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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RUPP, et al.,

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California; et al.,**

Defendants.

8:17-cv-00746-JLS-JDE

**DECLARATION OF BLAKE
GRAHAM IN SUPPORT OF
DEFENDANT XAVIER
BECERRA'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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DECLARATION OF BLAKE GRAHAM

I, BLAKE GRAHAM, declare:

1. I am a Special Agent Supervisor for the California Department of Justice, Bureau of Firearms. I make this declaration of my own personal knowledge and experience and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

BACKGROUND AND QUALIFICATIONS

2. I received a Bachelor of Science degree in May 1992 in Criminal Justice at the California State University Sacramento. My coursework included forensics, corrections, and a number of classes in criminal justice-related topics.

3. Since 1994, I have worked as either an investigator for the California Department of Alcoholic and Beverage Control (ABC), or as a Special Agent for the California Department of Justice (DOJ). My job responsibilities in all of these positions have increasingly required the recovery, investigation, and identification of firearms, the ammunition used for those firearms, and the magazines used for feeding ammunition for such firearms.

4. My work as an investigator for ABC between 1994 and 1999 included the recovery of firearms, magazines and ammunition.

5. Between 1999 and 2002, I worked as a Special Agent for DOJ, and was assigned to the Violence Suppression Program in the Bureau of Narcotic Enforcement. In this job, I investigated violent crimes and various violations occurring at California gun shows. As a gun show enforcement agent, I attended gun shows in the San Francisco Bay Area to monitor, and if necessary, seize, firearms, ammunition, and magazines sold illegally to felons, parolees, and probationers.

1 6. From October 2002 to the present, I have been a Special Agent and
2 Special Agent Supervisor, for the DOJ's Bureau of Firearms (BOF). In this
3 capacity, I am assigned to recover firearms from prohibited individuals, monitor
4 gun shows for illegal activities, conduct surveillance on gun dealers suspected of
5 illegal activity, and investigate illegal trafficking of firearms, manufacturing of
6 assault weapons, machine guns, and illegal possession of various magazines and
7 ammunition.

8 7. Since 2008, I have been responsible for reviewing handguns that are
9 submitted by manufacturers for inclusion in California's roster of handguns certified
10 for sale. A copy of the roster can be found on the DOJ website:
11 <http://certguns.doj.ca.gov/>.

12 8. In my career I have attended at least 40 gun shows and have become very
13 knowledgeable on current laws pertaining to the sales of firearms, assault weapons
14 identification, assault weapons registration, the Automated Firearms System (AFS),
15 ammunition, and ammunition containers—including large-capacity magazines
16 (LCMs)—in the State of California.

17 9. I have been trained and qualified to carry several different types of
18 firearms, including: Glock Model 17 (9 mm semi-automatic pistol), multiple Glock
19 .40 caliber semi automatic pistols, Heckler & Koch MP5 (9 mm submachine gun),
20 Smith & Wesson, Model 60 (.38 Special revolver), multiple .45 caliber semi-
21 automatic pistols, and a Colt, Model M4 (5.56 mm machine gun). I have access to
22 other Department-owned handguns, shotguns, submachine guns, machine guns,
23 rifles, shotguns and 40 mm "less lethal" launchers.

24 10. Throughout my career, I have conducted training programs in the
25 identification and handling of firearms. I have also trained other Special Agents of
26 BOF on assault weapons and firearms identification. I also have given firearms
27 identification classes to members of the multiple District Attorney's offices in the
28 State of California.

1 11. I have also completed at least 15 firearms training courses since 1994.
2 These courses included the assembly and use of specific firearms, cartridge
3 composition (bullet, the propellant, and the casing), common calibers used by law
4 enforcement, and training on rifle and handgun ammunition. I have been certified
5 as a California Peace Officer Standards and Training (POST) approved Firearms
6 Instructor/Rangemaster since 2002.

7 12. During the course of my career and training I have become proficient in
8 the use and disassembly of various revolvers, pistols, submachine guns, shotguns,
9 and rifles. I have made or assisted in the arrest of at least thirty persons for
10 violations involving illegal weapons possession. In the course of my employment I
11 have participated in excess of thirty search warrants which involved the illegal
12 possession of firearms.

13 13. I have been qualified as an expert witness regarding the use of firearms in
14 15 cases in both federal and state court since 2007.

15 **I. LEGISLATION LIMITING ASSAULT WEAPONS.**

16 14. I am also aware of the current state and former federal laws banning
17 the sale assault weapons in California.

18 15. In 1989, California passed the Roberti-Roos Assault Weapon Act.
19 This law banned future sales of and required the registration of previously sold
20 named weapons. There were specific rifles, pistols and shotguns listed in the
21 California Penal Code. The current Penal Code (PC) Section containing this list is
22 PC 30510. In general, semiautomatic rifles, pistols and shotguns were listed by
23 make and model.

24 16. From 1994 to 2004, the federal assault weapons ban controlled the
25 manufacture and sales of assault weapons in the United States. During this 10-year
26 window, Assault Weapons were only able to be sold to law enforcement and the
27 military. Over time, Assault Weapons were removed from public access due to
28 incidental seizure during everyday law enforcement investigations in all 50 states.

1 17. In 1999, the California Legislature passed Senate Bill No. 23, which
2 further restricted the sales, transfer and manufacture of Assault Weapons on a state
3 level. This law identified assault weapons by certain named characteristics. These
4 definitions of assault weapons are located in Penal Code Section 30515.

5 18. The California Supreme Court upheld the constitutionality of the
6 Roberti-Roos Assault Weapons Control Act of 1989 in *Kasler v. Lockyer*. This
7 decision took effect August 16, 2000. AK and AR-15 series weapons were
8 controlled as of August 16, 2000, and must have been registered as assault weapons
9 with the Department of Justice on or before January 23, 2001. These weapons are
10 identified by make and model in the California Code of Regulations.

11 **II. WAYS APPLICANTS MIGHT LOCATE DATE OF ACQUISITION AND**
12 **LOCATION OF ACQUISITION:**

13 19. Responsible gun owners keep records of their firearms purchases.
14 This is a common sense matter of record keeping. It should be done to prove
15 ownership in the event of a theft and to document the legal purchase or acquisition
16 of their firearms in the event of a criminal or civil dispute.

17 20. If a gun owner wants a list of their firearms records they can contact
18 DOJ BOF Automated Firearms System (AFS) unit and get any firearms ownership
19 information maintained by the DOJ after completing a copy of the form BOF 053,
20 Automated Firearms System (AFS) Request for Firearms Records. This service
21 provided by DOJ BOF is free. A true and correct copy of BOF 053 is attached as
22 Exhibit 1.

23 21. If a gun owner lost a copy of their firearms record and DOJ had no
24 record of the sale, then they could contact the gun store in which they purchased the
25 firearm. In general, California law requires firearms to be acquired through a
26 licensed firearms dealer whether the dealer is selling it directly to the customer or
27 one party is selling to another party and merely using the dealer as a transfer
28 location. Cal. Pen. Code § 27545.

1 22. The dealer must provide the purchaser a copy of the record of sale,
2 which indicates date, time and location of the sale or acquisition. Under California
3 law, licensed firearms dealers must maintain state records of firearms transactions
4 for three years. *Id.* § 28215(c)(2). Licensed firearms dealers are also required by
5 federal law to retain ATF 4473 forms for 20 years. 18 U.S.C. 478.129(b). The ATF
6 4473 form requires information on the date that the firearm in question is acquired
7 and name and address of the seller of the firearm. A true and correct copy of the
8 ATF 4473 form is attached as Exhibit 2.

9 23. If a gun owner lost their firearms records and couldn't remember what
10 store they bought the firearm from and the DOJ wasn't able to provide transaction
11 data then the owner could contact the firearms manufacturer to see what gun store
12 the firearms manufacturer originally shipped their firearm to. This contact with the
13 manufacturer could also generate a ship date to the California gun store, which
14 could lead to an acquisition date for the registration requirement.

15 **III. REASONS THAT THE STATE NEEDS TO GATHER DATE OF**
16 **ACQUISITION AND SOURCE OF ASSAULT WEAPONS DATA:**

17 24. The Legislature has clearly legitimate reasons to require the date of
18 acquisition and name and address of the person or business from whom the weapon
19 was acquired. This information serves important state interests because it helps
20 DOJ ensure that owners register only those assault weapons eligible for
21 registration.

22 25. The AWCA and each of its amendments that modified the definition of
23 the assault weapon grandfathered in only those weapons that came under the
24 applicable statutory definition by the original enactment or later
25 amendments. Section 30900(b)(1) permits registration by owners whose weapons
26 fit under the definition of an assault weapon under the 2016 amendments (i.e.,
27 semiautomatic rifles and pistols that do not have a fixed magazine and contain at
28 least one of the characteristics identified in section 30515, also semiautomatic

1 shotguns that have the ability to accept a detachable magazine). Specifically,
2 section 30900(b)(1) permits only those persons “who, from January 1, 2001, to
3 December 31, 2016, inclusive, lawfully possessed an assault weapon that does not
4 have a fixed magazine” to register.

5 26. Section 30900(b)(3) requires registrants to provide the “date the
6 firearm was acquired.” Requiring registrants to provide this information is
7 necessary because section 30900(b)(1) permits registration of only weapons that
8 were acquired between January 1, 2001 and December 31, 2016. The statute
9 requires registrants to report the acquisition date of the firearm so that the DOJ may
10 determine whether the firearm is eligible to be registered. The California DOJ does
11 not have ownership information on most long guns in California. Prior to January
12 1, 2014, California did not require long guns to be registered in the AFS. Owners
13 of long guns may voluntarily report his or her weapon but they are not required to
14 do so. The date of acquisition helps to establish that the weapon was lawfully
15 acquired during the permitted window of time. The date of acquisition can also be
16 helpful to establish that the firearm is lawfully possessed. For example, if an
17 applicant said he or she purchased the firearm in 2015 and there is no
18 corresponding record in the AFS then DOJ would have concerns about the veracity
19 of the applicants answer. All firearms sold at a California gun store after January 1,
20 2014 should have an entry in the AFS.

21 27. Requiring registrants to provide the name and address of the seller of the
22 assault weapon could also help the DOJ to determine whether the applicant is in
23 lawful possession of the weapon. It might permit the DOJ to verify the registrant’s
24 information with information the DOJ has on file for the transaction, the firearm,
25 and the seller. It might permit the DOJ to confirm that the firearm was obtained
26 from the identified seller. It might also permit the DOJ to track down the seller, if
27 necessary, to determine whether the seller was in lawful possession of the firearm at
28 the time of the sale.

1 28. In general, barring specified exceptions to Penal Code Section 27545, if a
2 licensed firearms dealer was not involved in the transaction in which an individual
3 acquired the assault weapon, the individual does not have lawful possession of the
4 firearm and cannot register the weapon under section 30900. Cal. Pen. Code §
5 30900(b)(3). Potential exceptions include self-made weapons manufactured
6 between January 1, 2001 and December 31, 2016, intrafamilial transfers, operation
7 of law transfers, and firearms reported by new residents.

8 **IV BULLET BUTTON FIREARMS IN CALIFORNIA AT THIS TIME:**

9 29. Bullet button firearms include those firearms defined to be assault
10 weapons under Penal Code 30515.

11 30. It is difficult if not impossible to accurately tell how many bullet button
12 firearms are in California based upon Dealer Records of Sale data maintained by
13 the DOJ.

14 31. The DOJ does not track if a particular firearm at the time of sale has a
15 bullet button style release or some other kind of release. Some firearms, including
16 lower receivers for certain assault weapons, sold in California have no release at all
17 and may never even be built up into a working firearm.

18
19 I declare under penalty of perjury that the foregoing is true and correct.

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21 Executed on: November 22, 2017

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23 
24 BLAKE GRAHAM