

No. 12-14009

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

DR. BERND WOLLSCHLAEGER, *et al.*,
Plaintiffs-Appellees,

v.

GOVERNOR OF THE STATE OF FLORIDA, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Florida
No. 1:11-cv-22026-MCG (Hon. Marcia G. Cooke)

**EN BANC BRIEF OF *AMICUS CURIAE* THE AMERICA PROFESSIONAL
SOCIETY ON THE ABUSE OF CHILDREN IN SUPPORT OF
PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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April 27, 2016

Wollschlaeger et al. v. Governor of the State of Florida et al., No. 12-14009

Certificate of Interested Persons and Corporate Disclosure Statement

Pursuant to 11th Circuit Rule 26.1-1, undersigned counsel certifies that, in addition to the persons and entities identified in the briefs submitted to date in this appeal, the following persons may have an interest in the outcome of this case:

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Undersigned counsel further certifies that APSAC has no parent corporation and that no publicly held corporation owns 10 percent or more of its stock.

April 27, 2016

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Statement of Interest

The **American Professional Society on the Abuse of Children** (“APSAC”) is the leading national organization for professionals who serve children and families affected by child maltreatment, including abuse and neglect. A multidisciplinary group of professionals, APSAC achieves its mission through expert training and educational activities, policy leadership and collaboration, and consultation that emphasizes theoretically sound, evidence-based principles. APSAC is a 28-year-old organization that has played a central role in developing professional guidelines that address child maltreatment.¹

Statement of the Issue

Whether the Florida Firearm Owners’ Privacy Act, which restricts life-saving speech by doctors and undermines the compelling government interest in protecting children from gun violence, fails strict or intermediate scrutiny under the First Amendment.

¹ No party’s counsel authored this brief in whole or in part. No party or a party’s counsel made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *amicus curiae* or its counsel made such a monetary contribution. *Amicus curiae* has moved for the Court’s leave to file this brief pursuant to Federal Rule of Appellate Procedure 29(b) and Eleventh Circuit Rule 29-1.

Summary of Argument

The district court correctly entered a permanent injunction barring Florida from enforcing the Firearm Owners' Privacy Act ("FOPA"). In evaluating whether FOPA's restrictions on physician speech regarding firearms comport with the First Amendment, this Court should not lose sight of one simple fact: if allowed to stand, FOPA will result in more Florida children being injured, maimed, and killed by guns.

Every year, thousands of children are involved in serious or deadly shootings. Some children accidentally shoot themselves, like an 11-year-old boy did a few weeks ago in Detroit. Others accidentally shoot friends or family members, like a 4-year-old boy from Jacksonville did to his mother last month. Some children intentionally take their own lives, like an Arizona 15-year-old did in February. And others intentionally shoot other people, as that same 15-year-old did to her girlfriend. The particulars of these shootings vary, but one detail remains the same: they all involve children gaining unsupervised access to guns.

Doctors play a critical role in reducing the number of children whose lives are damaged or ended by guns—provided doctors are able to speak freely on the subject. As professionals trained to provide counseling about all sorts of health hazards based on the accumulated knowledge of the medical community, doctors are ideally positioned to advise patients about the risks guns can pose to children,

and how to minimize those risks. For that reason, in accordance with the recommendations of APSAC and other professional organizations, doctors routinely ask parents and guardians whether they own a gun. If they do, doctors then offer advice about gun safety, just as they advise about other household dangers, such as poisonous chemicals, electrical outlets, or swimming pools. But as the plaintiffs explain, and as the district court and the panel unanimously found, FOPA markedly restricts doctors' ability to speak to their patients about one particular health hazard—guns. If allowed to go into effect, FOPA will ensure that fewer adults take commonsense precautions that can protect children from shootings.

In defending FOPA's constitutionality, the State invokes a slew of different government interests, supposedly compelling or substantial, that FOPA allegedly serves. But the State simply ignores the countervailing government interest in protecting children from gun violence. That interest is indisputably compelling, and FOPA directly undermines it. Thus, *at best*, FOPA serves multiple cross-cutting interests, allowing some gun owners to avoid a few unwelcome questions from their doctors at the cost of placing the lives of Florida's children in danger. Because FOPA severely undercuts the paramount government interest in safeguarding the welfare of children, this Court must apply the relevant constitutional standard with particular exactitude, and must strike the law down

unless the State can establish convincingly that FOPA actually advances a compelling or substantial government interest and truly is narrowly tailored under strict or intermediate scrutiny. That burden the State has not met, and cannot meet. This Court should affirm.

Argument

I. The Firearm Owners' Privacy Act Restricts Speech that Saves Children's Lives

“[T]he free flow of ... speech” has “great relevance in the fields of medicine and public health, where information can save lives.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (quotation marks omitted). Physician speech regarding firearms is critical to the health and wellbeing of many patients, but it is especially important for children, who are particularly vulnerable to being victimized by guns. By restricting physician speech about guns, FOPA degrades the quality of care doctors can provide to pediatric patients, and ensures that fewer families will take commonsense precautions that can protect children from serious injury or death.

Too often, the costs of widespread gun ownership in the United States fall on children. In 2014, over twenty-five hundred American children and teenagers died from guns—one every three and a half hours. Children's Defense Fund, *Protect Children Not Guns Factsheet*, Dec. 2015, <http://tinyurl.com/h3jupt2>. “As shocked as the nation was by the 2012 Newtown massacre,” in which 20-year-old

Adam Lanza used a semi-automatic rifle to fatally shoot 20 first graders ages 6 and 7, “more children and teens died from guns every three days in 2014 than died then.” *Id.*; see James Barron, *Children Were All Shot Multiple Times with a Semiautomatic, Officials Say*, N.Y. Times, Dec. 15, 2012, <http://tinyurl.com/cuaj2ag>. “Children and teens in the United States are killed with handguns more than with all other weapons combined.” Violence Policy Center, *Kids in the Line of Fire* (2001), <http://tinyurl.com/j9gdl78>. “Guns are the second leading cause of death among children and teens ages 1-19 and the number one cause among Black children and teens.” Children’s Defense Fund, *Protect Children Not Guns* 6 (2013), <http://tinyurl.com/hpdt8o9>. More than fifteen thousand American children and teens were injured by guns in 2010—one every 34 minutes. *Id.* “Nearly three times more children and teens were injured by guns in 2010 than the number of U.S. soldiers wounded in action that year in the war in Afghanistan.” *Id.*

The harms children experience from firearms take multiple forms. Children often accidentally shoot themselves or others. Last month, for example, a Jacksonville 4-year-old got hold of the .45-caliber handgun his mother kept on the floor of her pickup truck and shot her in the back. “There was also a dinosaur toy on the floor near where the gun would have slid, according to a police report.” *Authorities Want To Charge Mom Shot by her 4-Year-Old Son*, NBC News, Mar.

23, 2016, <http://tinyurl.com/hx2dr6c>. Similarly, a few weeks ago, “[a]n 11-year old boy accidentally shot himself in the butt while playing with a gun.” Allie Gross, *11-Year-Old Accidentally Shoots Himself in Southwest Detroit*, Detroit Metro Times, Apr. 7, 2016, <http://tinyurl.com/hfofa57>. According to a police captain, “His dad left for work ... and he was left by himself, ... and the rifle was left.... The child was aware the rifle was there.” *Id.* Even more tragically, “Veronica Rutledge, 29, was shot in the head and died instantly after her two-year-old son reached into her purse and got a hold of a 9mm Smith & Wesson handgun during a shopping trip.” *Boy, 2, Accidentally Shoots and Kills Mom at Idaho Walmart*, NBC News, Dec. 31, 2014, <http://tinyurl.com/hsrz2u3>.

These are not isolated incidents. One study found that at least 100 children under the age of 14 are killed in unintentional shootings annually. Everytown for Gun Safety & Moms Demand Action for Gun Sense in America, *Innocents Lost: A Year of Unintentional Child Gun Deaths* 5 (2014), <http://tinyurl.com/zsraje9>. More than 80 percent of these deaths occur in the home or vehicle of the victim’s family, or the home of a relative or friend. *Id.* at 7. These deaths occur “most often with guns that were legally owned but not secured.” *Id.* at 3. And most unintentional firearm injuries occur during “[t]he late afternoon hours when many children have come home from school but their parents may still be working.” Guohua Li et al., *Factors Associated with the Intent of Firearm-Related Injuries in*

Pediatric Trauma Patients, 150 *Archives of Pediatric & Adolescent Med.* 1160, 1160 (1996).

Young people also gain access to guns and use them intentionally to commit suicide. A few months ago, for example, “[j]ust before classes began on February 12 at Independence High School in Glendale, Arizona, 15-year-old Dorothy Dutiel shot and killed her girlfriend and fellow sophomore, Mary Kieu. Dutiel then turned the gun on herself.” Jennifer Maschia, *It’s Easy for Most American Kids To Get a Gun—Even if their Parents Believe Otherwise*, *The Trace*, Feb. 18, 2016, <http://tinyurl.com/zj7pzw6>. Sadly, this is not a rare occurrence. In 2014, suicide by firearm was the third leading cause of death among children 10-14 years old. Centers for Disease Control & Prevention, Nat’l Center for Injury Prevention & Control, *10 Leading Causes of Injury Deaths by Age Group Highlighting Violence-Related Injury Deaths, United States - 2014* (2014), <http://tinyurl.com/z4n8t92>.

Suicide among children, as among adults, is highly correlated with access to firearms. One study found that adolescent suicide victims are more than twice as likely as either suicide survivors or non-suicidal psychiatric patients to have had a gun in their home. David A. Brent et al., *The Presence and Accessibility of Firearms in the Homes of Adolescent Suicides*, 266 *J. of the Am. Med. Ass’n* 2989, 2989 (1991). Another found that firearms are almost three times more likely to have been present in the homes of adolescent suicide victims than psychiatric

patients who attempted or considered suicide. David A. Brent et al., *Risk Factors for Adolescent Suicide: A Comparison of Adolescent Suicide Victims with Suicidal Inpatients*, 45 *Archives of Gen. Psychiatry* 581, 585 (1988). And suicide attempts by firearm are almost always deadly—91 percent of the time—while attempts by other common methods, such as overdosing and wrist-cutting, are lethal only rarely—2 and 3 percent, respectively. See Matthew M. Miller, Deborah Azrael, & David Hemenway, *The Epidemiology of Case Fatality Rates for Suicide in the Northeast*, 43 *Annals of Emergency Med.* 723, 726 (2004).

Children also use guns to intentionally harm others. Young people are overrepresented among both the victims and perpetrators of violence generally, and gun violence in particular. Alfred Blumstein, *Youth, Guns, and Violent Crime*, *The Future of Children*, Summer/Fall 2002, at 39-40. Mass school shootings, such as the 1999 shooting at Columbine High School in Littleton, Colorado, have been highly publicized, and “[o]ver two-thirds of the attackers [in school shootings] acquired the gun (or guns) used in their attacks from their own home or that of a relative.” U.S. Secret Service & U.S. Dep’t of Educ., *The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States* 27 (2004), <http://tinyurl.com/mgy6gj6>. But while school shootings are regrettably common—there have been almost two hundred since 2013, *176 School Shootings in America Since 2013*, Everytown for Gun

Safety, <http://tinyurl.com/hyt6g6z> (last visited Apr. 26, 2016)—they do not tell the whole story. Children also use guns to shoot individual victims outside of school. The California courts, for example, recently considered the case of Joseph H., a 10-year-old boy who murdered his abusive father with his father’s unsecured gun. *See In re Joseph H.*, 188 Cal. Rptr. 3d 171, 177-78 (Cal. Ct. App. 2015).

These tragic stories and statistics are the predictable result of American children and teenagers having ready access to firearms. “Firearms are present in about one third of US households with children and youth.” Renee M. Johnson et al., *Are Household Firearms Stored Less Safely in Homes with Adolescents*, 160 *Archives of Pediatric & Adolescent Med.* 788, 788 (2006). In one study, “[m]ore than one third of the parents in th[e] sample said there was a gun in their home that was stored loaded, unlocked, or both.” *Id.* at 790. Moreover, parents of adolescents are more likely than parents of younger children to store their guns unsafely, even though most youth gun injuries happen to adolescents. *Id.* Even worse, parents are often mistaken about what their children know about household guns. One study found that 39 percent of parents mistakenly believed that their children did not know where a household gun was stored, and 22 percent mistakenly believed that their children had never handled a household gun. Frances Baxley & Matthew Miller, *Parental Misperceptions About Children and Firearms*, 160 *Archives of Pediatric & Adolescent Med.* 542, 542 (2006). The

same study found that 87 percent of children know where a household gun was stored, and 36 percent had handled a household gun. *Id.* at 545-46.

Doctors play an indispensable role in reducing the grave risks firearms pose to children. In one study, 64 percent of participants who received verbal counseling from their doctors regarding firearm storage safety improved their gun safety practices by the end of the study. Teresa L. Albright & Sandra K. Burge, *Improving Firearm Storage Habits: Impact of Brief Office Counseling by Family Physicians*, 16 J. of the Am. Bd. of Family Practice 40, 40 (2003). Participants who received the counseling were three times more likely to increase their gun safety practices than those who received no counseling. *Id.* Another study found that inquiring about firearm ownership and providing follow-up counseling to gun owners led to a 21 percent increase in safe gun storage practices. Shari L. Barkin et al., *Is Office-Based Counseling About Media Use, Timeouts, and Firearm Storage Effective?*, 122 Pediatrics 15, 21 (2008).

Accordingly, numerous professional organizations encourage doctors to counsel their patients about gun safety. The American Academy of Pediatrics “urge[s]” “[p]ediatricians and other child health care professionals ... to counsel parents about the dangers of allowing children and adolescents to have access to guns inside and outside the home,” and “recommends that pediatricians incorporate questions about the presence and availability of firearms into their patient history

taking and urge parents who possess guns to prevent access to these guns by children.” Am. Acad. of Pediatrics, *Policy Statement: Firearm-Related Injuries Affecting the Pediatric Population*, 130 Pediatrics 1416, 1421 (2012). The American College of Physicians, the American Academy of Family Physicians, and the American Medical Association all make similar recommendations. See D87 ¶¶ 4, 16-17. In its Handbook on Child Maltreatment, APSAC likewise points to “access to a loaded gun” as an example of “exposure to [environmental] hazards inside or outside the home [that] is a form of neglect.” APSAC Handbook on Child Maltreatment 158 (John E.B. Myers, ed., 3d ed., 2011). In accordance with these expert recommendations, roughly 70 percent of pediatricians report that they routinely ask about the presence of guns in the home and recommend unloading and locking household guns. Judith S. Palfrey & Sean Palfrey, *Preventing Gun Deaths in Children*, 368 New England J. of Med. 401, 402 (2013).

Alone among the household risks children face, FOPA markedly restricts these life-saving inquiries and recommendations regarding guns. The district court and the panel unanimously concluded that FOPA prohibits doctors from inquiring or keeping records about firearm ownership as a matter of routine preventative care. *Wollschlaeger v. Gov. of Fla.*, 814 F.3d 1159, 1176-77 (11th Cir. 2015); *id.* at 1202 (Wilson, J., dissenting); *Wollschlaeger v. Gov. of Fla.*, 797 F.3d 859, 904-07 (11th Cir. 2015) (Wilson, J., dissenting); *Wollschlaeger v. Farmer*, 880 F. Supp.

2d 1251, 1263 (S.D. Fla. 2012). The Florida legislature enacted FOPA in direct response to anecdotal constituent complaints regarding physician questions that are indistinguishable from routine preventative screening interviews. *See* D87 ¶¶ 3, 5-10. And the undisputed record details how the plaintiff physicians in this case have had to self-censor the inquiries they make and the counseling they provide out of fear of disciplinary sanctions under FOPA. *See* D87 ¶¶ 26-39.

Contrary to the statements in the FOPA's legislative history, life-saving inquiries and recommendations regarding firearms do not reflect a "political ... attack" on gun ownership or the Second Amendment. D87 ¶5 (quoting statement of Rep. Artiles). Rather, they reflect that guns are dangerous, as the State itself has recognized. Indeed, a Florida statute declares that any person "who stores or leaves, on a premise under his or her control, a loaded firearm, ... and who knows or reasonably should know that a minor is likely to gain access to the firearm ... without the supervision required by law," must "keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure or shall secure it with a trigger lock." Fla. Stat. § 790.174. The State enacted this requirement because it recognized that "a tragically large number of Florida children have been accidentally killed or seriously injured by negligently stored firearms; that placing firearms within the reach or easy access of children is irresponsible, encourages such accidents, and should be prohibited; and that

legislative action is necessary to protect the safety of our children.” 1989 Fla. Sess. Law Serv. 89-534, § 1 (West).

Professional organizations thus recommend that doctors provide counseling about guns alongside myriad other household dangers. APSAC’s handbook, for example, lists many other environmental hazards from which guardians must protect children, such as “poisonous substances ... within easy reach of young children,” “smoking around children with pulmonary conditions,” “riding a bike without a helmet,” and “failure to use a car seat or seat belt.” APSAC Handbook on Child Maltreatment 158 (John E.B. Myers, ed., 3d ed., 2011). Or as one gun rights advocate has explained, “Much as with other potentially dangerous objects found in our household, my siblings and I were raised to follow a strict ‘Don’t Touch’ policy. Don’t touch the hot stove, don’t touch the paint thinner[,] and don’t touch the guns.” B. Gil Horman, *6 Ways To Safely Store Your Firearms*, NRA Family, Apr. 14, 2016, <http://tinyurl.com/zngurqh>. No reasonable person would question whether the sound practice of medicine encompasses counseling patients about hot stoves, paint thinner, or other similar risks to children’s life and health. Firearms are no different. By displacing doctors’ professional judgment that talking about guns is necessary to safeguard their patients’ health and wellbeing, and substituting the State’s politicized judgment about that speech instead, FOPA places all patients—and children in particular—at greater risk of injury or death.

II. Because the Firearm Owners' Privacy Act Undermines the Compelling Government Interest in Protecting Children from Gun Violence, the Law Cannot Survive Strict or Intermediate Scrutiny

In arguing that FOPA survives strict or intermediate scrutiny, the State identifies four interests the law supposedly serves—protecting the right to keep and bear arms, protecting patient privacy, eliminating barriers to healthcare, and preventing discrimination and harassment in health care. State Br. 45-50. The plaintiffs persuasively explain why FOPA does not really advance those interests, why those interests are neither compelling nor substantial, and why FOPA is not narrowly tailored. But FOPA cannot pass constitutional muster for another reason as well: the law directly undermines the government's interest in protecting patients in general, and children in particular, from the deadly risks associated with gun ownership. Neither the State nor the panel majority adequately accounted for this countervailing government interest. And unlike the interests the State has asserted to defend FOPA, “[i]t is evident beyond the need for elaboration that a State's interest in safeguarding the physical and psychological well-being of a minor is compelling.” *New York v. Ferber*, 458 U.S. 747, 756-57 (1982).

The compelling government interest in protecting children from gun violence merits substantial weight in the First Amendment analysis. That is because, at bottom, strict and intermediate scrutiny are balancing tests. In *Barenblatt v. United States*, for example, an early case applying a form of what is

now known as strict scrutiny, the Supreme Court explained that the government may restrict First Amendment rights based on “a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown,” provided that “the subordinating interest of the State must be compelling.” 360 U.S. 109, 126-27 (1959) (quotation marks omitted). “Over the years, th[e Supreme] Court has restated and refined these basic First Amendment principles, adopting them more particularly to the balance of competing interests and the special circumstances of each field of application.” *Denver Area Educ. Telecomm ’ns Consortium, Inc. v. FCC*, 518 U.S. 727, 740-41 (1996). But notwithstanding that doctrinal evolution, “the successor strict and intermediate scrutiny tests applied today remain quintessential balancing inquiries that focus ultimately on whether a particular government interest is sufficiently compelling or important to justify an infringement on the individual right in question.” *Heller v. District of Columbia*, 670 F.3d 1244, 1281 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

In order to perform a proper balancing inquiry, however, a court must consider *all* of the relevant interests on both sides of the scales. In the typical case, government interests on one side are balanced against individual rights on the other. In this case, however, there is a paramount government interest on the *same side* of the scales with the First Amendment rights of doctors and patients.

When courts are tasked with balancing an asserted government interest against not only an individual right but also another countervailing government interest, they demand particularly strong evidence that the law at issue actually serves the first asserted interest. When evaluating the constitutionality of a race-based policy for transferring police officers between precincts, for example, the Second Circuit did not merely balance the city's asserted interest in "effective law enforcement" against the officers' individual right against racial discrimination. *Patrolmen's Benevolent Ass'n. of City of New York v. City of New York*, 310 F.3d 43, 52 (2d Cir. 2002). Rather, the court also considered that the race-based transfer policy could undermine public safety by harming the city's ability to recruit and retain minority officers. *Id.* at 53. The court ultimately struck the policy down, noting that "[t]he difficulty of balancing such competing interests underscores the need for particularized evidence of a compelling state interest." *Id.*

The en banc Tenth Circuit took a similar approach in *United States v. Hardman*, 297 F.3d 1116 (10th Cir. 2002) (en banc). That case involved a claim under the Religious Freedom Restoration Act challenging a scheme that limited permits for possessing eagle feathers to members of federally recognized Indian tribes. *Id.* at 1118, 1121-23. In defending the scheme, the government argued that granting permits to individuals who were not members of federally recognized tribes would increase the waiting times for permits and thus increase poaching. *Id.*

at 1132. But the court noted that the government has an interest in preventing poaching not only by federally recognized tribal members, but also by *other* individuals. Thus, “[w]hile the wait might increase for members of federally recognized tribes, it would decrease for sincere practitioners who are *not* members of federally recognized tribes, who currently have no legal access to eagle parts for religious purposes. This approach could result in an offsetting decrease in poaching by people who are not members of federally recognized tribes.” *Id.* at 1132-33. The court therefore remanded for further evidence on these questions, which “it was incumbent on the government to answer.” *Id.* at 1133.

Here, because FOPA directly undermines the countervailing compelling government interest in protecting children from gun violence, it was incumbent upon the State to produce particularly convincing evidence that the law satisfies strict or intermediate scrutiny. The State has not done that—nor could it. Indeed, when applying strict scrutiny, the Supreme Court has upheld laws restricting First Amendment rights only three times. *See Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*); *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990); *Burson v. Freeman*, 504 U.S. 191 (1992) (plurality op.); *id.* at 215 (Scalia, J., concurring in the judgment). All three of those decisions concerned electoral regulations, and the Court recently overruled one of them. *See Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 365 (2010) (overruling *Austin*). And it has been over

twenty years since the Supreme Court upheld a content-based restriction under intermediate scrutiny. *See Fla. Bar v. Went For It, Inc.*, 515 U.S. 618 (1995).

The countervailing compelling government interest in protecting children from gun violence also raises the State's burden in defending FOPA's constitutionality in another way. "[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quotation marks omitted). It cannot be gainsaid that protecting children from gun violence is a critically important matter of the deepest public concern. As the stories and statistics recounted above demonstrate, gun violence involving children is a public health crisis of the highest order. Physician speech on that subject therefore "is entitled to special protection." *Id.* (quotation marks omitted).

The fact that this speech takes place within the confines of a doctor's office "cannot by itself transform the nature of [the] speech" from public to private. *Id.* at 454. As the Third Circuit has explained, "professional speech ... serves as an important channel for the communication of information that might otherwise never reach the public." *King v. Gov. of New Jersey*, 767 F.3d 216, 234 (3d Cir. 2014). That is because doctors and other professionals "have access to a body of specialized knowledge to which laypersons have little or no exposure," which "will often be communicated to [citizens] directly by a licensed professional during the

course of a professional relationship.” *Id.* “[W]ord-of-mouth and the Internet are poor substitutes for a medical doctor; information obtained from chat rooms and tabloids cannot make up for the loss of individualized advice from a physician with many years of training and experience.” *Conant v. Walters*, 309 F.3d 629, 644 (9th Cir. 2002) (Kozinski, J., concurring). The health effects of physician speech on guns, moreover, are not limited to the patients and other individuals present in an exam room. Firearms counseling also protects the health and wellbeing of absent third parties, who may gain access to or otherwise be harmed by household guns that are stored unsafely. Because it restricts life-saving speech on a matter of intense public concern, undermining the compelling government interest in protecting children from gun violence, FOIPA violates the First Amendment.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's permanent injunction enjoining enforcement of the Firearm Owners' Privacy Act.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B) and 29(d) because this brief contains 4,379 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

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I hereby certify that, on April 27, 2016, I electronically filed the foregoing brief with the Clerk of the Court by using the Court's CM/ECF system.

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