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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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14 **KIM RHODE et al.,**

15 Plaintiffs,

16 **v.**

17 **XAVIER BECERRA, IN HIS OFFICIAL**
18 **CAPACITY AS ATTORNEY GENERAL OF**
19 **THE STATE OF CALIFORNIA, et al.,**

20 Defendants.
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3:18-cv-00802-BEN-JLB

**DEFENDANT'S RESPONSE TO
COURT'S INQUIRY AT APRIL 1,
2020, STATUS CONFERENCE**

Dept: 5A
Judge: Hon. Roger T. Benitez
Action Filed: 4/27/2018

Defendant Xavier Becerra, in his official capacity as the California Attorney General, submits this brief to respond to the Court’s question raised during the April 1, 2020 status conference regarding the relationship between Proposition 63 and Senate Bill 1235 (2016 Cal. Stat., ch. 55). The Court asked Defendant to provide “authority . . . on the State being able to preemptively amend an initiative that” has been presented to the people. *See* Apr. 1, 2020, Status Conference Tr. at 68:16-22; *see also id.* 25:19-22. As set forth in more detail below, the Legislature acted consistent with the California Constitution when it enacted SB 1235. Even so, this Court should refrain from considering the issue both because it was raised for the first time at the recent status conference and because it was not raised in the First Amended Complaint or Plaintiffs’ motion for preliminary injunction.

I. SB 1235 WAS A VALID LEGISLATIVE ENACTMENT

During the April 1, 2020 status conference the Court suggested that SB 1235 being enacted before the voters adopted Prop. 63 may constitute a basis for preliminarily enjoining the law. *See* Apr. 1, 2020, Status Conference Tr. at 28:12-21. SB 1235 raises no such concern.

As a threshold matter, California law affords acts of the Legislature a strong presumption of constitutionality. *See, e.g., Amwest Surety Ins. Co. v. Wilson*, 11 Cal.4th 1243, 1253 (1995) (noting “the general rule that a strong presumption of constitutionality supports the Legislature’s acts”); *Methodist Hosp. of Sacramento v. Saylor*, 5 Cal.3d 685, 691 (1971) (“If there is any doubt as to the Legislature’s power to act in a given case, the doubt should be resolved in favor of Legislative action.”). “[U]nlike the United States Congress, which possesses only those specific powers delegated to it by the federal Constitution, it is well established that the California Legislature possesses *plenary* legislative authority except as specifically limited by the California Constitution.” *Howard Jarvis Taxpayers Ass’n v. Padilla*, 62 Cal.4th 486, 498 (2016) (quotation marks omitted). Defendant

1 knows of no authority suggesting that the Legislature did not have the power to
2 amend Prop. 63.

3 In California, “[t]he legislative power . . . is vested in the . . . Legislature . . . ,
4 but the people reserve to themselves the powers of initiative and referendum.” Cal.
5 Const. art. IV, § 1. “The initiative is the power of the electors to propose statutes
6 and amendments to the Constitution and to adopt or reject them.” *Id.* art. II, § 8.
7 Put another way, “the reserved power to enact statutes by initiative is a legislative
8 power, one that would otherwise reside in the Legislature.” *Legislature v.*
9 *Deukmejian*, 34 Cal.3d 658, 673 (1983). Prop. 63 was an initiative statute. Ballot
10 Pamp., Gen. Elec. (Nov. 8, 2016), at 84.¹

11 Article II, section 10, of the California Constitution permits the Legislature to
12 amend or repeal initiative statutes in one of two ways. Cal. Const. art. II, § 10(c).
13 It may either enact another statute that becomes effective only when approved by
14 the voters or it may amend or repeal the initiative statute if the initiative statute
15 permits changes. *See id.*

16 Deciding whether a statute enacted by the Legislature impermissibly amends
17 an initiative statute involves two steps. *See People v. Superior Court (Pearson)*, 48
18 Cal.4th 564, 571 (2010). First, courts ask whether the Legislature’s statute amends
19 the initiative statute, that is, whether it is “designed to change an existing initiative
20 statute by adding or taking from it some particular provision.” *People v. Cooper*,
21 27 Cal.4th 38, 44 (2002). Here, by its terms, SB 1235 amended Prop. 63. 2016
22 Cal. Stat., ch. 55, § 19(b) (classifying provisions in the law as amendments to
23 Prop. 63).²

24 ¹ In its October 17, 2018 order granting in part and denying in part
25 Defendant’s motion to dismiss, this Court took judicial notice of Prop. 63 ballot
26 materials. *Rhode v. Becerra*, 342 F. Supp. 3d 1010, 1012 (S.D. Cal. 2018). This
27 memorandum cites to those materials, which are in the record as Exhibit 1 to the
Request for Judicial Notice in Support of Defendant Xavier Becerra’s Motion to
Dismiss the First Amended Complaint, ECF No. 11-2.

28 ² Section 15 is an uncodified provision of SB 1235. A complete copy of

1 Second, if the Legislature’s statute amends the initiative statute, courts look to
 2 whether the initiative statute permits amendment, and if so, whether the
 3 Legislature’s statute complies with the initiative statute’s amendment provisions.
 4 *See, e.g., People v. Superior Court (K.L.)*, 36 Cal.App.5th 529, 535 (2019). In
 5 conducting that analysis, courts “start with the presumption that the Legislature
 6 acted within its authority and uphold the validity of the legislative amendment if, by
 7 any reasonable construction, it can be said that the statute furthers the purposes of
 8 the initiative.” *Id.* (quotation marks and brackets omitted).

9 Prop. 63 provided that the “provisions of this measure may be amended by a
 10 vote of 55 percent of the members of each house . . . so long as such amendments
 11 are consistent with and further the intent of this Act.” Prop. 63 § 13. SB 1235
 12 received 46 aye votes and 30 no votes, with 4 abstaining, or 57.5%, in the
 13 Assembly, and 23 aye votes and 14 no votes with 3 abstaining, also 57.5%, in the
 14 Senate.³

15 SB 1235 also contained a legislative finding that the intent of Prop. 63 “is to
 16 safeguard the ability of law-abiding, responsible Californians to own and use
 17 firearms for lawful means while requiring background checks for ammunition
 18 purchases in the manner required for firearm purchases so that neither firearms nor
 19 ammunition are getting into the hands of dangerous individuals.” 2016 Cal. Stat.,
 20 ch. 55, § 19(b). Recognizing that intent, the Legislature found its amendments to
 21 Prop. 63 were “consistent with and further” that intent because the “amendments
 22 ensure that only law-abiding, responsible Californians who appear in the
 23 Automated Firearms System are able to purchase ammunition for their legally
 24 owned firearms while violent felons and the dangerously mentally ill who appear in
 25 the Armed Prohibited Persons System are not.” *Id.*

26 _____
 27 SB 1235 is available on commercial legal databases, such as Westlaw, as well as
 the California Legislative Information website at <https://leginfo.legislature.ca.gov/>.

28 ³ The Legislature’s voting history on SB 1235 is available on the California
 Legislative Information website at <https://leginfo.legislature.ca.gov/>.

1 These Legislative findings correctly state Prop. 63’s intent. When the voters
2 enacted Prop. 63, they decided that the law should “require background checks for
3 ammunition sales just like gun sales,” Prop. 63 § 2.7, to keep ammunition out of the
4 hands of dangerous people who are prohibited under the law from possessing guns
5 or ammunition, Prop. 63 §§ 3.2-3.3. Not only was SB 1235 designed to further that
6 purpose, but the law, as implemented, is realizing that purpose. As the California
7 Department of Justice (Department) has shown, from July 2019 through January
8 2020, the background check system stopped over 750 prohibited persons from
9 purchasing ammunition—and that number reflects only those who were willing to
10 try in the face of the background check process. *See* Third Supp. Decl. of M.
11 Morales in Supp. of Def.’s Opp’n to Pls.’ Mot. for Prelim. Inj. ¶ 56 & Tables 1.1,
12 2.1, ECF No. 53.

13 SB 1235’s primary change to Prop. 63 relates to Penal Code section 30370.
14 Under Prop. 63, Penal Code section 30370 authorized the Department to issue
15 “ammunition purchase authorizations” that would last four years, subject to
16 revocation, if the holder became prohibited. Prop. 63 § 8.15. SB 1235 repealed
17 that provision and added a new Penal Code section 30370 that established the
18 current, point-of-sale background check process. *See* 2016 Cal. Stat., ch. 55, §§ 15,
19 16. No one has argued that this change undermined Prop. 63’s purpose of requiring
20 background checks for ammunition purchases and keeping ammunition out of the
21 hands of prohibited people. Nor has anyone argued that SB 1235 is invalid because
22 it did not otherwise comply with article II, section 10(c), or any other limitation on
23 the Legislature’s plenary power in the California Constitution. The Department of
24 Justice was required by the California Constitution to implement the law as
25 amended. *See* Cal. Const. art. III, § 3.5.

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1 **II. THIS COURT SHOULD REFRAIN FROM ADDRESSING WHETHER SB 1235**
 2 **VALIDLY AMENDED PROP. 63**

3 Notwithstanding SB 1235’s sound footing, this Court should refrain from
 4 addressing whether the Legislature validly enacted the law under the California
 5 Constitution for two reasons.

6 First, Plaintiffs have not raised the issue in either the First Amended
 7 Complaint or their motion for preliminary injunction. *Cf. Lyng v. Nw. Indian*
 8 *Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1985) (“A fundamental and
 9 longstanding principle of judicial restraint requires that courts avoid reaching
 10 constitutional questions in advance of the necessity of deciding them.”). Premising
 11 an injunction on SB 1235 invalidly amending Prop. 63, when Plaintiffs have not
 12 advanced that theory, implicates a number of due process concerns, including fair
 13 notice and opportunity for Defendant to be heard on the issue. (For the reasons set
 14 forth above, it is not clear what would support this theory of invalidity, making a
 15 response very difficult to formulate.)

16 Second, to the extent the Court questions SB 1235’s validity under the
 17 California Constitution, it should decline to exercise supplemental jurisdiction over
 18 that question because—to the extent the Court disagrees with the analysis above—
 19 that presents a novel and complex issue of state law. *See* 28 U.S.C. § 1367(c)(1);
 20 *see, e.g., Wilson v. PFS, LLC*, 493 F. Supp. 2d 1122, 1126 (S.D. Cal. 2007)
 21 (granting defendant’s rule 12(b)(1) motion to dismiss state law claims where those
 22 claims presented “novel and complex matters of state law that are better left to the
 23 California courts for interpretation and decision” (quotation marks omitted)). That
 24 no party has raised the issue would also present the sort of exceptional
 25 circumstances that counsel against exercising supplemental jurisdiction. *See* 28
 26 U.S.C. § 1367(c)(4).

1 Dated: April 10, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Case Name: **Rhode v. Becerra**

No. **3:18-cv-00802 BEN JLB**

I hereby certify that on April 10, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANT'S RESPONSE TO COURT'S INQUIRY AT APRIL 1, 2020, STATUS CONFERENCE

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 10, 2020, at Sacramento, California.

Tracie L. Campbell

Declarant

/s/ Tracie Campbell

Signature