

1 XAVIER BECERRA
Attorney General of California
2 BENJAMIN BARNOUW (State Bar No. 168581)
Supervising Deputy Attorney General
3 ALEXIS DIAMOND
Deputy Attorney General
4 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 269-6506
Fax: (916) 731-2120
6 E-mail: Ben.Barnouw@doj.ca.gov
Attorneys for Defendants and Respondents
7 *California Department of Justice and*
Attorney General Xavier Becerra

Exempt from filing fees pursuant to
Government Code section 6103

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
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12
13 **FRANKLIN ARMORY, INC. AND**
14 **CALIFORNIA RIFLE & PISTOL**
ASSOCIATION, INCORPORATED,
15
16 Petitioners-Plaintiffs,
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18 v.
19
20 **CALIFORNIA DEPARTMENT OF**
JUSTICE, XAVIER BECERRA, IN HIS
OFFICIAL CAPACITY AS ATTORNEY GENERAL
FOR THE STATE OF CALIFORNIA, AND DOES
1-10,
21 Respondents-Defendants.

Case No. 20STCP01747

REPLY BRIEF IN SUPPORT OF
DEMURRER BY DEFENDANTS-
RESPONDENTS CALIFORNIA
DEPARTMENT OF JUSTICE AND
XAVIER BECERRA TO FIRST
AMENDED COMPLAINT AND
PETITION

Date: January 26, 2021
Time: 1:30 p.m.
Dept: 85
Judge: Hon. James C. Chalfant
Trial Date: Not set
Action Filed: May 27, 2020

Reservation made with Department 85

1 **REPLY BRIEF**

2 Defendants and respondents State of California, acting by and through the California
3 Department of Justice, (DOJ) and Attorney General Xavier Becerra (AG Becerra) submit this
4 Reply Brief in support of their Demurrer to the First, Second and Eighth causes of action set forth
5 in the First Amended Complaint and Petition (First Amended Complaint) filed by plaintiffs and
6 petitioners, Franklin Armory, Inc. (Franklin Armory) and California Rifle & Pistol Association
7 (the Association).

8 **I. INTRODUCTION**

9 Petitioners’ petition for writ of mandate and related claims were premised on allegations
10 they were unable to engage in transactions involving Franklin Armory’s “Title 1” firearm because
11 of a “technological barrier” in the electronic system the DOJ utilizes to process applications for
12 firearms, which is known as the Dealer Record of Sale Entry System (DES). However, after
13 Petitioners filed this action, the Title 1 became an assault weapon under amendments to the
14 Roberti-Roos Assault Weapons Control Act of 1989 (Act), significantly restricting lawful
15 transactions involving the firearm. In their First Amended Complaint, which was filed after the
16 Title 1 was declared an assault weapon, Petitioners do not allege that they are unable to engage in
17 lawful transactions involving the Title 1. Therefore, Petitioners’ claims for a writ of mandate and
18 related relief regarding the Title 1 are moot.

19 In their Opposition, Petitioners do not identify any lawful transfers of the Title 1 that they
20 are unable to engage in due to the alleged technological barrier in the DES or any other cause.
21 This is fatal to their claims with respect to the Title 1.

22 Petitioners contend in their Opposition that “Title 1,” as that term is used in the First
23 Amended Complaint, includes two models, a “centerfire” version that is now an assault weapon
24 and a “rimfire” version that is not an assault weapon. This is simply not true. In fact, the “Title 1”
25 referenced in the First Amended Complaint is limited to the “centerfire” model that is now an
26 assault weapon under the Act. This is clear because Petitioners allege that “the FAI Title 1” is
27 now an assault weapon: “the passage of Senate Bill 118, which passed and became law on
28 August 6, 2020 - immediately designating the FAI Title I an ‘assault weapon’ under the Roberti-

1 Roos Assault Weapon Act- thereby immediately prohibiting the transfer of the FAI Title 1 to their
2 customers.”¹ (First Amended Complaint at ¶105.) Petitioners disingenuously rely on their
3 allegation that “[t]he FAI Title 1 firearms, as designed and sold by FAI, are lawful to possess,
4 sell, transfer, purchase, loan, or otherwise be distributed within California through licensed
5 California firearm dealers to persons who are not otherwise prohibited from possessing firearms.”
6 (First Amended Complaint at ¶3.) This allegation is a remnant from the original Complaint and it
7 is contradicted by Petitioners’ acknowledgment that the “the FAI Title 1” is now an assault
8 weapon; an assault weapon is not available to all “persons who are not otherwise prohibited from
9 possessing firearms.”

10 In the First Amended Complaint, Petitioners allege that the Title 1 is one in a category of
11 “undefined subtype” firearms. In their Opposition, they contend that the Association has standing
12 to pursue a writ of mandate and related relief because its members are unable to engage in
13 transactions involving other “undefined subtype” firearms due to the alleged “technological
14 barrier” in the DES. However, the First Amended Complaint does not identify a single
15 “undefined subtype” firearm, except for the Title 1, nor does it allege that any Association
16 member attempted to purchase an undefined-type firearm but was unable to do so. Petitioners
17 assert that there are allegations that Association members “took affirmative steps to reserve”
18 undefined-type firearms, but those allegations refer to the Title 1. Petitioners also argue that it
19 would be futile for Association members to attempt to purchase an undefined-type firearm.
20 However, they fail to respond to Respondents’ argument, presented in the Demurrer, that without
21 knowing the circumstances of a hypothetical future transaction, including what specific firearm is
22 involved, it is speculation to assume how a gun dealer might interpret the category of the firearm,
23 what efforts the gun dealer might make to request an alternative process from the DOJ, and what
24 the DOJ’s position might be. In sum, the Association lacks standing to pursue claims regarding
25 “undefined subtype” firearms other than the Title 1, and its claims regarding the Title 1 are moot.

26 Petitioners concede that neither the Association nor any Association member verified the
27 First Amended Complaint, but they offer no authority that the Association can nonetheless

28 ¹ “FAI” refers to Franklin Armory, Inc. in the First Amended Complaint.

1 proceed with the petition for writ of mandate.

2 Petitioners argue that they should be granted “public interest standing,” but such standing is
3 not justified by the allegations here, which do not identify a single specific “undefined subtype”
4 firearm that any Association member is unable to purchase because of the alleged technological
5 barrier in the DES, and do not show that any Association member has actually attempted to
6 purchase such a firearm. Again, Petitioners’ claims regarding the Title 1 are moot.

7 Finally, Petitioners claim that, as part of the current proceedings, they seek injunctive relief
8 requiring the DOJ to allow transfers of the “centerfire” Title 1 to individuals who placed deposits
9 on the firearm before it became an assault weapon under the Act. It has been Respondents’
10 understanding that Petitioners were not seeking such relief at this time. Furthermore, even
11 assuming such a claim would be considered by this Court at this time, such injunctive relief is not
12 permitted because it would directly contravene the Act. The Act provides that the centerfire Title
13 1 is an assault weapon, and the only exemption set forth in the Act that would allow a person not
14 otherwise entitled to obtain an assault weapon to possess one now applies to “a person who has
15 possessed the assault weapon prior to September 1, 2020[.]” (Pen. Code, §30685.) Thus, allowing
16 transfers of the Title 1 to individuals simply because they placed a deposit for the firearm would
17 violate the Act.

18 In sum, given that the Title 1 at issue in the First Amended Complaint is now an assault
19 weapon, Petitioners’ claims concerning the Title 1 are moot. In addition, Petitioners lack standing
20 to pursue claims concerning other, unidentified firearms they do not allege they have attempted to
21 purchase. Finally, Respondents disagree that Petitioners are currently pursuing injunctive relief to
22 allow transfers of the “centerfire” Title 1, and such injunctive relief would be improper because
23 the Act prohibits such transfers. Therefore, Respondents request the Court grant their Demurrer.

24 **II. ARGUMENT**

25 **A. Petitioners Do Not Allege that Any Transfers of the Title 1 Need to be** 26 **Processed Through the DES**

27 Petitioners do not identify any transfers of the Title 1² that need to be processed through the

28 ² For purposes of this brief, “Title 1” without reference to “centerfire” or “rimfire” refers to the centerfire Title 1.

1 DES now that the Title 1 is an assault weapon under the Act. Petitioners point out in a footnote
2 that “[t]ransfers of ‘assault weapons’ to certain law enforcement and permittees is still allowed
3 under the regulatory scheme. (See Penal Code, §§ 30650, 30675.)” (Opposition at p. 11, fn. 5.)
4 However, they do not contend that such transfers need to be processed through the DES. Notably,
5 pursuant to Penal Code section 28400, the requirement of Penal Code section 28100 that a dealer
6 must submit information regarding any firearm transfer to the DOJ does not apply to transfers to
7 law enforcement personnel who are allowed to obtain assault weapons.

8 As a result, Petitioners’ petition for writ of mandate and related claims regarding the Title 1
9 are moot.

10 **B. The First Amended Complaint Does Not Concern a “Rimfire” Title 1**

11 Petitioners contend that their First Amended Complaint concerned a “centerfire” version of
12 the Title 1, which is now an assault weapon, and also a “rimfire” version of the Title 1 that is not
13 an assault weapon.³ This is a mischaracterization of the First Amended Complaint. In fact, in
14 paragraph 105 of the First Amended Complaint, Petitioners flatly allege that “the FAI Title 1” is
15 now an assault weapon under the Act: “Senate Bill 118, which passed and became law on August
16 6, 2020 - immediately designating the FAI Title 1 an ‘assault weapon’ under the Roberti-Roos
17 Assault Weapon Act - thereby immediately prohibiting the transfer of the FAI Title 1 to their
18 customers.” There is no mention in this paragraph or anywhere else in the First Amended
19 Complaint of any Title 1 “rimfire” model.

20 Petitioners also argue that the amendments to the Act did not “restrict the sale of centerfire
21 Title 1 firearms configured without any of the enumerated features necessary for a firearm to be
22 considered an ‘assault weapon’ under state law.” (Opposition at p. 11, lines 20-21.) However,
23 nowhere in the First Amended Complaint do Petitioners allege that there is a Title 1 centerfire
24 model that lacks the features necessary for the firearm to fit within the definition of an assault
25 weapon. To the contrary, they allege very simply that “the FAI Title 1” is an assault weapon.
26 (First Amended Complaint at ¶105.)

27 ³ Under the recent amendments to the Act, “assault weapon” now includes any
28 “semiautomatic **centerfire** firearm that is not a rifle, pistol, or shotgun” and has specified
features. (Pen. Code, §30515, subs. (a)(9),(10),(11) [bold emphasis added].)

1 Petitioners rely on an allegation that “[t]he FAI Title 1 firearms, as designed and sold by
2 FAI, are lawful to possess, sell, transfer, purchase, loan, or otherwise be distributed within
3 California through licensed California firearm dealers to persons who are not otherwise
4 prohibited from possessing firearms.” (First Amended Complaint at ¶3.) This allegation is a
5 remnant from the original Complaint and it is contradicted by Petitioners’ acknowledgment that
6 the “the FAI Title 1” is now an assault weapon. As an assault weapon, the firearm is not available
7 to all “persons who are not otherwise prohibited from possessing firearms.”

8 **C. The Association Lacks Standing**

9 Neither the Association nor any member has verified the First Amended Complaint.
10 Pursuant to Code of Civil Procedure section 1086, a writ of mandate can only be issued based on
11 a “verified petition of the party beneficially interested.” The Association offers no argument as to
12 how it can proceed without satisfying this requirement. If Petitioners seek to establish a beneficial
13 interest based on the claim of a member of the Association, they must provide a verification by
14 the member or the Association.

15 Furthermore, Petitioners fail to allege facts showing the Association or any of its members
16 could have standing to pursue a writ of mandate, injunctive relief or declaratory relief. “Standing
17 is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish
18 standing lies with the plaintiff.” (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th
19 802, 810 [citations omitted].)

20 Other than the Title 1, which is now an assault weapon, the First Amended Complaint does
21 not identify a single other “undefined subtype” firearm that any Association member is
22 supposedly unable to purchase because of the alleged technological barrier in the DES.
23 Furthermore, there are no allegations that any Association member has actually attempted to
24 purchase an “undefined type” firearm; instead, the First Amended Complaint carefully alleges
25 that Association members “wish” to engage in transactions of such firearms but are “prohibited”
26 from doing so.⁴ (First Amended Complaint at ¶6.) Thus, the First Amended Complaint alleges a

27 ⁴ Petitioners argue in their Opposition that they “expressly allege that CRPA members not
28 not only wish to purchase, but took affirmative steps to reserve, undefined firearm subtypes,

1 harm that is only “conjectural” and “hypothetical,” and thus it fails to establish a beneficial
2 interest that can support standing to seek a writ of mandate. (*Associated Builders and*
3 *Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362; *Mendoza, supra*, 6
4 Cal.App.5th at p. 810.) It also fails to allege facts showing that any Association member has
5 actually suffered an injury or is about to, as is required for an injunction. (*Schmier v. Supreme*
6 *Court* (2000) 78 Cal.App.4th 703, 707.) Finally, it does not allege facts showing there is a ripe
7 controversy to support declaratory relief. “[C]ourts will decline to adjudicate a dispute if the
8 abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues, if the court is
9 asked to speculate on the resolution of hypothetical situations, or if the case presents a contrived
10 inquiry.” (*Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 [internal
11 quotation marks and citations omitted].)

12 Petitioners argue it would be futile for Association members to actually try to purchase an
13 “undefined subtype” firearm. However, they fail to address the argument, set forth in the
14 Demurrer, that without knowing the circumstances of a hypothetical future transaction, including
15 what specific firearm is involved, it is speculation to assume how a gun dealer might interpret the
16 category of the firearm, what efforts the gun dealer might make to request an alternative process
17 from the DOJ, and what the DOJ’s position might be.

18 In sum, the Association has failed to meet its burden of pleading facts to establish standing
19 regarding “undefined subtype” firearms other than the Title 1.

20 **D. Petitioners’ Claim of Public Interest Standing Fails**

21 Petitioners argue that they have standing to pursue writ relief regarding the DES under an
22 exception to the traditional “beneficial interest” test where “the question is one of public right and
23 the object of the mandamus is to procure the enforcement of a public duty.” (*Weatherford v. City*
24 *of San Rafael* (2017) 2 Cal.5th 1241, 1248 [quoting *Save the Plastic Bag Coalition v. City of*
25 *Manhattan Beach* (2011) 52 Cal.4th 155, 166].) “This “public right/public duty” exception to the
26 requirement of beneficial interest for a writ of mandate’ ‘promotes the policy of guaranteeing
27 _____
28 including Title 1 firearms.” (Opposition at p. 15, lines 17-19.) However, the paragraphs they cite,
6 and 76, only refer to Association members placing a deposit on a Title 1.

1 citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of
2 legislation establishing a public right.’ [Citations] We refer to this variety of standing as ‘public
3 interest standing.’ [Citation]” (*Save the Plastic Bag Coalition, supra*, 52 Cal.4th at p. 166.)

4 “No party, individual or corporate, may proceed with a mandamus petition as a matter of
5 right under the public interest exception.” (*Save the Plastic Bag Coalition, supra*, 52 Cal.4th at p.
6 170, fn. 5.) This Court should not recognize public interest standing here. This case concerns a
7 very narrow category of firearm, the “undefined subtype” firearm, which is a firearm that does
8 not fit within the statutory definitions of “handgun”/“pistol,” “rifle,” or “shotgun.” The only
9 “undefined subtype” firearm that is actually identified in the First Amended Complaint is
10 Franklin Armory’s Title 1, which is now an assault weapon under the Act. The First Amended
11 Complaint offers only cursory allegations that unidentified Association members wish to
12 purchase other firearms in this category, but does not identify any such firearms or allege that any
13 Association member has actually attempted to purchase such a firearm. In sum, the allegations of
14 the First Amended Complaint do not demonstrate any issue that rises to the level of public
15 interest.

16 Finally, Petitioners argue that they should be granted public interest standing because they
17 allege a violation of the Administrative Procedure Act. This argument fails because Petitioners’
18 petition for writ of mandate does not seek any relief based on the Administrative Procedure Act.
19 To the contrary, in their petition for writ of mandate Petitioners seek to enforce Penal Code
20 sections 28155, 28205, 28215 and 28220. (First Amended Complaint at ¶128.) Furthermore,
21 Petitioners lack standing to pursue claims under the Administrative Procedure Act.

22 **E. Petitioners’ Claim for Injunctive Relief to Prohibit the Department of**
23 **Justice from Enforcing the Roberti-Roos Assault Weapons Act Is Not A**
24 **Part of the Current Proceedings and Seeks Improper Relief**

25 Petitioners contend that “they seek to enjoin Respondents ‘from enforcing the . . . Assault
26 Weapons Act in a manner that prohibits those who, but for [Respondents’] technological barriers .
27 . . could have lawfully acquired and registered their [Franklin Armory] Title 1 style firearm in
28 accordance with’ the new legislation.” (Opposition at p. 12, line 23 – p. 13 line 2 [brackets in
original].) However, it is Respondents’ understanding that Petitioners’ counsel had declined to

1 pursue this claim for injunctive relief at this time.

2 Furthermore, such an injunction would be prohibited by Code of Civil Procedure section
3 526, subdivisions (b)(4) and (b)(6). Subdivision (b)(4) prohibits injunctions that would “prevent
4 execution of a public statute by officers of the law for the public benefit.” Subdivision (a)(6)
5 prohibits injunctions “[t]o prevent the exercise of a public or private office, in a lawful manner,
6 by the person in possession.” These sections apply here because the injunction Petitioners seek
7 would require the DOJ to process transfers for an “assault weapon” in violation of the Act. The
8 Act provides that the centerfire Title 1 is an “assault weapon.” (Pen. Code, §30515, subds.
9 (a)(9),(10),(11); First Amended Complaint at ¶105.) Under the Act, only a very restricted set of
10 people, such as certain law enforcement officers, are permitted to obtain and possess assault
11 weapons. (Pen. Code, §§30600, 30605, 30625, 30630, 30650.) The only exemption set forth in
12 the Act that would allow a person who is not otherwise entitled to obtain an assault weapon to
13 possess a centerfire Title 1 firearm now applies to “a person who has possessed the assault
14 weapon prior to September 1, 2020[.]” (Pen. Code, §30685.) The injunction Petitioners seek
15 would require the DOJ to violate this express provision of the Act.

16 Petitioners state in their Opposition, “[t]o be clear, Petitioners do not ask this Court to order
17 the transfer of Title 1 firearms if such transfer would be unlawful. That is, this request for relief is
18 limited to those persons who made deposits before California enacted SB 118 and who were
19 prevented from effectuating said transfer due to Respondents’ unclean hands, as described in the
20 First Amended Complaint.” (Opposition at p. 9, fn. 3.) Petitioners fail to explain, however, how it
21 could be legal to transfer an assault weapon such as the centerfire Title 1 to an individual simply
22 because that individual made a deposit on the firearm. Again, unless the individual is generally
23 permitted to obtain an assault weapon (and thus would not need the benefit of the injunction
24 Petitioners seek), they could only be allowed to possess a centerfire Title 1 if they “possessed” the
25 firearm prior to September 1, 2020. (Pen. Code, §30685.)

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CONCLUSION

For the foregoing reasons, the California Department of Justice and Attorney General Xavier Becerra request the Court grant this Demurrer and dismiss Petitioners’ First, Second and Eighth causes of action as moot and because Petitioners lack standing.

Dated: January 19, 2021

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
BENJAMIN BARNOUW
Supervising Deputy Attorney General
ALEXIS DIAMOND
Deputy Attorney General



BENJAMIN BARNOUW
Supervising Deputy Attorney General
*Attorneys for Defendants and Respondents
California Department of Justice and
Attorney General Xavier Becerra*

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DECLARATION OF SERVICE BY ELECTRONIC MAIL

Case Name: **Franklin Armory, Inc. v. California Department of Justice**
No.: **20STCP01747**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On January 19, 2021, I served the attached **REPLY BRIEF IN SUPPORT OF DEMURRER BY DEFENDANTS-RESPONDENTS CALIFORNIA DEPARTMENT OF JUSTICE AND XAVIER BECERRA TO FIRST AMENDED COMPLAINT AND PETITION** by transmitting a true copy via electronic mail to the following addresses:

Anna M. Barvir
Jason A. Davis
MICHEL & ASSOCIATES, P.C.
abarvir@michellawyers.com
Jason@calgunlawyers.com
lpalmerin@michellawyers.com

Attorneys for Plaintiffs-Petitioners

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 19, 2021, at Burbank, California.

Erica Kelly
Declarant


Signature