

1 C. D. Michel – SBN 144258
2 cmichel@michellawyers.com
3 Sean A. Brady – SBN 262007
4 Matthew D. Cubeiro – SBN 291519
5 MICHEL & ASSOCIATES, P.C.
6 180 East Ocean Boulevard, Suite 200
7 Long Beach, CA 90802
8 Telephone: 562-216-4444
9 Facsimile: 562-216-4445

10 Attorneys for Plaintiffs

11
12 **IN THE UNITED STATES DISTRICT COURT**
13
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15
16 **SOUTHERN DIVISION**

17 STEVEN RUPP; STEVEN DEMBER;
18 CHERYL JOHNSON; MICHAEL
19 JONES; CHRISTOPHER SEIFERT;
20 ALFONSO VALENCIA; TROY WILLIS;
21 DOUGLAS GRASSEY; DENNIS
22 MARTIN; and CALIFORNIA RIFLE &
23 PISTOL ASSOCIATION,
24 INCORPORATED,

25 Plaintiffs,

26 vs.

27 XAVIER BECERRA, in his official
28 capacity as Attorney General of the State
of California; and DOES 1-10,

Defendants.

CASE NO.: 8:17-cv-00746-JLS-JDE

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Action Filed: April 24, 2017

1 Plaintiffs, Rupp, Dember, Johnson, Jones, Seifert, Valencia, Willis, Grassey,
 2 Martin, and the California Rifle & Pistol Association, Incorporated, through their
 3 counsel, bring this action against Defendant Attorney General Xavier Becerra, in his
 4 official capacity, and make the following allegations:

5 INTRODUCTION

6 1. Plaintiffs are law-abiding California residents who seek to protect
 7 themselves and their families with rifles owned and in common use by millions of
 8 Americans for self-defense. The Second Amendment squarely protects Plaintiffs’
 9 right to keep and bear arms “typically possessed by law-abiding citizens for lawful
 10 purposes.” *District of Columbia v. Heller*, 554 U.S. 570, 624-25 (2008). And
 11 California plainly infringes that right by completely barring Plaintiffs from acquiring,
 12 transferring, or possessing commonly owned rifles that it pejoratively labels “assault
 13 weapons”—a non-technical, political term of ever-changing definition and scope
 14 with no connection to the public safety interests that the law purports to serve.¹

15 2. California’s sweeping Assault Weapon Control Act (“the AWCA”)²
 16 prohibits the most popular rifle models in the country, which are lawfully owned and
 17 safely operated by millions of Americans in all but a few states. To achieve such a
 18 broad ban, California classifies as “assault weapons” dozens of specific, popular
 19 rifles by their make and model along with any other rifle having certain common
 20 features that are the hallmarks of the most popular rifle models. None of these
 21 features that qualify a rifle for the State’s prohibition have anything to do with rate of
 22 fire, ammunition capacity, power, or anything else linked to the rifle’s potential to be

23
 24 ¹ “ ‘Prior to 1989, the term “assault weapon” did not exist in the lexicon of
 25 firearms. It is a political term, developed by anti-gun publicists to expand the
 26 category of “assault rifles” so as to allow an attack on as many additional firearms as
 27 possible on the basis of undefined “evil” appearance.’ ” *Stenberg v. Carhart*, 530
 28 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting) (quoting Bruce H. Kobayashi &
 Joseph E. Olson, *In Re 101 California Street: A Legal and Economic Analysis of
 Strict Liability for the Manufacture and Sale of “Assault Weapons”*, 8 Stan. L. &
 Pol’y Rev. 41, 43 (1997)).

² Part 6, Title 4, Division 10, Chapter 2 of the California Penal Code,
 commencing with section 30500.

1 exploited for crime. To the contrary, their purpose is to promote ergonomic comfort,
 2 accuracy, and safe handling—that is, to make the rifles safer and more effective for
 3 the core lawful purpose of self-defense. In sum, California’s prohibition of rifles “in
 4 common use . . . for lawful purposes like self-defense” is based on distinctions that
 5 have nothing to do with public safety or any other valid government objective. *Id.* at
 6 624. That is a policy choice the Second Amendment takes “off the table.” *Id.* at 636.

7 3. The Second Amendment is not the only constitutional provision
 8 implicated by the State’s ban. By retroactively criminalizing firearms that were
 9 lawful when purchased based on arbitrarily selected features—many of which
 10 actually make firearms that are commonly owned and used *safer* and more effective
 11 for self-defense—the AWCA violates the Due Process Clause. *See, e.g., Lingle v.*
 12 *Chevron U.S.A. Inc.*, 544 U.S. 528, 541 (2005); *id.* at 548-49 (Kennedy, J.,
 13 concurring). And by severely constraining the right of firearm owners to transfer
 14 lawfully acquired firearms, and eliminating entirely the right of firearms owners “to
 15 pass on” their lawfully acquired property to their family members or heirs— “one of
 16 the most essential sticks in the bundle of” property rights, which has “been part of
 17 the Anglo-American legal system since feudal times”—without compensation, the
 18 AWCA violates the Takings Clause. *Hodel v. Irving*, 481 U.S. 704, 716 (1987);
 19 *Horne v. Dep’t of Agric.*, 135 S. Ct. 2419, 2425, 2427 (2015).

20 4. The ACWA also imposes distinct constitutional problems as to
 21 individuals who presently lawfully possess firearms that the law classifies as “assault
 22 weapons.” While the AWCA allows for continued possession of certain rifles that
 23 have recently been swept into the “assault weapon” definition, it does so only if those
 24 rifles are properly registered with the State, which requires the registrant to, among
 25 other things, state the date the rifle was acquired and the name and address of the
 26 person or business from whom the rifle was acquired. But neither California nor
 27 federal law required firearm purchasers to keep record of such information when the
 28 firearms in question were purchased, and it is unreasonable to expect people to

1 opposed to “rimfire”) ammunition.⁴ And having a “detachable magazine” means that
 2 the rifle is fed ammunition via a magazine that is not fixed to the rifle.

3 7. There is nothing new or unusually dangerous about semiautomatic,
 4 centerfire rifles with detachable magazines. Such rifles have been in safe and
 5 effective use by civilians in this country—including in California—for over a
 6 century. As a general matter, they remain lawful in all states today.

7 8. Many semiautomatic, centerfire rifles with detachable magazines come
 8 standard with—or can be modified with widely available aftermarket products to
 9 include—particular features designed to promote comfort, safe handling, and
 10 accuracy. As relevant to this case, those features include a “pistol grip” (including a
 11 “forward pistol grip”), a “thumbhole stock,” a “flash suppressor,” and an adjustable
 12 (“telescoping”) stock. *See* Cal. Penal Code § 30515.

13 9. A “pistol grip” allows for a “grasp in which the web of the trigger hand
 14 (between the thumb and index finger) can be placed below the top of the exposed
 15 portion of the trigger while firing.” Cal. Code Regs. tit. 11, § 5469(d). In other
 16 words, a pistol grip allows for a more comfortable and stable grip, which in turn
 17 promotes accuracy when shooting. “By holding the pistol grip, the shooter keeps the
 18 barrel from rising after the first shot, and thereby stays on target for a follow-up shot.
 19 The defensive application is obvious, as is the public safety advantage in preventing
 20 stray shots.” *Kolbe v. Hogan*, 849 F.3d 114, 159 (4th Cir. 2017) (en banc) (Traxler,
 21 J., dissenting) (citing David B. Kopel, *Rational Basis Analysis of “Assault Weapon”*
 22 *Prohibition*, 20 J. Contemp. L. 381, 396 (1994)). A pistol grip also lessens recoil and,

23
 24 ⁴ Ammunition consists of loaded cartridges that have four parts: a primer, case,
 25 propellant (gun powder) and a projectile (bullet or shot). *See* Cal. Penal Code §
 26 16150. When a firing pin strikes the priming compound of a cartridge placed in a
 27 gun’s chamber, the resulting spark ignites the powder charge and the resulting gas
 28 drives the bullet out of the case and then out of the barrel. In a “centerfire” cartridge,
 the priming compound is contained in a cup mechanically positioned in a ‘pocket’ in
 the center of the back end of the cartridge case. In a “rimfire cartridge,” the priming
 compound has been placed on the outside rim of the cartridge case by centrifugal
 force. The clear majority of cartridge types are centerfire; rimfire ammunition
 generally consists of smaller cartridges, *e.g.*, .22LR.

1 by allowing a user to grip the rifle from below rather than from above, minimizes the
 2 chance that a rifle will slip out of the user's hand while firing, further increasing
 3 safety, improving accuracy, and preventing stray shots.⁵

4 10. A "thumbhole stock" allows the thumb of the user's "trigger hand to
 5 penetrate into or through the stock while firing." Cal. Code Regs. tit. 11, § 5469(e).
 6 Like a pistol grip, a thumbhole stock makes it easier for a user to have a more
 7 comfortable and stable grip, which provides for greater accuracy and decreases the
 8 risk of dropping the weapon or firing stray shots.

9 11. A "flash suppressor" is a device designed to "reduce or redirect muzzle
 10 flash"—the sudden flash of light caused by the explosion of gunpowder when a rifle
 11 user fires a shot—"from the shooter's field of vision." Cal. Code Regs. tit. 11, §
 12 5469(b). A "flash suppressor" prevents a rifle user from being blinded in low lighting
 13 conditions, such as at dusk or dawn or during the nighttime. Another function of a
 14 "flash suppressor" is to reduce recoil and muzzle (tip of the barrel) movement,
 15 making the rifle less painful for the user to operate and increasing accuracy.

16 12. An adjustable ("telescoping") stock permits the rifle's user to adjust the
 17 stock forward or backward, making it shorter or longer, according to his or her
 18 specific physical size so that the rifle can be held comfortably.⁶ In other words, its
 19 purpose is to fit the particular user's arm length, making it easier, thus safer, to shoot;
 20 particularly if there are multiple users of different sizes using the same rifle. And,
 21 "there is essentially no difference between a short standard stock and a shortened
 22 retractable stock." *Murphy v. Guerrero*, No. 14-00026, 2016 WL 5508998, at *19
 23 (D. N. Mar. I. Sept. 28, 2016). As long as the rifle does not have an illegally short
 24 overall length⁷ when the adjustable stock is at its most compact setting, a non-

25
 26 ⁵ A "forward pistol grip" serves the same function for the user's forward hand.
 See Cal. Code Regs. tit. 11, § 5469(c).

27 ⁶ California provides no definition for "telescoping stock."

28 ⁷ See Penal Code §§ 33210-33290, 17170 and 18 U.S.C.A. §§ 921(a)(8),
 922(a)(4), 922(b)(4) (heavily restricting any "short-barreled" rifle having an overall
 length of less than 26 inches).

1 adjustable stock can lawfully be just as short.

2 13. In sum, a pistol grip, thumbhole stock, flash suppressor, and adjustable
3 (“telescoping”) stock (as those terms are defined by California regulations) are each
4 designed to make a rifle more comfortable or easier for a user to accurately operate,
5 thereby facilitating the rifle’s safe and effective operation when used for a lawful
6 purpose such as self-defense.

7 14. None of these features increases a rifle’s “rate of fire and capacity for
8 firepower.” Cal. Penal Code § 30505(a). To the contrary, they “actually tend to make
9 rifles easier to control and more accurate—making them safer to use.” *Murphy v.*
10 *Guerrero*, No. 14-00026, 2016 WL 5508998, at *18 (D. N. Mar. I. Sept. 28, 2016).

11 15. Rifles with these features are extremely popular with the American
12 public. Between 1990 and 2014, more than 11 million rifles having at least some of
13 these features were manufactured in or imported into the United States. *See Kolbe v.*
14 *Hogan*, 813 F.3d 160, 174 (4th Cir. 2016), *vacated* 849 F.3d 114 (2017). In 2012,
15 such rifles accounted for approximately 20 percent of all retail firearm sales. And in
16 2014 alone, approximately 1,228,000 such rifles were manufactured or sold in the
17 United States.⁸

18 16. Purchasers consistently report that one of the most important reasons for
19 their purchase of this class of rifle is self-defense. Other lawful and constitutionally
20 protected purposes for these rifles include hunting, competitive shooting, and target
21 shooting.

22 17. Rifles equipped with the banned features are no more dangerous or
23 susceptible to use for criminal purposes than those without them. In recognition of
24 that fact, the vast majority of States place no special restrictions on semiautomatic,
25 centerfire rifles with a detachable magazine for having a pistol grip, thumbhole
26

27 ⁸ To put that in perspective, less than 570,000 Ford F-150 trucks—the best-
28 selling vehicle in the United States—were sold in 2014. Warren Clarke, *Top 10 Best-
Selling Vehicles for 2014*, Edmunds (Jan. 15, 2015), <https://www.edmunds.com/car-reviews/top-10/top-10-best-selling-vehicles-for-2014.html>.

1 stock, flash suppressor, or adjustable stock. Indeed, only five States other than
 2 California (plus the District of Columbia) place restrictions on such rifles, and all
 3 those restrictions are of recent vintage.⁹

4 CALIFORNIA'S ASSAULT WEAPONS CONTROL ACT

5 A. General Principles

6 18. This case concerns what is known, in relevant part, as the Roberti-Roos
 7 Assault Weapons Control Act of 1989, or the AWCA, found at Part 6, Title 4,
 8 Division 10, Chapter 2 of the California Penal Code, commencing with section
 9 30500.¹⁰

10 19. The AWCA generally makes it illegal to manufacture or cause to be
 11 manufactured, distribute, transport, import into the state for sale, keep for sale, offer
 12 or expose for sale, or give, or lend any "assault weapon." A violation is punishable as
 13 a felony by imprisonment for four, six, or eight years. Cal. Penal Code § 30600(a).

14 20. The AWCA also generally prohibits the possession of any "assault
 15 weapon." A violation is punishable as either a misdemeanor or felony with potential
 16 imprisonment in county jail or state prison. *Id.* § 30605(a); *id.* § 1170(h).

17 21. The AWCA includes a few limited exceptions that apply to specific
 18 groups like peace officers, special "dangerous weapons permit" holders,¹¹ executors
 19 of estates, and those specifically licensed to engage in the business of firearms
 20 restricted under the AWCA. *See id.* §§ 30625-30630, 30645-30655, 31000-31005.
 21 The exceptions do not, however, permit possession of an "assault weapon" by a
 22

23 ⁹ Connecticut (Conn. Gen. Stat. Ann. §§ 53-202a - 53-2020); Washington D.C.
 24 (D.C. Code Ann. § 7-2501.01); Maryland (Md. Code Ann., Crim. Law § 4-301);
 25 Massachusetts (Mass. Gen. Laws Ann. ch. 140, § 121); New Jersey (N.J. Stat. Ann. §
 26 2C:39-1(w)); and New York (N.Y. Penal Law § 265.00(22)).

27 ¹⁰ These statutes are also known as the ".50 Caliber BMG Regulation Act of
 28 2004." The firearms impacted by the provisions of that Act, although appearing in
 the same statutes as "assault weapons," are not at issue in this litigation.

¹¹ This permit is generally issued only to those in the business of selling or
 transferring such firearms, and only upon demonstrating a bona fide market or public
 necessity for the issuance of such a permit in their application to the Department of
 Justice. *See* Cal. Code Regs, tit. 11, §§ 4132-4137.

1 member of the general public.

2 22. As discussed further below, there is an exception to the general
3 restriction on “possessing” an “assault weapon” for anyone who lawfully acquired a
4 firearm prior to the legislature classifying that firearm as an “assault weapon,”
5 provided the firearm was registered with the California Department of Justice (“the
6 California DOJ”) as an “assault weapon” during the statutorily mandated registration
7 period. *Id.* § 30900. Firearms exempted from the ban by these “grandfathering”
8 provisions, however, generally cannot be transferred to ordinary private citizens in
9 California, including members of the owner’s family upon the death of the owner.
10 They can only be transferred to specified law enforcement agencies and personnel,
11 certain “dangerous weapon” permit holders, or those who reside out of state. *Id.* §§
12 30625, 30645, 30650, 31055, 31100. Thus, lawful possession of timely registered
13 grandfathered “assault weapons” is effectively confined to the lifetime of the current
14 owner, after which the executor of the estate must dispose of them as described in the
15 preceding sentence or law enforcement will confiscate them.

16 **B. Definition of “Assault Weapon”**

17 23. The class of firearms that California defines as “assault weapons” has
18 evolved (and expanded) several times since the AWCA was first enacted in 1989.

19 24. As originally written, the AWCA expressly declared over 55 firearms,
20 listed by make and model, to be “assault weapons.” Those firearms include the
21 “Avtomat Kalashnikovs (AK) series,” the “Colt AR-15 and AR-15 series” rifles, the
22 “SKS with detachable magazine,” and any firearm declared an “assault weapon” by a
23 court under Penal Code section 30520 (former Penal Code section 12276.5).¹² *See*
24 *Assemb. B. 357, 1989-1990 Reg. Sess. (Cal. 1989), 1989 Cal. Stat. 64-65.*

25 ***Category 1 Assault Weapons***

26 25. In 1991, the Legislature amended the AWCA to add several new

27 ¹² In 2010, the legislature reorganized without substantive change all the Penal
28 Code sections relating to “deadly weapons,” including those relating to “assault
weapons.” *See* Sen. B. 1080, 2009-2010 Reg. Sess. (Cal. 2010).

1 firearms to the list of restricted “assault weapons,” including “Made in China AK,
 2 AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S.” *See* Cal. Penal Code § 30510
 3 (former Cal. Penal Code § 12276 (1992)) (added by Sen. B. 263, 1991-1992 Reg.
 4 Sess. (Cal. 1991), 1991 Cal. Stat. 4440-41). The “Avtomat Kalashnikovs (AK)
 5 series” and “CAR-15 series” were removed, while the provision banning the “Colt
 6 AR-15 series” remained. *See id.* And “[a]ll AK series” were added to the list. *See id.*
 7 This list of firearms commonly became known as “Category 1” “assault weapons.”

8 26. Category 1 “assault weapons” were required to be registered on or
 9 before March 31, 1992, following an extension after the 1991 amendment. *See* Cal.
 10 Penal Code § 30960(a) (former Cal. Penal Code § 12285(f) (1992)). It is no longer
 11 possible to register a Category 1 “assault weapon” and, therefore, no longer possible
 12 for the public to acquire one. Individuals who still possess a Category 1 “assault
 13 weapon” can only legally do so if the firearm was properly registered by the
 14 applicable deadline. And as explained above, registered owners of Category 1
 15 “assault weapons” cannot transfer them to ordinary private citizens within California,
 16 even their own family members upon their death.

17 ***Category 2 Assault Weapons***

18 27. In 2000, the California Supreme Court explained the legal requirements
 19 for adding a firearm to the list of “assault weapons.” *Kasler v. Lockyer*, 23 Cal. 4th
 20 472 (2000). Immediately following this decision, the California DOJ added more
 21 than 60 AR-15 and AK “series” firearms to that list. These firearms are commonly
 22 referred to as “Category 2 assault weapons.”

23 28. The list of rifles that the California DOJ deemed “assault weapons” as
 24 “series” makes and models, or Category 2 “assault weapons” can be found at 11
 25 C.C.R. § 5499. In 2006, the legislature repealed the California DOJ’s authority to
 26 add firearms to the list of “assault weapons” identified in 11 C.C.R. § 5499. *See* Cal.
 27 Penal Code § 30520 (former Cal. Penal Code § 12276.5) (added by Assemb. B.
 28 2718, 2005-2006 Reg. Sess. (Cal. 2006), 2006 Cal. Stat. 6342-43). Thus, the list of

1 firearms deemed “assault weapons” by make and model in Penal Code section 30510
2 or 11 C.C.R. § 5499 (Category 1 or Category 2 “assault weapons”) is now static.¹³

3 29. Category 2 “assault weapons” were required to be registered on or
4 before January 23, 2001. It is no longer possible to register a Category 2 “assault
5 weapon” and, therefore, no longer possible for the public to acquire one. Individuals
6 who still possess a Category 2 “assault weapon” can only legally do so if it was
7 properly registered by the applicable deadline. And as explained above, registered
8 owners of Category 2 assault weapons cannot transfer them to ordinary private
9 citizens within California, even their own family members upon their death.

10 ***Category 3 Assault Weapons***

11 30. In 1999, the legislature again amended the AWCA to further expand the
12 definition of “assault weapon.” Unlike Category 1 and Category 2 “assault
13 weapons,” which are expressly listed by make and model, this time the legislature
14 classified a firearm as an “assault weapon” based on its features and configuration.
15 See Cal. Penal Code § 30515 (former Cal. Penal Code § 12276.1) (added by Sen. B.
16 123, 1999-2000 Reg. Sess. (Cal. 1999), 1999 Cal. Stat. 1805-06). Firearms meeting
17 this definition are commonly referred to as “Category 3” “assault weapons.”

18 31. Category 3 “assault weapons” include:

19 (a) (1) A semiautomatic, centerfire rifle ***that has the***
20 ***capacity to accept a detachable magazine and any***
21 ***one of the following:***

22 (A) A pistol grip that protrudes conspicuously
beneath the action of the weapon.

23 (B) A thumbhole stock.

24 (C) A folding or telescoping stock.

25 (D) A grenade launcher or flare launcher.
26

27
28 ¹³ See Assault Weapons Identification Guide, California Attorney General,
<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/awguide.pdf> (3d Ed.,
Nov. 2001).

1 (E) A flash suppressor.

2 (F) A forward pistol grip.

3 (2) A semiautomatic, centerfire rifle that has a
4 fixed magazine with the capacity to accept more than
5 10 rounds.

6 (3) A semiautomatic, centerfire rifle that has an
7 overall length of less than 30 inches.

8 (4) A semiautomatic pistol *that has the capacity
9 to accept a detachable magazine and any one of the
10 following:*

11 (A) A threaded barrel, capable of accepting a
12 flash suppressor, forward handgrip, or
13 silencer.

14 (B) A second handgrip.

15 (C) A shroud that is attached to, or partially or
16 completely encircles, the barrel that allows the
17 bearer to fire the weapon without burning the
18 bearer's hand, except a slide that encloses the
19 barrel.

20 (D) The capacity to accept a detachable
21 magazine at some location outside of the pistol
22 grip.

23 (5) A semiautomatic pistol with a fixed magazine
24 that has the capacity to accept more than 10 rounds.

25 (6) A semiautomatic shotgun that has both of the
26 following:

27 (A) A folding or telescoping stock.

28 (B) A pistol grip that protrudes conspicuously
beneath the action of the weapon, thumbhole
stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability
to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

Cal. Penal Code § 30515.

32. In 2000, the California DOJ promulgated regulations, defining the

1 following key terms for Category 3 “assault weapons”: (a) “Detachable magazine;”
 2 (b) “Flash suppressor;” (c) “Forward pistol grip;” (d) “Pistol grip that protrudes
 3 conspicuously beneath the action of the weapon;” and (e) “Thumbhole stock.” Cal.
 4 Code Regs. tit. 11, § 5469.

5 33. Category 3 “assault weapons” were required to be registered on or
 6 before December 31, 2000. It is no longer possible to register a Category 3 “assault
 7 weapon” and, therefore, no longer possible for the public to acquire one. Individuals
 8 who still possess a Category 3 “assault weapon” can only legally do so if it was
 9 properly registered by the applicable deadline. And as explained above, registered
 10 owners of Category 3 “assault weapons” cannot transfer them to ordinary private
 11 citizens within California, even their own family members upon their death.

12 ***Category 4 Assault Weapons***

13 34. Because Category 3 assault weapons must have “the capacity to accept a
 14 detachable magazine,” Cal. Penal Code § 30505, rifle owners who preferred to keep
 15 safety and accuracy-enhancing features like a pistol grip, thumbhole stock, flash
 16 suppressor, or adjustable stock (which would otherwise be banned under the
 17 Category 3 definition) could avoid categorization as a Category 3 “assault weapon”
 18 by disabling their rifle’s capacity to accept a detachable magazine. To do so, they
 19 typically retrofitted their firearms with an aftermarket product generally referred to
 20 as a “magazine lock.”

21 35. Whereas the standard magazine release for a “detachable magazine”
 22 operates with the push of a finger, the typical “magazine lock” replaces the standard
 23 one-piece magazine release button with a two-piece assembly that cannot be operated
 24 with just the push of a finger; rather, a tool is needed to reach the button to release
 25 the magazine so it can be removed. The most common “tool” used to remove the
 26 magazine is the tip of a bullet, and a bullet is expressly considered a “tool” under
 27 California Code of Regulations, title 11, section 5469(a). Because a tool is needed to
 28 release the magazine, and because California considers a magazine not to be

1 “detachable” if a “tool” is required to remove it from the firearm, a firearm with a
 2 “magazine lock” does not qualify as having “the capacity to accept a detachable
 3 magazine.” Therefore, prior to 2017, firearms with a “magazine lock” did not fall
 4 within the “assault weapon” definition, and could accordingly be equipped with
 5 safety- and accuracy-enhancing features like a pistol grip, thumbhole stock, flash
 6 suppressor, or adjustable stock.

7 36. In 2016, the Legislature introduced Assembly Bill 1135 and Senate Bill
 8 880, which once again changed the “assault weapon” definitions for rifles and pistols
 9 (but not shotguns). The purpose of these bills was to make equipping a pistol or rifle
 10 with a “magazine lock” an insufficient alteration to take that firearm outside the
 11 definition of an “assault weapon.” *See* Assemb. B. 1135, 2015-2016 Reg. Sess. (Cal.
 12 2016); Sen. B. 880, 2015-2016 Reg. Sess. (Cal. 2016).

13 37. Specifically, the Legislature amended the definition of “assault weapon”
 14 in Penal Code section 30515 as follows:

15 (a) (1) A semiautomatic, centerfire rifle ***that does not***
 16 ***have a fixed magazine but has any one of the***
 17 ***following:***

18 (A) A pistol grip that protrudes conspicuously
 19 beneath the action of the weapon.

20 (B) A thumbhole stock.

21 (C) A folding or telescoping stock.

22 (D) A grenade launcher or flare launcher.

23 (E) A flash suppressor.

24 (F) A forward pistol grip.

25

26 (4) A semiautomatic pistol ***that does not have a***
 27 ***fixed magazine but has any one of the following:***

28 (A) A threaded barrel, capable of accepting a
 flash suppressor, forward handgrip, or
 silencer.

1 (B) A second handgrip.

2 (C) A shroud that is attached to, or partially or
3 completely encircles, the barrel that allows the
4 bearer to fire the weapon without burning the
5 bearer's hand, except a slide that encloses the
6 barrel.

7 (D) The capacity to accept a detachable
8 magazine at some location outside of the pistol
9 grip.

10 (b) *For purposes of this section, "fixed magazine"*
11 *means an ammunition feeding device contained in, or*
12 *permanently attached to, a firearm in such a manner that*
13 *the device cannot be removed without disassembly of the*
14 *firearm action.*

15 Cal. Penal Code § 30515 (subdivisions (a)(1), (a)(4), and (b) are emphasized to
16 underscore the only changes made to the definition of "assault weapon" from 2016 to
17 2017).

18 38. Firearms now classified as "assault weapons" as a result of Assembly
19 Bill 1135 and Senate Bill 880 are being referred to as "Category 4" "assault
20 weapons." The sale or transfer of a Category 4 "assault weapon" is prohibited as of
21 January 1, 2017. Thus, it is no longer possible to acquire a Category 4 (or any)
22 "assault weapon" in California.

23 39. Individuals who currently possess a Category 4 "assault weapon" can
24 only legally do so if they lawfully acquired and possessed it before January 1, 2017,
25 and they must register such firearms by December 31, 2017. It will be illegal to
26 possess an unregistered Category 4 "assault weapon" after December 31, 2017, even
27 if that firearm was lawfully acquired. Like registered owners of earlier-designated
28 "assault weapons," registered owners of Category 4 "assault weapons" cannot
transfer them to ordinary private citizens within California, even their own family
members upon their death.

29 ***Registration of Category 4 Assault Weapons***

40. Previous "assault weapon" registrations required "a description of the

1 firearm that identifies it uniquely, including all identification marks, the full name,
 2 address, date of birth, and thumbprint of the owner, and any other information that
 3 the department may deem appropriate.” Former Cal. Penal Code § 30900, subd. (c)
 4 (2012-2016); Former Penal Code § 12285, subd. (a) (2009-2011). While DOJ
 5 initially sought to promulgate regulations requiring the registrant to include the date
 6 the “assault weapon” was acquired and the address of the person or entity from
 7 whom it was acquired, following several public hearings and a 45-day public
 8 comment period, DOJ amended those proposed regulations to state that such
 9 information is “to be provided if known,” and that “the name and address of the
 10 person or firearms dealership from whom the assault weapon was acquired is
 11 optional.”¹⁴

12 41. Nevertheless, with AB 1135 and SB 880 the Legislature amended Penal
 13 Code section 30900, subdivision (b), to include:

14 The registration shall contain a description of the firearm
 15 that identifies it uniquely, including all identification marks,
 16 *the date the firearm was acquired, the name and address*
 17 *of the individual from whom, or business from which, the*
 18 *firearm was acquired*, as well as the registrant's full name,
 19 address, telephone number, date of birth, sex, height, weight,
 20 eye color, hair color, and California driver's license number
 21 or California identification card number.

22 Cal. Penal Code § 30900, subd. (b)(3) (emphasized to underscore the changes made
 23 to the registration content requirements from 2016 to 2017). This now makes it a
 24 requirement, not a suggestion, to include the date the “assault weapon” was acquired
 25 and the address of the person or entity from whom it was acquired.

26 **C. Summary of Assault Weapons Regulation**

27 42. As a result of the Category 4 “assault weapon” definition, a rifle that

28 ¹⁴ *Department of Justice Regulations for Assault Weapons and Large Capacity
 Magazines: Final Statement of Reasons*, California Department of Justice,
<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/fsor.pdf> (last visited June
 22, 2017); See 11 C.C.R. § 5469

1 does *not* have a fixed magazine is an “assault weapon” if it has any of the statutorily
2 enumerated features (pistol grip, thumbhole stock, flash suppressor, or adjustable
3 stock), but a rifle that *does* have a fixed magazine is *not* an assault weapon even if it
4 has all of those features.

5 43. A Category 3 or Category 4 “assault weapon” can be modified so that it
6 no longer meets the “assault weapon” definition by removing the features that
7 qualify it as one. These modified firearms would not need to be registered and may
8 be lawfully possessed, used, or transferred, subject only to California’s general
9 firearm laws. For example, the owner of a generic AR-15 platform rifle could
10 remove the “pistol grip” and “flash suppressor” and permanently affix the stock so it
11 is not adjustable; the firearm would then be considered a standard rifle under
12 California law and not an “assault weapon.”

13 44. That is not the case, however, with Category 1 or Category 2 “assault
14 weapons” (those expressly listed by make and model in Penal Code section 30510 or
15 11 C.C.R. § 5499). They remain “assault weapons” forever, regardless of their
16 features, must be registered, and cannot generally be transferred.

17 45. There are two noteworthy practical effects of this distinction between
18 Category 1 and 2 “assault weapons” and Category 3 and 4 “assault weapons.” First,
19 rifles that are essentially identical in function, configuration, features, design, caliber,
20 rate of fire, and ammunition capacity, can have drastically different treatment under
21 the law, solely because of what maker’s marks the rifles have etched onto their
22 surface. For example, a rifle with “Colt AR-15” engraved on it that does not have a
23 “pistol grip” or “flash suppressor” and has a fixed (non-adjustable) stock is still an
24 “assault weapon,” while a rifle in the same configuration with “Illegal Assault
25 Weapon” engraved on it is not. Second, the rifle marked “Illegal Assault Weapon”
26 could legally have a “detachable magazine” and not be an “assault weapon,” as long
27 as it does not have other restricted features, while the rifle marked “Colt AR-15”
28 could have a fixed magazine and would still be an “assault weapon.”

1 would assemble his firearm frame into such a configuration, which rifle he would use
2 for self-defense and for other lawful purposes.

3 49. Plaintiff Steven Dember is a resident of Orange County, California, and
4 a law-abiding citizen of the United States. Plaintiff Dember seeks to acquire a rifle
5 that is prohibited by the AWCA to keep in his home for self-defense and other lawful
6 purposes, like hunting, training, and recreation. But for the AWCA and his fear of
7 prosecution for violating it, Plaintiff Dember would acquire a semiautomatic,
8 centerfire rifle with a detachable magazine, having one or more of the features that
9 would make it a prohibited “assault weapon” under California law.

10 50. Plaintiff Cheryl Johnson is a resident of Orange County, California, and
11 a law-abiding citizen of the United States. Plaintiff Johnson seeks to acquire a rifle
12 that is prohibited by the AWCA to keep in her home for self-defense and other
13 lawful purposes, like hunting, training, and recreation. But for the AWCA and her
14 fear of prosecution for violating it, Plaintiff Johnson would acquire a semiautomatic,
15 centerfire rifle with a detachable magazine, having one or more of the features that
16 would make it a prohibited “assault weapon” under California law.

17 51. Plaintiff Michael Jones is a resident of Orange County, California and a
18 law-abiding citizen of the United States. Mr. Jones lawfully owns a semiautomatic,
19 centerfire rifle which he keeps in his home for self-defense and for other lawful
20 purposes, such as hunting and recreation. Mr. Jones’ rifle is deemed an “assault
21 weapon” based on the rifle’s features under the latest amendment to the AWCA (it is
22 a Category 4 “assault weapon”). As such, he must register the firearm as an “assault
23 weapon” before January 1, 2018, for his possession of it in that configuration to
24 continue to be lawful, which he intends to do. Upon so registering it, Plaintiff Jones
25 will not be able to devise or transfer his rifle in that configuration to his offspring or
26 otherwise devise or transfer his property to law-abiding Californians. But for this
27 restriction and fear of prosecution for violating the AWCA, Plaintiff Jones would
28 devise or transfer his rifle to his offspring.

1 52. Plaintiff Christopher Seifert is a resident of Orange County, California
2 and a law-abiding citizen of the United States. Mr. Seifert lawfully owns a registered
3 semi-automatic centerfire rifle with a detachable magazine, which he keeps in his
4 home for self-defense and for other lawful purposes, such as hunting and recreation.
5 Mr. Seifert's rifle is deemed an "assault weapon" under California law because it has
6 a detachable magazine and at least one prohibited feature (it is a Category 3 "assault
7 weapon"). As such, Plaintiff Seifert cannot devise or transfer his rifle to offspring or
8 otherwise devise or transfer his property to law-abiding Californians. But for this
9 restriction and fear of prosecution for violating the AWCA, Plaintiff Seifert would
10 devise or transfer his rifle to his offspring. Mr. Seifert also owns a firearm frame or
11 "lower receiver" that he wishes to assemble into a fully functioning semiautomatic,
12 centerfire rifle with a detachable magazine that has a pistol grip, flash suppressor,
13 and adjustable stock. As a result of the AWCA, he is prohibited from assembling his
14 firearm frame into a semiautomatic, centerfire rifle that has a non-fixed magazine
15 and a pistol grip, flash suppressor, or adjustable stock. But for this restriction and
16 fear of prosecution for violating the AWCA, Mr. Seifert would assemble his firearm
17 frame into such a configuration, which rifle he would use for self-defense and for
18 other lawful purposes.

19 53. Plaintiff Alfonso Valencia is a resident of Orange County, California, a
20 law-abiding citizen of the United States, and former Los Angeles Deputy Sheriff.
21 Plaintiff Valencia seeks to acquire a rifle that is prohibited by the AWCA to keep in
22 his home for self-defense and other lawful purposes, like hunting, training, and
23 recreation. But for the AWCA and his fear of prosecution for violating it, Plaintiff
24 Valencia would acquire a semiautomatic, centerfire rifle with a detachable magazine,
25 having one or more of the features that would make it a prohibited "assault weapon"
26 under California law.

27 54. Plaintiff Troy Willis is a resident of Riverside County, California and a
28 law-abiding citizen of the United States, and a retired reserve officer for the Indio

1 Police Department. Mr. Willis lawfully owns a registered semiautomatic centerfire
2 rifle with a detachable magazine, which he keeps in his home for self-defense and for
3 other lawful purposes, such as hunting and recreation. Mr. Willis' rifle is deemed an
4 "assault weapon" under California law because it has a detachable magazine and at
5 least one prohibited feature (it is a Category 3 "assault weapon"). As such, Plaintiff
6 Willis cannot devise or transfer his rifle to his offspring or otherwise devise or
7 transfer his property to law-abiding Californians. But for this restriction and fear of
8 prosecution for violating the AWCA, Plaintiff Willis would devise or transfer his
9 rifle to his offspring.

10 55. Plaintiff Douglas Grassey is a resident of San Diego County, California
11 and a law-abiding citizen of the United States. Mr. Grassey lawfully owns a rifle that
12 is deemed an "assault weapon" under the AWCA's new definition (it is a Category 4
13 "assault weapon"), which he keeps in his home for self-defense and for other lawful
14 purposes, such as hunting and recreation. Mr. Grassey will not be able to meet the
15 AWCA's registration requirements because he does not know and has no readily
16 available source to discover: (1) the exact date he acquired the rifle; or (2) the name
17 or address of the individual or business from whom he acquired the rifle. Nor was he
18 legally required to maintain a record of such information when he obtained the rifle,
19 information that he could not reasonably be expected to remember.

20 56. Plaintiff Dennis Martin is a resident of Kern County, California and a
21 law-abiding citizen of the United States. Mr. Martin lawfully owns a rifle that is
22 deemed an "assault weapon" under the AWCA's new definition (it is a Category 4
23 "assault weapon"), which he keeps in his home for self-defense and for other lawful
24 purposes, such as hunting and recreation. Mr. Martin will not be able to meet the
25 AWCA's registration requirements because he does not know and has no readily
26 available source to discover: (1) the exact date he acquired the rifle; or (2) the name
27 or address of the individual or business from whom he acquired the rifle. Nor was he
28 legally required to maintain a record of such information when he obtained the rifle,

1 information that he could not reasonably be expected to remember.

2 57. Each of the individual Plaintiffs identified above is eligible under the
3 laws of the United States and of the State of California to receive and possess
4 firearms.

5 58. Plaintiff California Rifle & Pistol Association, Inc. (“CRPA”), is a
6 nonprofit membership and donor-supported organization qualified as tax-exempt
7 under 26 U.S.C. § 501(c)(4) with its headquarters in Fullerton, California. Founded
8 in 1875, CRPA seeks to defend the civil rights protected under the Second
9 Amendment of all law-abiding individuals, including the fundamental right to
10 acquire, possess, use, and transfer firearms.

11 59. CRPA also provides guidance to California gun owners regarding their
12 legal rights and responsibilities. In addition, CRPA is dedicated to promoting the
13 shooting sports and providing education, training, and organized competition for
14 adult and junior shooters. CRPA members come from virtually all walks of life,
15 including law enforcement officers, professionals, firearm experts, and many others.

16 60. In this suit, CRPA represents the interests of the tens of thousands of its
17 members who reside in the State of California, including Orange County, who are
18 too numerous to conveniently bring this action individually, and who are impacted
19 by California’s “assault weapon” laws. CRPA members wish to exercise their
20 constitutionally protected Second Amendment right to keep and bear arms without
21 being subjected to criminal prosecution. There are countless CRPA members who
22 are, or will be, eligible for lawful firearm ownership in California who, but for the
23 AWCA and fear of prosecution for violating it, would acquire, assemble, or import to
24 possess in their homes for self-defense and other lawful purposes, a semiautomatic,
25 centerfire rifle with a detachable magazine and a “pistol grip,” “flash suppressor,”
26 “thumbhole stock,” or adjustable stock. There are also CRPA members who already
27 lawfully possess such firearms and would, but for the AWCA and fear of prosecution
28 for violating it, transfer them to offspring or other law-abiding Californians. Finally,

1 some CRPA members who already legally possess these rifles will not be able to
2 meet the AWCA's registration requirements because they do not know and do not
3 have any readily available source to discover: (1) the exact date they acquired the
4 rifle; or (2) the name or address of the individual or business from whom they
5 acquired the rifle. Nor were they legally required to maintain a record of such
6 information when they obtained their rifles—information they could not reasonably be
7 expected to remember.

8 **Defendants**

9 61. Defendant Xavier Becerra is the Attorney General of California. He is
10 the chief law enforcement officer of California. Defendant Becerra is charged by
11 Article V, Section 13 of the California Constitution with the duty to see that the laws
12 of California are uniformly and adequately enforced. Defendant Becerra also has
13 direct supervision over every district attorney and sheriff in all matters pertaining to
14 the duties of their respective officers. Defendant Becerra's duties also include
15 informing the public, local prosecutors, and law enforcement regarding the meaning
16 of the laws of the State, including restrictions on certain firearms classified as
17 "assault weapons." He is sued in his official capacity.

18 62. The true names or capacities, whether individual, corporate, associate or
19 otherwise of the Defendants named herein as Does 1-10, are presently unknown to
20 Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs pray
21 for leave to amend this Complaint to show the true names or capacities of these
22 Defendants if and when the same have been determined.

23 63. Defendants Becerra and Does 1-10 are responsible for formulating,
24 executing, and administering California's "assault weapons" laws at issue in this
25 lawsuit and are in fact presently enforcing them.

26 64. Defendants enforce California's "assault weapon" laws against
27 Plaintiffs and other California citizens under color of state law within the meaning of
28 42 U.S.C. § 1983.

JURISDICTION AND VENUE

65. The Court has original jurisdiction of this civil action under 28 U.S.C. § 1331 because the action arises under the Constitution and laws of the United States, thus raising federal questions. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs, and usages of the State of California and political subdivisions thereof, of rights, privileges or immunities secured by the United States Constitution and by Acts of Congress.

66. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys' fees is authorized under 42 U.S.C. § 1988.

67. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

GENERAL ALLEGATIONS

[Right to Keep and Bear Arms]

68. The Second Amendment to the United States Constitution declares that "the right of the people to keep and bear arms shall not be infringed." U.S. Const. amend. II.

69. The United States Supreme Court has concluded (thrice) that "[s]elf-defense is a basic right, recognized by many legal systems from ancient times to the present day, and . . . individual self-defense is 'the central component' of the Second Amendment right." *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (quoting *Heller*, 554 U.S. at 599, 628); *see also Caetano v. Massachusetts*, -- U.S. --, 136 S. Ct. 1027 (2016). The Court has held that "a prohibition of an entire class of 'arms' that is overwhelmingly chosen by American society" is unconstitutional, especially when that prohibition extends "to the home, where the need for defense of self, family, and property is most acute." *Heller*, 554 U.S. at 628.

70. The “arms” protected by the Second Amendment are those “typically possessed by law-abiding citizens for lawful purposes” today. *Id.* at 624-25; *see also*, *e.g.*, *Caetano*, 136 S. Ct. at 1027-28. The Court has specifically explained that semiautomatic rifles, including ones prohibited by California, “traditionally have been widely accepted as lawful possessions.” *Staples*, 511 U.S. at 612.

71. The Supreme Court has also held that the Second Amendment right to keep and bear arms is incorporated into the Due Process Clause of the Fourteenth Amendment and so may not be infringed by state and local governments. *McDonald*, 561 U.S. at 750.

[Due Process Clause]

72. The Due Process Clause of the Fourteenth Amendment provides that “No state shall ... deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV.

73. “The touchstone of due process is protection of the individual against arbitrary action of government.” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *see, e.g., Cty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (collecting cases). Thus, a statute that deprives an individual of life, liberty, or property arbitrarily or irrationally—that is, without serving “any legitimate governmental objective”—violates the Due Process Clause. *Lingle*, 544 U.S. at 542.

74. Legislation that changes the law retroactively—making illegal conduct that was legal when undertaken—is especially likely to run afoul of the Due Process Clause. *See Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17 (1976); *E. Enterprs. v. Apfel*, 524 U.S. 498, 547-550 (1998) (Kennedy, J., concurring in part and dissenting in part). “If retroactive laws change the legal consequences of transactions long closed, the change can destroy the reasonable certainty and security which are the very objects of property ownership. As a consequence, due process protection for property must be understood to incorporate our settled tradition against retroactive laws of great severity.” *Id.* at 548-49.

75. A law that deprives an owner of private property without a legitimate justification violates the Due Process Clause regardless of whether it also violates the Takings Clause. *See Lingle*, 544 U.S. at 541-42; *id.* at 548-49 (Kennedy, J., concurring).

[Takings Clause]

76. The Takings Clause of the Fifth Amendment provides “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. The Takings Clause applies against the States through the Fourteenth Amendment. *See Lingle*, 544 U.S. at 536.

77. The Takings Clause protects against two kinds of governmental takings: a direct “physical appropriation” of “an interest in property,” and “a restriction on the use of property,” which is known as a “regulatory taking.” *Horne*, 135 S. Ct. at 2425, 2427 (2015). “When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 535 U.S. 302, 322 (2002). Likewise, a regulation that “goes too far”—for example, by depriving a landowner of economically beneficial use or otherwise “interfer[ing] with legitimate property interests”—requires just compensation. *Lingle*, 544 U.S. at 537-39.

78. Among the many protected “interest[s] in property” is “the right to pass on property—to one’s family in particular” after death. *Hodel*, 481 U.S. at 716. The right to devise property is “one of the most essential sticks in the bundle of” property rights and cannot be “completely abolished” by the government without compensation. *Id.* at 716-17.

[Violation of Plaintiffs' Right to Keep and Bear Arms]

79. Semiautomatic, centerfire rifles with a detachable magazine, including those that the AWCA expressly prohibits by make and model, are arms “typically possessed by law-abiding citizens for lawful purposes” throughout the United States.

1 *Heller*, 554 U.S. at 624-25.

2 80. Most of the features prohibited on semiautomatic, centerfire rifles with a
3 detachable magazine by Penal Code section 30515(a)(1)—a “pistol grip,” a “flash
4 suppressor,” and a “thumbhole stock” or adjustable stock, or any combination of
5 these features (as those terms are defined in California Code of Regulations, title 11,
6 section 5469)—are standard on rifles that are “typically possessed by law-abiding
7 citizens for lawful purposes,” *Heller*, 554 U.S. at 624-25, throughout the United
8 States.¹⁶

9 81. No public interest is furthered by prohibiting these common rifle
10 features, or by prohibiting any of the commonly possessed rifles that California
11 expressly lists as “assault weapons” by make and model on the ground that they have
12 such features. None of these features makes the rifles more dangerous, raises their
13 likelihood of use in crimes, or increases the power, rate of fire, or ammunition
14 capacity of a semiautomatic, centerfire rifle with a detachable magazine. To the
15 contrary, these features enhance public safety by making rifles safer, more accurate,
16 and more effective for use in self-defense.

17 82. Semiautomatic, centerfire rifles with an overall length of 26 inches or
18 more are arms “typically possessed by law-abiding citizens for lawful purposes”
19 throughout the United States. *Heller*, 554 U.S. at 624-25. The AWCA uniquely (with
20 the sole exception of Connecticut) bars any such rifles under 30 inches, regardless of
21 their magazine system, ammunition capacity, or features. In doing so, it bans
22 countless rifles of lengths that are common and generally accepted for lawful
23 purposes throughout the country.¹⁷

24 _____
25 ¹⁶ Plaintiffs do not assert that “grenade launchers,” listed as a prohibited
26 feature under California’s definition of an “assault weapon,” are in common use or
27 otherwise protected under the Second Amendment. Such devices are restricted as
28 “destructive devices” under California law, the possession of which is generally
prohibited irrespective of California’s “assault weapon” restrictions. *See* Cal. Penal
Code §§ 16460(a)(2), 18710. Those laws are not challenged here.

¹⁷ Penal Code § 30515(a)(3); *see* Penal Code §§ 33210-33290, 17170 and 18
U.S.C.A. §§ 921(a)(8), 922(a)(4), 922(b)(4) (heavily restricting any “short-barreled”

83. The AWCA's registration requirement further violates Plaintiffs' Second Amendment rights. Plaintiffs, like thousands of other Californian residents, already own rifles that have now been retroactively classified as "assault weapons," and that they may continue to possess only if they timely register them with the State. In order to do so, however, Plaintiffs must provide detailed information including the date that they acquired the rifle and the name and address of the person or business from whom they received. Plaintiffs and other Californians covered by this grandfathering provision may have possessed their rifles for many years and were not required to keep any record of those details at the time of the acquisitions. Accordingly, those individuals who did not keep records, like Plaintiffs Grassey and Martin and countless members of Plaintiff CRPA, now have no means of complying with the registration condition the State has now retroactively imposed on acquisitions that were long ago conducted in accordance with all then-applicable law.

84. By conditioning Plaintiffs' continued possession of firearms protected by the Second Amendment on a registration requirement with which they do not have the means to comply and should not reasonably be expected to, the AWCA violates Plaintiffs' Second Amendment rights.

[Violation of Plaintiffs' Right to Due Process]

85. The AWCA violates Plaintiffs' rights under the Due Process Clause because it deprives them of protected property interests—namely, the possession and transfer of otherwise-lawful rifles—without due process of law. The due process concerns are heightened here because the ban applies retroactively to eliminate property rights (including the right to transfer or devise the rifles to a family member in California) that existed at the time the rifles were purchased. *See E. Enterprs.*, 524 U.S. at 547-550 (Kennedy, J., concurring in part and dissenting in part).

86. The ban violates Plaintiffs' due process rights because it imposes

rifle having an overall length of less than 26 inches). Plaintiffs do not challenge these "short-barreled" rifle restrictions, but only California's prohibition on semiautomatic centerfire rifles with an overall length of under 30 inches and over 26 inches.

1 prohibitions and restrictions that have nothing to do with furthering any permissible
2 governmental objective. *Lingle*, 544 U.S. at 542. Moreover, the ban draws arbitrary
3 distinctions, prohibiting rifles that have the statutorily enumerated features in
4 combination with a non-fixed magazine while permitting rifles that have the exact
5 same statutorily enumerated features in combination with a fixed magazine, and
6 prohibiting rifles with a fixed magazine due to their maker's marks, regardless of
7 their features, while permitting effectively identical rifles with non-fixed magazines,
8 as long as they do not have the prohibited features.

9 87. The AWCA's registration requirement further violates Plaintiffs' due
10 process rights. Plaintiffs, like thousands of other Californian residents, already own
11 rifles that have now been retroactively classified as "assault weapons," and that they
12 may continue to possess only if they timely register them with the State. In order to
13 do so, however, Plaintiffs must provide detailed information including the date that
14 they acquired the rifle and the name and address of the person or business from
15 whom they received it. Plaintiffs and other Californians covered by this
16 grandfathering provision have possessed their rifles for many years and were not
17 required to keep any record of those details at the time of the acquisitions.
18 Accordingly, those individuals who did not keep records, like Plaintiffs Grassey and
19 Martin and countless members of Plaintiff CRPA, now have no means of complying
20 with the registration condition the State has now retroactively imposed on
21 acquisitions that were long ago conducted in accordance with all then-applicable law.

22 88. By conditioning Plaintiffs' continued possession of their rifles on a
23 registration requirement with which they do not have the means to comply and
24 should not reasonably be expected to, the AWCA arbitrarily deprives Plaintiffs of
25 property and liberty interests in violation of the Due Process Clause.

26 **[Violation of the Plaintiffs' Rights Under the Takings Clause]**

27 89. The AWCA violates Plaintiffs' rights under the Takings Clause. Not
28 only does the law severely constrain Plaintiffs' rights to transfer their lawfully

1 acquired rifles property during their lifetimes; it requires them upon their death to
2 physically surrender to the government (or a tiny category of people permitted by the
3 government to possess dangerous weapons) lawfully acquired rifles that they would
4 otherwise devise to their children or heirs. The law thus deprives Plaintiffs of their
5 property rights—indeed, destroys “one of the most essential sticks in the bundle of”
6 property rights—without compensation. *Hodel*, 481 U.S. at 716; *see Horne*, 135 S.
7 Ct. at 2427; *Lingle*, 544 U.S. at 537-39.

8 90. The AWCA’s registration requirement further violates the Taking
9 Clause. Plaintiffs, like thousands of other Californian residents, already own rifles
10 that have now been retroactively classified as “assault weapons,” and that they may
11 continue to possess only if they timely register them with the State. In order to do so,
12 however, Plaintiffs must provide detailed information including the date that they
13 acquired the rifle and the name and address of the person or business from whom
14 they received it. Plaintiffs and other Californians covered by this grandfathering
15 provision have possessed their rifles for many years and were not required to keep
16 any record of those details at the time of the acquisitions. Accordingly, those
17 individuals who did not keep records, like Plaintiffs Grassey and Martin and
18 countless members of Plaintiff CRPA, now have no means of complying with the
19 registration condition the State has now retroactively imposed on acquisitions that
20 were long ago conducted in accordance with all then-applicable law

21 91. By conditioning Plaintiffs’ continued possession of their rifles on a
22 registration requirement with which they do not have the means to comply and
23 shouldn’t reasonably be expected to, the AWCA deprives Plaintiffs of private
24 property without just compensation.

25 **DECLARATORY JUDGMENT ALLEGATIONS**

26 92. There is an actual and present controversy between the parties. Plaintiffs
27 contend that the AWCA infringes on Plaintiffs’ right to keep and bear arms under the
28 Second and Fourteenth Amendments to the United States Constitution, by generally

1 prohibiting commonly-possessed firearms it deems “assault weapons.” Plaintiffs also
 2 contend that the AWCA violates the Due Process Clause by banning lawfully
 3 acquired firearms based on features that have nothing to do with enhancing public
 4 safety or any other valid governmental objective. And Plaintiffs contend that the
 5 AWCA violates the Takings Clause by depriving them of protected property interests
 6 in their lawfully acquired firearms without compensation. Defendants deny these
 7 contentions. Plaintiffs desire a judicial declaration that California Penal Code
 8 sections 30510(a), 30515(a)(1)(A-C), 30515(a)(1)(E-F), 30515(a)(3), 30520, 30600,
 9 30605, 30900(b)(3), 30925, and 30945, as well as California Code of Regulations,
 10 title 11, section 5499, violate Plaintiffs’ constitutional rights. Plaintiffs should not be
 11 forced to choose between risking criminal prosecution and exercising their
 12 constitutional rights to keep and bear common arms for self-defense and other lawful
 13 purposes, and to devise their lawfully acquired property to their heirs.

14 **INJUNCTIVE RELIEF ALLEGATIONS**

15 93. Plaintiffs are presently and continuously injured by Defendants’
 16 enforcement of California Penal Code 30510(a), 30515(a)(1)(A-C), 30515(a)(1)(E-
 17 F), 30515(a)(3), 30520, 30600, 30605, 30900(b)(3), 30925, and 30945, as well as
 18 California Code of Regulations, title 11, section 5499, insofar as those provisions
 19 violate Plaintiffs’ rights under the Second Amendment, the Due Process Clause, and
 20 the Takings Clause by precluding (without compensation) the acquisition,
 21 possession, use, and transfer of rifles that are “typically possessed by law-abiding
 22 citizens for lawful purposes” nationwide.

23 94. If not enjoined by this Court, Defendants will continue to enforce the
 24 Act in derogation of Plaintiffs’ constitutional rights. Plaintiffs have no plain, speedy,
 25 and adequate remedy at law. Damages are indeterminate or unascertainable and, in
 26 any event, would not fully redress any harm suffered by Plaintiffs due to their
 27 inability to engage in constitutionally protected activity because of California’s
 28 ongoing enforcement of the AWCA.

CLAIMS FOR RELIEF

Right to Keep and Bear Arms

(U.S. Const. amends. II and XIV)

95. Paragraphs 1-92 are realleged and incorporated herein by reference.

96. The AWCA's definition of "assault weapon"—whether by express listing of make and model or by prohibited feature combinations—includes the most popular class of rifles in the nation. The AWCA, therefore, generally prohibits Californians or those visiting California from the acquisition, importation, use, possession, and transfer of such rifles, subject to severe criminal penalties, including up to years in prison.

97. These prohibitions and restrictions on rifles that are commonly possessed throughout the United States by law-abiding, responsible citizens for lawful purposes infringe on the right of the People of California, including Plaintiffs, to keep and bear protected arms as guaranteed by the Second Amendment of the United States Constitution, and as made applicable to California by the Fourteenth Amendment.

98. In violation of the Second Amendment, the AWCA prohibits law-abiding, responsible adults, including Plaintiffs Rupp, Dember, Johnson, and Valencia, as well as members of CRPA, who would otherwise do so, from acquiring a rifle listed in Penal Code section 30510 or 11 C.C.R. § 5499 (Category 1 or 2 "assault weapons") or that has features listed in Penal Code section 30515(a) (Category 3 "assault weapons") that are standard on rifles that are in common use by law-abiding citizens for lawful purposes throughout the United States.

99. In violation of the Second Amendment, the AWCA prohibits law-abiding, responsible adults, including Plaintiffs Rupp, Dember, Johnson, Valencia, and Seifert, as well as members of CRPA, who would otherwise do so, from possessing a rifle that is listed in Penal Code section 30510 or 11 C.C.R. § 5499 (Category 1 or 2 "assault weapons") or that has features listed in Penal Code section

1 30515(a) (Category 3 “assault weapons”) that are standard on rifles in common use
2 by law-abiding citizens for lawful purposes throughout the United States.

3 100. In violation of the Second Amendment, the AWCA prohibits law-
4 abiding, responsible adults, including Plaintiffs Rupp and Seifert, as well as members
5 of CRPA, who would otherwise do so, from adding features listed in Penal Code
6 section 30515(a) that are standard on rifles in common use by law-abiding citizens
7 for lawful purposes throughout the United States to their semiautomatic, centerfire
8 rifles.

9 101. In violation of the Second Amendment, the AWCA prohibits law-
10 abiding, responsible adults, including Plaintiffs Seifert and Willis, as well as
11 members of CRPA, who would otherwise do so, from transferring to their offspring
12 or to other law-abiding Californian residents a rifle that is listed in Penal Code
13 section 30510 or 11 C.C.R. § 5499 (Category 1 or 2 “assault weapons”), which
14 belongs to the most popular class of rifles among law-abiding citizens for lawful
15 purposes throughout the United States.

16 102. In violation of the Second Amendment, the AWCA prohibits law-
17 abiding, responsible adults, including Plaintiff Jones, as well as members of CRPA,
18 who would otherwise do so, from transferring to their offspring or to other law-
19 abiding Californian residents a rifle that is deemed an “assault weapons” by virtue of
20 its features, which belongs to the most popular class of rifles among law-abiding
21 citizens for lawful purposes throughout the United States.

22 103. In violation of the Second Amendment, the AWCA prohibits law-
23 abiding, responsible adults, including members of CRPA who would otherwise do
24 so, from obtaining or possessing semiautomatic, centerfire rifles, regardless of their
25 magazine system or ammunition capacity, with an overall length of less than 30 but
26 more than 26 inches, as the general consensus in the country for decades has been
27 that rifles with an overall length of more than 26 inches are acceptable for use, and
28

typically used by, law-abiding people for lawful purposes.¹⁸ In doing so, it bans countless rifles of lengths that are common and generally accepted throughout the country for lawful purposes.

104. The AWCA's prohibitions extend into Plaintiffs' homes, where the Second Amendment protections are at their zenith, but also affects lawful and constitutionally protected conduct such as hunting, recreational shooting, and competitive marksmanship participation.

105. Defendants cannot satisfy their burden of justifying the AWCA's restrictions on the Second Amendment right of the People, including Plaintiffs, to acquire, possess, transfer, transport, and use rifles that are in common use by law-abiding adults throughout the United States for the core right of defense of self and home and other lawful purposes.

106. The AWCA's registration requirement also violates the Second Amendment because it deprives Plaintiffs Grassey and Martin and countless members of Plaintiff CRPA, of constitutionally protected firearms that they lawfully acquired. Conditioning Plaintiffs' continued possession of their lawfully acquired firearms on a registration requirement with which they have no means of complying, and should not reasonably be expected to, substantially burdens and violates their Second Amendment rights because it leaves those Plaintiffs with no choice but to surrender their lawfully acquired private property to avoid becoming felons.

Due Process Clause

(U.S. Const. amend. XIV)

107. Paragraphs 1 through 104 are realleged and incorporated herein by reference.

108. The AWCA's definition of "assault weapon"—whether by express listing of make and model or by prohibited feature combinations—violates the Due

¹⁸ See Penal Code §§ 33210-33290, 17170 and 18 U.S.C.A. §§ 921(a)(8), 922(a)(4), 922(b)(4) (heavily restricting any "short-barreled" rifle having an overall length of less than 26 inches).

1 Process Clause because prohibiting the rifles and/or features targeted by the law does
2 not advance the State's asserted justification of public safety. If anything, prohibiting
3 the features enumerated by the AWCA undermines public safety by making rifles
4 less safe and more difficult for law-abiding citizens to use for the purpose of self-
5 defense.

6 109. For example, as noted, a semiautomatic, centerfire rifle with a
7 detachable magazine with "Colt AR-15" engraved on it that does not have a "pistol
8 grip" or "flash suppressor" and has a fixed (non-adjustable) stock is still an "assault
9 weapon," while a rifle in the same configuration with "Illegal Assault Weapon"
10 engraved on it is not. And a rifle marked "Illegal Assault Weapon" could legally
11 have a "detachable magazine" and not be an "assault weapon," as long as it does not
12 have other restricted features, while the rifle marked "Colt AR-15" could have a
13 fixed magazine and would still be an "assault weapon."

14 110. Likewise, there is no legitimate basis for banning rifles that have the
15 statutorily enumerated features in combination with a non-fixed magazine while
16 permitting rifles that have the very same statutorily enumerated features in
17 combination with a fixed magazine rifle.

18 111. These distinctions do not advance any legitimate government objective,
19 let alone do so in a sufficiently meaningful manner. And they are particularly
20 offensive under the Due Process Clause because they apply retroactively to eliminate
21 property rights that existed at the time the rifles were lawfully purchased.

22 112. The AWCA's registration requirement also violates the Due Process
23 Clause because it arbitrarily deprives law-abiding, responsible adults, including
24 Plaintiffs Grassey and Martin and countless members of Plaintiff CRPA, of any
25 means of successfully registering—and thus continuing to lawfully possess—their
26 lawfully acquired rifles, because they cannot provide historical details of acquisition
27 that they were under no obligation to keep or record at the time. Conditioning
28 Plaintiffs' continued possession of their lawfully acquired firearms on a registration

1 requirement with which they have no means of complying arbitrarily deprives
2 Plaintiffs of their property and liberty interests without due process of law.

3 **Takings Clause**

4 (U.S. Const. amends. V and XIV)

5 113. Paragraphs 1 through 110 are realleged and incorporated herein by
6 reference.

7 114. The AWCA severely constrains the right of owners of rifles covered by
8 the law to transfer their lawfully acquired property during their lifetimes, and
9 completely abrogates their right to devise their property to their children or heirs.
10 Rifle owners who wish to keep their property in-state and within their family instead
11 must physically surrender the rifles to the government without compensation, or to a
12 very small category of people to whom the government has issued permits to own
13 dangerous weapons.

14 115. By severely constraining Plaintiffs' property rights in their rifles during
15 their lifetimes, and completely destroying an essential and long-lasting property right
16 by requiring surrender of those rifles without government compensation upon their
17 death, the AWCA effects both a regulatory and a physical appropriation of private
18 property without just compensation, in violation of the Takings Clause.

19 116. The AWCA's registration requirement also violates the Takings Clause
20 because it deprives Plaintiffs Grassey and Martin and countless members of Plaintiff
21 CRPA, of their lawfully acquired private property without compensation.
22 Conditioning Plaintiffs' continued possession of their firearms on a registration
23 requirement with which they have no means of complying, and should not
24 reasonably be expected to, leaves Plaintiffs with no choice but to surrender their
25 lawfully acquired private property to avoid becoming felons. That is a quintessential
26 taking without just compensation.

27 ///

28 ///

PRAYER

Plaintiffs pray that the Court:

1. Enter a declaratory judgment under 28 U.S.C. § 2201 that California Penal Code sections 30510(a), 30515(a)(1)(A-C), 30515(a)(1)(E-F), 30515(a)(3), 30520, 30600, 30605, 30900(b)(3), 30925, and 30945, as well as California Code of Regulations, title 11, section 5499, are each unconstitutional facially and to the extent they apply to “assault weapons” or, alternatively, to the extent they prohibit any semi-automatic, centerfire rifle with a detachable magazine having a “pistol grip,” “flash suppressor,” “thumbhole stock,” or “telescoping” stock, or any semi-automatic, centerfire rifle that is over 26 inches in overall length, because such provisions unlawfully infringe on the right of the People to keep and bear arms that are in common use contemporarily, in violation of the Second and Fourteenth Amendments to the United States Constitution; arbitrarily deprive Plaintiffs of protected property interests und the Due Process Clause; and unconstitutionally take property without compensation in violation of the Takings Clause;

2. Issue an injunction enjoining Defendants and their officers, agents, and employees from enforcing any provisions of California Penal Code sections 30510(a), 30515(a)(1)(A-C), 30515(a)(1)(E-F), 30515(a)(3), 30520, 30600, 30605, 30925, 30945, and California Code of Regulations, title 11, section 5499, prohibiting “assault weapons” or, alternatively, to the extent they prohibit the acquisition, possession, or transfer of any semi-automatic, centerfire rifle with a detachable magazine having a “pistol grip,” “flash suppressor,” “thumbhole stock,” or “telescoping” stock, or any semi-automatic, centerfire rifle that is over 26 inches in overall length;

3. Issue an injunction enjoining Defendants and their officers, agents, and employees from enforcing the provision of California Penal Code section 30900(b)(3) that requires a registrant of an “assault weapon” to provide “the date the firearm was acquired, the name and address of the individual from whom, or

1 business from which, the firearm was acquired,” to the extent such provision
2 prohibits the continued possession of any lawfully acquired semi-automatic,
3 centerfire rifle with a detachable magazine having a “pistol grip,” “flash
4 suppressor,” “thumbhole stock,” or “telescoping” stock, or any semi-automatic,
5 centerfire rifle that is over 26 inches in overall length;

6 4. Award remedies available pursuant to 42 U.S.C. § 1983 and all
7 reasonable attorneys’ fees, costs, and expenses under 42 U.S.C. § 1988, or any other
8 applicable law; and

9 5. Grant any such other and further relief as the Court may deem proper.

10
11 Dated: September 11, 2017

MICHEL & ASSOCIATES, P.C.

12 /s/Sean A. Brady

13 Sean A. Brady

14 Attorney for Plaintiffs
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*

Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
Attorney General of California
Peter H. Chang
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
E-mail: peter.chang@doj.ca.gov

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

Executed September 11, 2017

/s/Laura Palmerin
Laura Palmerin