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FIREARMS POLICY COALITION,
FIREARMS POLICY FOUNDATION,
and SECOND AMENDMENT FOUNDATION

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM WIESE, an individual; JEREMIAH
MORRIS, an individual; LANCE COWLEY, an
individual; SHERMAN MACASTON, an
individual; FRANK FEDEREAU, an individual;
ALAN NORMANDY, an individual; TODD
NIELSEN, an individual; THE CALGUNS
FOUNDATION; FIREARMS POLICY
COALITION; FIREARMS POLICY
FOUNDATION; SECOND AMENDMENT
FOUNDATION,

Plaintiffs,

vs.

XAVIER BECERRA, in his official capacity as
Attorney General of California; MARTHA
SUPERIOR, in her official capacity as Acting
Chief of the Department of Justice Bureau of
Firearms,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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COME NOW the plaintiffs WILLIAM WIESE, JEREMIAH MORRIS, LANCE COWLEY, SHERMAN MACASTON, FRANK FEDEREAU, ALAN NORMANDY, TODD NIELSEN, THE CALGUNS FOUNDATION, FIREARMS POLICY COALITION, FIREARMS POLICY FOUNDATION, and SECOND AMENDMENT FOUNDATION (collectively, “Plaintiffs”), by and through their undersigned counsel, who hereby complain and allege as follows:

INTRODUCTION

1. This is a facial and as-applied constitutional challenge to California Penal Code § 32310, as recently amended by Senate Bill 1446 and Proposition 63, and Penal Code § 32390 (collectively, the “Large-Capacity Magazine Ban”), which would, if enforced, and as applied, individually and collectively prohibit Plaintiffs and other law-abiding citizens from continuing to possess, use, or acquire lawfully-owned firearms, in common use for lawful purposes such as self-defense (inside and outside the home), competition, sport, and hunting.

2. This action further challenges the Large-Capacity Magazine Ban statutory scheme which would, if enforced, as of July 1, 2017, subject thousands of law-abiding gun owners to criminal liability and sanctions, and subjecting their lawfully-possessed personal property to forfeiture, seizure and permanent confiscation, without due process or compensation.

3. Moreover, the Large-Capacity Magazine Ban is hopelessly vague and ambiguous, as it fails to provide fair or even adequate notice to law-abiding gun owners of what they may do with their personal property without being subject to criminal sanctions, and fails to inform them of which version of the statutes may apply, or whether they are subject to an exception thereunder.

4. The possession of all ammunition magazines, which are intrinsic operating parts of modern, constitutionally-protected semi-automatic firearms, has heretofore been legal. In 1999, through passage of Senate Bill 23 (“SB23”), California enacted legislation banning the importation, sale or manufacture of standard-capacity ammunition feeding devices that can hold

more than ten rounds of ammunition (so-called “large-capacity magazines” as the Legislature called and defined them in Cal. Penal Code § 16740). However, as a part of SB23, possession of lawfully-acquired “large capacity magazines” was not prohibited and continued to be legal. Therefore, millions of these “grandfathered” large-capacity magazines have existed and currently are lawfully possessed by law-abiding California gun owners. More to the point, they are inherent, operating parts of handguns and other firearms that are lawfully owned and protected under the United States Constitution. The Large-Capacity Magazine Ban is, effectively and now, actually, a confiscation, in part, of bearable arms, protected by the United States Constitution.

5. This action therefore seeks to vindicate the right of the people of the State of California, including Plaintiffs, and others similarly situated, to keep and bear arms under the Second Amendment, as incorporated to the states, which prohibits infringement of a core right to keep commonly-possessed firearms.

6. This action is brought by individual and organizational plaintiffs, both on their own behalves, and as representatives on behalf of the class of individuals who are or would be affected by the Large-Capacity Magazine Ban, that is, those law-abiding California residents, who are not otherwise exempt, who lawfully and have legally possessed Large-Capacity Magazines in this state, prior to December 31, 1999.

PARTIES

7. Plaintiff William Wiese is a natural person and a law-abiding California resident who resides in the City of San Jose, California. Wiese has lawfully owned and possesses large-capacity magazines, as defined by statute, before 2000. Wiese is a board member and supporter of The Calguns Foundation. Wiese is a member and supporter of Second Amendment Foundation, Firearms Policy Coalition, and Firearms Policy Foundation.

8. Plaintiff Jeremiah Morris is an individual, and a law-abiding resident of the County of Kern, California. Morris has possessed, and continues to lawfully possess a so-called large-capacity magazine for an AR-type rifle, chambered in 5.56 x 45 mm, since before the ban

on the importation and sale of such magazines in 2000. Morris holds an active license to carry a concealed weapon (“CCW”) issued by his county sheriff, issued to him only after proving “good cause” and his “good moral character” to his licensing authority, successfully completing a course of training on the law and firearms proficiency, passing an extensive Live Scan-based background check¹ and placement into the State’s “Rap Back” system for monitoring law enforcement contact, arrests, and criminal convictions. Morris has maintained an active CCW license, requiring additional training and background checks, since 2010.

9. Plaintiff Lance Cowley is an individual, and a law-abiding resident of the County of Placer, California. Plaintiff Cowley is the lawful possessor of one or more large-capacity magazines, as defined by statute, which he legally acquired before 2000. Cowley is a member and supporter of The Calguns Foundation, Second Amendment Foundation, Firearms Policy Coalition, and Firearms Policy Foundation.

10. Plaintiff Sherman Macaston is an individual, and law-abiding resident of the County of Sonoma, California. Plaintiff Macaston was born and raised in California, and has honorably served his county, serving two combat tours of duty in Vietnam. After being honorably discharged from the United States Army in 1978, Plaintiff Macaston returned to California, and here he lawfully acquired, prior to 2000, large-capacity magazines for a Browning Hi-Power pistol, chambered in 9mm, and large-capacity magazines for a Smith & Wesson Model 59 pistol, also chambered in 9mm. In fact, the large-capacity magazines that Plaintiff Macaston acquired for the Smith & Wesson Model 59 pistol are the only magazines that he has for that particular pistol, and as far as plaintiff Macaston is aware, and on information and belief, no 10-round OEM magazines were ever produced by the original manufacturer, specifically for that particular pistol, before its production was discontinued in 1988.

11. Plaintiff Frank Federau is an individual, and law-abiding resident of the County of San Francisco, California. Plaintiff is the lawful possessor of large-capacity magazines,

¹ Laws relating to licenses to carry a concealed handgun are set forth in California Penal Code § 26150, *et seq.*

1 including one or more magazines that are currently working and intrinsic parts of a lawfully
2 possessed AR-15 platform model rifle, chambered in .458 SOCOM caliber. Said magazines hold
3 10 rounds of .458 SOCOM ammunition for the firearm as it is currently chambered and used.
4 However, such magazine also holds 30 rounds of 5.56 x 45mm ammunition, and is therefore
5 classified as a large-capacity magazine under California law, even though plaintiff's firearm does
6 not accept that round. On information and belief, plaintiff Federau is one of many other persons
7 in a similar situation regarding the use of firearm magazines that are capable of accepting more
8 than 10 rounds of a different caliber ammunition. Federau is a member and supporter of The
9 Calguns Foundation, Second Amendment Foundation, Firearms Policy Coalition, and Firearms
10 Policy Foundation.

11 12. Plaintiff Lt. Alan Normandy (retired) is an individual and law-abiding resident of
12 Prescott, Arizona. Normandy has family in California and visits them often. Normandy is an
13 honorably retired police officer who faithfully served the people of California in the South San
14 Francisco Police Department for over 28 years. Normandy competes in shooting competitions
15 and conducts and participates in firearms training, and would like to do so in California.
16 Normandy is a former S.W.A.T. and tactical firearms instructor, and a firearms expert.
17 Normandy was a firearms consultant for the "Mythbusters" television program produced for and
18 broadcast on the Discovery Channel. Normandy is an individual member, member of the board
19 of directors, and the current vice-president of Firearms Policy Coalition. Normandy is a member
20 and supporter of The Calguns Foundation, Second Amendment Foundation, and Firearms Policy
21 Foundation.

22 13. Plaintiff Todd Nielsen is an individual and a law-abiding resident of Mapleton,
23 Utah. Nielsen is an honorably retired peace officer and a 20+ year veteran of the San Jose Police
24 Department. Nielsen competes in shooting competitions and conducts and participates in
25 firearms training through his firm, Nielsen Training and Consulting. Nielsen is a member and
26 supporter of The Calguns Foundation, Second Amendment Foundation, Firearms Policy
27 Coalition, and Firearms Policy Foundation.
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1 14. Plaintiff The Calguns Foundation, Inc. (CGF) is a non-profit membership
2 organization incorporated under the laws of California with its principal place of business in
3 Sacramento, California, with members residing both within and outside of this state, dedicated to
4 promoting education for all of stakeholders about California and federal firearm laws, rights and
5 privileges, and defending and protecting the civil rights of California gun owners. CGF
6 represents these members and supporters, who include California firearm retailers and
7 consumers. CGF brings this action on behalf of itself, its members, supporters, who possess all
8 the indicia of membership, and similarly situated members of the public.

9 15. Plaintiff Firearms Policy Coalition, Inc. (FPC) is a non-profit membership
10 organization incorporated under the laws of Delaware with its principal place of business in
11 Sacramento, California, with members residing both within and outside of this state, that serves
12 its members and the public through direct and grassroots advocacy, legal efforts, and education.
13 The purposes of FPC include defending the United States Constitution and the People's rights,
14 privileges and immunities deeply rooted in the Nation's history and tradition, especially the
15 fundamental right to keep and bear arms. FPC represents these members and supporters, who
16 include California firearm retailers and consumers. FPC brings this action on behalf of itself, its
17 members, supporters, who possess all the indicia of membership, and similarly situated members
18 of the public.

19 16. Plaintiff Firearms Policy Foundation, Inc. (FPF) is a non-profit membership
20 organization incorporated under the laws of Delaware with its principal place of business in
21 Sacramento, California, with members residing both within and outside of this state, that serves
22 to defend and advance constitutional rights through charitable purposes, with a focus on the
23 fundamental, individual right to keep and bear arms. FPF represents these members and
24 supporters, who include California firearm retailers and consumers. FPF brings this action on
25 behalf of itself, its members, supporters, who possess all the indicia of membership, and
26 similarly situated members of the public.

27 17. Plaintiff Second Amendment Foundation, Inc. (SAF) is a non-profit membership
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1 organization incorporated under the laws of Washington with its principal place of business in
2 Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including
3 California. The purposes of SAF include education, research, publishing and legal action
4 focusing on the Constitutional right to privately own and possess firearms, and the consequences
5 of gun control. SAF brings this action on behalf of itself, its members, supporters, who possess
6 all the indicia of membership, and similarly situated members of the public.

7 18. Individual plaintiffs Wiese, Morris, Cowley and Macaston are bringing this claim
8 on behalf of themselves, and as representatives of the class of similar individuals consisting of
9 law-abiding California residents, who are not otherwise prohibited nor exempt, who lawfully and
10 have legally possessed Large-Capacity Magazines in this state, prior to December 31, 1999.
11 Organizational plaintiffs CGF, FPC, FPF and SAF are bringing this claim as public interest
12 organizations, whose California members similarly have lawfully possessed Large-Capacity
13 Magazines in this state, prior to December 31, 1999. As to all claims made in a representative
14 capacity herein, there are common questions of law and fact that substantially affect the rights,
15 duties and liabilities of a large number of California residents who knowingly or unknowingly
16 are subject to the Large-Capacity Magazine Ban. The relief sought in this action is declaratory
17 and injunctive in nature, and is a matter of substantial public interest.

18 19. Individual plaintiffs and California residents Wiese, Morris, Cowley, Macaston
19 and Federau also seek to acquire, and would acquire, additional large-capacity magazines for
20 lawful use and purposes such as self-defense, recreation and competition, but are and have been
21 further prevented from doing so by the Large-Capacity Magazine Ban.

22 20. Defendant Xavier Becerra is the Attorney General of the State of California, and
23 is sued herein in his official capacity. The Attorney General is the chief law enforcement officer
24 of the state, and it is his duty to ensure that California's laws are uniformly and adequately
25 enforced. The Attorney General is the head of the California Department of Justice ("DOJ").
26 The DOJ and its Bureau of Firearms regulate and enforce state law related to the sales,
27 ownership, and transfer of firearms, including the licensing and regulation of firearms dealers.
28

1 The Attorney General maintains an office in Fresno.

2 21. Defendant Martha Supernor is the Acting Chief of the DOJ Bureau of Firearms.
3 Upon information and belief, Ms. Supernor reports to Attorney General Becerra, and is
4 responsible for overseeing the licensing and regulation of firearms and firearms dealers. She is
5 sued herein in her official capacity.

6
7 **JURISDICTION AND VENUE**

8 22. This court has jurisdiction over all claims for relief pursuant to 28 U.S.C. § 1331,
9 as this action arises under the Constitution and laws of the United States, and under 28 U.S.C. §§
10 1343 and 42 U.S.C. § 1983. All Plaintiffs herein are seeking relief under the Declaratory
11 Judgment Act, 28 U.S.C. §§ 2201-2202. To the extent that the court determines that Plaintiffs
12 are asserting state law claims, this court has supplemental jurisdiction under 28 U.S.C. § 1367(a).

13 23. Venue is proper under 28 U.S.C. § 1391(b). Assignment to the Fresno Division is
14 proper pursuant to Local Rule 120(d) because the Attorney General and Department of Justice
15 maintain an office in Fresno and at least one of the named plaintiffs in this action resides in this
16 jurisdiction.

17
18 **BACKGROUND AND FACTS COMMON TO ALL COUNTS**

19
20 ***The Second Amendment***

21 24. The Second Amendment to the United States Constitution states, in pertinent part,
22 that “the right of the people to keep and bear arms, shall not be infringed.” U.S. Const., Amend
23 II. The Second Amendment further “elevates above all other interests the right of law-abiding,
24 responsible citizens to use arms in defense of hearth and home.” *District of Columbia v. Heller*,
25 554 U.S. 570, 635 (2008). The Second Amendment protects “arms....of the kind in common
26 use.... for lawful purposes like self-defense.” *Id.*, 554 U.S. at 624.

27 25. California is unique in that its state constitution contains no provision securing the
28 right to keep and bear arms. Without any express right to keep and bear arms within its

1 constitution, the political branches of the State were effectively given free rein to restrict the
2 rights of law-abiding people for decades, creating one of the most onerous and burdensome gun
3 control schemes in the country.

4 26. Indeed, until the U. S. Supreme Court decided *McDonald v. City of Chicago*, 561
5 U.S. 742, 130 S.Ct. 3020 (2010), and incorporated the Second Amendment’s guarantees as
6 against states and local governments through the Fourteenth Amendment, law-abiding California
7 residents and visitors were not able to enjoy the freedoms and benefits of an enduring and
8 substantive protection of the fundamental, individual right to keep and bear arms.

9 27. The Second Amendment is not a second-class guarantee buried at the bottom of
10 our Constitution. As the Court held in *McDonald*, “it is clear that the Framers and ratifiers of the
11 Fourteenth Amendment counted the right to keep and bear arms among those *fundamental* rights
12 necessary to our system of ordered liberty.” 130 S.Ct. at 3043 (emphasis added.)

13 *Ammunition Magazines and the California Magazine Ban*

14 28. Ammunition magazines and feeding devices are an intrinsic part of all semi-
15 automatic firearms, which were designed, developed, produced and sold in large quantities
16 starting in the early 20th Century and continuing through today. Today, a vast majority of
17 firearms, including handguns, are self-loading semi-automatic firearms that require a magazine
18 to feed each round of ammunition. Of these semi-automatic firearms, a vast majority in
19 existence use spring-loading magazines which load each successive round of ammunition. A
20 magazine is therefore an inherent part of, and inseparable from, a modern firearm. In fact, most,
21 if not all all semi-automatic firearms sold at retail by all manufacturers today are sold with at
22 least one magazine included as an inherent part of that firearm. A modern, semi-automatic
23 firearm is essentially inoperable without a magazine, or other ammunition feeding device.

24 29. Although an exact number is not known at this time, as will be shown at trial,
25 over the past century, many millions of magazines have existed, lawfully within the United
26 States, as inherent parts of semi-automatic firearms commonly held and used by Americans for
27
28

1 lawful purposes like self-defense, competition, training, and sport.

2 30. Likewise, and up through 1999, millions of California citizens lawfully acquired,
3 possessed and continued to possess semi-automatic firearms that contained, as a part of such
4 firearms, magazines, many of which were only *later* legislatively branded as “large-capacity
5 magazines,” though they were never described as such before 1999.

6 31. In 1999, through passage of Senate Bill 23, California enacted legislation
7 generally banning methods of acquiring standard-capacity ammunition feeding devices that can
8 hold more than ten rounds (so-called “large-capacity magazines”, as defined in Penal Code §
9 16740). However, as a part of Sen. Bill 23, as enacted, possession of lawfully-acquired “large
10 capacity magazines” was not prohibited and continued to be lawful. Individual Plaintiffs Wiese,
11 Morris, Cowley, and Macaston, and the members of the putative class of persons on whose
12 behalf this action is brought, are law-abiding citizens, who are neither prohibited nor exempt,
13 and who have lawfully possessed such large-capacity magazines through December 31, 1999.

14 32. California gun owners, in trusting and justifiable reliance upon the legislative
15 compromise and the continued lawful possession of large-capacity magazines, owned, continued
16 to own, and acquired new firearms which included firearms capable of accepting large-capacity
17 magazines. Furthermore, many California gun owners made choices regarding firearms based
18 upon the assumption that they would be able to use, and continue to use, lawfully-acquired
19 magazines, including large-capacity magazines.

20 33. The California Department of Justice acknowledges, in its recently-issued
21 “Finding of Emergency” for regulations it had sought to promulgate related to the Large
22 Capacity Magazine Ban, that “[t]here are likely hundreds of thousands of large-capacity
23 magazines in California at this time. In recent years, there has been an increase in these types of
24 firearms on the market. The Department therefore expects many gun owners to be affected by the
25 new ban.” The California Department of Justice likely understates the number of large-capacity
26 magazines in this state. On information and belief, the true number of magazines well exceeds
27 the Attorney General’s estimates. A true and correct copy of the Department’s “Finding of
28

Emergency” promulgated on or about December 16, 2016 (less exhibits thereto) is attached hereto as **Exhibit A**.

34. As a further matter of scale, moreover, this is not simply a matter of prohibiting ownership of one or two items of personal property. Many of California’s gun owners, including some members and constituents of the organization plaintiffs, own many magazines, worth substantial amounts of value, for many different types of firearms. The financial impact to the loss of these intrinsic firearm parts would be substantial, as will be demonstrated at trial.

35. On July 1, 2016, Governor Brown signed into law the provisions of Senate Bill 1446, which amended and will amend Penal Code § 32310(b), to make it a criminal offense to possess large-capacity magazines starting on July 1, 2017, “regardless of the date the magazine was acquired[.]” The law as signed would also require a person in lawful possession of any large-capacity magazines prior to July 1, 2017, to dispose of such magazine(s) only as provided by the statute.

36. Furthermore, on November 8, 2016, California voters enacted Proposition 63 (the “Safety for All Act”)², a measure that was sponsored and heavily promoted as a “gun safety” measure by Lt. Gov. Gavin Newsom. Proposition 63 amended Penal Code §§ 32310, 32400, 32405, 32410, 32425, 32435, 32450, added section 32406, and repealed section 32420 by initiative statute, which changed the law to totally prohibit and criminalize the possession of “large-capacity magazines” as of July 1, 2017, for Plaintiffs and others similarly situated. Proposition 63 took effect on the day after the election. (Cal. Const., Art. II, § 10(a): “An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”)

37. Absolutely no financial impact statement or report about the costs of enforcement of this scheme was ever conducted in conjunction with either SB 1446, or Proposition 63, because both the bill’s sponsors, and the initiative’s promoters, simply assumed that the state, via

²The full text of Proposition 63 can be viewed or downloaded at:
[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20\(Firearms\)_0.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20(Firearms)_0.pdf).

1 local law enforcement agencies, had the power to confiscate the magazines without providing
2 compensation therefor.

3 38. In fact, in enacting the provisions of SB 1446, and/or Proposition 63, neither the
4 sponsors of the bill, nor the proponents of the initiative, considered such statutory scheme to
5 implicate any takings violation at all. (See Senate Rules Committee Analysis dated 5/19/16
6 regarding SB 1446, at pp. 4-5 (summarily concluding that "courts have held that prohibiting
7 possession of dangerous weapons is a valid exercise of the government's police power not to be
8 confused with the power of imminent domain [*sic*][,]" a copy of which is attached hereto as
9 **Exhibit B.**) Therefore, the State has neither created nor established, nor has there even been any
10 established process, remedy or administrative body to which one may seek compensation for the
11 surrender/takings of the firearm parts at issue. Accordingly, Plaintiffs are not required to exhaust
12 any administrative remedies, as there are no such administrative remedies available at all, and
13 any request for compensation by individual magazine holders – individually and collectively –
14 would be futile.

15 39. Plaintiffs simply wish to continue to hold and otherwise exercise their Second
16 Amendment right to possess, keep, use and acquire firearms and standard-capacity magazines,
17 which are in common use, and for lawful purposes, but cannot because of the total, categorical
18 ban presently and soon to be imposed by the Large-Capacity Magazine Ban.

19 40. Plaintiffs further wish, on their own behalves, on behalf of all similarly-situated
20 individuals lawfully possessing large-capacity magazines, to prevent the state from enforcing its
21 statutory scheme which amounts to a taking of constitutionally-protected arms, without just
22 compensation, by declaring the entire statutory scheme to be invalid.

23 41. The ammunition magazines that Plaintiffs wish to continue to lawfully possess,
24 use and/or acquire—those items prohibited through California's Large-Capacity Magazine
25 Ban—are exactly the type of instruments that are afforded protection under the Second
26 Amendment for the acquisition, protection, and use by law-abiding people for the preservation of
27 self and the state in times of unjust force. They are inherent parts of lawfully acquired and
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1 possessed firearms including most handguns, that are now subject to confiscation, i.e., through
2 “surrender” to the state.

3 42. Such magazines are, in virtually every other state of the Union, exactly the sorts
4 of lawful weapons in common use that law-abiding people possess at home for lawful purposes—
5 and exactly what they would bring to service in militia duty should such cause be necessary.
6 *See, e.g., Heller II*, 670 F.3d at 1261 (“We think it clear enough in the record that semi-automatic
7 rifles and magazines holding more than ten rounds are indeed in ‘common use,’ as the plaintiffs
8 contend.”); *Colorado Outfitters Ass’n v. Hickenlooper*, 24 F. Supp. 3d 1050, 1068 (D. Colo.
9 2014) (concluding that statute “affects the use of firearms that are both widespread and
10 commonly used for self-defense,” in view of the fact that “lawfully owned semi-automatic
11 firearms using a magazine with the capacity of greater than 15 rounds number in the tens of
12 millions”); *Shew v. Malloy*, 994 F. Supp. 2d 234, 246 (D. Conn. 2014) (concluding that semi-
13 automatic rifles such as the AR-15 as well as magazines with a capacity greater than 10 rounds
14 “are ‘in common use’ within the meaning of *Heller* and, presumably, used for lawful purposes”).

15 43. Despite California’s apparent legislative policy preferences and animus towards
16 Second Amendment rights (and, by extension, those who would lawfully seek to assert and
17 exercise them), “[T]he enshrinement of constitutional rights necessarily takes certain policy
18 choices off the table.” *Heller*, 554 U.S., at 636, 128 S.Ct., at 2822. Indeed, the Court “expressly
19 rejected the argument that the scope of the Second Amendment right should be determined by
20 judicial interest balancing[.]” *McDonald v. City of Chicago*, 561 U.S. at 785, 130 S.Ct. at 3047
21 quoting *District of Columbia v. Heller*, 554 U.S., at 634-636, 128 S.Ct., at 2820-2821.

22 44. Millions of semi-automatic firearms in common use for lawful purposes are
23 possessed by law-abiding people throughout the United States, including in California. Those
24 firearms include, but are not limited to, highly-popular makes and models of handguns like the
25 Glock models 17, 19, 22, and 23, the Smith & Wesson M&P series models, the Springfield
26 Armory XD series models, and many others, including some pistols that have now been
27 discontinued.
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1 45. Millions of such firearms, including those handguns, are commonly possessed by
2 law-abiding people for lawful purposes including target shooting, training, sport shooting,
3 competition, and self-defense.

4 46. Millions of such firearms, including those handguns, were designed with and
5 were intended to be used with magazine capacities exceeding 10 rounds. For example, one of
6 the most common and popular models of handgun commonly used and possessed for self-
7 defense, the Glock model 17 9mm, was designed with a 17-round magazine.

8 47. Many of these handguns that were designed for factory-standard large-capacity
9 magazines that hold more than 10 rounds, including the Glock model 17 handgun, are available
10 for sale in the State of California to law-abiding people and on the Roster of Handguns Certified
11 for Sale (Roster) promulgated and maintained by the California Department of Justice.³

12 48. Some handguns were designed, equipped and sold *only* with Large-Capacity
13 Magazines, and for which no magazines holding ten or fewer rounds were ever produced by the
14 original manufacturer. For example, manufacturer Smith & Wesson, on information and belief,
15 never produced or sold OEM magazines holding ten or fewer rounds specifically for use with its
16 Model 59 pistol, the type that is owned by plaintiff Macaston.

17 49. The State of California expressly recognizes that the large-capacity magazines
18 prohibited under the Large-Capacity Magazine Ban to normal, law-abiding people who possess
19 them for lawful purposes have intrinsic value for self-defense in its exemption for armored
20 vehicle companies and their employees, Cal. Penal Code § 32435, as armored vehicle companies
21 and personnel are only legally authorized for defensive, rather than offensive, actions using such
22 large-capacity magazines to preserve life and property from violent attackers. Other statutory
23 exemptions make it clear that California fully recognizes that large-capacity magazines have
24 intrinsic value as parts of semi-automatic pistols, per the exemptions that it allows. (See list of
25 statutory exemptions, found at Penal Code Part 6, Title 4, Div. 10, Chapter 5, Article 2, at §§
26 _____
27 _____

28 ³ The Roster can be viewed online at <http://certguns.doj.ca.gov>.

32400, *et seq.*)

50. As alleged herein, the legislative prohibition on the possession of a fundamental part of most lawfully-owned handguns and rifles amounts to a de facto confiscation of firearms, or parts thereof, which are in common use for lawful purposes. As Plaintiffs will demonstrate at trial, the so-called large capacity magazines are widely owned, used and are inherent parts of operating and lawfully-possessed firearms. The state may not enact nor enforce a statutory scheme which amounts to confiscation of constitutionally-protected bearable arms, either with or without compensation.

51. Plaintiffs must now appeal to the third branch of government and seek declaratory and injunctive relief to invalidate the statutory provisions and enjoin any further action by the Attorney General of California and the California Department of Justice Bureau of Firearms to confiscate and take, or to allow confiscation and taking by local law enforcement agencies, their lawfully-possessed and constitutionally-protected property, and infringe their right to keep and bear lawfully-acquired arms, in common use, which are not unusual and dangerous.

CLAIMS FOR RELIEF

COUNT I: VIOLATION OF U.S. CONST., AMEND. II

52. Plaintiffs incorporate herein by reference paragraphs 1 through 51 as if fully set forth herein.

53. Large capacity magazines, as so called and defined by the Legislature, are commonly possessed by law-abiding citizens in California, and throughout the United States, for self-defense, target shooting, hunting, and other lawful purposes. Most modern semi-automatic firearms are designed for, and commonly sold with magazines that hold more than 10 rounds of ammunition.

54. The need for, and usefulness of such large-capacity magazines, as so defined by the Legislature, is demonstrated by the fact that they are issued to civilian law enforcement officers, presumably for self-defense purposes. Criminals and other prohibited persons have and

will use magazines against the unarmed and the armed, without any limitation in capacity. The Large-Capacity Magazine Ban’s prohibition on the possession of large-capacity magazines – “regardless of the date the magazine was acquired” – puts law abiding citizens such as Plaintiffs at a severe disadvantage to those intending to do them harm.

55. The arbitrarily-defined large capacity magazines, as so defined by the Legislature, are not merely individual pieces of personal property, but rather, are intrinsic and inherent constitutionally-protected parts of constitutionally-protected firearms, which are lawfully possessed and used by millions of California citizens, including Plaintiffs affected herein.

56. California Penal Code section 32310, subdiv. (b), as amended by the Large-Capacity Magazine Ban, would prohibit as of July 1, 2017 the possession of large-capacity magazine, “regardless of the date the magazine was acquired,” including previously and lawfully-owned magazines as described above, and in quantities and amounts to be proven at trial.

57. California Penal Code section 32310, subdiv. (d), as amended by Proposition 63, requires a person who, prior to July 1, 2017, legally possesses a large-capacity magazine to “dispose” or the magazine, only by three specific methods, which are: (1) *personal* physical removal of the magazine from the state (since giving/arranging for or otherwise selling to someone out of state is still prohibited); (2) sale of the magazine to a “licensed firearms dealer,” and (3) surrender of the magazine to a law enforcement agency for destruction. However, and as alleged further below (*infra* at ¶¶ 77-79), the first two of these purported options are illusory, as they do not reflect viable means of recovering the value of their personal property, leaving only the third “option,” i.e., “surrender” of the magazine to law enforcement, for which no compensation is provided for or appropriated.

58. Furthermore, California Penal Code § 32390, which has already been enacted, provides that any large-capacity magazine is a “nuisance” and is subject to an injunction against its possession, manufacture, or sale, and is subject to confiscation and summary destruction. However, neither the statute nor the regulations that pertain to it provide for compensation to be

1 provided to the owner of a legally-owned large capacity magazine.

2 59. As an added burden, any person who has lawfully owned one or more firearms
3 with a large-capacity magazine as the *only* ammunition feeding device for such firearm will now
4 have to acquire – usually through the added expense of purchasing – at least one, if not more,
5 reduced-capacity (non-large-capacity) magazine for each such firearm owned. This is an
6 expense that could cost California gun owners hundreds, if not thousands of dollars, a burden
7 which disarms the owner of the use of such firearms until a suitable replacement magazine can
8 be obtained.

9 60. The individual Plaintiffs herein, and organizational Plaintiffs on behalf of their
10 California members and similarly-situated individuals who lawfully possess large-capacity
11 magazines, are suing to enjoin enforcement of the Large-Capacity Magazine Ban on the grounds
12 that the Ban violates their rights to own and possess firearms as guaranteed by the Second
13 Amendment, and that the Ban constitutes an illegal taking of their constitutionally-protected
14 firearms.

15 61. First, the Large Capacity Magazine Ban infringes upon the right of the people,
16 including Plaintiffs, to keep and bear arms, as guaranteed by the Second Amendment, and made
17 applicable to the States by the Fourteenth Amendment, of the United States Constitution. The
18 arms include handguns which, as *Heller* observed, are the “quintessential self-defense weapon,”
19 *Heller*, 554 U.S. at 629, 128 S. Ct. at 2818, and are therefore widely, commonly and lawfully
20 possessed in all other states in the Union.

21 62. The Large Capacity Magazine Ban further amounts to a total, confiscatory taking
22 of lawfully-held, common, and constitutionally-protected arms, or intrinsic parts thereof, from
23 law-abiding people who possess them for lawful purposes and therefore violates the Second
24 Amendment.

25 63. By maintaining and enforcing a set of laws that restrict law-abiding people from
26 acquiring arms in common use for lawful purposes like self-defense, Defendants, acting under
27 color of state law, are propagating customs, policies, and practices that violate the Second
28

1 Amendment to the United States Constitution, facially and as applied against the individual
2 Plaintiffs, depriving Plaintiffs of civil rights and damaging Plaintiffs in violation of 42 U.S.C. §
3 1983.

4 64. Because California's Large-Capacity Magazine Ban Laws constitute a total ban
5 on the possession and acquisition of constitutionally-protected instruments to keep in the home,
6 strict scrutiny should apply. The prohibition and taking of heretofore lawful firearms parts
7 implicates a core protection of the Second Amendment right to keep and bear arms, and severely
8 burdens such right, as will be demonstrated at trial, which makes such ban and taking
9 categorially unconstitutional under any level of heightened scrutiny.

10 65. Plaintiffs are entitled to injunctive relief against such infringing customs, policies,
11 and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all
12 similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according
13 to proof at trial.

14 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

15
16 **COUNT II: VIOLATION OF U.S. CONST., AMENDS. V and XIV**
17 **(Due Process and Takings)**

18 66. Plaintiffs incorporate herein by reference paragraphs 1 through 65 as if fully set
19 forth herein.

20 67. The Fifth Amendment to the United States Constitution provides that no person
21 shall be deprived of life, liberty, or property, without due process of law; nor shall private
22 property be taken for public use, without just compensation.

23 68. The Fourteenth Amendment to the United States Constitution provides that no
24 State shall deprive any person of life, liberty, or property without due process of law.

25 69. Aside from the violation of the Second Amendment, as applied to the states, as set
26 forth above, that the statutory scheme represents, defendants' enforcement of the Large-Capacity
27 Magazine Ban violates additional rights of Plaintiffs, and the class of persons they represent,
28

specifically: their rights to compensation and/or due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, in that the Laws completely dispossess them of their lawfully-owned, constitutionally-protected personal property. Moreover, the manner in which Plaintiffs and the class have kept, bore and possessed such property was a substantial, constitutionally-protected liberty interest.

70. Penal Code section 32310, subdiv. (d) as amended by Proposition 63, provides for three and only three enumerated ways of disposing of a lawfully-possessed magazine, owned prior to July 1, 2017, and is therefore a taking of the entire bundle of said Plaintiffs' rights to possess, use and dispose of the property in the manner as they see fit. Subdivision (d)(3) provides for the purported option of the property owner to "surrender" a large-capacity magazine to any law enforcement agency for destruction, without stating any means of recompensing the property owner for such statutorily-mandated "surrender." Subdivision (d)(2) provides for the purported option of the property owner to sell the magazine to a licensed firearms dealer, without providing for the fact that not every firearms dealer (in fact very few) will or are otherwise permitted to receive large-capacity magazines, leaving this as not a valid option. The purported option to "sell the large-capacity magazine to a licensed firearms dealer" set forth in section 32310, subdiv. (d)(2) as amended, is illusory, and not really an option at all. As will be demonstrated at trial, and on information and belief, a substantial number of licensed firearms dealers refuse or will refuse to accept for sale any large-capacity magazines because, among other reasons, economics, vagueness of risk, and personal choices relating to their views of the unconstitutionality that SB 1446/Proposition 63 presents, and refuse to participate in an undertaking that amounts to a de facto taking, and the legal and financial risks associated with receiving "large capacity magazines" under a vague law. The inability and/or refusal of California firearms dealers to accept the large-capacity magazines for sale, effectively means there is no market for the sale of Plaintiffs' personal property, as will be demonstrated at trial.

71. Penal Code § 32390 (previously codified at § 12029), provides that any large-capacity magazine is considered to be a "nuisance," and is subject to summary confiscation and

disposal, even those that were and continue to be lawfully possessed. Under Pen. Code § 18010(b), such items are “subject to confiscation and summary destruction whenever found within the state.” Neither the statute, nor any regulations promulgated that pertain to such statute, provide for any means by lawfully-possessing large-capacity magazine owners to challenge, petition, or even address the fact that such personal property is legally owned, and therefore may not be detained or destroyed by an arm of the state, with or without compensation.

72. The Large Capacity Magazine Ban, as a whole, is a regulatory scheme which completely deprives the owners of all economically beneficial uses of their lawfully-owned property, and therefore, constitutes a regulatory taking. See, *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019, 112 S.Ct. 2886 (1992). Certain regulations, such as the Large-Capacity Magazine Ban moreover, are so onerous that their effect is tantamount to a direct appropriation of property, and therefore, a compensable taking under the Fifth Amendment. See, e.g., *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538, 125 S.Ct. 2074, 2081 (2005). In essence, this statutory scheme eviscerates the full bundle of rights, i.e., the rights to possess, use and dispose of the property in a manner that plaintiffs may choose, which includes personal property. *Horne v. Dept. of Agriculture*, __ U.S. __ 135 S.Ct. 2419, 2427 (2015).

73. By enacting and enforcing the Large-Capacity Magazine Ban, defendants are thereby propagating customs, policies, and practices which violate the Fifth and Fourteenth Amendment to the United States Constitution, facially and as applied against the individual Plaintiffs in this action, damaging Plaintiffs in violation of 42 U.S.C. § 1983. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against such customs, policies, and practices.

74. Plaintiffs are entitled to injunctive relief against such infringing customs, policies, and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according to proof at trial.

WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

COUNT III: VIOLATION OF U.S. CONST., AMEND. XIV
(Vagueness)

75. Plaintiffs incorporate herein by reference paragraphs 1 through 74 as if fully set forth herein.

76. The Large-Capacity Magazine Ban fails to provide adequate notice and is vague, in violation of the Due Process Clause of the Fourteenth Amendment. The Large-Capacity Magazine Ban is unconstitutionally vague both on its face, and as applied to one or more of the individual plaintiffs herein.

77. As asserted above, the purported option to “sell the large-capacity magazine to a licensed firearms dealer” set forth in section 32310, subdiv. (d)(2) as amended, is illusory, and not really an option at all. As will be demonstrated at trial, a substantial number of licensed firearms dealers refuse or will refuse to accept for sale any large-capacity magazines because, among other reasons, economics, vagueness of risk, and personal choices relating to their views of the unconstitutionality that SB 1446/Proposition 63 presents, and refuse to participate in an undertaking that amounts to a de facto taking, and the legal and financial risks associated with receiving “large capacity magazines” under a vague law. Both the vagueness of the law as amended, and the refusal of California firearms dealers to accept the large-capacity magazines for sale, effectively means there is no market for the sale of Plaintiffs’ personal property, as will be demonstrated at trial.

78. As will be demonstrated at trial, and as applied to the Plaintiffs herein, the purported option under Penal Code § 32310, subdiv. (d)(1) to “remove the large-capacity magazine from the state,” is not a viable option and is also vague. In the first place, there is no provision which allows the holder of a large-capacity magazine to sell, or arrange a sale of the magazine to a willing buyer, out of state. Indeed, section 32310, subdiv. (a), makes no such exception, and expressly criminalizes the offering or exposure for sale of such magazines by any person in the state. Therefore, arranging an out-of-state sale of the large-capacity magazine

1 itself, while the magazine holder is within this state, is expressly prohibited. Therefore, section
2 32310, subdiv. (d)(1) does not provide any avenue by which a lawful large-capacity magazine
3 holder, including Plaintiffs, can or will recover any portion of the value of his or her property.
4 Physical transfer of the magazines to an out of state recipient, without arranging for the transfer
5 beforehand, is impractical if not implausible.

6 79. Therefore, Penal Code § 32310, subdivisions (d)(1) and (d)(2) are impermissibly
7 vague, and utterly impractical, and amount to no real option that does not expose Plaintiffs and
8 other large-capacity magazine holders to criminal liability, nor does it provide any relief to large-
9 capacity magazine holders to recover any portion, in whole or in part, of the value of their
10 lawfully-owned property. The only option, therefore, as will be demonstrated at trial, is to
11 “surrender” the large-capacity magazine to a law enforcement agency for destruction, effectively
12 rendering it a taking for which compensation is not provisioned or required.

13 80. Furthermore, at present, the Legislature’s passing of Sen. Bill 1446, and the
14 passage of Proposition 63 has resulted in two parallel versions of the relevant statutes herein,
15 further leading to confusion as to which version controls. For example, it is unclear whether
16 certain California gun owners may arguably be exempt from the Large Capacity Magazine Ban,
17 since Pen. Code § 32406, subdiv. (f), as chaptered, states that “[a] person lawfully in possession of
18 a firearm that the person obtained prior to January 1, 2000, if no magazine that holds 10 or fewer
19 rounds of ammunition is compatible with that firearm and the person possesses the large-
20 capacity magazine solely for use with that firearm.” On information and belief, some California
21 gun owners may benefit from this provision depending on whether the phrase “compatible with
22 that firearm” refers to an originally-manufactured magazine, or whether it means something else
23 (even potentially inferior, unreliable products). However, this exemption set forth in section
24 32406, subdiv. (f) appears only in the version that was passed by the Senate in enacting SB 1446.
25 (Added by Stats.2016, c. 58 (S.B.1446), § 4, eff. Jan. 1, 2017.) This exemption does not,
26 however, appear in the “parallel” version of the statute enacted pursuant to the passage of
27 Proposition 63. In essence, the state is running two parallel criminal statutes, subjecting its
28

citizens to liability thereunder, with absolutely no clarity or certainty as to which version controls, or which exemptions may apply to Plaintiffs and others similarly situated.

81. Such differences between these versions cannot simply be fixed by legislative fiat. The Legislature may only “amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.” Cal. Cont. Art. II, § 10(c). Proposition 63 expressly provides that its provisions “may be amended [only] by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor,” and only “so long as such amendments are consistent with and further the intent of this Act.” California Proposition 63 (2016), § 13.

82. Therefore, by running two “parallel” versions of the Large-Capacity Magazine Ban statutes, with substantive differences, the state has enacted vague and conflicting laws, with no certainty as to which version applies. These statutes are therefore vague and unenforceable, because they fail to provide adequate notice to persons of ordinary intelligence as to whether they are subject or exempt from its provisions.

83. Furthermore, as to plaintiffs Normandy and Nielsen, and similarly-situated individuals, the statute as amended by Proposition 63 is further vague, in that it purports to exempt “honorably retired peace officers” and retired federal officers from the new prohibitions on possession of large-capacity magazines, but such retired peace officers and retired federal officers continue to be prohibited from the importation restrictions of section 32310(a). And thus, the statute as amended results in the absurdity of allowing a retired peace officer or retired federal officer to possess large-capacity magazines in this state, for lawful purposes, but prohibits them from bringing them in, even temporarily. And therefore, retired peace officers such as plaintiffs Normandy and Nielsen, and similarly-situated individuals, who often participate in, or are asked to join or conduct, or instruct in firearms training programs for law enforcement agencies and civilians are legally prohibited from bringing large-capacity magazines into the state, though once here, they may possess them. The two parallel Penal Code sections 32406 as enacted by SB 1446 and Proposition 63 are therefore unconstitutionally vague,

1 and section 32310 as amended defeats the purpose of such exemptions.

2 84. The Large-Capacity Magazine Ban, taken in total, is vague because it fails to
3 provide adequate notice to a person of ordinary intelligence what they can do with a lawfully-
4 held large-capacity magazine, nor does it provide them with viable, practical options. Therefore,
5 on the face of its provisions, and as applied, for the reasons stated herein, the Large-Capacity
6 Magazine Ban violates the Due Process Clause of the Fourteenth Amendment.

7 85. Defendants are thereby propagating customs, policies, and practices that violate
8 the Fifth and Fourteenth Amendment to the United States Constitution, facially and as applied
9 against the individual plaintiffs in this action, damaging Plaintiffs in violation of 42 U.S.C. §
10 1983. Plaintiffs are therefore entitled to permanent injunctive relief against such customs,
11 policies, and practices.

12 86. Plaintiffs are entitled to injunctive relief against such infringing customs, policies,
13 and practices. Plaintiffs and all of them, on their own behalves and on behalf of the class of all
14 similarly-situated persons, seek declaratory and injunctive relief, in a specific manner according
15 to proof at trial.

16 WHEREFORE, Plaintiffs seek declaratory and injunctive relief as set forth below.

17
18 **PRAYER FOR RELIEF**

19
20 WHEREFORE, Plaintiffs request that judgment be entered in their favor and against
21 Defendants, and pray for relief as follows:

22 1. For declaratory judgment and relief, pursuant to 28 U.S.C. § 2201, that California
23 Penal Code sections 32310, 32390, and sections 32445 and 32450 are unconstitutional and
24 violate the Second Amendment;

25 2. For declaratory judgment and relief, pursuant to 28 U.S.C. § 2201, that California
26 Penal Code sections 32310, 32390, and sections 32445 and 32450 are unconstitutional and
27 violate the Fifth and Fourteenth Amendments;

28 3. For declaratory judgment and relief, pursuant to 28 U.S.C. § 2201, that California

1 Penal Code sections 32310, 32390, and sections 32445 and 32450 are indefinite, vague and
2 uncertain, and therefore unenforceable, and also, on the grounds that it is not clear which version
3 of these statutes (i.e., the version passed pursuant to SB 1446 or Prop. 63), and the exceptions
4 thereto, may apply;

5 4. For injunctive relief, consistent with declaratory relief sought herein, enjoining
6 defendants, and their officers, agents and employees, from enforcing any of the provisions of
7 California Penal Code sections 32310, 32390, and sections 32445 and 32450;

8 5. For costs of suit, including attorneys' fees and costs under 42 U.S.C. § 1988 and
9 any other applicable law; and

10 6. For all such relief to which Plaintiffs may be justly entitled.

11
12 Dated: April 28, 2017

SEILER EPSTEIN ZIEGLER & APPLGATE LLP

13
14 /s/ George M. Lee

15 George M. Lee
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SEILER EPSTEIN ZIEGLER & APPLGATE LLP
Attorneys at Law

EXHIBIT A

Finding of Emergency

The Department of Justice (Department or DOJ) finds that an emergency exists, and that the immediate adoption of sections within Chapter 39, of Division 5, of Title 11 is necessary to avoid serious harm to the public peace, health, safety, or general welfare.

Specific Facts Demonstrating the Need for Immediate Action

Proposition 63, a measure banning the possession of large-capacity magazines, was approved by the voters on November 8, 2016 and took effect November 9, 2016. In anticipation of its passages, the Legislature pre-amended Proposition 63 with the passage of Senate Bill 1446 (Chapter 48, Statutes of 2016). The clarifying amendments take effect on January 1, 2017.

Pursuant to Proposition 63, as amended, beginning July 1, 2017, it will be an infraction punishable by a fine for a person to possess any large-capacity magazine, regardless of the date the magazine was acquired. (Penal Code, § 32310, subdivision (b).) The new law requires a person in lawful possession of a large-capacity magazine prior to July 1, 2017 to dispose of the magazine. Some persons are exempt from the ban, including active and retired law enforcement, armored car entities, and licensed gun dealers. (Penal Code, §§ 32400, 32405, 32406, 32410, 32430, 32435, 32450.) Starting July 1, 2017, anyone who violates the ban is subject to a year in jail, and a \$100 fine for a first offence, \$250 fine for a second offense, and a \$500 fine for a third offense. (Penal Code § 32310, subdivision (b).)

These emergency regulations are necessary for the implementation and on-going enforcement of the ban on large-capacity magazines. The proposed regulations provide guidance to California residents on how to comply with the ban. These regulations need to be established as soon as possible so the Department has time to notify gun owners and gun owners have time to make the necessary changes to comply with the ban.

There are likely hundreds of thousands of large-capacity magazines in California at this time. In recent years, there has been an increase in these types of firearms on the market. The Department therefore expects many gun owners to be affected by the new ban. Under the new law, gun owners have six months to dispose of or permanently alter their large-capacity magazines. Pursuant to Penal Code section 32310, subdivision (c), a person who legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means prior to July 1, 2017: (1) remove the large-capacity magazine from the state; (2) sell the large-capacity magazine to a licensed firearms dealer; (3) destroy the large-capacity magazine; or (4) surrender the large-capacity magazine to a law enforcement agency for destruction.

Alternatively, gun owners may permanently alter large-capacity magazines by reducing their ammunition capacity so that it no longer meets the definition of a “large-capacity magazine.” Penal Code section 16740 defines “large-capacity magazine” to mean any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds. If a gun owner chooses to permanently reduce the capacity of their large-capacity

magazines, these emergency regulations provide guidance for doing so with what the Department has determined to be the acceptable minimum level of permanence.

By providing this information to the public in a timely manner, through the emergency process, the Department will avert serious harm to public peace, health, safety, or general welfare.

Technical, Theoretical, and Empirical Study, Report, or Similar Document, if any, Upon Which the Department Relied

In addition to existing regulations forming the basis of these proposed regulations, the following documents were used:

UTAS MAKINE LTD., UTS-15 owners manual, attached for reference
KEL TEC, KSG owners manual, Rev 042814, attached for reference
Standard MFG. DP-12 shotgun owners manual, attached for reference

Authority and Reference Citations

Authority: Penal Code sections 26905, 26910, 32310, 32311, 32315.

Reference: Penal Code sections 16740, 32310, 32311, 32315, 32400, 32405, 32406, 32410, 32415, 32425, 32430, 32435, 32440, 32445, 32450.

Repealed: Penal Code section 32420 was removed from the authority of section 5480 because SB 1446 repealed that section.

Informative Digest/Policy Statement Overview

Existing law prohibits the sale, gift, and loan of a large-capacity magazine. A violation of this prohibition is punishable as a misdemeanor with specified penalties, or as a felony. The new law goes further and provides that possession of large-capacity magazines by a non exempt person is an infraction punishable by a fine not to exceed \$100 for the first offense, by a fine not to exceed \$250 for the second offense, and by a fine not to exceed \$500 for the third or subsequent offense, regardless of the date the magazine was acquired. The law requires a person in lawful possession of a large-capacity magazine prior to July 1, 2017, to dispose of the magazine as provided. By creating a new crime, this law imposes a state-mandated local program.

Existing law creates various exceptions to the prohibition on the sale, gift or loan of a large-capacity magazine including, but not limited to, the sale of, giving of, lending of, importation into this state, or purchase of, any large-capacity magazine to, or by the holder, of a special weapons permit for use as a prop for a motion picture or any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties. The new law makes conforming changes to those exceptions by including possession of a large-capacity magazine in those provisions and would establish additional exceptions, including exceptions to allow

licensed gunsmiths and honorably retired sworn peace officers to possess large-capacity magazines.

The objective of the proposed regulations is to inform California gun owners of their options for complying with new California laws while maintaining public safety.

Article 4. Large-Capacity Magazine Permits

§ 5480. Requirements for Large-Capacity Magazine Permits Pursuant to Penal Code Section 32315.

This section is amended to state that a separate Large-Capacity Magazine Permit is needed for each licensed location. The permit will automatically transfer with an existing California Firearms Dealer if their physical store moves and they notify the Department prior to moving. Large-Capacity Magazine Permit applications can only be submitted online.

§ 5483. Large-Capacity Magazine Permit Record Keeping.

This section is amended to include instructions on how permittees shall document the Large-Capacity Magazine Permit records, which form to use, any additional documentation to be kept with the form, and timeframe for completing the documentation.

§ 5484. Large-Capacity Magazine Permit Revocations.

This section is amended to include the grounds for revocation of a Large-Capacity Magazine Permit, and the factors surrounding the revocation.

Article 5. Large-Capacity Magazines and Large-Capacity Magazine Conversion Kits

§ 5490. Large-Capacity Magazine; manufacturing

This section has been added to inform gun owners who legally possess a large-capacity magazine that they may disassemble and clean the magazine without triggering the ban.

§ 5491. Large-Capacity Magazine; capacity

This section has been added to inform gun owners of the legal definition of a large-capacity magazine and provide guidance on reducing the capacity on their large-capacity magazines.

§ 5492. Large-Capacity Magazine Conversion Kits.

This section has been added to clarify the definition of large-capacity magazine conversion kits.

Government Code Section 11346.5(a)(3)(D) Evaluation

The proposed regulations are not inconsistent or incompatible with existing state regulations.

Mandate on Local Agencies or School Districts

The Department has determined the proposed emergency regulations do impose a state-mandated local program or a mandate requiring reimbursement by the State pursuant to Chapter 58, Statutes of 2016, because it creates a new crime. However, SB 1446 states that no reimbursement

is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations

None.

Nonduplication of State Statutes as Necessary To Satisfy Government Code Section 11349.1(a)(6)

To satisfy the requirements of Government Code section 11349.1(a)(6), the text of the proposed regulations are nonduplicative.

Forms Incorporated by Reference

Large-Capacity Magazine Permit Application, BOF 050 (Rev. 12/2016)
Large Capacity Magazine Report, BOF 1002 (Rev. 12/2016)

Cost Estimates

The Department has assessed the potential for significant adverse impact that might result from the proposed emergency action and has determined:

- There will be no non-discretionary costs or savings to local agencies
- There will be no costs to school districts
- There will be no costs or savings in federal funding to the State

As detailed on the attachment to the Economic and Fiscal Impact Statement (STD. 399), the Department estimates its costs (state agency) directly related to the large-capacity magazine permit and enforcement of the large-capacity magazine laws and regulations will be insignificant.

Finding of Emergency

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Explanation of Failure to Adopt Nonemergency Regulations

The Department is unable to develop regulations in the standard manner because of the short timeframes provided in the legislation. The legislation was signed into law on July 1, 2016, and the ban commences on July 1, 2017. It is the Department's intention to provide guidance to California's gun owners so that by July 1, 2017, they will be in compliance with the law. The proposed regulations provide options for disposal of large-capacity magazines, as well as instructions for reducing the capacity of a large-capacity magazine, and need to be formalized and provided to California residents as soon as possible.

EXHIBIT B

SENATE RULES COMMITTEE

SB 1446

Office of Senate Floor Analyses

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1446
Author: Hancock (D), et al.
Amended: 3/28/16
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-3, 4/19/16

AYES: Hancock, Leno, Liu, Monning

NOES: Anderson, Glazer, Stone

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Firearms: magazine capacity

SOURCE: Author

DIGEST: This bill, commencing July 1, 2017, prohibits the possession of large-capacity magazines, as specified.

ANALYSIS:

Existing law:

- 1) Banned the possession of “assault weapons” and “large capacity ammunition feeding devices,” defined as a magazine capable of holding more than 10 rounds of ammunition, manufactured after that date. That law, the federal assault weapons law (the Violent Crime Control and Law Enforcement Act, H.R. 3355, Pub.L. 103-322,) became effective on September 13, 1994, expired in 2004 and has not been reenacted.
- 2) Defines a “large-capacity magazine” as any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:
 - a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

- b) A .22 caliber tube ammunition feeding device.
 - c) A tubular magazine that is contained in a lever-action firearm. (Penal Code § 16740.)
- 3) Provides that, except as specified, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment for 16 months, two or three years pursuant to Penal Code Section 1170(h). “Manufacturing” includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine. (Penal Code § 32310.)
 - 4) Provides that, commencing January 1, 2014, any person in this state who knowingly manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large capacity magazine conversion kit is punishable by a fine of not more than \$1,000 or imprisonment in a county jail not to exceed six months, or by both that fine and imprisonment. This section does not apply to a fully assembled large-capacity magazine. A “large capacity magazine conversion kit” is a device or combination of parts of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine. (Penal Code § 32311.)
 - 5) Provides that, upon a showing that good cause exists, the Department of Justice may issue permits for the possession, transportation, or sale between a licensed firearms dealer and an out-of-state client, of large-capacity magazines. (Penal Code § 32315.)
 - 6) Provides that, except as specified, any large-capacity magazine is a nuisance and is subject to an injunction against its possession, manufacture or sale, and is subject to confiscation and summary destruction. (Penal Code § 32390.)

This bill:

- 1) Provides that, except as specified, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to

exceed \$100 upon the first offense, by a fine not to exceed \$500 upon the third or subsequent offense.

- 2) Requires that a person who, prior to July 1, 2017, legally possesses a large-capacity magazine dispose of that magazine by any of the following means:
 - a) Remove the large-capacity magazine from the state.
 - b) Prior to July 1, 2017, sell the large-capacity magazine to a licensed firearms dealer.
 - c) Destroy the large-capacity magazine.
 - d) Surrender the large-capacity magazine to a law enforcement agency for destruction.
- 3) Exempts the following:
 - a) An individual who honorably retired from being a sworn peace officer, as specified or an individual who honorably retired from being a sworn federal law enforcement officer, who was authorized to carry a firearm in the course of scope of that officer's duties, as specified.
 - b) A licensed gunsmith for the purpose of maintenance, repair or modification of the large-capacity magazine, as specified.
 - c) Any federal, state or local historical society, museum or institutional society, museum or institutional collection which is open to the public, provided that the large-capacity magazine is property housed, secured from unauthorized handling and unloaded.
 - d) Any person who finds the large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possessed the large-capacity magazine no longer than necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to the law.
 - e) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.
 - f) The receipt or disposition of a large-capacity magazine by a trustee of a trust, or an executor or administrator of an estate, including an estate that is subject to probate, that includes a large-capacity magazine.
 - g) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of

ammunition is compatible with that firearm and that person possesses the large-capacity magazine solely for use with that firearm.

- 4) Makes a number of conforming changes to the Penal Code.

Background

Since January 1, 2000, California has banned the importation, manufacture or sale of high capacity magazines. (Penal Code §§ 32310, 32390.) These magazines have also been deemed a public nuisance and are, therefore, subject to confiscation and destruction, although this requires a prosecutor to obtain a civil injunction, which is costly and time-consuming. (Penal Code § 18010.) This bill imposes criminal penalties for possession of high capacity magazines in California.

According to a report released by the Violence Policy Center in December of 2015:

Since 1980, there have been at least 50 mass shootings (3 or more fatalities) where the shooter used high-capacity ammunition magazines. A total of 436 people were killed in these shootings and 425 were wounded. This number is likely a significant undercount of actual incidents since there is no consistent collection or reporting of this data. Even in many high-profile shootings information on magazine capacity is not released or reported.

(http://www.vpc.org/fact_sht/VPCshootinglist.pdf.)

There were at least three mass shootings involving large-capacity magazines in 2015. On December 2, 2015, 14 people were killed and 21 were seriously injured in a mass shooting at the Inland Regional Center in San Bernardino, California. The perpetrators of this mass shooting used four high capacity magazines. In July of 2015, six people were killed (including the shooter) and two were wounded in a shooting at the Navy Operational Support Center and Marine Corps Reserve Center, in Chattanooga, Tennessee. The perpetrator used multiple 30-round magazines. On June 17, 2015, a shooting at the Emanuel African Methodist Episcopal Church, in Charleston, South Carolina, left nine people dead. The perpetrator used 13-round magazines. (*Id.*)

Comments

The Fifth Amendment “Takings” Clause

The “takings clause” of the Fifth Amendment to the United States Constitution states: “nor shall private property be taken for public use without just compensation.” California law already bans the import, manufacture and sale of

high capacity ammunition magazines, and has declared them a nuisance and subject to confiscation and destruction. (Penal Code §§ 32310, 32390, 18010.) Nonetheless, the question has been raised whether adding criminal penalties for possession of these ammunition magazines would constitute a “taking of private property for public use without just compensation,” in violation of the Fifth Amendment.

The U.S. Supreme Court has recognized for well over a century a difference between legislative action that results in a taking of private property for public use through a process of eminent domain and a legitimate use of the police power of the state to protect the public health and welfare. In upholding a statute prohibiting the sale of alcohol, the Court stated:

The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner.

(*Mugler v. Kansas*, 123 U.S. 623, 668-669 (1887).)

Specifically in the context of the regulation of firearms, courts have held that prohibiting possession of dangerous weapons is a valid exercise of the government’s police power not to be confused with the power of eminent domain. In 1978, Washington, D.C. passed a law prohibiting the ownership of certain types of weapons, including those that could fire more than 13 rounds without reloading. The law was quickly challenged by a several gun owners who had legally purchased such weapons before the law went into effect and were thus required to dispose of them or be in violation of the law. They claimed this amounted to a taking by the government, without just compensation, in violation of the Fifth Amendment. The Court of Appeals for the District of Columbia held:

Petitioners’ third constitutional challenge alleges that D.C. Code 1978 Supp., § 6-1820(c) provides for a taking of their property without just compensation in violation of the Fifth Amendment. That section of the Code provides three alternatives for disposition within seven days of a firearm denied registration. The unsuccessful applicant may (1) “peaceably surrender” the firearm to the chief of police, (2) “lawfully remove” the firearm from the District for as long as he retains an interest in the firearm, or (3) “lawfully dispose” of his interest in the firearm. Petitioners’ argument is that the second and third alternatives require, under the terms imposed by the Federal Gun Control Act of 1968, 18

U.S.C. § 922 (1970), a quick “forced sale” of the firearms at less than fair market value to a dealer in firearms, while the first alternative would provide not even a salvage value return.

Assuming, arguendo, that the statute authorized a “taking,” we note that the Fifth Amendment prohibits taking of “private property . . . for public use, without just compensation.” Such a taking for the public benefit under a power of eminent domain is, however, to be distinguished from a proper exercise of police power to prevent a perceived public harm, which does not require compensation. *Lamm v. Volpe*, 449 F.2d 1202, 1203 (10th Cir. 1971). That the statute in question is an exercise of legislative police power and not of eminent domain is beyond dispute. The argument of petitioner, therefore, lacks merit.

(*Fesjian v. Jefferson*, 399 A.2d 861, 865-866 (1979).)

Exception for Retired Peace Officers

The assault weapons ban in California (AWCA) allowed law enforcement agencies to sell or transfer assault weapons to a sworn peace officer upon that officer’s retirement. This provision was challenged in *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002). The Ninth Circuit held:

We thus can discern no legitimate state interest in permitting retired peace officers to possess and use for their personal pleasure military-style weapons. Rather, the retired officers exception arbitrarily and unreasonably affords a privilege to one group of individuals that is denied to others, including plaintiffs.

In sum, not only is the retired officers’ exception contrary to the legislative goals of the AWCA, it is wholly unconnected to any legitimate state interest. A statutory exemption that bears no logical relationship to a valid state interest fails constitutional scrutiny. The 1999 AWCA amendments include, however, a severability provision providing that should any portion of the statute be found invalid, the balance of the provisions shall remain in force. Accordingly, because the retired officers’ exception is an arbitrary classification in violation of the Fourteenth Amendment, we sever that provision, § 12280(h)-(i), from the AWCA.

(*Id.* at 1091-92.)

Like the AWCA, this bill exempts retired sworn peace officers from the ban on the possession of large-capacity magazines.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 5/17/16)

American Academy of Pediatrics, California
California Academy of Family Physicians
California Chapter of the American College of Emergency Physicians
California Chapters of the Brady Campaign to Prevent Gun Violence
California Church IMPACT
City of Long Beach
City of Oakland
City of Santa Monica
Cleveland School Remembers
Coalition Against Gun Violence
Courage Campaign
David Alvarez, Councilmember, City of San Diego
Eric Garcetti, Mayor of the City of Los Angeles
Law Center to Prevent Gun Violence
Physicians for Social Responsibility
Rabbis Against Gun Violence
Violence Prevention Coalition of Greater Los Angeles
Youth ALIVE!

OPPOSITION: (Verified 5/17/16)

California State Sheriffs' Association
Firearms Policy Coalition
Gun Owners of California
National Rifle Association
Outdoor Sportsman's Coalition of California
Safari Club International Foundation
The California Sportsman's Lobby

ARGUMENTS IN SUPPORT: According to the California Chapters of the Brady Campaign to Prevent Gun Violence:

Since January 2000, California law has prohibited the manufacture, importation, sale, gift, or loan of any large capacity ammunition magazine capable of holding more than ten rounds. SB 1446 is a narrow

bill that would add a prohibition on *possessing* large capacity magazines, as defined in the bill, regardless of the date the magazine was acquired. Current and retired police officers would be exempt from the prohibition.

Mass shootings involving large capacity magazines have demonstrated the tragic carnage caused by these magazines. The shooters in the recent San Bernardino tragedy as well as the gunmen in Santa Monica (2013), Fort Hood, Tucson, Aurora, and Newtown were able to injure or kill large numbers of people very quickly because of their ability to shoot a large number of bullets in a very short period of time. Jared Loughner, who was able to rapidly fire 31 bullets in 15 seconds without reloading, killed six people and wounded thirteen others in Tucson. The shooting ended when bystanders tackled the gunman while he was reloading. Nine year old Christina-Taylor Green was shot by the thirteenth bullet – had there been a magazine limit of ten rounds, she might be alive today.

California had a number of mass shootings involving large capacity ammunition magazines before the ban on their sale and transfer in year 2000 (in San Ysidro, Stockton, San Francisco and Orange). Other rampage shootings involving large capacity magazines have happened since then - and will happen again - because of the prevalence of large capacity magazines and the difficulty of enforcing existing law. It is nearly impossible to prove when a large capacity magazine was acquired or whether the magazine was illegally purchased after the 2000 ban. Furthermore, until 2014, magazine conversion kits were being sold in California. These kits, containing parts to repair large capacity magazines, were legally purchased and later assembled into new large capacity magazines. Since the possession of large capacity magazines is permissible, this practice, which clearly evaded the intent of the law, was able to increase the proliferation of large capacity magazines in the state. SB 1446 would enable the enforcement of existing law regarding large capacity magazines.

With average use, magazines typically last about twelve years. It is now time to end the grandfathering of large capacity magazines and exploitation of the law by prohibiting their possession. Serious hunters do not use large capacity magazines. A prohibition on the sale, transfer, and *possession* of large capacity magazines clearly furthers public

safety. The California Brady Campaign Chapters appreciate your introduction of SB 1446 and are in full support.

ARGUMENTS IN OPPOSITION: The Firearms Policy Coalition states in opposition to this bill:

Most firearms sold in America today, and certainly the highest by volume sold, such as AR-15s and semi-automatic handguns, come standard from the factory with magazines that hold more than ten rounds. Law enforcement agencies and peace officers purchase those same firearms with those same magazines because they are standard kit -- and, most importantly, because no one wants to be under-armed in a self-defense situation.

Furthermore, many magazines are altered and made "California Legal" at some point of manufacture. Given this, SB 1446 would immediately make most full size handguns inoperable as it bans any magazine that has been permanently altered to only accept 10 rounds or less, creating a taking of constitutionally protected property.

Many people have purchased permanently altered magazines to be compliant with California's ever growing body of law surrounding firearms and have based their consumer choices on this being the law of the land. Now the goal posts would appear to be moving yet again.

SB 1446 is simply an unconstitutional taking of personal property and an express infringement on the fundamental civil rights of all Californians. The measure creates significant criminal liability for items currently -- and lawfully -- possessed by hundreds of thousands, if not millions, of Californians. Depriving people of Constitutionally-protected civil rights by criminalizing the possession of items commonplace to gun owners is poor policy and invites litigation.

Even more disturbing, SB 1446 invites a deepening wedge between the police and non-police as it protects "honorably retired peace officers" from the dispossession of their personal property. This wanton violation of the 14th amendment to the United States Constitution creates a caste system of civilians- those who used to be police officers and those who weren't.

According to the federal civil rights case *Silveira v. Lockyer* (9th Cir. 2002), 312 F.3d 1052, retired peace officers are not allowed to maintain

the “assault weapons” they acquired through exemptions they held as active duty peace officers. When they became non-peace officers through separation from their employer, they became civilians.

The State will need to track all of the magazines purchased by peace officers, should they become former, retired or “honorably retired” to ensure the state’s expressed interest in controlling these firearms parts is met and can confiscate magazines from peace officers who retire early, resign, are fired or are otherwise not deemed “honorably retired”.

With no appropriation for outreach in SB 1446, and the untold millions of magazines in circulation, we fear widespread, inadvertent non-compliance and a revolving door of lives upended by the deluge of criminal prosecutions in every courthouse in the state as everyday people become overnight criminals. An appropriation today may save millions of dollars later as the inventory of these parts is significant and the outreach is non-existent, creating a potential wave of prosecutions of otherwise law abiding person whose only “crime” was possession of ammunition feeding devices (including those of 10 rounds or less) that were lawfully acquired.

Without pre-emption, firearms parts owners may be subject to a withering hail of statutes and ordinances aimed at them with different penalties depending on which jurisdiction prosecutes first. Ironically, some local laws are more severe than the proposed state statute.

Prepared by: Jessica Devencenzi / PUB. S. /
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