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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF FRESNO

10 SHERIFF CLAY PARKER, TEHAMA )  
COUNTY SHERIFF; HERB BAUER )  
11 SPORTING GOODS; CALIFORNIA RIFLE )  
AND PISTOL ASSOCIATION )  
12 FOUNDATION; ABLE'S SPORTING, )  
INC.; RTG SPORTING COLLECTIBLES, )  
13 LLC; AND STEVEN STONECIPHER, )

14 Plaintiffs and Petitioners, )  
15 )  
16 vs. )

17 THE STATE OF CALIFORNIA; JERRY )  
BROWN, IN HIS OFFICIAL CAPACITY )  
AS ATTORNEY GENERAL FOR THE )  
18 STATE OF CALIFORNIA; THE )  
CALIFORNIA DEPARTMENT OF )  
19 JUSTICE; and DOES 1-25, )  
20 )  
21 Defendants and Respondents. )

CASE NO.

10 CECG 02116  
**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF;  
PETITION FOR WRIT OF MANDATE**

**(TO DETERMINE VALIDITY  
OF STATUTES)**

This case has been assigned to  
Judge Adolfo M. Corona for all purposes

22 Plaintiffs and Petitioners<sup>1</sup> Sheriff Clay Parker, et. al., (collectively "Plaintiffs") by and  
23 through their Counsel, bring this action against Defendants under state and federal law, including  
24 42 U.S.C. 1983, to challenge the validity of California Penal Code sections 12060, 12061, and  
25 12318 *et seq.* that regulate "handgun ammunition" as it is defined in Penal Code sections  
26 12060(b) and 12323(a).  
27

28 <sup>1</sup> In matters combining a complaint for declaratory relief and writ petition, the parties are  
uniformly referred to as "plaintiff" and "defendant." (Code Civ. Proc. §§ 308, 1063.)



## INTRODUCTION

1. In 2009, Governor Schwarzenegger signed Assembly Bill 962 into law, which added Penal Code sections 12060, 12061 and 12318<sup>2</sup> to the California Penal Code and implemented a statutory scheme for the transfer and handling of “handgun ammunition.”

2. The Challenged Provisions are void for vagueness under the Due Process Clause of the Fourteenth Amendment, both facially and as applied, because their definition of “handgun ammunition” fails to provide notice to “people of ordinary intelligence,” including Plaintiffs and law enforcement officers, of which calibers of ammunition these provisions regulate. This failure to provide notice is especially egregious given the heightened standard of certainty required of laws like the Challenge Provisions that impose criminal penalties and impact constitutionally protected conduct. Under the Challenged Provisions, “handgun ammunition” includes all ammunition “*principally for use in* pistols, revolvers, and other firearms capable of being concealed upon the person, . . . notwithstanding that the ammunition may also be used in some rifles.”

3. Despite the fact that virtually all calibers of ammunition can be used safely in both rifles and handguns, the Challenged Provisions fail to provide any standard whereby a person of ordinary intelligence can understand and determine whether a given caliber of ammunition is “principally for use” in a handgun. Ordinary persons, including law abiding individuals, ammunition vendors, and law enforcement officers are required to know, *without any clarifying guidelines from Defendants*, whether ammunition commonly used in both rifles and handguns, including but not limited to .22 LR, .22-250, 270 Winchester, .308, .308 NATO, 9mm, .357 Magnum, .40 Smith & Wesson .44 Magnum, .45 Colt, .45 ACP, and 40-40 Winchester, are “principally for use in handguns.”

4. Accordingly, the Challenged Provisions require ordinary persons – as well as those charged with enforcing them – to have superior knowledge that they neither have, nor can

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<sup>2</sup> Penal Code sections 12060, 12061 and 12318 are hereinafter referred to collectively as the “Challenged Provisions.”



1 reasonably acquire, prior to engaging in or regulating the exercise of constitutionally protected  
2 conduct.

3 5. The confusion surrounding which calibers of ammunition are “principally for use” in  
4 handguns prevents persons of ordinary intelligence who wish to comply with the law from having  
5 reasonable notice of their obligations under the Challenged Provisions.

6 6. Further, even if the terms “principally for use in” had an objective meaning, whether a  
7 given caliber of ammunition is used principally in a handgun as opposed to a rifle is something  
8 that will change and fluctuate over time, depending on the changing popularity and usage of  
9 different types of firearms that utilize that particular caliber of ammunition.

10 7. Moreover, rifle and handgun ammunition packaging most often *does not have* a label  
11 indicating whether it is “handgun” or “rifle” ammunition – let alone labeling indicating what its  
12 “*principal use*” might be under the Challenged Provisions.

13 8. Ultimately, no statutory or other means exist that would enable Plaintiffs to first  
14 *understand the meaning* of the Challenged Provisions’ “principally for use in” standard, and  
15 second, determine whether a given caliber of ammunition is *actually “handgun ammunition”*  
16 *under that standard*.

17 9. Due to the vagueness of the Challenged Provisions, law enforcement officials have  
18 essentially unbridled discretion to interpret and apply the Challenged Provisions, including the  
19 arbitrary ability to declare which calibers of ammunition are “handgun ammunition.” Plaintiffs,  
20 and others wishing to comply with the law, are therefore unjustly subject to criminal penalties if  
21 their understanding of the law differs from that of law enforcement.

22 10. For these reasons, Plaintiffs, as taxpayers, citizens, retailers, and law enforcement  
23 officials seek injunctive and declaratory relief prohibiting the enforcement of the Challenged  
24 Provisions.

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**PARTIES**

**[Plaintiffs]**

11. Plaintiff SHERIFF CLAY D. PARKER ("SHERIFF PARKER"), is the duly elected Sheriff for the County of Tehama, California. SHERIFF PARKER has been a law enforcement officer since 1981, and is a graduate of the Federal Bureau of Investigation National Academy. He was originally elected Sheriff of Tehama County in 1998, and has been re-elected to that position two (2) times. SHERIFF PARKER is also the immediate-past President of the California State Sheriffs' Association, and is a former President of the Western States' Sheriffs' Association. In addition to having standing as a citizen and taxpayer, SHERIFF PARKER is responsible for determining the policies of the Tehama County Sheriff's Department, including which calibers of ammunition are "handgun ammunition" under the Challenged Provisions. SHERIFF PARKER is also responsible for upholding the laws of California and of the United States. Without further clarification or guidelines as to what calibers of ammunition are "handgun ammunition," SHERIFF PARKER cannot, and does not, know how to equitably enforce the Challenged Provisions.

12. Plaintiff HERB BAUER'S SPORTING GOODS, INC., is a California corporation that sells a variety of ammunition suitable for use in both rifles and handguns, with its principal place of business in the County of Fresno, CA. Barry Bauer is the President of HERB BAUER'S SPORTING GOODS, INC., and is responsible for determining the policies and operating procedures of HERB BAUER'S SPORTING GOODS, INC., including which calibers of ammunition are "handgun ammunition" under the Challenged Provisions. Plaintiff does not, and cannot, know what its obligations are under the Challenged Provisions because they do not provide notice of which calibers of ammunition are "handgun ammunition" and thus regulated by the Challenged Provisions. The failure to provide Plaintiff with notice of which calibers of ammunition are "handgun ammunition" under the Challenged Provisions unreasonably and unfairly subjects Plaintiff to the threat of prosecution for violations of these laws, because Plaintiff does not, and cannot, know what the Challenged Provisions prohibit.

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1           13. Plaintiff CALIFORNIA RIFLE AND PISTOL ASSOCIATION FOUNDATION  
2 ("CRPA FOUNDATION") is a non-profit entity classified under section 501(c)(3) of the Internal  
3 Revenue Code and incorporated under California law, with headquarters in Fullerton, California.  
4 Contributions to CRPA FOUNDATION are used for the direct benefit of Californians. Funds  
5 granted by the Foundation benefit a wide variety of constituencies throughout California,  
6 including gun collectors, hunters, target shooters, law enforcement, and those who choose to own  
7 a firearm to defend themselves and their families. CRPA FOUNDATION seeks to: raise  
8 awareness about unconstitutional laws, defend and expand the legal recognition of the rights  
9 protected by the Second Amendment, promote firearms and hunting safety, protect hunting rights,  
10 enhance marksmanship skills of those participating in shooting sports, and educate the general  
11 public about firearms. CRPA FOUNDATION supports law enforcement and various charitable,  
12 educational, scientific, and other firearms-related public interest activities that support and defend  
13 the Second Amendment rights of all law-abiding Americans. In this suit, CRPA FOUNDATION  
14 represents the interests of the tens of thousands of its supporters who reside in the State of  
15 California and who are too numerous to conveniently bring this action individually, and whose  
16 interests include their desire to purchase and transfer ammunition and otherwise exercise their  
17 constitutional rights to keep and bear arms without being subject to criminal prosecution for  
18 violating the unconstitutionally vague Challenged Provisions.

19           14. Plaintiff ABLE'S SPORTING, INC. ("ABLE'S") is a lawful ammunition distributor  
20 that ships dozens of different calibers of firearm ammunition, including ammunition suitable for  
21 use in both long guns and handguns, directly to California residents. Neither Plaintiff ABLE'S,  
22 nor others distributors in its position, know what their obligations are under California Penal Code  
23 section 12318<sup>3</sup> because the Challenged Provisions do not provide notice as to which calibers of  
24 ammunition are "handgun ammunition" and thus regulated by section 12318. As a result, the  
25 Challenged Provisions unreasonably and unfairly subject Plaintiff ABLE'S to criminal  
26 prosecution for violating section 12318.

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28 <sup>3</sup> All further statutory references are to the California Penal Code unless otherwise indicated.



15. Plaintiff RTG SPORTING COLLECTIBLES, LLC (“RTG”) is a lawful ammunition distributor that ships dozens of different calibers of firearm ammunition, including ammunition suitable for use in both long guns and handguns, directly to residents of California, including Fresno County residents. Most of the ammunition RTG ships into California was manufactured before the year 1960, and in many cases before 1920, and, despite being mostly live ammunition, is sold as “collectible ammunition” not intended for firing. Plaintiff RTG does not and cannot know what its obligations are under section 12318 because the Challenged Provisions not only fail to provide notice of which calibers of ammunition are “handgun ammunition” and thus regulated by section 12318, but also as to whether RTG’s collectible ammunition is subject to section 12318 at all. As a result, the Challenged Provisions unreasonably and unfairly subject RTG to criminal prosecution for violating section 12318.

16. Plaintiff STEVEN STONECIPHER is an individual resident of Fresno County, California and is *not* engaged in the business of selling ammunition. In addition to having standing as a citizen and taxpayer, Plaintiff STONECIPHER mails ammunition to friends and/or family, and sometimes receives ammunition in the mail from out of state shippers of ammunition. Plaintiff STONECIPHER does not, and cannot, know what his obligations are under section 12318, because the Challenged Provisions do not provide notice of what calibers of ammunition are “handgun ammunition” and thus regulated by section 12318. As a result, the Challenged Provisions unreasonably and unfairly subject Plaintiff STONECIPHER and others similarly situated to criminal prosecution for violating section 12318.

17. Plaintiffs initiate this action in their respective personal interests and as taxpayers and citizens seeking to enjoin the undue expenditure of public funds to enforce these void and invalid statutes.

**[Defendants]**

18. Defendant STATE OF CALIFORNIA ("STATE") is a sovereign state admitted to the United States under section 3, Article IV of the United States Constitution.

19. Defendant JERRY BROWN is the Attorney General of California. He is the chief law enforcement officer of California, and is charged by article V, section 13 of the California



1 Constitution with the duty to inform the general public, and to supervise and instruct local  
2 prosecutors and law enforcement agencies, regarding the meaning of the laws of the STATE,  
3 including the Challenged Provisions, and to ensure the fair, uniform and consistent enforcement of  
4 those laws throughout the state.

5 20. Defendant CALIFORNIA DEPARTMENT OF JUSTICE ("DOJ") is a lawfully  
6 constituted executive agency of California responsible, in part, for administering the Challenged  
7 Provisions. It is charged by Article V, section 13 of the California Constitution with the duty to  
8 inform the general public, and to supervise and instruct local prosecutors and law enforcement  
9 agencies, regarding the meaning of the laws of the STATE, including the Challenged Provisions,  
10 and ensure the fair, uniform and consistent enforcement of those laws throughout the state.

11 21. Defendants STATE OF CALIFORNIA, BROWN and the DOJ (collectively  
12 "DEFENDANTS") are responsible for administering the Challenged Provisions, and are in fact  
13 presently enforcing subparagraphs (1) and (2) of section 12061(a) against Plaintiffs, and will  
14 enforce subparagraphs (3)-(7) of section 12061(a) and section 12318 against Plaintiffs when those  
15 provisions take effect on February 1, 2011.

16 22. The true names or capacities, whether individual, corporate, associate or otherwise of  
17 the Defendants named herein as DOE, are presently unknown to Plaintiffs, who therefore sue said  
18 Defendants by such fictitious names. Plaintiffs pray for leave to amend this Complaint and  
19 Petition to show the true names, capacities, and/or liabilities of DOE Defendants if and when they  
20 have been determined.

21 23. Defendants are presently enforcing subparagraphs (1) and (2) of section 12061(a) and  
22 will be enforcing subparagraphs (3)-(7) of section 12061(a) and section 12318 against Plaintiffs  
23 under color of state law within the meaning of 42 U.S.C. § 1983, in that such enforcement  
24 subjects plaintiffs to the deprivation of rights, privileges, and immunities secured by the United  
25 States Constitution.

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1 **JURISDICTION AND VENUE**

2 24. This Court has jurisdiction under sections 525, 526, 1060 and 1085 of the California  
3 Code of Civil Procedure and other applicable laws. Plaintiffs lack a “plain, speedy, and adequate  
4 remedy in the ordinary course of law.” (Cal. Code of Civ. Proc. § 1086.)

5 25. Because this action is brought against a public officer of the State of California and  
6 against the State of California itself, and because the Attorney General has an office in Fresno,  
7 CA, this action is properly brought in the Superior Court for the State of California for the County  
8 of Fresno. (Code of Civ. Proc. §§ 393(b), 394(a), 401(1).)

9 **AUTHENTICITY OF EXHIBITS**

10 26. All exhibits accompanying this Complaint and Petition are true and correct copies of  
11 the original documents. The exhibits are incorporated herein by reference as though fully set forth  
12 in this Complaint and Petition.

13 **REGULATORY SCHEME**

14 **[Assembly Bill 962]**

15 27. Sections 12060, 12061 and 12318 were added to the California Penal Code by  
16 Assembly Bill 962 (2009-2010 Reg. Sess.) (“AB 962”),<sup>4</sup> which implemented a statutory scheme  
17 for the transfer and handling of “handgun ammunition.”

18 28. Each of these sections regulate “handgun ammunition” as defined in section 12060(b).

19 29. Section 12060(b) defines “handgun ammunition” as follows: “Handgun ammunition”  
20 means handgun ammunition as defined in subdivision (a) of Section 12323, but excluding  
21 ammunition designed and intended to be used in an “antique firearm” as defined in Section  
22 921(a)(16) of Title 18 of the United States Code. Handgun ammunition does not include blanks.”

23 30. Penal Code section 12323(a)<sup>5</sup> defines “handgun ammunition” as: “...ammunition

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25 <sup>4</sup> Assembly Bill No. 962 (2009-2010 Reg. Sess.) is codified at Penal Code §§ 12060,  
26 12061, 12316, 12317, and 12318. The amendments to Penal Code §§ 12317 and 12318 are not  
27 challenged in this suit. A copy of AB 962 containing the language of the statutes added and  
28 amended by its passage, including the Challenged Provisions, is attached as Exhibit “A” and  
incorporated herein.

<sup>5</sup> A copy of the text of Cal. Pen. Code section 12323(a) is attached hereto as Exhibit “B.”



1 principally for use in pistols, revolvers, and other firearms capable of being concealed upon the  
2 person, as defined in subdivision (a) of Section 12001<sup>6</sup>, notwithstanding that the ammunition may  
3 also be used in some rifles.”

4       31. As provided in Section 921(a)(16) of Title 18 of the United States Code, the term  
5 “antique firearm” means: (A) any firearm (including any firearm with a matchlock, flintlock,  
6 percussion cap, or similar type of ignition system) manufactured in or before 1898; or (B) any  
7 replica of any firearm described in subparagraph (A) if such replica (i) is not designed or  
8 redesigned for using rimfire or conventional centerfire fixed ammunition, or (ii) uses rimfire or  
9 conventional centerfire fixed ammunition which is no longer manufactured in the United States  
10 and which is not readily available in the ordinary channels of commercial trade; or (C) any muzzle  
11 loading rifle, muzzle loading shotgun, or muzzleloading pistol, which is designed to use black  
12 powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of  
13 this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a  
14 firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any  
15 muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the  
16 barrel, bolt, breechblock, or any combination thereof.”

17       32. Thus, “handgun ammunition,” for purposes of the Challenged Provisions, is defined  
18 by Penal Code section 12060(b), as all ammunition “principally for use in [handguns] . . . ,  
19 notwithstanding that the ammunition may also be used in some rifles.”<sup>7</sup>

20       33. Section 12061 regulates the activities of anyone deemed a “handgun ammunition  
21 vendor” (hereinafter “Vendor”) as defined in section 12060©.

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25       <sup>6</sup> Section 12001(a) provides: “As used in this title, the terms ‘pistol,’ ‘revolver,’ and ‘firearm  
26 capable of being concealed upon the person’ shall apply to and include any device designed to be  
27 used as a weapon....” (For convenience, “pistols, revolvers, and other firearms capable of being  
concealed upon the person” are hereinafter referred to in this Complaint as “handgun(s).”)

28       <sup>7</sup> Excluding ammunition “designed and intended” to be used in “antique firearms,” and  
blanks. (Cal Pen. Code section 12061(b).)



1           34. Section 12060(c) defines a “handgun ammunition vendor” as: “any person, firm,  
2 corporation, dealer, or any other business enterprise that is engaged in the retail sale of any  
3 “handgun ammunition,” or that holds itself out as engaged in the business of selling any “handgun  
4 ammunition.”

5           35. Section 12061(a)(1) mandates that: “A vendor shall not permit any employee who the  
6 vendor knows or reasonably should know is a person described in Section 12021 or 12021.1 of  
7 this code or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, or deliver  
8 handgun ammunition in the course and scope of his or her employment.”

9           36. Section 12061(a)(2) mandates that: “A vendor shall not sell or otherwise transfer  
10 ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or  
11 display for transfer of ownership of any handgun ammunition in a manner that allows that  
12 ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or  
13 employee thereof.”

14           37. Commencing February 11, 2011, subsections (3)-(7) of 12061(a) require Vendors  
15 (subject to exceptions for exempted persons), under penalty of misdemeanor prosecution, to  
16 accurately record specific information about every transfer of “handgun ammunition” made by the  
17 Vendor, store the records on the premises for five years, and make the records available for  
18 inspection and/or use by law enforcement.<sup>8</sup>

19           38. Section 12318 requires that, subject to exceptions for exempted persons:  
20 “Commencing February 11, 2011, the delivery or transfer of ownership of handgun ammunition  
21 may only occur in a face-to-face transaction with the deliverer or transferor being provided bona  
22 fide evidence of identity from the purchaser or other transferee. A violation of this section is a  
23 misdemeanor.”<sup>9</sup>

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25           <sup>8</sup> See section 12061(b) of AB 962 attached hereto as Exhibit “A.”

26           <sup>9</sup> Deliveries, transfers or sales to certain persons are exempted from these requirements under  
27 section 12318(c), including transfers to authorized law enforcement representatives, persons on  
28 the centralized list maintained by the Department of Justice pursuant to section 12083, “handgun  
ammunition vendors,” and others.



**[Vagueness Doctrine]**

39. The Fourteenth Amendment of the United States Constitution provides that no state shall deprive any person of life, liberty, or property, without due process of law.

40. A statute which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential requirement of due process.

41. The “void for vagueness” doctrine under the Due Process Clause generally requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited. It requires laws to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he or she may act accordingly.

42. The certainty required in legislation is greater where a criminal statute limits a constitutional right.

43. *District of Columbia v. Heller* (2008), 128 S. Ct. 2783, held that the Second Amendment of the United States Constitution protects an individual right to keep and bear arms.

44. The Second Amendment, by way of its incorporation through the Fourteenth Amendment, limits state and local government action from infringing on an individual’s right to keep and bear arms.

45. The “void for vagueness” doctrine also requires that penal statutes regulate in a manner that does not encourage arbitrary and discriminatory enforcement of the law. Laws may not impermissibly delegate basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

**GENERAL ALLEGATIONS**

46. Each of the Challenged Provisions are criminal statutes that limit the constitutional right to keep and bear arms guaranteed by the Second Amendment.

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1           47. The Challenged Provisions are void for vagueness because persons of ordinary  
2 intelligence, including Plaintiffs, are unable to ascertain at any given time which calibers of  
3 ammunition are considered “principally for use” in a handgun and are thus “handgun ammunition”  
4 pursuant to sections 12060(b) and 12323(a).

5           48. All modern centerfire and rimfire ammunition for use in rifles and/or handguns consist  
6 of the same components: a metal casing that suspends a metal projectile over a charge of  
7 smokeless powder confined within the metal casing and a primer to ignite the charge.

8           49. Virtually all calibers of ammunition can be used safely in both rifles and handguns.

9           50. Many calibers of ammunition are commonly used in both rifles and handguns,  
10 including but not limited to .22 LR, .22-250, 270 Winchester, .308, .308 NATO, 9mm, .357  
11 Magnum, .40 Smith & Wesson, .44 Magnum, .45 Colt, .45 ACP, and 40-40 Winchester.

12           51. Persons of ordinary intelligence are unable to ascertain from reading the Challenged  
13 Provisions what the phrase “principally for use in” means, let alone whether a given caliber of  
14 ammunition is “principally for use” in a handgun at any given time.

15           52. The Challenged Provisions fail to provide any standard whereby one can determine  
16 whether a given caliber of ammunition is “principally for use” in a handgun.

17           53. The Challenged Provisions do not state what “ammunition ‘principally for use’ in a  
18 handgun” means. If it means ammunition that is used more often in a handgun than in a long gun,  
19 the Challenged Provisions still do not specify which calibers of ammunition are in fact used more  
20 often in a handgun than in a long-gun, or vice-versa.

21           54. Whether a given caliber of ammunition is used more often in a handgun than in a rifle  
22 may change and fluctuate over time, depending on the changing popularity and usage of different  
23 types of firearms which utilize that caliber of ammunition, or vice-versa.

24           55. There are no means for individuals of ordinary intelligence to determine which  
25 calibers of ammunition, at any given time, are used more often in a handgun than in a long-gun.

26           56. Even if a manufacturer’s intended use was the “applicable” standard, there are  
27 likewise no means for individuals of ordinary intelligence to determine which calibers of  
28 ammunition are intended by manufacturers to be “principally for use” in a handgun or a rifle.



1           57. Packaging for ammunition that is commonly used in both rifles and handguns most  
2 often has no label indicating whether it is “handgun” or “rifle” ammunition, let alone indicating  
3 whether the ammunition is “*principally for use*” in a handgun under section 12060(b).

4           58. As well, as firearm models and calibers evolve, are developed, and become more or  
5 less popular with consumers, whether a specific type of ammunition is intended to be “principally  
6 for use” in a handgun can change and fluctuate over time.

7           59. There is no generally accepted technical definition of “handgun ammunition,” nor any  
8 commonly understood delineation between “handgun ammunition” and other ammunition used in  
9 the firearms industry that clearly equates to the “principally for use in [handguns]” language upon  
10 which the Challenged Provisions rely.

11           60. For example, ammunition that is commonly referred to as .22 Long Rifle, or .22 LR,  
12 is frequently used in handguns, including Olympic target pistols, despite the use of the term “rifle”  
13 in its nomenclature.

14           61. Further, under the definition of “antique firearm” in Section 921(a)(16) of Title 18 of  
15 the United States Code, a firearm made in or before 1898 is an “antique firearm,” but an identical  
16 firearm in the same caliber made after 1898 is not an “antique firearm.” Numerous calibers of  
17 ammunition, including but not limited to .22 Short, .22 Long, 32-20, .38-40, .44-40, .45 Colt, and  
18 .32 Colt can be used in identical firearms that were manufactured both in or before 1898 and after  
19 1898, and are commonly used in both rifles and handguns. Because many calibers of ammunition  
20 can be used in both a modern firearm and an “antique firearm” under that definition, there is no  
21 way of knowing whether any of those calibers is “designed and intended” to be used in an  
22 “antique firearm” or not, and thus exempt from the Challenged Provisions

23           62. The uncertainty and confusion as to which calibers of ammunition are “principally for  
24 use in” handguns prevents people of ordinary intelligence who wish to comply with the law from  
25 having notice of what their obligations are under the Challenged Provisions.

26           63. Law enforcement officials likewise cannot know and are unable to clearly determine  
27 which calibers of ammunition are “principally for use in” handguns.



64. Without legislative guidance as to what calibers of ammunition are “handgun ammunition,” such as an enumerated list of regulated ammunition calibers, some law enforcement agencies, and individual officers, will unilaterally or subjectively consider a given caliber to be “handgun ammunition” under the Challenged Provisions, while others will not, thereby encouraging arbitrary and discriminatory application of the Challenged Provisions.

65. Also, a person of ordinary intelligence does not, and cannot, know whether rare ammunition that is sold as a collectible, not intended to be fired but that can be fired, is “handgun ammunition” under the Challenged Provisions. Though it is intended to be used as a collectible, it may still be subjectively considered “principally for use in” handguns by law enforcement, thereby encouraging further arbitrary and discriminatory application of the Challenged Provisions.

### [Guideline Failures]

66. On or about December 30, 2009, the DOJ Bureau of Firearms released an official “Information Bulletin” for all California firearms dealers that provided a list of all “New and Amended Firearms Laws” that became effective January 1, 2010. The Information Bulletin lists subparagraphs (1) and (2) of section 12061(a) as laws effective January 1, 2010. The Information Bulletin also lists subparagraphs (3) of section 12061 and section 12318 as taking effect on February 1, 2011.<sup>10</sup>

67. The Information Bulletin summarizes each Challenged Provision, but fails to provide any guidelines or clarification for Vendors, individuals or law enforcement to understand and determine what the term “principally for use in” means, let alone whether any given caliber of ammunition is “principally for use” in handguns, and therefore “handgun ammunition” under the Challenged Provisions.

68. None of the Challenged Provisions, nor any other provision of the law, confer authority upon an agency or other entity to promulgate regulations to clarify the Challenged Provisions.

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<sup>10</sup> A copy of the Information Bulletin is attached hereto as Exhibit "C."



69. Defendant DOJ has expressly stated it “[does not] have any other guidelines to distinguish . . . “handgun ammunition” from other ammunition,” and it “would only refer to the language of Penal Code section 12323, subd. (a) . . .”

70. Defendant DOJ has expressly stated it “can’t and won’t adopt a general policy” about which calibers of ammunition are covered by the Challenged Provisions.

71. Defendant DOJ also stated it “[does not] plan to hold any regulatory meetings” concerning the implementation and clarification of the Challenged Provisions.

72. Defendant DOJ has stated it “[doesn’t] know and . . . can’t say” whether DOJ Field Representatives charged with enforcing these laws will consider a certain caliber of ammunition to be “handgun ammunition” under, and for purposes of enforcing, the Challenged Provisions.

### [Irreparable Injury Allegations]

73. Due to the vagueness of the Challenged Provisions as to what calibers of ammunition are “handgun ammunition,” the named individual plaintiffs, and the individuals and entities represented in this action, are irreparably injured, and will continue to be injured, by the mere enactment, existence, and ongoing and pending arbitrary enforcement of the Challenged Provisions in the following ways:

74. Licensed business enterprises, including Plaintiff HERB BAUER SPORTING GOODS, INC. and those represented by Plaintiff CRPA FOUNDATION, engaged in the business of selling or transferring ammunition within the state are, and will continue to be, subject to criminal prosecution for allowing an employee to handle a caliber of ammunition that, unbeknownst to the Vendor, law enforcement subjectively deems “handgun ammunition” – despite the fact that neither Vendors nor law enforcement can ascertain which calibers of ammunition are “handgun ammunition” under section 12061(a)(1) and which are not.

75. Licensed business enterprises, including Plaintiff HERB BAUER SPORTING GOODS, INC. and those represented by Plaintiff CRPA FOUNDATION, engaged in the business of selling or transferring ammunition within the state are, and will continue to be, subject to criminal prosecution for displaying a caliber of ammunition in a manner accessible to the transferee that, unbeknownst to the Vendor, law enforcement subjectively considers “handgun



ammunition”, despite the fact that neither Vendors nor law enforcement can ascertain which calibers of ammunition are “handgun ammunition” under 12061(a)(2) and which are not.

76. Licensed business enterprises, including Plaintiff HERB BAUER SPORTING GOODS, INC. and those represented by Plaintiff CRPA FOUNDATION, engaged in the business of selling or transferring ammunition within the State will be forced to risk criminal prosecution for failing to record transfers of a caliber of ammunition that, unbeknownst to the Vendor, law enforcement subjectively considers “handgun ammunition,” despite the fact that neither Vendors nor law enforcement can ascertain which calibers of ammunition are “handgun ammunition” under section 12061(a)(3-7).

77. Licensed business enterprises, including Plaintiffs ABLE’S, RTG, and those represented by CRPA FOUNDATION, engaged in the business of shipping ammunition to individuals in the State will be subject to criminal prosecution for shipping to a transferee within the State a caliber of ammunition that, unbeknownst to the Vendor, law enforcement subjectively considers “handgun ammunition,” despite the fact that neither Vendors nor law enforcement can ascertain which calibers of ammunition are “handgun ammunition” under section 12318 and which are not. Due to enforcement threats under section 12318 and the inability to determine which calibers of ammunition are “handgun ammunition,” Plaintiffs ABLE’S and RTG may be forced to cease all shipments of ammunition suitable for use in both handguns and rifles to their customers in California, thereby causing a significant decrease in sales and lost profits.

78. In the case of Plaintiff RTG, most of the ammunition it ships into California is sold as collectible ammunition that is not intended for firing. Plaintiff RTG does not, and cannot, know what its obligations are under section 12318 because the Challenged Provisions fail to provide notice of whether collectible ammunition is subject to section 12318.<sup>11</sup> It is unclear whether any given caliber of RTG’s collectible ammunition is “principally for use in a handgun” when it is sold for use as a collector’s item. This failure to provide notice unreasonably and unfairly subjects

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<sup>11</sup> Much of the collectible ammunition RTG ships to California is not “designed and intended to be used in an ‘antique firearm’ as defined in Section 921(a)(16) of Title 18 of the United States Code” and is thus not *expressly* exempt from the requirements of section 12318.



1 RTG to criminal prosecution for violating section 12318, because RTG does not and cannot know  
2 what conduct the law prohibits.

3 79. Licensed business enterprises, including Plaintiff HERB BAUER SPORTING  
4 GOODS, INC., and those represented by Plaintiff CRPA FOUNDATION, engaged in the business  
5 of selling or transferring ammunition in the state will be subject to criminal prosecution for failing  
6 to request “bona fide evidence of identification” from a transferee, upon transferring within the  
7 state, a caliber of ammunition that law enforcement subjectively considers “handgun  
8 ammunition,” despite the fact that neither Vendors nor law enforcement can ascertain which  
9 calibers of ammunition are “handgun ammunition” under section 12318 and which are not.

10 80. Individual residents of the state, including Plaintiff STEVEN STONECIPHER and  
11 those represented by Plaintiff CRPA FOUNDATION, who transfer and receive ammunition via  
12 mail within the state, will be subject to criminal prosecution for shipping to a transferee (or  
13 receiving as a transferee) a caliber of ammunition that law enforcement subjectively considers  
14 “handgun ammunition,” despite the fact that neither the parties to the transfer, nor law  
15 enforcement, can ascertain which calibers of ammunition are “handgun ammunition” under  
16 section 12318 and which are not.

17 81. Residents of the state, including Plaintiff STEVEN STONECIPHER and those  
18 represented by Plaintiff CRPA FOUNDATION, who transfer ammunition, will be subject to  
19 criminal prosecution for failing to request “bona fide evidence of identification” upon transfer of a  
20 caliber of ammunition that law enforcement subjectively considers “handgun ammunition,”  
21 despite the fact that neither the parties to the transfer, nor law enforcement, can ascertain which  
22 calibers of ammunition are “handgun ammunition” under section 12318 and which are not.

23 82. Law enforcement officials, including Plaintiff SHERIFF PARKER, whose sworn duty  
24 it is to uphold the law, do not and cannot know what individuals’ and Vendors’ obligations are  
25 under the Challenged Provisions because those officials cannot ascertain which calibers of  
26 ammunition are “handgun ammunition” under the Challenged Provisions. The vagueness of the  
27 term “handgun ammunition” thereby encourages arbitrary and discriminatory enforcement of the  
28 Challenged Provisions.



83. All Plaintiffs, and those represented by Plaintiffs, who are taxpayers, are irreparably injured by the waste of tax funds associated with the passage and implementation of the unconstitutionally vague Challenged Provisions, including expenditures of public funds relating to the enforcement of these provisions.

84. Plaintiffs ask this Court to declare the Challenged Provisions invalid on their face and as applied to Plaintiffs because the definition of “handgun ammunition” as set forth in these provisions, and in section 12060(b) specifically, is unconstitutionally vague, as it fails to provide notice to persons of ordinary intelligence what the law is or how to comply with it, and thereby violates Plaintiffs’ rights under the Due Process Clause of the Fourteenth Amendment. Plaintiffs also ask that a writ issue prohibiting Defendants from enforcing any of the Challenged Provisions.

### PUBLIC INTEREST INVOLVED

85. Plaintiffs, and those represented by Plaintiffs, as citizens and taxpayers, properly bring this Complaint for Injunctive and Declaratory relief and Petition for Writ of Mandate in the nature of a citizen mandamus action to promote the public interest in having the general laws obeyed.

86. The Challenged Provisions are void for vagueness under the Due Process Clause of the Fourteenth Amendment because they fail to provide notice to “people of ordinary intelligence” regarding which calibers of ammunition those provisions regulate, and make ordinary citizens responsible for determining the scope of their application. Similarly, because of the failure to clearly specify which calibers of ammunition should be regulated by the Challenged Provisions, law enforcement officials have unbridled discretion to interpret and enforce the Challenged Provisions.

87. The public has an interest in preventing the state from enforcing vague laws such as the Challenged Provisions that subject residents to criminal prosecution without notice of how to avoid liability under those provisions, in violation of those residents' constitutional rights.

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**FIRST CAUSE OF ACTION  
FOR DECLARATORY AND INJUNCTIVE RELIEF  
DUE PROCESS VAGUENESS - FACIAL  
(By All Plaintiffs Against All Defendants)**

88. Plaintiffs re-allege all prior paragraphs and incorporate them herein.

89. An actual controversy has arisen and now exists between Plaintiffs and Defendants relative to their respective rights and duties under the Challenged Provisions, in that Plaintiffs contend these provisions are invalid and unenforceable on their face because they violate the Fourteenth Amendment's Due Process requirement that laws not be vague. Defendants dispute this contention, as they currently enforce subparagraphs (1) and (2) of section 12061(a), and will enforce subparagraphs (3)-(7) of section 12061 and section 12318 when these sections take effect on February 1, 2011.

90. Plaintiffs desire a declaration invalidating the Challenged Provisions on their face. A judicial declaration is necessary and appropriate at this time so that Plaintiffs may ascertain their rights and duties under the Challenged Provisions without first unknowingly violating these provisions and thereby subjecting themselves to criminal liability.

91. To resolve this controversy, Plaintiffs request that, pursuant to California Code of Civil Procedure section 1060, this Court declare the following: Penal Code sections 12060, 12061 and 12318 that regulate "handgun ammunition" as defined in Penal Code sections 12060(b) and 12323(a) are void for vagueness on their face because they fail to provide notice to persons of ordinary intelligence regarding which calibers of ammunition are "handgun ammunition" and thus subject to the Challenged Provisions; this vagueness thereby encourages arbitrary and discriminatory enforcement of the law and violates the Due Process Clause of the Fourteenth Amendment.

92. Additionally, Plaintiffs seek an injunction pursuant to Code of Civil Procedure sections 525 and 526. The state's enforcement of the Challenged Provisions, unless enjoined by order of this Court, will continue to cause great and irreparable injury to Plaintiffs, because they are unable to determine what conduct is required or prohibited under the Challenged Provisions. As a result, Plaintiffs continually risk criminal prosecution and suffer Due Process violations.



93. The state's adoption and enforcement of the Challenged Provisions, and the resultant injuries to Plaintiffs, is and will be of a continuing nature for which Plaintiffs have no adequate remedy at law because monetary damages are impossible to determine.

94. Accordingly, Plaintiffs seek a permanent injunction forbidding Defendants, their agents, employees, representatives, and all those acting in concert with them from enforcing the Challenged Provisions. This Court should render declaratory judgment declaring the Challenged Provisions unconstitutional and unenforceable.

**SECOND CAUSE OF ACTION  
FOR DECLARATORY AND INJUNCTIVE RELIEF  
DUE PROCESS VAGUENESS - AS APPLIED  
(By Plaintiff Herb Bauer Sporting Goods, Inc. Against All Defendants)**

95. Plaintiffs re-allege all prior paragraphs and incorporate them herein.

96. An actual controversy has arisen and now exists between Plaintiff and Defendants relative to their respective rights and duties under subparagraphs (1) and (2) of section 12061(a) in that Plaintiff contends these provisions are invalid and unenforceable as applied to Plaintiff because they violate the Fourteenth Amendment's Due Process requirement that laws not be vague. Defendants dispute this contention, as they currently enforce subparagraphs (1) and (2) of section 12061(a), and thereby subject Plaintiff to arbitrary prosecution for inadvertent violations of these provisions because Plaintiff does not, and cannot, know how to comply with them due to their vagueness as applied.

97. As to subparagraph (1) of section 12061(a), Plaintiff does not, and cannot, know which calibers of ammunition certain employees are prohibited from handling.

98. As to subparagraph (2) of section 12061(a), Plaintiff does not, and cannot, know which calibers of ammunition must be displayed in a manner so that the ammunition is inaccessible to customers.

99. Plaintiff desires a declaration as to the validity of subparagraphs (1) and (2) of section 12061(a) as these provisions are applied to Plaintiff. A judicial declaration is necessary and appropriate at this time so that Plaintiff may ascertain its rights and duties under subparagraphs (1)



1 and (2) of section 12061(a) without first inadvertently subjecting itself to arbitrary criminal  
2 liability by unknowingly violating any of these provisions.

3 100. To resolve this controversy, Plaintiff requests that, pursuant to California Code of  
4 Civil Procedure section 1060, this Court declare the following: subparagraphs (1) and (2) of Penal  
5 Code section 12061(a) are void for vagueness as applied to Plaintiff because these provisions fail  
6 to provide notice to Plaintiff regarding which calibers of ammunition are "handgun ammunition"  
7 as defined in Penal Code sections 12060(b) and 12323(a), and because such vagueness encourages  
8 arbitrary and discriminatory enforcement of these laws against Plaintiff in violation of the Due  
9 Process Clause of the Fourteenth Amendment.

10 101. Additionally, Plaintiff seeks an injunction pursuant to Code of Civil Procedure  
11 sections 525 and 526. The State's wrongful conduct, unless enjoined by this Court, will continue  
12 to cause great and irreparable injury to Plaintiff because it is unable to determine what conduct is  
13 required of it under subparagraphs (1) and (2) of section 12061(a). As a result, Plaintiff  
14 continually risks criminal prosecution and suffers Due Process violations.

15 102. The state's adoption and enforcement of subparagraphs (1) and (2) of section  
16 12061(a), and the resultant injuries to Plaintiff, is and will be of a continuing nature for which  
17 Plaintiff has no adequate remedy at law because monetary damages are impossible to determine.

18 103. Accordingly, Plaintiff seeks a permanent injunction forbidding Defendants, their  
19 agents, employees, representatives, and all those acting in concert with them from enforcing the  
20 Challenged Provisions. This Court should render declaratory judgment declaring the Challenged  
21 Provisions unconstitutional and unenforceable.

22 **THIRD CAUSE OF ACTION**  
23 **PETITION FOR WRIT OF MANDATE**  
**(By All Plaintiffs Against All Defendants)**

24 104. Plaintiffs re-allege all prior paragraphs and incorporate them herein.

25 105. Defendants have a clear, present, and ministerial duty *not* to enforce the Challenged  
26 Provisions against Plaintiffs, or anyone.



1           106. Plaintiffs are beneficially interested in this matter, as they and their supporters are  
2 subject to Defendants' arbitrary enforcement of the unconstitutionally vague Challenged  
3 Provisions.

4           107. Defendants' adoption and enforcement of the Challenged Provisions is and will be of  
5 a continuing nature for which Plaintiffs have no plain, speedy, adequate remedy at law, and which  
6 has and will continue to result in irreparable harm.

7           108. Plaintiffs present important questions of statutory and constitutional interpretation, as  
8 well as questions of public interest, which further warrant prompt disposition of this matter.

9           109. Accordingly, Plaintiffs seek a writ of mandate, pursuant to Code of Civil Procedure  
10 sections 1085 and 1087 commanding Defendants to stop enforcing the Challenged Provisions.

#### 11                           **DECLARATORY AND WRIT RELIEF WARRANTED**

12           110. Declaratory and writ relief is warranted in this case because: (1) an actual  
13 controversy has arisen and now exists between Plaintiffs and Defendants over the validity of the  
14 Challenged Provisions; and (2) there is no adequate remedy in the ordinary course of law.

15           111. Subsections (1) and (2) of section 12061(a) took effect on January 1, 2010, and are  
16 currently being enforced. These provisions are unlawfully vague such that Plaintiffs are unable to  
17 understand the Challenged Provisions and ascertain which calibers of ammunition are "handgun  
18 ammunition" under these provisions. Due to this vagueness, ammunition vendors have been  
19 forced, and will continue to be forced, to risk criminal penalties for failing to comply with the  
20 Challenged Provisions, because it allows for an arbitrary and discriminatory application of the  
21 Challenged Provisions by law enforcement. Likewise, any person or Vendor who transfers  
22 ammunition, subject to limited exceptions for exempted persons, will be forced to risk criminal  
23 penalties for failing to comply with the Challenged Provisions. Moreover, Defendants' ongoing  
24 and pending enforcement of invalid laws wastes taxpayer funds and unduly burdens Plaintiffs.

#### 25                           **PRAYER**

26           1. Wherefore Plaintiffs pray for the following relief: A Declaration that Penal Code  
27 sections 12060, 12061, and 12318 are null and void on their face because such provisions are  
28 unlawfully vague under the Due Process Clause of the Fourteenth Amendment;



1           2. A Declaration that subparagraphs (1) and (2) of Penal Code section 12061(a) are null  
2 and void as applied to Plaintiffs because such provisions are unlawfully vague under the Due  
3 Process Clause of the Fourteenth Amendment;

4           3. Issuance of a Peremptory Writ and/or Permanent Injunction ordering Defendants to stop  
5 enforcing Penal Code sections 12060, 12061, and 12318;

6           4. Costs and attorneys' fees as provided by section 1021.5 of the California Code of Civil  
7 Procedure, 42 U.S.C. § 1988, and any other relevant provision of California or federal law.

8           5. Such other relief as this Court may deem just and proper.  
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10       Dated: June 17, 2010

**Respectfully submitted,**  
**MICHEL & ASSOCIATES, P.C.**

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13       C. D. MICHEL  
14       Attorney for Plaintiffs



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**VERIFICATION**

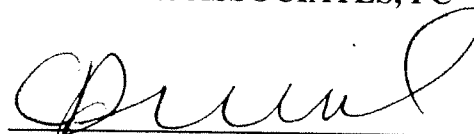
I, C.D. Michel, declare as follows:

I am one of the attorneys for the Plaintiffs herein. I have read the foregoing Complaint for Declaratory and Injunctive Relief / Petition for Writ of Mandate and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts and because my clients are absent from the county where I have my office, I, rather than Plaintiffs, verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on June 17, 2010, at Long Beach, California.

Dated: \_\_\_\_\_

**MICHEL & ASSOCIATES, PC**

  
\_\_\_\_\_  
C. D. Michel  
Attorney for Plaintiffs