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## How Far Will the Strictest State Push the Limits: The Constitutionality of California's Proposed Gun Law Under the Second Amendment

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# HOW FAR WILL THE STRICTEST STATE PUSH THE LIMITS: THE CONSTITUTIONALITY OF CALIFORNIA’S PROPOSED GUN LAW UNDER THE SECOND AMENDMENT

LAUREN PAGLINI\*

I. Introduction .....	460
II. Background .....	463
A. The Triggering Factors of Assembly Bill 1014. ....	463
B. Establishing the Second Amendment Baseline: <i>District of         Columbia v. Heller</i> . ....	464
C. Analyzing the Constitutionality of City and State Ordinances Under the Second Amendment.....	466
1. Intermediate Scrutiny .....	467
2. Strict Scrutiny .....	468
III. Analysis .....	469
A. When Selecting the Appropriate Level of Scrutiny For Second Amendment Claims, Courts Should Adopt the First Amendment Framework Because the Second Amendment Is Subject to a One-Size-Fits-All Level of Scrutiny.....	469
1. Courts Should Use the First Amendment As a Guide When Analyzing Second Amendment Claims. ....	469

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460 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 23:3

2. Assembly Bill 1014 Does Not Severely Burden an Individual’s Right to Bear Arms Because the Bill Does Not Apply to Responsible, Law-Abiding Citizens; therefore, Courts Should Apply Intermediate Scrutiny..... 470

B. Assembly Bill 1014 Passes Intermediate Scrutiny Because the Bill Reasonably Regulates the Time and Manner in Which Dangerous, Threatening People Possess Firearms, Thus Aiming to Serve the Government’s Compelling Interest in Preventing Gun Violence and Mass Shootings. .... 474

C. Not Only Does California’s Assembly Bill 1014 Satisfy Intermediate Scrutiny, But the Bill Also Survives Strict Scrutiny Because the Bill Narrowly Restricts Dangerous Citizens Aiming to Serve the Compelling Governmental Interest to Prevent Gun Violence and Mass Shootings. . 478

IV. Policy Recommendation..... 483

V. Conclusion ..... 484

## I. INTRODUCTION

Elliot Rodger viewed Friday, May 24, 2014, as his “day of retribution” as he embarked on a violent killing spree throughout the streets of California.<sup>1</sup> Rodger’s massacre left a total of seven victims dead, including himself, on the streets neighboring the University of California, Santa Barbara campus.<sup>2</sup> Rodger executed his premeditated, meticulous mass murder with three semi-automatic handguns, accompanied by 400 rounds of ammunition — all of which he legally purchased and registered.<sup>3</sup>

As a child, Rodger participated in therapy and received psychiatric drug treatment; however, at the age of 18, Rodger refused continued mental healthcare.<sup>4</sup> Professionals agree that Rodger displayed warning signs

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1. See Kimberly Kindy, *Father of Victim in Santa Barbara Shootings to Politicians: ‘I Don’t Care About Your Sympathy*, WASH. POST (May 27, 2014), [http://www.washingtonpost.com/politics/father-of-victim-in-santa-barbara-shootings-to-politicians-i-dont-care-about-your-sympathy/2014/05/27/8a030d10-e5ad-11e3-a86b-362fd5443d19\\_story.html](http://www.washingtonpost.com/politics/father-of-victim-in-santa-barbara-shootings-to-politicians-i-dont-care-about-your-sympathy/2014/05/27/8a030d10-e5ad-11e3-a86b-362fd5443d19_story.html) (detailing how Rodger stabbed and shot his victims).

2. Ralph Ellis & Sara Sidner, *Deadly California Rampage: Chilling Video, but No Match for Reality*, CNN (May 27, 2014), <http://www.cnn.com/2014/05/24/justice/california-shooting-deaths/> (stating that Rodger killed seven, including himself, and injured thirteen others).

3. See *id.*

4. L.A. Times Staff Writers, *Isla Vista Attacker’s Struggles Didn’t Prevent Gun Buying*, L.A. TIMES (May 26, 2014), <http://www.latimes.com/local/lanow/la-me-in-islavista-attacker-20140526-story.html>.

indicating he harbored violent tendencies.<sup>5</sup> For example, in Rodger's 137-page manifesto, "My Twisted World," he documented his violent propensities including his attempt to push people off of a ledge at a college party.<sup>6</sup> In April 2014, after discovering her son's disturbing YouTube videos, Rodger's mother tried to intervene by alerting his former therapist.<sup>7</sup> In response, the therapist reported the incident to the Santa Barbara mental health hotline, which dispatched police officers to follow up with Rodger.<sup>8</sup> Rodger admitted to the police officers that he had difficulties socializing with his classmates and peers, yet the police determined that his calm, lucid behavior did not meet the criteria for an involuntary hold.<sup>9</sup> If the officers had searched Rodger's home they would have uncovered three semi-automatic handguns, 400 rounds of ammunition, and his 137-page manifesto plotting his "day of retribution."<sup>10</sup> However, because Rodger maintained a clean record and did not meet the criteria for an involuntary commitment for mental health treatment, California law did not allow police to intervene or remove firearms.<sup>11</sup> Further, even if police believed Rodger truly posed a threat to himself or others, California law did not permit police to intervene.<sup>12</sup>

In response to Rodger's mass shooting, California politicians recognized

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vista-shooting-suspects-struggle-didnt-prevent-gun-buying-20140526.html  
(emphasizing that he was in a phase of pre-psychosis).

5. See Phillip Rucker & Robert Costa, *In Elliot Rodger, Authorities in California Saw Warning Signs but Didn't See a Tipping Point*, WASH. POST (May 25, 2014), [http://washingtonpost.com/national/sheriff-calif-shooter-rodger-flew-under-the-radar-when-deputies-visited-him-in-april/2014/05/25/88123026-e3b4-11e3-8dcd6b7fede081a\\_story.html](http://washingtonpost.com/national/sheriff-calif-shooter-rodger-flew-under-the-radar-when-deputies-visited-him-in-april/2014/05/25/88123026-e3b4-11e3-8dcd6b7fede081a_story.html).

6. See *id.* (detailing Rodger's violent episodes where he targeted girls whom Rodger wanted to "punish" for not talking to him).

7. Caroline Bankoff, *UCSB Shooter's Parents Tried to Stop Him*, N.Y. MAG. (May 26, 2014), <http://nymag.com/daily/intelligencer/2014/05/ucsb-shooters-parents-tried-to-stop-him.html> (explaining that Rodger's mother noticed and sought to prevent her son's erratic behavior).

8. See *id.* (emphasizing Rodger participated in therapy on-and-off since he was eight years old; in high school, Rodger saw a therapist every day).

9. See *id.* (stressing that under California law police officers lacked grounds for a search because they classified Rodger as normal).

10. Rucker & Costa, *supra* note 5 (asserting officers would have found Rodger's manifesto detailing his disturbed thoughts).

11. See J.B. Wogan, *After Isla Vista, Lawmakers Want to Take Guns from Dangerous People*, GOVERNING (June 6, 2014), <http://www.governing.com/topics/public-justice-safety/gov-bill-would-allow-police-to-seize-guns-from-dangerous-people.html> (stressing California law is flawed because it did not allow police to remove Rodger's firearms).

12. *Id.* (proposing how Assembly Bill 1014 would attempt to repair the flaw in California law).

the problems with California gun laws; particularly, Assemblywoman Nancy Skinner affirmed that the Santa Barbara mass shooting illuminated the problems with California's mental health laws, but more importantly, with the state's gun laws.<sup>13</sup> Rodger's massacre prompted California lawmakers to create Assembly Bill 1014, which allows police to temporarily seize guns from people who pose a threat to themselves or others.<sup>14</sup>

This Comment argues that Assembly Bill 1014 does not infringe on an individual's Second Amendment constitutional right to bear arms because the bill is narrowly tailored to prevent gun violence as it targets only dangerous individuals.<sup>15</sup> Part II discusses Assembly Bill 1014 and summarizes the basic principles of Second Amendment jurisprudence.<sup>16</sup> Part III argues that since the Supreme Court has not yet established an appropriate standard for Second Amendment analysis, courts should use First Amendment jurisprudence as guidance in determining the appropriate level of scrutiny to employ when analyzing Second Amendment claims.<sup>17</sup> Part III explains how Assembly Bill 1014 survives the requisite intermediate scrutiny analysis and further survives strict scrutiny – the highest level of scrutiny applied by the courts.<sup>18</sup> Part IV recommends that other states should consider the impact of gun violence by passing legislation similar to California's Assembly Bill 1014.<sup>19</sup> Part V concludes by reiterating that California's Assembly Bill 1014 is constitutional because it survives both intermediate and strict scrutiny.<sup>20</sup>

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13. Melanie Mason, *Lawmakers Seek 'Gun Violence Restraining Order' After UCSB Slayings*, L.A. TIMES (May 27, 2014), <http://www.latimes.com/local/political/lam-me-pc-gun-violence-restraining-order-20140527-story.html> (highlighting that legislation surfaced in response to the Santa Barbara shooting).

14. See Wogan, *supra* note 11 (noting when people are in a psychological crisis, those closest can best spot warning signs).

15. U.S. CONST. amend. II.

16. See *infra* Part II (discussing the Second Amendment's historical jurisprudence and its applicability, using First Amendment framework, to California's Assembly Bill 1014).

17. See *infra* Part III (analogizing the First Amendment framework with the Second Amendment, using a one-size-fits-all analysis, arguing that Assembly Bill 1014 passes intermediate scrutiny).

18. See *infra* Part III (arguing that when applying the First Amendment scrutiny framework, Assembly Bill 1014 survives both intermediate and strict scrutiny).

19. See *infra* Part IV (discussing that in response to our nation's recent mass shooting trend, other states should adopt gun violence restraining orders and firearm seizure warrants similar to California's Assembly Bill 1014).

20. See *infra* Part V (arguing that extrapolating the First Amendment framework, Assembly Bill 1014 is constitutional under the Second Amendment).

## II. BACKGROUND

*A. The Triggering Factors of Assembly Bill 1014.*

Assembly Bill 1014 creates a procedure for family members to obtain a restraining order and firearm seizure warrant against an individual who poses significant injury to themselves or others by possessing a firearm.<sup>21</sup> A gun violence restraining order prohibits an individual from having in his or her custody or control, owning, purchasing, or possessing any firearm or ammunition.<sup>22</sup> A firearm seizure warrant orders a restrained person to surrender to local law enforcement all firearms or ammunition in his or her custody.<sup>23</sup>

In particular, an immediate family member may submit an ex parte request to the court setting forth the facts and circumstances convincing the court that a gun violence restraining order shall be issued.<sup>24</sup> Whether the grounds exist to grant a gun violence restraining order will turn on many factors including: recent threats or acts of violence, reckless use or display of firearms, and history of use, attempted use, or threat of force against others.<sup>25</sup> If a magistrate judge finds probable cause to believe the named person poses a threat, the magistrate will issue a gun violence restraining order.<sup>26</sup> Further, if the individual has current control or custody of firearms, then the magistrate may also issue a firearm seizure warrant.<sup>27</sup>

After issuing a gun violence restraining order, the court will hold a hearing to determine whether the individual may buy or possess firearms.<sup>28</sup> During the hearing, the State must present clear and convincing evidence that the named person poses a significant risk of personal injury to themselves or

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21. A.B 1014, Gen. Assemb., 2013-2014 Reg. Sess. (Cal. 2014) emphasizing that to ensure an individual's due process right, an individual is entitled to a hearing to determine whether a person may own or possess a firearm).

22. *See id.* (detailing the renewal process of the order for additional one-year periods and hearing process to terminate the order).

23. *See id.* (explaining how the local law enforcement agency must retain custody of the firearm and/or ammunition for the duration of a gun violence restraining order).

24. *See id.* (stressing an affidavit should set forth the credible facts of violent behavior or a violent history in order to establish the restraining order's probable cause).

25. *See id.* (considering recent violations of any protective orders and prior arrests for felony offenses).

26. *Id.* (stating whether a magistrate issues a firearm seizure warrant is at the magistrate's complete discretion based on the facts established by the government).

27. *Id.* (explaining that a seizure warrant requires that a police officer seize any specified firearms the dangerous individual owns or possesses).

28. *See id.* (detailing the hearing must be scheduled no later than twenty-one days after the firearm seizure).

others by owning or possessing the firearm.<sup>29</sup> If such risks are proven, Assembly Bill 1014 requires law enforcement to retain any firearms for a period of up to one year.<sup>30</sup> Further, Assembly Bill 1014 would prohibit the restrained individual from owning, possessing, receiving or attempting to receive a firearm.<sup>31</sup> Assembly Bill 1014 would authorize, upon probable cause, either a law enforcement agency or judge to file a motion to request a gun violence restraining order renewal.<sup>32</sup> Since Assembly Bill 1014 involves firearm restrictions, its constitutionality under the Second Amendment will undoubtedly be questioned.<sup>33</sup>

*B. Establishing the Second Amendment Baseline: District of Columbia v. Heller.*

The Second Amendment protects an individual's right to bear arms.<sup>34</sup> More specifically, courts recognize that at the core of the Second Amendment is the right of law-abiding, responsible citizens to bear firearms in the home for self-defense.<sup>35</sup> In 2008, the Supreme Court struck down the District of Columbia's ban on the possession of handguns in *District of Columbia v. Heller*.<sup>36</sup> For the first time, the Supreme Court analyzed the Second Amendment's protections, scope, and limitations.<sup>37</sup> The Court began by analyzing the Second Amendment's Operative Clause that codifies a

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29. *Id.* (stressing that the state carries the burden of proof).

30. *See id.* (explaining that an individual found as a significant risk of injury may file a written appeal).

31. *Id.* (noting that the total time of the firearm restraint should also not exceed one year, however, can be renewed).

32. *See id.* (underlining that only with probable cause to believe that a person continues to pose a significant risk of personal injury to him, herself or others will a judge grant this motion).

33. *See id.* (acknowledging critics will attack the Bill's constitutionality under *Heller*); Patrick McGreevy, *Governor Oks Temporary Gun Seizures from People Judged to be a Danger*, L.A. Times (Sept. 30, 2014), <http://www.latimes.com/local/political/la-me-pc-california-jerry-brown-gun-seizures-20140929-story.html> ("Without a doubt, AB 1014 is one of the most egregious violations of civil liberties ever introduced in the California Legislature.").

34. U.S. CONST. amend. II.

35. *See United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (noting that *Heller* established the core of the Second Amendment as a citizen's right to use arms in defense of hearth and home).

36. *See District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (holding that the District of Columbia's blanket ban on handgun possession prohibits law-abiding citizens from lawfully possessing a firearm in the home for the purpose of immediate self-defense).

37. *See id.* (establishing the Second Amendment protects an individual's right to keep and bear arms for the core lawful purpose of self-defense).

“right of the people,” stressing that this right belongs to all Americans.<sup>38</sup> The Court analyzed the expansive meaning behind “the right to keep and bear Arms.”<sup>39</sup> Additionally, the Court, while analogizing it to the First Amendment, held that the Second Amendment extends to all arms, even those not in existence at the time of the Second Amendment’s founding.<sup>40</sup> After piecing together the textual elements of the Operative Clause, the Court found that the Second Amendment guarantees an individual the “right to possess and carry weapons in case of confrontation.”<sup>41</sup>

Indeed, the Second Amendment confers an individual the right to bear arms; however, courts recognize that this right is not unlimited.<sup>42</sup> Particularly, the Second Amendment does not extend to *all* citizens the right to carry arms for *any* manner or purpose.<sup>43</sup> The Court cautioned that though the Second Amendment confers a right to bear arms, nothing about the Court’s opinion should cast doubt on the long-standing prohibitions on the possession of firearms by felons and the mentally ill,<sup>44</sup> or laws forbidding firearms in sensitive places such as schools and government buildings.<sup>45</sup>

In *Heller*, the Court struck down the gun ban in the District of Columbia after emphasizing the Second Amendment’s inherent right of self-defense in the home.<sup>46</sup> Unlike most jurisprudence analyzing an individual’s fundamental right, the Court did not employ a specific level of scrutiny in establishing the law’s constitutionality.<sup>47</sup> The Court, however, established

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38. *See id.* at 579-81.

39. *Id.* at 581 (noting the phrase applies to weapons not specifically designed for military use and capacity).

40. *Id.* at 582 (comparing the Second and Fourth Amendment, stating just as the Fourth Amendment protects modern forms of search, the Second Amendment applies to any and all instruments that constitute bearable arms).

41. *Id.* at 592 (noting that the meaning of the Second Amendment is strongly supported by the amendment’s historical background).

42. *See Kwong v. Bloomberg*, 723 F.3d 160, 165 (2d Cir. 2013) (drawing the parallel between the First and Second Amendment noting though the right is protective, not unlimited).

43. *Heller*, 554 U.S. at 595 (stressing the Second Amendment does not allow citizens the right to carry arms for any confrontation).

44. Jana R. McCreary, “*Mentally Defective*” *Language in the Gun Control Act*, 45 CONN. L. REV. 813, 853 (2013) (noting the *Heller* Court correctly limits the right to bear arms from the mentally ill).

45. *See Heller*, 554 U.S. at 626 (noting the Court did not invalidate many of the longstanding state and federal prohibitions on firearm possession).

46. *See id.* at 628 (establishing that the ban impinges on an individual’s inherent right of self-defense by banning an entire class of arms that society uses for lawful purposes).

47. *Id.* at 628-29. (noting the Court did not specify a level of scrutiny because under any level of scrutiny a complete ban of handguns from the home would fail constitutional

that courts going forward could not analyze the Second Amendment under a rational basis review because the low burden would render the Second Amendment ineffective.<sup>48</sup> Though the Court rejected the rational basis test, the Court neither established, nor hinted, at how future courts should review Second Amendment claims.<sup>49</sup> Instead, the Court held that under either strict or intermediate scrutiny, the complete ban of handguns – the most preferred firearm – in the home, would fail any constitutional analysis.<sup>50</sup> In effect, the Court held the Second Amendment rises above any interests in a law-abiding, responsible citizen's right to use arms in defense of "hearth and home."<sup>51</sup> Thus, the Court concluded that the District of Columbia's ban on handgun possession violated the Second Amendment because it prohibited law-abiding citizens from possessing *any* lawful firearm in the home for the purpose of self-defense.<sup>52</sup>

*C. Analyzing the Constitutionality of City and State Ordinances Under the Second Amendment.*

Although the Court in *Heller* established a list of long-standing firearm regulations that did not infringe on a person's Second Amendment right, the Court did not establish how future courts should review Second Amendment claims.<sup>53</sup> When determining the level of scrutiny to use in Second Amendment jurisprudence, most courts analogize to the First Amendment.<sup>54</sup> Particularly, the court in *United States v. Chovan* looked to the First

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muster).

48. *See id.* at 628 n.27 (explaining that if all that was required to overcome the right to bear arms was rational basis, the Second Amendment would be redundant and have no effect).

49. *See United States v. Chester*, 628 F.3d 673, 676 (4th Cir. 2010) (asserting the *Heller* court did not establish the proper level of scrutiny because the ban would fail under any constitutional muster).

50. *See Heller*, 554 U.S. at 628-29 (noting that the District of Columbia's ban disables individuals to protect one's home and family and such would be unconstitutional under any standards of scrutiny that we have applied to other constitutional rights).

51. *Id.* at 635; *see also United States v. Marzzarella*, 614 F.3d 85, 92 (3d Cir. 2010) (noting the Amendment must protect the right of law-abiding citizens to own guns for lawful purposes).

52. *Heller*, 554 U.S. at 635 (stressing the right to self-defense in an individual's home is at the core, a law-abiding citizen's Second Amendment right).

53. *See United States v. Masciandaro*, 638 F.3d 458, 467 (4th Cir. 2011) (concluding *McDonald* established self-defense as fundamental and as the central component of the individual right to bear arms); *see also United States v. Chovan*, 735 F.3d 1127, 1137 (9th Cir. 2013) (noting the *Heller* court did determine that rational basis review would render the Second Amendment redundant, and thus inappropriate for Second Amendment analysis).

54. *See Chovan*, 735 F.3d at 1138.

Amendment when analyzing a law that prohibited domestic violence misdemeanants and held that the degree of judicial scrutiny depends on the degree of burden placed on the fundamental right.<sup>55</sup> Further, the court in *United States v. Marzzarella* also used the First Amendment's framework to decide whether a Second Amendment claim should be analyzed under strict or intermediate scrutiny.<sup>56</sup>

Additionally, courts analyzing the Second Amendment can follow the court's analysis in *Ezell v. City of Chicago* by extrapolating the First Amendment framework.<sup>57</sup> Using the framework, courts should conclude that a *severe* burden on the Second Amendment will require a "strong public interest justification" while activity and laws merely regulating gun possession, rather than restricting, may be more easily justified.<sup>58</sup> As illustrated in *Chovan* and *Marzzarella*, courts may look towards the First Amendment jurisprudence and employ either strict or intermediate scrutiny to a Second Amendment claim.<sup>59</sup>

### 1. Intermediate Scrutiny

When a statute's place and manner restrictions serve a governmental interest and do not substantially burden the right to possess a firearm for self-defense, courts will review the Second Amendment claim under intermediate scrutiny.<sup>60</sup> For example, when analyzing the law banning gun possession for domestic violence misdemeanants, the court in *United States v. Chester* stated when applying intermediate scrutiny that: (1) the government's objective must be important, and (2) there must be a reasonable fit between the regulation and the asserted objective.<sup>61</sup> The court in *United States v.*

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55. *Id.* (stating that along with the burden, courts sometimes look towards the specific iteration of the right).

56. *See United States v. Marzzarella*, 614 F.3d 85, 96 (3d Cir. 2010) (explaining while analyzing the constitutionality of a ban of firearms with destroyed serial numbers, the court declared that courts should apply the First Amendment framework to Second Amendment claims).

57. *See Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011) (analogizing the First Amendment to the Second Amendment, stating time, place, and manner restrictions need only be reasonable and justified).

58. *See id.*

59. *See Chovan*, 735 F.3d at 1138 (noting that similar to the First Amendment context, the level of scrutiny in the Second Amendment context should depend on the nature of the conduct being regulated and to the degree which the challenged law burdens the right); *see also Marzzarella*, 614 F.3d at 97-98 (extrapolating the First Amendment framework).

60. *See Chovan*, 735 F.3d at 1139 (recognizing the law may not significantly impair an individual's right of firearm possession in the home).

61. *See United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010) (stating the

*Masciandro* noted that a law does not need to be the least intrusive means of achieving the government objective.<sup>62</sup>

The court in *Chester* applied intermediate scrutiny to a West Virginia law that banned domestic violence misdemeanants from possessing firearms and justified the use of intermediate scrutiny since the ban served the interest of restraining non-law-abiding citizens' gun possession.<sup>63</sup> Similarly, the court in *United States v. Skoien* applied the same analysis as the *Chester* court to a domestic violent misdemeanor.<sup>64</sup>

## 2. Strict Scrutiny

Courts review Second Amendment claims under strict scrutiny only when a restriction imposes a substantial burden on the ability of a law-abiding citizen to possess a firearm for self-defense.<sup>65</sup> The court in *Chovan* explained that courts weigh the severity of the law's burden against a narrowly tailored governmental interest.<sup>66</sup> As the court in *New York State Rifle & Pistol Associations v. Cuomo* explained, courts will define a regulation as a severe burden when a regulation fails to leave open ample alternative channels.<sup>67</sup> For example, the court in *Decastro* recognized that although the New York law prohibiting anyone except for licensed importers from transporting firearms burdened citizens' Second Amendment right, the law left ample alternative means of possessing a firearm.<sup>68</sup> For a regulation to survive strict scrutiny, the regulation must be narrowly tailored.<sup>69</sup> A narrowly tailored

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government has the burden of showing there is a reasonable fit, not perfect fit, between the challenged regulation and a substantial governmental interest).

62. See *United States v. Masciandro*, 638 F.3d 458, 474 (4th Cir. 2011) (acknowledging the fit of the law's burden need not be perfect, rather, a reasonable fit to the governmental interest).

63. See *Chester*, 628 F.3d at 683 (banning domestic violence misdemeanants right to possess firearms).

64. See *United States v. Skoien*, 587 F.3d 803, 805 (7th Cir. 2009) (noting the law placed a blanket ban only on all individuals convicted of domestic violence misdemeanors).

65. See *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008) (explaining the Second Amendment applies strictly to only law-abiding, responsible citizens).

66. See *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (explaining how courts should determine the appropriate level of scrutiny using the First Amendment framework).

67. See *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 990 F. Supp. 2d. 349, 367 (W.D.N.Y. 2013) (specifying laws cannot place a complete, blanket ban on firearms but must leave open alternative channels).

68. See *United States v. Decastro*, 682 F.3d 160, 168 (2d Cir. 2011) (holding the regulation left open alternative means of firearm possession and thus was constitutional).

69. See *Ezell v. City of Chicago*, 651 F.3d 684, 707 (7th Cir. 2011) (noting that the strength of the governmental interest must reflect the seriousness of the actual burden on

restriction “requires that the regulation actually advance the compelling interest it is designed to serve.”<sup>70</sup> For example, the *Marzzarella* court held that the law prohibiting firearms with obliterated serial numbers survived strict scrutiny because the law was narrowly tailored to serve the interest of tracing firearms by prohibiting possession of untraceable firearms.<sup>71</sup>

### III. ANALYSIS

#### *A. When Selecting the Appropriate Level of Scrutiny For Second Amendment Claims, Courts Should Adopt the First Amendment Framework Because the Second Amendment Is Subject to a One-Size-Fits-All Level of Scrutiny.*

##### *1. Courts Should Use the First Amendment As a Guide When Analyzing Second Amendment Claims.*

As the *Heller* court failed to establish the appropriate framework for Second Amendment claims, courts now look towards the First Amendment for guidance.<sup>72</sup> When determining the applicable framework for First Amendment cases, courts must first determine how close the regulation or restriction comes to the core of an individual’s fundamental right.<sup>73</sup> For example, the *Heller* court acknowledged that some federal gun laws and regulations ultimately survive analysis because they regulate activity outside of the Second Amendment’s intended scope.<sup>74</sup> However, if the government cannot establish that the regulated activity falls outside the scope, judicial review will depend on how close the law comes to the core of the amendment’s guaranteed right and the severity of the burden on that right.<sup>75</sup>

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the Amendment).

70. See *United States v. Marzzarella*, 614 F.3d 85, 100 (3d Cir. 2010) (explaining that a law that burdens a significant amount of protected conduct while not implicating the government interest is evidence that a regulation is insufficiently tailored).

71. See *id.* at 99-101 (arguing obliterated serial numbers on firearms lead to untraceable firearms, thus prohibiting obliterated serial numbers allows the government to properly track the firearms).

72. See *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (recognizing that the two frameworks are similar because of the similarities between the scope and context of the First Amendment and the Second Amendment).

73. See *Chovan*, 735 F.3d at 1138 (stating courts focus on how the law burdens the core of the Second Amendment right and the severity of such burden).

74. See *Ezell*, 651 F.3d 702-03 (noting that if the law falls outside the scope of the Second Amendment, the analysis ends; therefore, the regulated activity is unprotected).

75. See generally *id.* (asserting that if the government cannot establish the law is unprotected, then the second inquiry is how close the law comes to the core of the Second Amendment right).

Just as other constitutional rights can adopt a one-size-fits-all standard of review, so can the Second Amendment.<sup>76</sup> Using the framework carved out by courts analyzing First Amendment challenges, the level of scrutiny in a Second Amendment context should likewise depend on: (1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the law's burden on the right.<sup>77</sup> In effect, the Second Amendment can extrapolate the First Amendment's framework by concluding that a severe burden on the Second Amendment will require a strong public interest justification while laws merely regulating, not restricting, may be more easily justified.<sup>78</sup>

*2. Assembly Bill 1014 Does Not Severely Burden an Individual's Right to Bear Arms Because the Bill Does Not Apply to Responsible, Law-Abiding Citizens; therefore, Courts Should Apply Intermediate Scrutiny.*

As the Second Amendment jurisprudence has not yet drawn the important distinctions between the application of intermediate and strict scrutiny based on the restriction's target, many courts rightfully look towards First Amendment analysis and jurisprudence for guidance.<sup>79</sup> For example, the court in *Ezell* followed the First Amendment to determine the appropriate level of scrutiny to analyze Chicago's ordinance banning all firing ranges in the city.<sup>80</sup> The court analogized election law cases where laws imposing severe burdens apply strict scrutiny, whereas "more modest regulatory measures need only be reasonable, politically neutral, and justified by an

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76. See *United States v. Chester*, 628 F.3d 673, 682 (4th Cir. 2010) (explaining that Second Amendment regulations impose varying degrees of burden on individual assertions of the right; thus, susceptible to a one-size-fits-all standard of review by using the framework of other fundamental rights analysis).

77. See *id.* at 682; *Ezell*, 651 F.3d at 703 (establishing the framework courts should apply to Second Amendment challenges).

78. See *Ezell*, 651 F.3d at 708 (demonstrating the different levels of scrutiny in First Amendment jurisprudence using commercial-speech cases as an example; specifically explaining that courts apply intermediate scrutiny to review the subordinate position that commercial speech occupies in the scale of the First Amendment values).

79. See generally *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (explaining that the First Amendment contains the right of freedom-of-speech that includes specific exceptions for speech outside its scope, and the Second Amendment is no different).

80. Compare *Ezell*, 651 F.3d at 708 (highlighting in First Amendment jurisprudence, focusing on public benefits, courts will apply intermediate scrutiny after noting that restrictions in adult bookstores have public benefits justifying any curtailment of speech), with *Nordyke v. King*, 644 F.3d 776, 786 (9th Cir. 2011) (explaining that when analyzing election laws, courts will apply strict scrutiny only where the right to vote is subjected to "severe restrictions").

important governmental interest.”<sup>81</sup> It follows that California’s Assembly Bill 1014 should be analyzed by critics and analysts under the First Amendment jurisprudence to determine the appropriate framework and level of scrutiny.<sup>82</sup> Under First Amendment analysis, unlike the regulation in *Ezell* that placed a blanket ban on firearm activity or firearm possession, Assembly Bill 1014 modestly regulates gun possession for a period not to exceed one-year.<sup>83</sup> Further, Assembly Bill 1014 does not come into effect unless there is probable cause, supported later by clear and convincing evidence, to believe one is a risk to himself or others.<sup>84</sup> Therefore, the bill does not regulate an individual’s firearm possession unless he or she is proven to be a dangerous individual.<sup>85</sup> In effect, because Assembly Bill 1014 merely places a moderate, temporary burden on only a dangerous, irresponsible individual’s Second Amendment right, the First Amendment jurisprudence analysis points toward applying intermediate scrutiny.<sup>86</sup> Essentially, because the strength of the government interest must reflect the seriousness of the actual, modern burden on the constitutional right, applying intermediate scrutiny, rather than strict, is justified.<sup>87</sup> Because Assembly Bill 1014 aims at serving the governmental interest of preventing mass shootings, suicides, and other tragedies while placing a moderate burden on an individual’s Second Amendment right, intermediate scrutiny should be applied.<sup>88</sup>

When reviewing and analyzing different degrees of scrutiny under the Second Amendment, courts generally recognize that the Second Amendment

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81. *See Ezell*, 651 F.3d at 707 (noting many courts have said that First Amendment framework is analogous for Second Amendment claims).

82. *See id.* at 708 (stating that courts can distill the First Amendment doctrine and extrapolate a few general principles applicable to the Second Amendment context).

83. *See* A.B. 1014 Gen. Assemb., 2013-2014 Reg. Sess. (Cal. 2014) (stressing that if one poses a significant risk of personal injury, law enforcement can retain the person’s firearms for a period not exceeding one year).

84. *See id.* (emphasizing that Assembly Bill does not target law-abiding, responsible citizens, rather, only dangerous individuals).

85. *See id.* (targeting only those individuals who demonstrate a propensity to commit violence toward themselves or others).

86. *See generally id.* §§ 18175(b)(1), 18185(b)(noting there is a high burden to prove that an individual’s firearms should be restrained).

87. *See Ezell v. City of Chicago*, 651 F.3d 684, 703-08 (7th Cir. 2011) (applying intermediate scrutiny requires a court to measure the burden the law places on an individual’s right and whether the burden is tailored to an important governmental interest).

88. Ian Lovett, *California Will Allow Family Members to Seek Seizure of Guns*, N.Y. TIMES (Sept. 30, 2014), <http://www.nytimes.com/2014/10/01/us/california-will-allow-family-members-to-seek-seizure-of-guns.html> (stressing Assembly Bill 1014 allows family members to intervene before a shooting tragedy occurs).

is susceptible to a one-size-fits-all standard of fundamental right review.<sup>89</sup> In *Chester*, the court examined the constitutionality of a West Virginia law, which banned those convicted of domestic violence misdemeanors from possessing firearms.<sup>90</sup> Using the First Amendment framework, the court stated that the level of scrutiny depends on the nature of the regulated conduct and the degree of which the law burdens a law-abiding, responsible right.<sup>91</sup> Specifically, a court should also acknowledge that as in First Amendment jurisprudence, content-neutral time, place, and manner regulations should trigger intermediate scrutiny.<sup>92</sup> A court examining Assembly Bill 1014 should analogize the bill to *Chester* because the bill in question also regulates a non-law-abiding citizen.<sup>93</sup> Similar to the law in *Chester*, California's Assembly Bill 1014 strictly targets regulating irresponsible, dangerous individuals.<sup>94</sup> As the law in *Chester* applies to convicted domestic violence misdemeanants,<sup>95</sup> Assembly Bill 1014 similarly targets only dangerous individuals who, like domestic violence misdemeanants, prove to be a threat to themselves or others.<sup>96</sup> Thus, guided by the First Amendment framework, courts should employ intermediate scrutiny when analyzing Assembly Bill 1014 because the bill reasonably restricts the manner in which *only* dangerous individuals may possess

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89. See *United States v. Chester*, 628 F.3d 673, 682 (4th Cir. 2010) (explaining gun-control regulations impose varying degrees of burdens on Second Amendment rights; thus, similar to other constitutional rights, the Second Amendment is susceptible to a one-size-fits all standard of review (citing *United States v. Skoien*, 587 F.3d 803, 813-14 (7th Cir. 2009)).

90. *Id.* at 677-78 (explaining that the lower court compared the law to lawful regulations, such as longstanding prohibitions on the possession of firearms by felons, in finding the restriction a lawful exercise of governmental regulation).

91. See *id.* at 682 (exemplifying that content-based speech restrictions on noncommercial speech must satisfy strict scrutiny).

92. *Id.*; see also *Skoien*, 587 F.3d at 813-14 (emphasizing that laws may be more easily justified if they merely regulate rather than restrict, and that laws posing modest burdens on a right may be more easily justified).

93. See *Chester*, 628 F.3d at 683 (holding because the appellant was not a law-abiding citizen that the law regulating the manner of gun possession called for intermediate scrutiny).

94. See A.B. 1014, Gen. Assemb., 2013-2014 Reg. Sess. (Cal. 2014) (stressing that Assembly Bill 1014 establishes a procedure to obtain a gun violence restraining order and seizure warrant when a person poses a significant risk of personal injury to themselves or others).

95. See *Chester*, 628 F.3d at 677 (stating Congress aimed at keeping firearms out of the hands of dangerous misdemeanants).

96. See Cal. A.B. 1014 § 18155(b) (highlighting that magistrates should look towards recent threats, acts of violence towards the named person and others, reckless use or display of firearms, and attempted threat or threatened use of physical force).

firearms.<sup>97</sup>

A court examining Assembly Bill 1014 should also look to the court's First Amendment analysis in *Skoien* for direction.<sup>98</sup> Similar to *Chester*, the appellant in *Skoien* challenged state law, which placed a blanket ban on firearm possession on those convicted of a domestic-violence misdemeanor.<sup>99</sup> Essentially, a court should also look to the First Amendment jurisprudence and recognize that levels of scrutiny fluctuate with the character and degree of a challenged law's burden on the right.<sup>100</sup> Specifically, because the law merely regulates rather than places a blanket ban, or wholly restricts firearm possession, intermediate scrutiny should apply.<sup>101</sup> Because the appellant was a convicted domestic violence misdemeanor, the court compared the appellant to a convicted felon, holding that the appellant was not a law-abiding, responsible citizen, and thus applied intermediate scrutiny.<sup>102</sup> Similar to the regulation in *Skoien*, California's Assembly Bill 1014 aims at unarming dangerous individuals; though the restricted individuals are not formally convicted of a crime, they are still considered irresponsible citizens because they have proven a propensity to commit violence.<sup>103</sup>

California's Assembly Bill 1014 does not place a blanket ban on any and everyone's firearm possession, rather, the bill regulates an irresponsible, dangerous person's possession for a short one-year period.<sup>104</sup> Further, to even potentially regulate an individual, a court must provide clear and convincing evidence that an individual is a danger to themselves or others.<sup>105</sup>

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97. See generally Cal. A.B. 1014.

98. See *United States v. Skoien*, 587 F.3d 803, 804 (7th Cir. 2009) (noting dispute arose over misdemeanor's shotgun possession).

99. See *id.* at 805 (noting the dispute arose over a convicted domestic violence misdemeanor's possession of a shotgun).

100. *Id.* at 813 (recognizing the fluctuating differences between various types of speech protections under the First Amendment).

101. See *id.* (stating that laws that merely regulate, rather than completely restrict and implicate, the central self-defense concern of the Second Amendment, should use intermediate scrutiny).

102. See *id.* at 810, 814 (stressing intermediate scrutiny is appropriate because the appellant's challenge does not implicate the core Second Amendment right of armed self-defense implicated in *Heller*).

103. Compare *Skoien*, 587 F.3d at 805 (restraining irresponsible, convicted domestic violence misdemeanants from possessing a firearm), with A.B. 1014, Gen. Assemb., 2013-2014 Reg. Sess. (Cal. 2014) (underlining the high burden the government must show to prove an individual is a significant risk of injury to themselves or others).

104. Cal. A.B. 1014 (emphasizing the period shall not exceed one year).

105. See *id.* (specifying the state has a high burden of proof when arguing a magistrate shall grant a gun violence restraining order and firearm seizure warrant).

Moreover, the court must hold a hearing to determine if a person is truly a threat to themselves or others.<sup>106</sup> Because California's Assembly Bill 1014 simply regulates, rather than places a blanket ban or wholly restricts, dangerous individual's possession of firearms, courts should apply intermediate scrutiny.<sup>107</sup>

*B. Assembly Bill 1014 Passes Intermediate Scrutiny Because the Bill Reasonably Regulates the Time and Manner in Which Dangerous, Threatening People Possess Firearms, Thus Aiming to Serve the Government's Compelling Interest in Preventing Gun Violence and Mass Shootings.*

For a Second Amendment claim to survive intermediate scrutiny, the law must state an important governmental interest and support a fit between the challenged regulation and asserted objective.<sup>108</sup> As discussed above, the court in *Chovan* applied intermediate scrutiny to California's law that barred persons convicted of misdemeanor domestic violence crimes from possessing any firearms.<sup>109</sup> Under intermediate scrutiny, the government stressed its important interest in preventing gun violence by detaining firearms from those who will most likely misuse them.<sup>110</sup> Further, the government argued it's interest in preventing domestic gun violence altogether.<sup>111</sup> A court analyzing Assembly Bill 1014 should draw from the *Chovan* court's analysis and hold that the law survives intermediate scrutiny for numerous reasons; however, most importantly, because the law sought to reach the people not merely based on their status as convicted felons, but those who demonstrated violence and irresponsibility.<sup>112</sup>

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106. *See id.* (stressing if the state does not establish clear and convincing evidence that the named person is a threat to themselves or others, the seized firearms should be returned to the named person).

107. *See id.* (targeting only individuals that prove to possess a propensity of violence and are a significant threat of physical injury to themselves or others); *see e.g.*, *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 990 F. Supp. 2d 349, 356-57 (W.D.N.Y. 2013) (regulating the amount of magazines an individual can purchase).

108. *See generally* *United States v. Chovan*, 735 F.3d 1127, 1139 (9th Cir. 2011) (stressing the fit must not be perfect, but rather, reasonable).

109. *See id.* at 1138 (using the First Amendment framework to establish the burden the statute placed on a domestic violence misdemeanor's Second Amendment right).

110. *See id.* at 1139 (arguing that the law advances the important governmental interest of preventing gun violence in general by banning possession by irresponsible individuals).

111. *See id.* (finding that the assembly bill reasonably fits the government's important governmental interest, thus surviving intermediate scrutiny).

112. *Id.* at 1140 (holding that keeping guns from domestic violence misdemeanants is substantially related to the broader interest of preventing domestic gun violence and,

Similar to the law in *Chovan*, which served the important governmental interest of reducing domestic violence and gun violence, the government in California's Assembly Bill 1014 similarly seeks to keep guns out of the hands of unpredictable, violent individuals.<sup>113</sup> Thus, California's Assembly Bill 1014 is analogous to the law in *Chovan* by aiming at keeping firearms out of the hands of those who will most likely misuse them.<sup>114</sup> In particular, Assembly Bill 1014 is designed to further achieve the governmental interest by allowing concerned immediate family members to intervene and potentially prohibit firearm possession in an attempt to prevent tragedies such as the Isla Vista shooting.<sup>115</sup> There are currently no California laws that provide a mechanism to limit firearm access to an individual who seeks, needs, or receives mental health services.<sup>116</sup> Assembly Bill 1014 aims to fill this gap by attempting to prevent tragedies stemming from gun violence and mass shootings.<sup>117</sup> Similar to the law in *Chovan*, as the bill only targets violent individuals who prove themselves as risks, Assembly Bill 1014 provides a reasonable fit to the government's objective of preventing gun violence, and thus survives intermediate scrutiny.<sup>118</sup>

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therefore, survives intermediate scrutiny). *But see* United States v. Chester, 628 F.3d 673, 680 (4th Cir. 2010) (highlighting that scholars disagree to the extent to which felons, let alone misdemeanants, were considered excluded from the right to bear arms).

113. *See generally* A.B. 1014, Gen. Assemb., 2013-2014 Reg. Sess. (Cal. 2014) (targeting only those who are a significant risk of injury to themselves or others); *see also* Mason, *supra* note 13 (noting that the state proposal borrows heavily from existing state laws pertaining to domestic violence intended to protect victims).

114. *See* Cal. A.B. 1014 (aiming to restrain those who are a risk of injury to themselves or others from using firearms).

115. *See id.* § 18150(a)(1) (noting that an "immediate family" means any "spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household."); *see also* Press Release, Cal. State Assembly, Assembly Members Nancy Skinner, Das Williams Announce Legislation in Wake of Santa Barbara Shooting (May 27, 2014) (on file with author) (arguing that parents who try to intervene, like Rodger's mother, deserve an effective tool to help prevent tragedies).

116. *See* Press Release, Cal. State Assembly, *supra* note 115 (noting that existing law only prohibits firearm purchase, sale, or possession for those under domestic violence protective orders).

117. *See id.* (criticizing current legislation and stating that because Rodger neither committed a crime nor met the criteria for involuntary treatment, the purchase and possession of firearms remained unpreventable).

118. *Compare* United States v. Chovan, 735 F.3d 1127, 1139 (9th Cir. 2013) (emphasizing that Congress sought to close the dangerous loophole by establishing a policy of zero gun violence tolerance and passing a law strictly to prevent domestic gun violence), *with* Press Release, Cal. State Assembly, *supra* note 115 (highlighting that the bill fits the government's objective because when an individual is in a crisis the people

Although when analyzing a claim under intermediate scrutiny the government must establish a fit between a statute's means and its end, the fit need not be perfect, but rather, only reasonable.<sup>119</sup> The court in *Chester* acknowledged the reasonable fit standard while analyzing a West Virginia's law barring domestic violence misdemeanants under intermediate scrutiny.<sup>120</sup> Although the court recognized the government's offer to show why the disarmament of domestic violence misdemeanants substantially relates to an important governmental goal, the court concluded that the government did not offer sufficient evidence to establish a relationship between the statute and its stated goal.<sup>121</sup> Unlike the government in *Chester*, California's Assembly Bill 1014 establishes a reasonable, in fact, almost perfect fit between the government's important interest and a regulation.<sup>122</sup> In particular, California's Assembly Bill 1014 establishes a procedure to keep firearms out of the hands of the main problem: potentially dangerous, threatening, and violent individuals.<sup>123</sup> Assemblywoman Nancy Skinner introduced the bill in response to the UCSB shooting, stating that parents such as Rodger's deserve an effective tool that they can utilize to help prevent such tragedies.<sup>124</sup> In Rodger's situation, Rodger's mother recognized that her son was a dangerous, violent, and threatening individual and she attempted, but failed, to intervene.<sup>125</sup> California's Assembly Bill

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closest to him or her can spot the warning signs and prevent him or her from buying or possessing a firearm).

119. See generally *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011) (stressing the law need not be the best disposition but the scope is proportional to the interest).

120. See *United States v. Chester*, 628 F.3d 673, 677-83 (4th Cir. 2010) (stressing courts will not apply strict scrutiny whenever a law impinges upon a right specifically enumerated in the Bill of Rights).

121. *Id.* at 683 (holding that the restriction did not survive intermediate scrutiny because the government failed to establish a reasonable fit between the important object of reducing domestic gun violence and the statute's permanent disarmament of all domestic violence misdemeanants).

122. See Press Release, Cal. State Assembly, *supra* note 115 (explaining that family members can intervene and prevent mass shootings and future tragedies).

123. See generally A.B. 1014, Gen. Assemb., 2013-2014 Reg. Sess. (Cal. 2014) (establishing a procedure to obtain a gun violence restraining order and a firearm seizure warrant when a person poses a significant risk of personal injury to himself or others).

124. *Id.* (stressing the bill allows use of information brought forth by relatives or friends to determine eligibility for a gun violence restraining order); see also Press Release, Cal. State Assembly, *supra* note 115 (noting that currently there is nothing to prevent a threatening individual from purchasing or possessing firearms, but tragedies create opportunities for legislators to reform proposals).

125. See generally Cal. A.B. 1014 § 18150(a) (allowing parents to bring forward claims of individuals who pose a significant risk of injury to themselves or others); see

1014 would provide parents, such as Rodger's mother, with the opportunity to seek help from the court.<sup>126</sup> California's Assembly Bill 1014 serves to prevent gun violence and tragic mass-shootings, demonstrating that the bill is reasonably tailored and ultimately survives intermediate scrutiny.<sup>127</sup>

To survive intermediate scrutiny, courts rely on substantial evidence that fairly supports the government's rationale in passing the law.<sup>128</sup> For example, the government in *Cuomo* had the burden of establishing that New York had a substantial interest in public safety and crime prevention to uphold its ban on assault weapons referred to in the SAFE Act.<sup>129</sup> In finding that the statute survived intermediate scrutiny, the court recognized New York's exhaustive study of shootings in America, citing mass shootings in the last thirty years where shooters used assault weapons.<sup>130</sup> Similar to New York's SAFE Act, California's Assembly Bill 1014, stemming from the proliferation of mass shootings in the last decade, aims to prevent mass shootings by keeping weapons out of dangerous hands.<sup>131</sup> California's Assembly Bill 1014 compares to New York's SAFE Act because the bill narrowly focuses on gun violence prevention by intervening during a critical psychological period by restricting access to firearms.<sup>132</sup> The bill encourages concerned family members to warn law enforcement of dangerous individuals, and thus it aims to prevent gun violence by keeping firearms out of the hands of dangerous individuals.<sup>133</sup> Because California's Assembly

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also Mason, *supra* note 13 (stating Rodger's mother contacted mental health professionals regarding her son's conditions, but they could not remove his firearms).

126. Mason, *supra* note 13 (noting that people deserve an effective tool they can act on to help prevent these types of tragedies).

127. *See generally* Cal. A.B. 1014 (stating if a magistrate finds probable cause to believe the named individual is dangerous or a significant risk to others, the magistrate shall issue both a firearm seizure warrant and a gun violence restraining order).

128. *See* N.Y. State Rifle & Pistol Ass'n v. Cuomo, 990 F. Supp. 2d. 349, 368 (W.D.N.Y. 2013) (analyzing whether New York provided substantial evidence to support their ban on assault weapons).

129. *See generally id.* (noting New York had to prove evidence without deference that supports their rationale for their ban).

130. *Id.* at 371 (finding that New York satisfied its burden to demonstrate a substantial link between the regulation and the compelling interest of public safety it sought to advance).

131. *Compare id.* (finding that New York satisfied its burden by demonstrating a substantial link, based on reasonably relevant evidence, between the SAFE Act's regulation of assault weapons and compelling interest of public safety), *with* Cal. A.B. 1014 (emerging from the Santa Barbara shooting and serving the compelling interest of preventing gun violence).

132. *See generally* Cal. A.B. 1014 (going beyond federal standards to keep firearms out of the hands of threatening, dangerous individuals).

133. *See id.* (explaining a gun violence restraining order prohibits a named person

Bill 1014 serves the important, compelling governmental interest of preventing mass shootings and is reasonably tailored to keep firearms out of dangerous hands, Assembly Bill 1014 survives intermediate scrutiny.<sup>134</sup>

*C. Not Only Does California's Assembly Bill 1014 Satisfy Intermediate Scrutiny, But the Bill Also Survives Strict Scrutiny Because the Bill Narrowly Restricts Dangerous Citizens Aiming to Serve the Compelling Governmental Interest to Prevent Gun Violence and Mass Shootings.*

Courts should review Second Amendment claims under strict scrutiny only when a restriction creates a substantial burden and significantly interferes with the ability of a law-abiding, responsible citizens possession and use of firearms for self-defense.<sup>135</sup> A restriction creates a substantial burden when it burdens a protected interest un-proportionally to the statute's asserted governmental interest.<sup>136</sup> In *Heller*, the District of Columbia enforced a blanket handgun ban ultimately prohibiting the possession and registration of handguns.<sup>137</sup> Further, the District of Columbia required that residents keep any lawfully obtained firearms unloaded and disassembled.<sup>138</sup> Consequentially, the law at issue *completely* banned handgun possession in the home, and in effect, placed a blanket prohibition on an entire class of firearms.<sup>139</sup> Scholars and politicians heavily criticized the law because the prohibition extended to the home, where the need for self-defense of property

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from having under his or her custody and control, owning, purchasing, possessing, or receiving firearms).

134. See Carissa Quiambao, Gun Control Bill Moves Through State Senate, DAILY NEXUS (July 1, 2014), <http://dailynexus.com/2014-07-01/gun-control-bill-moves-through-state-senate/> (stressing Assembly Bill 1014 aims at preventing an incident such as the Isla Vista shooting).

135. See *District of Columbia v. Heller*, 554 U.S. 570, 634 (2008) (stressing courts should only use strict scrutiny when a statute burdens an interest in such a way that is out of proportion to the salutary effects upon other governmental interests); see also *id.* at 688 (Breyer, J., dissenting) (clarifying that rational-basis cannot be used for Second Amendment cases because the laws which seek to prevent gun violence bear at least a "rational relationship" to a "legitimate" governmental objective).

136. *Heller*, 554 U.S. at 634; see also *Nordyke v. King*, 644 F.3d 776, 786 (9th Cir. 2011) (declaring strict scrutiny necessary when laws significantly interfere with a fundamental right).

137. *Heller*, 554 U.S. at 574-75 (noting the District of Columbia prohibited registration of handguns and possession of unregistered handguns outlawed the possession of any handgun).

138. See *id.* at 575 (providing that firearms do not need to be unloaded and disassembled when located in a place of business or used for recreational activities).

139. *Id.* at 576 (stressing that the type of firearm restricted is mostly used for lawful purposes).

and family is imperative.<sup>140</sup> Although the Court acknowledged the Second Amendment's limitations, the Court also recognized that the law protects the fundamental right of law-abiding, responsible citizens to use arms in defense of hearth and home.<sup>141</sup> The Court explained that under any level of scrutiny, an ultimate ban of handguns<sup>142</sup> would fail constitutional analysis.<sup>143</sup> A law restricting the possession of all firearms in all homes for any law-abiding citizen would surely fail any level of scrutiny, therefore, Assembly Bill 1014 contrasts the burden in *Heller*.<sup>144</sup> Unlike the law in *Heller*, California's Assembly Bill 1014 narrowly targets and *only* applies to irresponsible, violent individuals rather than applying to *all* law-abiding, responsible citizens like *Heller*.<sup>145</sup> Further, rather than placing a complete blanket prohibition on firearms like the law in *Heller*, Assembly Bill 1014 only temporarily seizes a potentially dangerous individual's firearms for a time not exceeding one year.<sup>146</sup> Additionally, Assembly Bill 1014 provides individuals a safeguard by requiring a hearing to determine whether one poses a significant risk to themselves or others before restraining one's firearms.<sup>147</sup>

Critics may argue Assembly Bill 1014 is unconstitutional because the bill removes the ability for an individual to possess firearms in the home — a critical, acute area for self-defense.<sup>148</sup> However, interpreting the Second Amendment precedent in such a way would ignore a crucial factor in the

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140. *Id.* at 628 (noting protection of the home, property, and family is most acute).

141. *Id.* at 635; *see also* *Ezell v. City of Chi.*, 651 F.3d 684, 701 (7th Cir. 2011) (stating the court in *Heller* established the inherent right of self-defense is central to the Second Amendment right).

142. *See Heller*, 554 U.S. at 628-29 (underlining the ban prohibits the nation's preferred firearm, handguns, to protect the home).

143. *Id.* at 629 (emphasizing that few laws in the nation's history came close to the severe restrictions, such as the District of Columbia's blanket ban on handguns).

144. *See id.* at 635 (stressing the District's law as unconstitutional because the law infringed the right of law-abiding, responsible citizens to use arms in defense).

145. *Compare id.* (emphasizing that the law placed an unconstitutionally blanket prohibition on law-abiding, responsible citizens' handgun possession), *with* Cal. A.B. 1014 (targeting only persons who are proven to be irresponsible, dangerous, and a threat to themselves or others).

146. *See* Cal. A.B. 1014 (asserting that a person's firearms may be seized for a period not to exceed one year; however, after one year, if the person is still a threat to others, the seizure may be renewed for a second year).

147. *See generally id.* (requiring a hearing, after a temporary restraining order has been issued, where the state must prove by clear and convincing evidence that an individual poses a significant risk to themselves or others).

148. *See Heller*, 554 U.S. at 628 (emphasizing the home is where the need for self-defense, property, and family is most acute and banning firearms from the home would fail any constitutional muster).

analysis – namely, the Second Amendment applies to only law-abiding, *responsible* citizens.<sup>149</sup> Assembly Bill 1014 does not infringe on the rights of the every day, average, responsible citizens; rather, the bill strictly focuses on irresponsible individuals who prove by clear and convincing evidence a propensity for violence and a threat to themselves or others.<sup>150</sup> Accordingly, because California’s Assembly Bill 1014 does not infringe on a *responsible* citizen’s fundamental right to possess firearms for self-defense, and does not wholly regulate an average citizen’s right to bear arms, Assembly Bill 1014 also survives strict scrutiny analysis.<sup>151</sup>

Additionally, courts agree that only regulations *substantially* burdening the right to keep and bear arms trigger heightened, strict scrutiny.<sup>152</sup> In *Decastro*, the appellant argued a New York law prohibiting anyone other than licensed importers or dealers from transporting a firearm purchased or obtained outside that state into the state violates his Second Amendment right.<sup>153</sup> To analyze whether such burden impinged on the appellant’s right to bear arms, the court evaluated the reasonableness of the regulation and whether the regulation left open ample alternative channels to obtain a firearm.<sup>154</sup> A court analyzing Assembly Bill 1014 will also likely consider these factors.<sup>155</sup> A court should draw from the *Decastro* court’s reasoning when analyzing Assembly Bill 1014 and declare that the law does not burden an individual’s Second Amendment right because it burdens one’s ability to purchase a firearm in his or her own state for only one year, and therefore, the bill provides ample alternatives for firearm possession.<sup>156</sup>

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149. *Id.* at 635 (stressing the Second Amendment protects the interests of law-abiding, responsible citizens); *see also* *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011) (criticizing Chicago’s regulation because it encroaches and prohibits law-abiding, responsible citizens from engaging in their Second Amendment rights).

150. Cal. A.B. 1014 (stating if a person poses a significant risk of personal injury to himself or herself or others by possessing a firearm, the bill would require law enforcement to retain the firearm).

151. *See id.* (explaining that the inherent right of self-defense for law-abiding citizens is central to the Second Amendment).

152. *See United States v. Decastro*, 682 F.3d 160, 166 (2d Cir. 2012) (noting a severe burden on the core amendment right will require an extremely strong public-interest justification).

153. *Id.* at 163 (specifying the appellant purchased a firearm in Florida and knowingly transported the pistol to New York without applying for a license to possess a firearm in New York).

154. *See id.* at 168; *see also* *Silvester v. Harris*, No. 1:11-CV-2137 AWI SAB, 2013 U.S. Dist. LEXIS 172946, at \*13 (E.D. Cal. Dec. 6, 2013) (stating that a regulation is subject to strict scrutiny when the regulation threatens a core Second Amendment right).

155. *See* Cal. A.B. 1014.

156. *Decastro*, 682 F.3d at 168 (emphasizing that one’s residence is the most

As the New York state transporting law in *Decastro* provided adequate alternatives for firearm possession, California's Assembly Bill 1014 also provides these same alternatives.<sup>157</sup> Critics may argue Assembly Bill 1014 completely seizes an individual's firearms, thus, the bill places a blanket ban on firearm possession.<sup>158</sup> However, such argument is flawed because the bill requires that the firearms be only *temporarily* seized until one can present their case to a magistrate.<sup>159</sup> Similar to the law in *Decastro*, Assembly Bill 1014 does not completely prohibit possession of firearms; rather, the law places a strict regulation on firearms from violent, dangerous citizens for a temporary period no longer than one year.<sup>160</sup> Moreover, at the hearing after firearm seizure, the state must meet the heightened burden of proof; however, if the court finds that the state does not meet its burden, the individual may regain his or her firearms.<sup>161</sup> Assembly Bill 1014 satisfies strict scrutiny because it requires a hearing before temporarily seizing the firearms, does not place a blanket ban on *any* and *all* firearm possession, and allows for ample alternatives for responsible, law-abiding individuals to possess firearms.<sup>162</sup>

For a regulation to pass a Second Amendment analysis under strict scrutiny, the regulation must be narrowly tailored to serve a compelling state interest.<sup>163</sup> In *Marzzarella*, the appellant argued that his conviction under a Pennsylvania law prohibiting handguns with obliterated serial numbers

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convenient place to purchase a firearm).

157. Cal. A.B. 1014 (stating the existing law requires police officers to only take temporary custody of an individual's firearms).

158. Abigail Wilkinson, *CA Bill Would Allow Secret Seizure of Firearms Based on Just One Complaint*, CNS NEWS (July 10, 2014), <http://cnsnews.com/news/article/abigail-wilkinson/ca-bill-would-allow-secret-seizure-firearms-based-just-one-complaint> (stressing the National Rifle Association claims the bill is one of the most egregious violations of civil liberties ever introduced).

159. *See* Cal. A.B. 1014 (emphasizing that at a hearing the magistrate should determine the grounds for a gun violence restraining order and determine if the firearms should be seized).

160. *Compare Decastro*, 682 F.3d at 167 (noting laws that place reasonable time, manner, and place restrictions that leave ample alternatives as constitutional), *with* Cal. A.B. 1014 (requiring a hearing allows for built in due process to determine whether there is probable cause to issue a firearm seizure for no longer than one year).

161. *See generally* Cal. A.B. 1014 (stressing if the named person is not a risk or if the court finds that the state has not met the required standard of proof, the firearms must be returned to the named person).

162. *See id.* (noting that the state has the burden of proving that the individual poses a significant risk of safety to himself, herself or to others).

163. *See* *United States v. Marzzarella*, 614 F.3d 85,99-100 (3d Cir. 2010) (explaining that a law must be the least-restrictive method of serving that interest).

violated his right to keep and bear arms under the Second Amendment.<sup>164</sup> The court specified that at its core, the Second Amendment protects the right of law-abiding, responsible citizens to possess non-dangerous weapons for self-defense for lawful purposes.<sup>165</sup> For a law to pass muster under strict scrutiny, the court noted that the law must be narrowly tailored towards a compelling governmental interest in which it is designed to serve.<sup>166</sup> The court explained that the state statute protected the governmental interest of tracing firearms because it discouraged possession and use of firearms that are harder or impossible to trace.<sup>167</sup> The court held that the statute was narrowly tailored, and therefore, passed under either intermediate or strict scrutiny.<sup>168</sup> Similar to the law in *Marzzarella*, California's Assembly Bill 1014 is narrowly tailored to support a compelling governmental interest.<sup>169</sup>

Like the law in *Marzzarella*, prohibiting possession of firearms without serial numbers narrowly tailored the government's interest of tracing firearms, California's Assembly Bill 1014 sets forth a detailed procedure specifically and narrowly targeting only dangerous individuals.<sup>170</sup> Assembly Bill 1014 does not place a blanket ban on all individuals; rather, the bill narrowly aims at seizing firearms from only those who are proven as a significant threat to themselves or others.<sup>171</sup> Further, Assembly Bill 1014 does not allow officials to restrict anyone's firearms at their discretion, but rather, the bill requires the state to use sufficient evidence to prove that the

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164. *Id.* at 88 (stating the law is designed to regulate the commercial sale of firearms and to prevent possession by a class of presumptively dangerous individuals).

165. *Id.* at 92 (stressing that all possession for any purpose is not protected by the Second Amendment); *see also* *United States v. Masciandaro*, 638 F.3d 458, 466 (4th Cir. 2011) (noting that the Second Amendment right, parallel to the First Amendment right, is not unlimited and does not protect the right to keep any weapon in any manner for any purpose).

166. *See Marzzarella*, 614 F.3d at 100 (explaining that a law must be the least-restrictive method of serving that interest).

167. *Id.* at 98-101 (emphasizing because firearm serial numbers assist law enforcement in gathering vital information the statute serves a compelling government interest).

168. *Id.* at 101 (stressing the law protects the compelling interest of tracing firearms by discouraging the possession and use of firearms that are harder or impossible to trace).

169. *See* Cal. A.B. 1014.

170. *Compare Marzzarella*, 614 F.3d at 101 (stressing that the statute protects the compelling narrow interest of tracing firearms by discouraging possession and use of firearms that are impossible to trace), *with* Cal. A.B. 1014 (seizing firearms from those who prove a significant risk of injury to themselves or others to further protect against gun violence and mass shootings of notably dangerous individuals).

171. *See generally* Cal. A.B. 1014 (preventing irresponsible, dangerous individuals from possessing or purchasing firearms during a crucial psychological period to avert gun violence and mass shootings).

named person poses a significant risk of bodily harm to himself, herself, or to others.<sup>172</sup> Most importantly, Assembly Bill 1014 establishes this procedure specifically to deter and prevent gun violence and mass shootings in light of the recent Isla Vista shooting.<sup>173</sup> Accordingly, California's Assembly Bill 1014 undoubtedly survives heightened strict scrutiny.<sup>174</sup>

#### IV. POLICY RECOMMENDATION

As mass shootings continue to devastate our nation, Congress responds by proposing stricter gun regulations in attempts to prevent such tragedies.<sup>175</sup> With Assembly Bill 1014, "California goes beyond the federal standard to keep guns out of the hands of dangerous individuals."<sup>176</sup> Studies reveal that factors leading to gun violence include, "a history of violent crime, perpetration of domestic violence, and drug and alcohol abuse."<sup>177</sup> California's Assembly Bill 1014 suggests past violence is the best predictor of future violence and acts as an effective policy at both a state and federal level.<sup>178</sup> Instituting an order such as Assembly Bill 1014 nationwide, or even state-to-state, would allow for interventions during critical times when a person has the potential to be extremely dangerous.<sup>179</sup>

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172. *Id.* (stressing the magistrate must consider an array of evidence, concluding the state met proof beyond a reasonable doubt, before issuing a gun violence restraining order and a firearm seizure warrant).

173. Press Release, Cal. State Assembly, *supra* note 115 (addressing the tragedies of the Isla Vista shooting and creating a procedure to issue gun violence restraining orders).

174. *See generally* Cal. A.B. 1014 (detering irresponsible, dangerous individuals from possessing or purchasing firearms); *Ezell v. City of Chicago*, 651 F.3d 684, 706 (7th Cir. 2011) (specifying that Second Amendment scrutiny necessarily means that the government's actions must be justified under a heightened standard of judicial review).

175. Chris Dolmetsch & Edvard Petterson, *Connecticut Gun Law Passed After Sandy Hook Ruled Legal*, BLOOMBERG (Jan. 31, 2014), <http://www.bloomberg.com/news/articles/2014-01-31/connecticut-gun-law-passed-after-sandy-hook-ruled-legal?cmpid=yhoo>.) (explaining that Connecticut's ban on assault weapons and large-capacity magazines, which arose after the Sandy Hook shooting, is constitutional).

176. Renee Binder, *California Needs a Gun Violence Restraining Order*, L.A. TIMES (May 26, 2014), <http://www.latimes.com/opinion/op-ed/la-oe-binder-rodgers-gun-violence-isla-vista-20140527-story.html> (explaining California strengthened its laws by temporarily banning individual's guns).

177. *See id.* (detailing Consortium for Risk-Based Firearm study and arguing that past violence may also be a predictor for future violence).

178. *Id.* (explaining that evidence demonstrates that people who have serious mental illness and are not engaging in necessary treatment may be at an elevated risk of violence).

179. *Id.* (explaining that Rodger's mother voiced her concerns in April, proving that family members know when a loved one is in crisis and may have access to firearms to

Over the last few decades, our country has endured countless mass shooting sprees involving firearms in the hands of mentally disturbed or dangerous individuals.<sup>180</sup> In light of the Isla Vista shooting, many states, such as California and Connecticut, have revised and tightened specific gun regulations.<sup>181</sup> States should propose regulations similar to California Assembly Bill 1014 to prevent future acts of violence by keeping guns out of the hands of dangerous individuals, such as Isla Vista shooter Elliott Rodger.<sup>182</sup> Other states should create such mechanisms, similar to California's bill, which would allow those closest – family member, friend, or even a co-worker – to a troubled individual to act when there are warning signs or indications that a person is at risk for violence.<sup>183</sup> States should push bills, such as California's Assembly Bill 1014, centered on mental health to preserve the nation's mental health and prevent horrific, gruesome events such as the Isla Vista mass shooting.<sup>184</sup> Not only should states consider such legislation, but courts should also prepare to face resistance to emerging gun control by considering and establishing the appropriate level of scrutiny they will apply to such bills and legislation.<sup>185</sup>

#### V. CONCLUSION

Though courts have yet to establish the appropriate level of scrutiny for

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do potential harm).

180. Paul Wallin, *Should California Adopt a Gun Violence Restraining Order Law*, BEFORE IT'S NEWS (June 27, 2014), <http://beforeitsnews.com/crime-all-stars/2014/06/should-california-adopt-a-gun-violence-restraining-order-law-2449994.html>; Kindy, *supra* note 1, at 2 (noting the father of a victim of the UCSB shooting stresses Congress needs to act and prevent gun violence).

181. See, e.g., George Lauer, 'Gun Violence Restraining Order' Idea May Get Traction Experts Predict, CAL. HEALTHLINE (June 2, 2014), <http://www.californiahealthline.org/insight/2014/gun-violence-restraining-order-idea-may-get-traction-experts-predict> (noting after the UCSB shooting, Connecticut Senator sought to revive gun laws that were proposed after the Newtown shooting).

182. Ellis & Sidner, *supra* note 2, at 1 (highlighting the day before the shooting, Rodger posted a YouTube video detailing his "day of retribution" where he would punish girls); see also Wallin, *supra* note 180, at 2 (stressing adopting a gun violence restraining order will protect the public from future tragedies allowing law enforcement to take action).

183. Lauer, *supra* note 181, at 1 (supporting California's Assembly Bill 1014, noting the idea of giving the people closest to them the ability to intervene and avoid crisis makes sense).

184. See *id.* (recognizing that not all gun violence can be prevented by laws but Congress should attempt to pass legislation to make the country safer).

185. See *Peruta v. County of San Diego*, 678 F. Supp. 2d 1046, 1049 (S.D. Cal. 2010) (emphasizing that the *Heller* Court left many lingering questions for future determination).

Second Amendment claims, courts continuously and correctly look towards the First Amendment for guidance.<sup>186</sup> Using the First Amendment, courts should consider how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right.<sup>187</sup> As California's Assembly Bill 1014 surfaces, critics will surely argue that the bill fails constitutional muster because it infringes on an individual's core, fundamental Second Amendment right to possess a firearm in the home for self-defense.<sup>188</sup> However, despite the reasonable restriction Assembly Bill 1014 places on firearm possession, a close analysis of the bill demonstrates that it survives both intermediate and strict scrutiny.<sup>189</sup> Assembly Bill 1014 aims at keeping weapons out of the hands of the most vulnerable, dangerous individuals to ultimately prevent mass shootings such as Elliot Rodger's Isla Vista shooting.<sup>190</sup> Assembly Bill 1014 goes beyond the federal standard of gun control and takes the first step in the right direction by providing individuals and law enforcement with a preemptive tool to stop gun violence and mass tragedies.<sup>191</sup>

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186. See *United States v. Chovan*, 735 F.3d 1127, 1137-38 (9th Cir. 2013) (explaining though *Heller* did not specify the appropriate level of scrutiny, other circuits have looked towards the First Amendment as a guide); see also *Nordyke v. King*, 644 F.3d 776, 786 (9th Cir. 2011) (declaring that regulations trigger strict scrutiny when they significantly interfere with exercising a fundamental right).

187. See *Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011) (stressing the rigor of judicial review will depend on how close the law comes to the core and the severity of burden on the Second Amendment).

188. Quiambao, *supra* note 134, at 1 (highlighting the President of the California Association of Federal Firearms Licensees criticizes Assembly Bill 1014 and argues the Bill violates individuals' protected, constitutional rights).

189. See generally Cal. A.B. 1014 (arguing that because the procedure of California's Assembly Bill 1014 is narrowly tailored to prevent gun violence, Assembly Bill 1014 passes both intermediate and strict scrutiny); see also Quiambao, *supra* note 134, at 2 (stressing the bill operates within constitutional bounds and preserves an individual's right to due process).

190. See Cal. A.B. 1014 (targeting only individuals who are a significant threat of injury to themselves and others); see also Ellis & Sidner, *supra* note 2, at 2 (detailing Rodger's video where he told the world he would punish girls for not being attracted to him).

191. See Binder, *supra* note 176, at 1 (highlighting that California's law goes beyond the federal standard to keep guns out of the hands of dangerous individuals).