sale of easily concealed pistols in the late 1800s, complementing the public-carry
 2 restrictions that were common throughout the United States. Rivas Decl., ¶ 29-30; *see also*
 3 Spitzer Decl. Ex. B.

4 **(3) Early twentieth century regulations on automatic and semi-
 automatic weapons**

5 Automatic and semi-automatic weapons were introduced into America’s civilian
 6 marketplace after being adopted by the military during World War I, and quickly became the
 7 subject of a nationwide effort to restrict their possession and use. Spitzer Decl., at pp. 33-47. The
 8 Thompson submachine gun (Tommy Gun) was first marketed to civilians in the United States
 9 starting in the 1920s, and it was advertised as the “ideal weapon for the protection of large
 10 estates, ranches, plantations, etc.” *Id.* at pp. 34-36. Despite its marketing as a defensive weapon,
 11 the Tommy Gun became known for its ability to murder a large number of people quickly, most
 12 infamously in the St. Valentine’s Day massacre of 1929. *Id.* at pp. 34, 37.

13 Reacting to these new, dangerous, and suddenly widely available weapons, 32 states
 14 enacted anti-machine gun laws between 1925 and 1934. *Id.* at pp. 40-41. Many of these laws
 15 regulated semi-automatic weapons in addition to automatics. *Id.* at pp. 43-45. Ten jurisdictions
 16 had laws of this kind. *Id.* This flurry of legislative activity culminated in the 1934 National
 17 Firearms Act, which imposed strict requirements on automatic firearms nationwide. *Id.* at p. 42.
 18 “Machine guns” (i.e. automatic weapons) remain strictly regulated in the United States to this
 19 day. *See, e.g.*, 18 U.S.C. § 922(o).

20 **c. SHB 1240 is consistent with the historical tradition of weapons
 21 regulation**

22 SHB 1240 was enacted for similar reasons as historical weapons regulations, and any
 23 burden on the right to bear arms in self-defense is similarly minimal.

24 The machine-gun bans of the 1920s and 1930s are particularly apt comparators. While
 25 *Bruen* stated that “not all history is created equal,” 142 S. Ct. at 2136, it did not hold that more
 26 modern history was irrelevant, especially when it is consistent with earlier American traditions.

1 *See Hanson*, 2023 WL 3019777 at *16 (“*Bruen* left open the possibility that in an appropriate
 2 case, 20th century history that is not contradicted by earlier evidence can illuminate a modern-
 3 day regulation’s constitutional vitality.”). Prohibition-era machine-gun bans were a natural
 4 outgrowth of earlier laws restricting trap guns, clubs, Bowie knives, and pistols—just as modern
 5 assault-weapon restrictions are. And SHB 1240, just like its historical analogues, was enacted
 6 specifically to reduce incidents of high-fatality violence. *See, e.g., Hanson*, 2023 WL 3019777
 7 at *15. Likewise, just like its historical analogues, SHB 1240 does not burden the right to armed
 8 self-defense. The Tommy Gun is a weapon of war, unsuited for self-defense. Spitzer Decl., at
 9 pp. 34-35. Assault weapons, too, are offensive, military-style weapons not useful for self-
 10 defense. *See supra* §§ II.B-D. Just as the machine-gun bans and other historical weapons
 11 regulations are consistent with the history and tradition of the United States—as *Heller*
 12 confirmed, 554 U.S. at 624—SHB 1240 is too, as courts have consistently found. *See Del. State*
 13 *Sportsmen’s Ass’n*, 2023 WL 2655150 at *11; *Bevis*, 2023 WL 2077392 at *10-11; *Herrera*,
 14 2023 WL 3074799, at *4; *see also Ore. Firearms Fed’n, Inc.*, 2022 WL 17454829 at *13;
 15 *Hanson*, 2023 WL 3019777 at *15-16 (upholding regulation on large-capacity magazines as
 16 relevantly similar to Prohibition-era machine-gun regulations).

17 **C. Plaintiffs Face No Irreparable Harm**

18 Plaintiffs’ extraordinary request for preliminary injunctive relief must also be denied
 19 because they will not suffer any irreparable harm while this litigation is pending. Plaintiffs’ sole
 20 asserted claim of harm is a constitutional violation (Mot. at p. 14), but as detailed above, they
 21 cannot show a likelihood of success on their facial challenge to SHB 1240.

22 Plaintiffs are also incorrect that a constitutional violation, standing alone, automatically
 23 establishes irreparable harm. Plaintiffs’ preferred rule is specifically limited to the First
 24 Amendment context. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“*The loss of First Amendment*
 25 *freedoms*, for even minimal periods of time, unquestionably constitutes irreparable injury.”). In
 26 other constitutional contexts, courts “require[] more than a constitutional claim to find

1 irreparable harm.” *Great N. Res. v. Coba*, 3:20-CV-01866-IM, 2020 WL 6820793, at *2 (D. Or.
 2 Nov. 20, 2020) (discussing *Melendres v. Arpaio*, 695 F.3d 990, 997 (9th Cir. 2012); *Hernandez*
 3 *v. Sessions*, 872 F.3d 976, 986 (9th Cir. 2017); *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053,
 4 1068 (9th Cir. 2014); and *Am.Trucking Assn’s v. City of Los Angeles*, 559 F.3d 1046, 1057 (9th
 5 Cir. 2009)); *see also Allen v. County of Lake*, No. 14-CV-03934-TEH, 2014 WL 4380297, at *2
 6 (N.D. Cal. Sept. 4, 2014); *Poder in Action v. City of Phoenix*, 481 F. Supp. 3d 962 (D. Ariz.
 7 2020); *Mendoza v. Garrett*, 358 F. Supp. 3d 1145, 1180-81 (D. Or. 2018).⁵

8 Here, Plaintiffs cannot show irreparable harm because nothing in SHB 1240 impinges on
 9 their individual rights to bear arms in self-defense. Even taking at face value Plaintiffs’ claim
 10 that they own assault weapons for self-defense purposes (despite their unsuitability for this
 11 purpose), SHB 1240 does not affect the individual Plaintiffs’ ability to use the assault weapons
 12 they *already own*. *See* Dkt. #1 (Compl.), ¶¶ 11-13. Furthermore, plenty of firearms are lawfully
 13 for sale in Washington that Plaintiffs can use for self-defense. Though Plaintiffs may not sell
 14 their existing assault weapons within the State or add to their collections, those inconveniences
 15 pose no constitutional emergency warranting the “extraordinary remedy” of a preliminary
 16 injunction. *Winter*, 555 U.S. at 24.

17 Nor can Plaintiffs bootstrap their irreparable harm argument by alleging lost sales by
 18 Plaintiff Sporting Systems Vancouver because “monetary damages” are not irreparable. *Fox*
 19 *Broad. Co. v. Dish Network*, 747 F.3d 1060, 1073 (9th Cir. 2014). Nor has Sporting Systems
 20 Vancouver suffered any constitutional injury, because even if the Second Amendment
 21 guaranteed the unrestricted right to buy assault weapons, “the Second Amendment does not
 22 independently protect a proprietor’s right to sell firearms.” *Teixeira v. County of Alameda*, 873
 23 F.3d 670, 690 (9th Cir. 2017). Because Sporting System Vancouver has no Second Amendment
 24 right to sell weapons, or at least no greater right than its customers’ right to acquire weapons for
 25

26 ⁵ To the extent individual Plaintiffs assert harm based on “fears [of] prosecution” under SHB 1240,
 causation is lacking because SHB 1240 does not prohibit possessing or “acquir[ing]” assault weapons. Mot. at p. 2.

1 self-defense, *id.* at 682, it suffers no irreparable harm.

2 **D. The Equities and Public Interest Weigh Heavily against an Injunction**

3 Finally, the Court should deny Plaintiffs’ Motion because the equities and public
4 interest—which merge here—are resoundingly in the State’s favor. *See Drakes Bay Oyster Co.*
5 *v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Plaintiffs’ only interest is in being able to buy
6 *more* assault weapons than they already have, or to sell them to a broader market than SHB 1240
7 permits, while this litigation is pending. By contrast, the Legislature found that SHB 1240 will
8 likely save lives. This is no contest.

9 As explained above, assault weapons are particularly deadly, military-style firearms that
10 act as force multipliers in mass shootings, are disproportionately used to kill police, and are
11 disproportionately owned by gang members. The types of weapons and accessories available
12 today, and the ease with which items can be purchased to render these arms fully automatic, have
13 given civilians weapons that are *more* lethal than what is carried by the military. Busse Decl.,
14 ¶¶ 44, 47; *Bevis*, 2023 WL 2077392, at *15. Our Legislature concluded that “gun violence is a
15 threat to the public health and safety of Washingtonians” and that restricting the sale of assault
16 weapons would likely reduce that violence. 2023 Wash. Sess. Laws, ch. 162 § 1. It would be a
17 mistake for this Court to overturn the judgment of the People’s representatives, especially on a
18 preliminary basis without a fully developed factual record.

19 **E. Neither an Accelerated Trial on the Merits Nor Summary Judgment Is Appropriate**
20 **at this Early Juncture.**

21 Under Fed. R. Civ. P. 65(a)(2), “the [C]ourt may advance the trial on the merits and
22 consolidate it with the hearing” on a motion for preliminary injunction. But this is disfavored:
23 “[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a
24 final judgment on the merits.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

25 If this Court reaches the second step of the *Bruen* analysis, the parties will need to engage
26 in discovery to develop evidence establishing and illuminating the relevant historical tradition

1 of weapons regulation, including laws and regulatory practices throughout our history and the
 2 historical contexts in which they arose. *See* Mot. at p. 5 (agreeing that historical tradition must
 3 be factually “prove[d]”). But by seeking consolidation with the merits or summary judgment,
 4 Plaintiffs seek to effectively deny the State Defendants the opportunity to develop and submit
 5 this evidence. Plaintiffs’ previous efforts to do so have appropriately been rejected. *See*
 6 Declaration of Andrew Hughes, Ex. A at 12-13 (Chief Judge Estudillo rejecting Plaintiffs’
 7 request to dispense with discovery, concluding that *Bruen*’s second step requires “historical
 8 research done by historians” and so “discovery does need to be had ... to help the Court out with
 9 the historical contexts” in *Sullivan v. Ferguson*, Case No. 3:22-cv-5403-DGE (Oct. 3, 2022). So
 10 too here: if the Court concludes that it must reach step two of the *Bruen* analysis, discovery is
 11 necessary and summary adjudication on an undeveloped record is inappropriate.

12 IV. CONCLUSION

13 Plaintiffs’ Motion for Preliminary Injunction should be denied.

14
 15 DATED this 22nd day of May, 2023.

16 ROBERT W. FERGUSON
 17 Attorney General

18 *s/Andrew R. W. Hughes*
 19 KRISTIN BENESKI, WSBA #45473
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 26

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 22nd day of May, 2023, at Seattle, Washington.

s/ Andrew R.W. Hughes
ANDREW R.W. HUGHES, WSBA #49515
Assistant Attorney General