

1 C. D. Michel – SBN 144258  
cmichel@michellawyers.com  
2 Joshua Robert Dale – SBN 209942  
jdale@michellawyers.com  
3 Konstadinos T. Moros – SBN 306610  
kmoros@michellawyers.com  
4 MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
5 Long Beach, CA 90802  
Telephone: (562) 216-4444  
6 Facsimile: (562) 216-4445  
www.michellawyers.com  
7

8 Attorneys for Plaintiffs South Bay Rod & Gun Club, Inc. Gary Brennan, Cory  
Henry, Patrick Lovette, Virginia Duncan, Randy Ricks, Gun Owners of California,  
9 Second Amendment Law Center, and California Rifle and Pistol Association,  
Incorporated

10 Donald Kilmer-SBN 179986  
Law Offices of Donald Kilmer, APC  
11 14085 Silver Ridge Road  
Caldwell, Idaho 83607  
12 Telephone: (408) 264-8489  
Email: Don@DKLawOffice.com  
13

14 Attorneys for Plaintiff Citizens Committee for the Right to Keep and Bear Arms

15 **UNITED STATES DISTRICT COURT**

16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 SOUTH BAY ROD & GUN CLUB,  
INC.; GARY BRENNAN, an  
18 individual; CORY HENRY, an  
individual; PATRICK LOVETTE, an  
19 individual; VIRGINIA DUNCAN, an  
individual; RANDY RICKS, an  
20 individual; CITIZENS COMMITTEE  
FOR THE RIGHT TO KEEP AND  
21 BEAR ARMS; GUN OWNERS OF  
CALIFORNIA; SECOND  
22 AMENDMENT LAW CENTER; and  
CALIFORNIA RIFLE & PISTOL  
23 ASSOCIATION, INCORPORATED,

24 Plaintiffs,

25 v.

26 ROB BONTA, in his official capacity  
as Attorney General of the State of  
27 California; and DOES 1-10,

28 Defendants.

**CASE NO: 22-cv-01461-BEN-JLB**

**DECLARATION OF KONSTADINOS  
T. MOROS IN SUPPORT OF  
PLAINTIFFS' EX PARTE  
APPLICATION FOR ORDER  
SHORTENING TIME FOR  
HEARING ON PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF KONSTADINOS T. MOROS**

1. I, Konstadinos T. Moros, am an attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. Plaintiffs filed the complaint in this matter on September 28, 2022. Defendant’s counsel, Elizabeth Watson, noticed her appearance on October 11, 2022. ECF No. 8. Ms. Watson’s contact information is as follows: Elizabeth Watson, Deputy Attorney General, California Department of Justice, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. Her telephone number is (415) 510-3847. Her email is [Elizabeth.Watson@doj.ca.gov](mailto:Elizabeth.Watson@doj.ca.gov). ECF No. 8.

3. On October 21, 2022, I contacted Ms. Watson via email to provide Defendant with notice that Plaintiffs intended to file an ex parte application for an order shortening time to hear their anticipated motion for preliminary injunction. I also informed her the application would be filed on October 24, 2022 and asked if Defendant would oppose it.

4. Ms. Watson responded that day as follows: “I agree that it makes sense to have one hearing date for both cases, but given that *South Bay* has more claims at issue than *Miller II*, I think it would make sense to have that single hearing on November 21<sup>st</sup>, the date for which the *South Bay* case is currently scheduled. That way, defendants get the full time to which they are entitled to respond to the claims in *South Bay*. Would you reach out to the *Miller II* plaintiffs and see if they would be amenable to that?”

5. Also on October 21<sup>st</sup>, I reached out to counsel for the *Miller II* plaintiffs, Bradley Benbrook, to determine if they would oppose my clients’ ex parte application, and to let them know Ms. Watson’s proposal. They replied that they do not oppose this application but do oppose any delay in their own hearing date. Specifically, Mr. Benbrook wrote: “We will not oppose having the two motions for

1 preliminary injunction heard on November 14, provided that your team agrees that  
2 our motion will be heard first. We do not agree to move the hearing date back, so,  
3 assuming you agree our motion will be heard first, please note in your papers that  
4 we oppose a simultaneous hearing date if granting the request would involve moving  
5 the hearing date back.” Their contact information is as follows: Bradley A.  
6 Benbrook, 701 University Avenue, Suite 106, Sacramento, CA 958825. Telephone:  
7 (916) 447-4900. Email: [brad@benbrooklawgroup.com](mailto:brad@benbrooklawgroup.com); and David H. Thompson,  
8 1523 New Hampshire Avenue, NW, Washington, D.C. 20036. Telephone: (202)  
9 220-9600. Email: [dthompson@cooperkirk.com](mailto:dthompson@cooperkirk.com).

10 6. This case presents claims under 42 U.S.C. § 1983 for violations of the  
11 First Amendment, the Fourteenth Amendment, the Supremacy Clause, and the  
12 constitutional prohibition against bills of attainder. Simply put, Plaintiffs seek  
13 nothing more than to preserve their rights; rights that, before the enactment of  
14 California Code of Civil Procedure section 1021.11, they freely enjoyed.

15 7. Under the plain language of Section 1021.11, if anyone seeks to  
16 challenge a state or local law in California related to firearms, they and their  
17 attorneys must be willing to bear the cost of the government’s attorney’s fees if they  
18 are not the prevailing party. And to be the “prevailing party” as defined under  
19 Section 1021.11, they must prevail *on all claims*. Under Section 1021.11(b), if the  
20 government defendant prevails on *even a single cause of action*, the challenging  
21 parties and attorneys are not the prevailing party, but the government is, and the  
22 plaintiff must pay the government’s attorney’s fees and costs.

23 8. What’s more, if Plaintiffs and their attorneys are sued in such a civil  
24 action, under subdivision (d)(2) fees and costs not being granted to defendants in the  
25 original matter are *not a defense* that can be raised to the subsequent civil matter, in  
26 violation of basic principles of *res judicata*, collateral estoppel, and federal  
27 Supremacy.  
28

1           9.       Section 1021.11 takes effect January 1, 2023, but has the *ex post facto*  
2 effect of applying to any lawsuit that that was pending at any point in the three years  
3 prior to enactment of the law. That means that matters being currently litigated, and  
4 that were filed well before Section 1021.11 was first proposed, are currently being  
5 affected by the law.

6           10.       Plaintiffs are already being harmed by the enactment of Section  
7 1021.11. The associational Plaintiffs that typically fund Second Amendment  
8 challenges in California are in a particularly precarious position. They have filed  
9 numerous cases and would effectively be bankrupted if they had to foot the bill for  
10 the State’s litigation expenses in those existing matters. Even if Section 1021.11 was  
11 not retroactive and only applied to litigation filed on or after January 1, 2023, that  
12 would mean that the associational Plaintiffs cannot risk starting any new firearm-  
13 related litigation in the new year and would instead go silent in terms of their  
14 litigation efforts.

15           11.       The individual Plaintiffs, as their declarations in support of the motion  
16 for preliminary injunction attest, are considering dropping out of the important  
17 Second Amendment lawsuits they are involved in out of fear that they could be  
18 financially liable for the State’s expenses.

19           12.       Section 1021.11 is also already blocking future possible plaintiffs from  
20 utilizing the court system to redress their grievances. One declaration in support of  
21 Plaintiffs’ motion is from a major gun retailer in California, Turner’s Outdoorsman,  
22 which was considering joining a recently-filed lawsuit but did not do so because of  
23 Section 1021.11’s intentional chilling effect.

24           13.       The legislative history behind Section 1021.11 shows that both the  
25 State Assembly and the Senate knew it was unconstitutional when they passed it,  
26 and the Attorney General himself signed onto an amicus brief arguing a similar  
27 provision in Texas law was unconstitutional. This Court should not continue to let it  
28 do any more damage than it already has.

1 14. Good cause thus exists for this Court to expedite the hearing on  
2 Plaintiffs' motion for preliminary injunction.

3 15. On behalf of Plaintiffs, I respectfully request that the Court set the  
4 following briefing and hearing schedule in this matter:

- 5 ■ Filing and service of opposition papers on or before November 2, 2022;
- 6 ■ Filing and service of reply papers on or before November 7, 2022;
- 7 ■ Hearing on Plaintiffs' Motion for a Preliminary Injunction to be held on  
8 November 14, 2022, at 10:30 a.m.

9 I declare under penalty of perjury of the laws of the State of California and the  
10 United States that the foregoing is true and correct. Executed within the United  
11 States on October 24, 2022.

12 \_\_\_\_\_  
13 *s/Konstadinos T. Moros*  
14 Declarant

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ERTIFICATE OF SERVICE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case Name: *South Bay Rod & Gun Club, Inc. v. Bonta*  
Case No.: 22-cv-01461-BEN-JLB

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**DECLARATION OF KONSTADINOS T. MOROS IN SUPPORT OF  
PLAINTIFFS’ EX PARTE APPLICATION FOR ORDER SHORTENING  
TIME FOR HEARING ON PLAINTIFFS’ MOTION FOR PRELIMINARY  
INJUNCTION**

on the following parties by electronically filing the foregoing on October 24, 2022, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Robert Meyerhoff  
[Robert.Meyerhoff@doj.ca.gov](mailto:Robert.Meyerhoff@doj.ca.gov)  
Elizabeth Watson  
[Elizabeth.Watson@doj.ca.gov](mailto:Elizabeth.Watson@doj.ca.gov)  
1300 I Street, Suite 125  
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on October 24, 2022, at Long Beach, CA.

Additionally, the following party was served as follows:

Bradley A. Benbrook  
701 University Avenue, Suite 106  
Sacramento, CA 958825  
Email: [brad@benbrooklawgroup.com](mailto:brad@benbrooklawgroup.com)

By Electronic Mail As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.

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

/s/Christina Castron  
CHRISTINA CASTRON