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15 **SUPERIOR COURT OF CALIFORNIA**

16 **COUNTY OF SACRAMENTO**

17 POWAY WEAPONS & GEAR, INC. and SGR
18 VENTURES LLC (D/B/A SACRAMENTO
GUN RANGE),

19 Plaintiffs,

20 v.

21 CALIFORNIA DEPARTMENT OF TAX AND
22 FEE ADMINISTRATION; TRISTA
GONZALES, in her official capacity as
23 Director of the California Department of Tax
and Fee Administration,

24 Defendants.

Case No.: 25CV018964

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES
IN OPPOSITION TO
DEFENDANTS' DEMURRER**

Date: May 14, 2026

Time: 9:00 AM

Dept: 54

Judge: The Honorable Christopher E.
Krueger

Trial Date: Not Set

Action Filed: August 11, 2025

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1 Plaintiffs Poway Weapons & Gear, Inc. and SGR Ventures LLC (d/b/a “Sacramento Gun
2 Range”), respectfully submit the following memorandum of points and authorities in opposition to
3 the demurrer of Defendants, the California Department of Tax and Fee Administration and its
4 Director, Trista Gonzales.

5 I. INTRODUCTION

6 By adopting Assembly Bill 28, which imposes an 11% excise tax on the retail sale of
7 firearms, firearm precursor parts, and firearm ammunition, *see* Assem. Bill No. 28, 2023–2024
8 Reg. Sess. (Cal. 2023) (“AB 28”); CAL. REV. & TAX. CODE § 36001, *et seq.*; CAL. PENAL CODE §§
9 26700, 26705, 30395, 34400, the State of California has directed a targeted and special tax at the
10 exercise of a fundamental constitutional right.

11 The United States Supreme Court has repeatedly struck down similar state efforts to tax the
12 exercise of a fundamental constitutional right. *See, e.g., Harper v. Va. Bd. of Elections*, 383 U.S.
13 663 (1966); *Minneapolis Star & Trib. Co. v. Minnesota Comm’r of Revenue*, 460 U.S. 575 (1983).
14 And the Supreme Court has emphasized time and again that the People’s right to keep and bear
15 arms protected by the Second Amendment may not be treated as a second-class right. *See, e.g.,*
16 *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality op.); *N.Y. State Rifle & Pistol*
17 *Ass’n v. Bruen*, 597 U.S. 1, 70 (2022).

18 Yet the State has filed a demurrer urging this Court to dismiss outright Plaintiffs’
19 constitutional challenge to the State’s tax on Californians’ exercise of their Second Amendment
20 rights.

21 The demurrer should be denied. Plaintiffs have cleared the modest burden required to
22 survive a demurrer at this early stage of litigation. Plaintiffs are taxpayers who have exhausted the
23 applicable state administrative remedies despite the futility of having done so in this constitutional
24 challenge. They are in fact subject to the tax they challenge, which they have paid and continue to
25 pay. And the acquisition of firearms plainly implicates Second Amendment protections. It is
26 axiomatic that the commercial acquisition of arms is intimately connected—indeed, necessary—to
27 the keeping and bearing of arms. And precedent plainly establishes that retailers can assert the
28 constitutional rights of their customers when challenging a regulation aimed at them. The State’s

1 contrary argument belies both precedent and reality and would provide a blueprint for States to
2 evade constitutional protections for any rights they disfavor. The United States Supreme Court has
3 been clear: a State cannot target a fundamental constitutional right through special taxation. The
4 demurrer should be denied.

5 **II. STATEMENT OF FACTS**

6 **A. CALIFORNIA’S EXCISE TAX ON FIREARMS**

7 California enacted AB 28 on September 26, 2023. Verified Compl. ¶ 31. The excise tax on
8 firearms took effect on July 1, 2024. *Id.*; CAL. REV. & TAX. CODE § 36011. In relevant part, AB 28
9 adds Section 36011 to the California Revenue and Taxation Code, which imposes an 11% excise
10 tax on the “gross receipts from the retail sale . . . of any firearm, firearm precursor part, or
11 ammunition” sold by “licensed firearms dealers, firearms manufacturers, and ammunition
12 vendors.” CAL. REV. & TAX. CODE § 36011. Proceeds from the excise tax “shall be deposited in the
13 Gun Violence Prevention and School Safety Fund,” *id.* § 36041, which funds various California
14 political initiatives, *id.* § 36005.

15 As the Senate Public Safety Committee recognized during consideration of AB 28, this
16 excise tax will likely “get passed to the consumer via a higher retail price for the good in question”
17 because “nothing in the bill precludes dealers and manufacturers from raising their prices to offset
18 the tax and functionally passing the tax on to the consumers.” Verified Compl. ¶ 34 (quoting
19 *Firearms and Ammunition: Excise Tax, Hearing on AB-28 Before the Sen. Comm. on Pub. Safety,*
20 *2023–2024 Reg. Sess. 9 (Cal. 2023)*, <https://perma.cc/58FR-3FAH>). In fact, sellers of firearms and
21 ammunition have added a line item to customer receipts reflecting that the 11% tax is passed on to
22 the purchaser of firearms and ammunition. *Id.* ¶ 35. Taxpayers such as Plaintiffs also face an
23 administrative burden of complying with the tax, and risk facing penalties for even accidental non-
24 compliance or delay. *Id.* ¶ 37; *see* CAL. REV. & TAX. CODE §§ 36001, 36038, 36039.

25 **B. ADMINISTRATIVE PROCEEDINGS**

26 Plaintiff Poway Weapons & Gear, Inc. (“PWG”) is a licensed dealer of firearms and
27 ammunition, which it sells at its shooting range and retail location in Poway, California. Verified
28 Compl. ¶ 10. On July 1, 2024, PWG began collecting from its customers California’s 11% excise

1 tax on qualifying sales of firearms, firearm precursor parts, and ammunition by adding the 11%
2 excise tax as a line item on its customers' receipts. *Id.* ¶ 11. On October 1, 2024, PWG submitted
3 payment of the 11% excise tax for its sales during the third quarter of 2024 (July 1, 2024, through
4 September 30, 2024) to the California Department of Tax and Fee Administration ("CDTFA"). Ex.
5 4. The amount of the payment was \$34,666.00. *Id.*

6 On October 22, 2024, PWG sought a refund of that payment. Ex. 5. On November 6, 2024,
7 the CDTFA denied PWG's refund request. In an explanation issued on November 19, 2024, the
8 CDTFA confirmed that it "lacks the authority" to refund a tax payment based on an argument that
9 a statute is unconstitutional "unless an appellate court has made a determination that such statute is
10 unconstitutional." Ex. 11. PWG administratively appealed the refund denial. On February 11,
11 2025, the CDTFA notified PWG that because it was engaged in litigation over the excise tax, the
12 CDTFA was holding PWG's administrative "claim for refund case . . . stayed in abeyance pending
13 the litigation." Ex. 2.

14 A group of plaintiffs had previously challenged AB 28 on constitutional grounds in the
15 Superior Court for the County of San Diego on July 2, 2024. Compl., *Jaymes v. Maduros*, No. 37-
16 2024-00031147-CU-MC-CTL (Cal. Super. Ct. July 2, 2024). That suit largely mirrored this one,
17 with plaintiffs who were California buyers of firearms and Second Amendment groups. Because
18 CDTFA would not proceed with the administrative proceedings while litigation was pending,
19 Plaintiffs requested dismissal on March 21, 2025, which the Court entered on April 1, 2025. PWG
20 informed CDTFA of the dismissal, and CDTFA resumed the administrative process in April 2025.
21 Ex. 3.

22 CDTFA "fully denied" PWG's refund claim on May 14, 2025. Ex. 1. PWG thus has now
23 completed the administrative refund process and exhausted all administrative remedies. It remains
24 subject to the unconstitutional excise tax, submitting payments quarterly as required by state law.
25 *See* Ex. 6.

26 Plaintiff Sacramento Gun Range ("SGR") is also a licensed dealer of firearms and
27 ammunition, which it sells at its shooting range and retail location in Sacramento, California.
28 Verified Compl. ¶ 20. On July 1, 2024, SGR began collecting California's 11% excise tax on

1 qualifying sales of firearms, firearm precursor parts, and ammunition by adding the 11% excise tax
2 as a line item on its customers' receipts. *Id.* ¶ 21. On October 2, 2024, SGR submitted payment of
3 the 11% excise tax for its sales during the third quarter of 2024 (July 1, 2024, through September
4 30, 2024) to the CDTFA. *Id.* ¶ 22. The amount of the payment was \$24,640.00. Ex. 9. On October
5 22, 2024, SGR sought a refund of that payment of \$24,640.00 from CDTFA. *Id.* On November 19,
6 2024, CDTFA recommended full denial of the refund request, stating: "CDTFA lacks the authority
7 to make such a determination or to order any relief." Ex. 10.

8 On May 14, 2025, CDTFA likewise "fully denied" SGR's refund request. Ex. 7. SGR has
9 thus completed the administrative refund process. *Id.* SGR remains subject to the unconstitutional
10 excise tax, submitting payments quarterly as required by state law. Verified Compl. ¶ 28.

11 The California Department of Tax and Fee Administration is charged with administering
12 and collecting the 11% tax. CAL. REV. & TAX. CODE § 36031(a). A taxpayer may bring an action
13 "against the board" "[w]ithin 90 days after the mailing of the notice of the board's action upon a
14 claim for refund." *Id.* § 55243. The term "board" refers to the California Department of Tax and
15 Fee Administration. *Id.* § 20(a). Defendant Trista Gonzales is the Director of CDTFA and enforces
16 the 11% excise tax in her official capacity as Director. *Id.* § 36031.

17 **III. LEGAL STANDARD**

18 "A demurrer tests the sufficiency of a complaint as a matter of law." *Durell v. Sharp*
19 *Healthcare*, 108 Cal. Rptr. 3d 682, 689–90 (Cal. Ct. App. 2010) (quotation marks omitted). The
20 "court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all
21 material facts properly pleaded." *Id.* (quotation marks omitted).¹

22 **IV. ARGUMENT**

23 **A. PLAINTIFFS HAVE STATED A CAUSE OF ACTION.**

24 **1. The Second Amendment, As Interpreted by the Supreme Court's** 25 **Precedents, Renders Unconstitutional the State's Targeted Tax on Second** 26 **Amendment Conduct.**

26 The Second Amendment to the United States Constitution provides: "A well regulated
27

28 ¹ Defendants' discussion of facial versus as-applied challenges is inapposite, as Defendants concede that Plaintiffs have brought an as-applied challenge here.

1 Militia, being necessary to the security of a free State, the right of the people to keep and bear
2 Arms, shall not be infringed.” U.S. CONST. amend. II. In *District of Columbia v. Heller*, the United
3 States Supreme Court recognized that the Second Amendment protects an individual right to keep
4 and bear arms and that a “central component” of that right is “individual self-defense.” 554 U.S.
5 570, 599 (2008) (emphasis omitted). The Second Amendment is incorporated against the State of
6 California through the Fourteenth Amendment. *See McDonald*, 561 U.S. at 750 (plurality op.); *id.*
7 at 805 (Thomas, J., concurring in part and concurring in judgment). In *Bruen*, the Supreme Court
8 explicitly set forth the Supreme Court’s mandated two-part test for Second Amendment
9 challenges, looking first to text and then to history: “When the Second Amendment’s plain text
10 covers an individual’s conduct, the Constitution presumptively protects that conduct. The
11 government must then justify its regulation by demonstrating that it is consistent with the Nation’s
12 historical tradition of firearm regulation.” 597 U.S. at 24.

13 Applying the Supreme Court’s test here, the State’s 11% excise tax on firearms and
14 ammunition violates the Second Amendment because it implicates conduct protected by the
15 Second Amendment’s plain text—the acquisition of protected firearms and ammunition—and is
16 not part of this Nation’s history of arms regulation. *See id.* at 1, 33–34. Defendants do not attempt
17 to meet their burden under the historical part of the *Bruen* inquiry. Rather, they attempt to argue
18 that the Second Amendment simply has nothing to say about a state excise tax on the sale of all
19 firearms, firearm parts, and ammunition. That is mistaken for several reasons under the textual part
20 of *Bruen*.

21 As a threshold matter, Defendants assert repeatedly that this Court should “presum[e]” that
22 the State’s tax does not violate the U.S. Constitution and must “resolv[e] all doubts in favor of the
23 Legislature’s action.” Defs.’ Mem. in Supp. of Demurrer at 11–12 (Oct. 27, 2025) (“Demurrer
24 Br.”). As support for this proposition, though, Defendants primarily cite cases in which courts
25 considered claims under the *state* constitution. *See id.* The state courts should not put a thumb on
26 the scale in favor of challenged state legislation against the *federal* constitution, which reigns
27 supreme over state legislation. U.S. CONST. art. VI, cl. 2. What is more, *Bruen* repeatedly makes
28 clear that laws that implicate the Second Amendment’s text are presumptively *unconstitutional*.

1 See 597 U.S. at 17, 24.

2 On the merits, Defendants’ highly circumscribed characterization of the rights and
3 attendant conduct protected by the Second Amendment is also wrong. “Constitutional rights . . .
4 implicitly protect those closely related acts necessary to their exercise.” *Luis v. United States*, 578
5 U.S. 5, 26 (2016) (Thomas, J., concurring in judgment). The Second Amendment protects “the
6 individual right to possess and carry weapons in case of confrontation.” *Heller*, 554 U.S. at 592.
7 To do either of these things, it is necessary that a person first be able to acquire a firearm. Because
8 the right to keep and bear arms “wouldn’t mean much without the ability to acquire arms,” *Nguyen*
9 *v. Bonta*, 140 F.4th 1237, 1241 (9th Cir. 2025) (cleaned up), the Second Amendment covers the
10 right to purchase them. In other words, just as “the First Amendment right to speak would be
11 largely ineffective if it did not include the right to engage in financial transactions that are the
12 incidents of its exercise,” the Second Amendment “right to keep and bear arms would be
13 toothless” “[w]ithout protection for [the] closely related rights” of acquiring firearms and
14 ammunition. *Luis*, 578 U.S. at 26–27 (Thomas, J., concurring in judgment) (cleaned up).

15 Indeed, the right to acquire a firearm is the “*most fundamental* prerequisite of legal gun
16 ownership[,]” *Illinois Ass’n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 938
17 (N.D. Ill. 2014); *see also, e.g., United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010)
18 (recognizing the commercial sale of firearms as protected by *Heller*). The same is true for the
19 commercial sale of ammunition, which is also subject to the State’s taxation regime. Constitutional
20 rights “implicitly protect those closely related acts necessary to their exercise.” *Luis*, 578 U.S. at
21 26 (Thomas, J., concurring in the judgment). American courts accordingly have long recognized
22 that the “right to keep arms, necessarily involves the right to purchase them, to keep them in a state
23 of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep
24 them in repair.” *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 178 (1871); *accord United States v.*
25 *Miller*, 307 U.S. 174, 180 (1939); *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011); *see*
26 *also N.Y. State Rifle & Pistol Ass’n v. City of New York*, 590 U.S. 336, 364 (2020) (Alito, J.,
27 dissenting).

28 This rule makes sense. Were it otherwise, a state seeking to diminish the Second

1 Amendment could all too easily enact a de facto ban on possessing firearms by prohibiting anyone
2 from buying firearms or the ammunition needed to operate them. Such a ban would be no more
3 constitutionally permissible under the Second Amendment than a ban on a newspaper’s paper and
4 ink under the First. *See Minneapolis Star & Trib.*, 460 U.S. 575. And as *Minneapolis Star &*
5 *Tribune* makes clear, the same reasoning extends to taxation targeted at constitutional rights.

6 Defendants go on to repackage their same argument for a crabbed view of the Second
7 Amendment’s text as a complaint about the particular plaintiffs in this action. As sellers of
8 firearms, Defendants argue, Plaintiffs are not even covered by the Second Amendment.
9 Defendants cite *Teixeira* for the proposition that retailers may not bring a Second Amendment
10 claim, Demurrer Br. at 14, but that case stands for the very *opposite* proposition. There, the Ninth
11 Circuit explained that “vendors and those in like positions have been *uniformly permitted* to resist
12 efforts at restricting their operations by acting as advocates of the rights of third parties who seek
13 access to their market or function.” *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir.
14 2017) (en banc) (quoting *Craig v. Boren*, 429 U.S. 190, 195 (1976)) (emphasis added) (brackets
15 omitted). Thus, the court held, a gun store operator may “assert the subsidiary right to acquire arms
16 on behalf of his potential customers.” *Id.*; *see also Carey v. Population Servs., Int’l*, 431 U.S. 678,
17 683–84 (1977); *Ezell*, 651 F.3d at 693, 696 (supplier of firing range facilities had standing to
18 challenge Chicago ordinance banning firing ranges on behalf of potential customers).

19 Defendants ignore this uniform precedent. Instead, they attempt to greatly expand language
20 from *Heller*, which only served to *include* individuals who were “ordinary, law-abiding, adult
21 citizens” as those covered by the Second Amendment’s protection. *Bruen*, 597 U.S. at 31–32
22 (citing *Heller*, 554 U.S. at 580). Even assuming that language was intended to provide the outer
23 limit of the Amendment’s reach, the State’s tax *does* burden ordinary, law-abiding adult citizens
24 seeking to use firearms for self-defense by artificially increasing the price of firearms and
25 ammunition. And the long-recognized principle of allowing retailers targeted by a law to assert the
26 rights of their customers applies. *Teixeira*, 873 F.3d at 678. Indeed, it is hard to see how it could be
27 otherwise. An unconstitutional law is no law at all, so it would violate principles of due process for
28 retailers to be punished for failing to comply with laws that are unconstitutional for any reason.

1 *See Bond v. United States*, 564 U.S. 211, 226–27 (2011) (Ginsburg, J., concurring).

2 Further, Defendants themselves previously complained that non-taxpayers could not
3 challenge the tax when Plaintiffs brought suit with both retailers *and* buyers as plaintiffs. *See*
4 Defs.’ Mem. in Supp. of Demurrer at 12, *Jaymes v. Maduros*, No. 37-2024-00031147-CU-MC-
5 CTL (Cal. Super. Ct. Feb. 18, 2025) (“The Individual Plaintiffs are not the taxpayers and lack
6 standing to bring this action “[O]nly *retailers* as the taxpayers are authorized to file and
7 prosecute a tax refund action against the Department.” (emphasis added)). Defendants thus
8 propose a Catch-22: firearm sellers cannot challenge the tax because the right belongs to their
9 customers, and firearm buyers cannot challenge the tax because its incidence is on the sellers. That
10 cannot be the law. In any case, the need for some other additional plaintiff—which, to be clear,
11 does not exist—would be grounds for leave to amend, not for outright dismissal.

12 Next, Defendants attempt to fit the State’s 11% tax into “presumptively lawful regulatory
13 measures,” *Heller*, 554 U.S. at 626–27 & n.26, including certain “laws imposing conditions and
14 qualifications on the commercial sale of arms,” *id.* at 626–27. The State’s firearm tax is not a
15 “condition[] [or] qualification[] on the commercial sale of arms.” *Id.* It does not, for example,
16 require sellers to pass through certain hoops before being allowed to deal in firearms. Rather, the
17 State has imposed a tax that directly targets *all* sales of firearms and ammunition regardless of
18 buyer or seller conduct, and that tax has the direct effect of artificially increasing the cost of
19 firearms and ammunition in California.

20 Defendants also argue that the Second Amendment is not violated because law-abiding
21 Californians wishing to exercise their Second Amendment rights could avoid the tax by acquiring
22 (presumably used) firearms from family members and other private transfers. Demurrer Br. at 18.
23 Defendants thus seem to think that the State could prohibit the commercial sale of firearms in
24 California, and the federal Constitution would have nothing to say about it. That argument is flatly
25 contradicted by Supreme Court precedent. The premise that state action making the exercise of the
26 Second Amendment right more difficult is permissible so long as Americans have *some* means to
27 access *some* firearms is contrary to *Heller*. There too, the government argued that it could restrict
28 the right to keep and bear so long as citizens retained sufficient means of self-defense—arguing

1 that “it is permissible to ban the possession of handguns so long as the possession of other firearms
2 (*i.e.*, long guns) is allowed.” *Heller*, 554 U.S. at 629. The United States Supreme Court rejected
3 that argument, *id.*, and this Court should too.

4 Finally, federal taxation on certain firearm-related products cannot justify the State’s excise
5 tax on all firearms and ammunition here. There were no federal firearm taxes before the 20th
6 Century, so they all come too late to establish a tradition of regulation under *Bruen*.

7 Further, federal taxes on firearms are only constitutional to the extent individuals do not
8 have a right to possess the taxed arms under the Second Amendment. In *Heller*, the United States
9 Supreme Court explained that certain aspects of the National Firearms Act (“NFA”) were
10 constitutional where “the *type of weapon at issue* was not eligible for Second Amendment
11 protection[.]” 554 U.S. at 622 (discussing *Miller*, 307 U.S. at 178). And the Court reasoned that *if*
12 a certain type of firearm *were* protected by the Second Amendment, the NFA’s restrictions—
13 which include taxation—would raise constitutional concerns. *See id.* at 624 (explaining that if
14 machineguns were covered by the Second Amendment, “it would mean that the National Firearms
15 Act’s restrictions on machineguns . . . might be unconstitutional”). Here, by contrast, the State’s
16 tax applies to ammunition and firearms that are indisputably covered by the Second Amendment.
17 Thus, on the Supreme Court’s reasoning, such arms could not be constitutionally taxed consistent
18 with the Second Amendment’s text. *See id.* at 624–25.

19 **2. The State’s Firearm Tax Impermissibly Taxes Constitutionally Protected**
20 **Conduct.**

21 Because the State’s tax implicates the Second Amendment, it is incumbent upon California
22 to establish a history of regulation that would support it. California has not even attempted to do so
23 in its demurrer. And California will be unable to do so. Indeed, the United States Supreme Court
24 has repeatedly—and for nearly a century—held that the exercise of constitutional rights cannot be
25 targeted through taxation. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105, 114 (1943) (striking
26 down tax on religious activities under the First Amendment’s Free Exercise Clause); *Harper*, 383
27 U.S. at 668 (striking down \$1.50 poll tax under the Fourteenth Amendment’s Equal Protection
28 Clause); *Minneapolis Star & Trib.*, 460 U.S. at 591 (striking down tax on the paper and ink

1 products used by a newspaper under the First Amendment’s Free Press Clause). The excise tax—
2 imposed on top of California’s 7.25% generally-applicable sales tax²—singles out Second
3 Amendment rights for disfavored treatment.

4 Because the Second Amendment “is not ‘a second-class right, subject to an entirely
5 different body of rules than the other Bill of Rights guarantees,’” *Bruen*, 597 U.S. at 70 (quoting
6 *McDonald*, 561 U.S. at 780), these precedents apply with equal force to California’s excise tax.
7 And Defendants’ invocation of similar excise taxes on conduct that is *not* explicitly
8 constitutionally protected—things like smoking, drinking, or fueling a car, *see* *Demurrer Br.* at
9 20—goes to show how inappropriate a tax on constitutionally protected conduct really is. As the
10 Supreme Court famously cautioned, “[a] right to tax, without limit or control, is essentially a
11 power to destroy.” *McCulloch v. Maryland*, 17 U.S. 316, 391 (1819). Here, California effectively
12 seeks the power to destroy the exercise of a constitutional right by singling it out for special
13 taxation. If this tax is permitted, there is nothing stopping California from imposing a 50% or even
14 100% tax on a constitutional right it disfavors—whether it be the right to keep and bear arms, the
15 right to free exercise of religion, or any other right.

16 Defendants do not meaningfully engage with this precedent. Instead, they assert that the
17 Supreme Court’s long-standing jurisprudence on state efforts to tax constitutional rights was
18 somehow implicitly abrogated, at least for Second Amendment purposes, by *Bruen*’s rejection of
19 means-end scrutiny in Second Amendment cases. But these precedents were not abrogated in the
20 Second Amendment context, except to the extent they suggest taxes targeted at constitutional
21 rights could be sustained if the government could somehow show that they satisfied an applicable
22 level of scrutiny. Because *Bruen* eliminated scrutiny analysis, taxes targeting Second Amendment
23 conduct are flatly unconstitutional.

24 Nor is it an excuse that the State’s tax on firearms is “only” an additional 11 percent—a
25 significant sum on top of the State’s existing 7.25 percent sales tax. The Illinois Supreme Court’s

26 ² Plaintiffs do not challenge California’s ordinary sales tax as applied to firearms and
27 ammunition because it applies equally to all goods sold in the state and, unlike the excise tax on
28 firearms and firearm parts, does not single out Second Amendment-protected items for special
taxation.

1 reasoning in *Boynton v. Kusper* demonstrates why. In striking down a \$10 tax on the issuance of
2 marriage licenses, the Court acknowledged that “[i]t may be argued . . . that the amount of the
3 tax . . . does not . . . impose a significant interference with the fundamental right to marry.”
4 *Boynton v. Kusper*, 494 N.E.2d 135, 141 (Ill. 1986). But that was *irrelevant* since once “it is
5 conceded that the State has the *power* to . . . single out [a right] for special tax consideration, there
6 is no limit on the amount of the tax that may be imposed.” *Id.*; *see also Harper*, 383 U.S. at 668
7 (holding that the government may not impose a \$1.50 tax on the right to vote and that “[t]he
8 degree of the discrimination is irrelevant”). Further support is provided by *Minneapolis Star &*
9 *Tribune*, where the dissent alleged that the challenged use tax was “significantly less burdensome”
10 financially than the generally applicable sales tax that all agreed would have been constitutionally
11 permissible. 460 U.S. at 598 (Rehnquist, J., dissenting). The majority nevertheless invalidated the
12 tax, reasoning that it was the *fact* of “differential treatment” of the press, not the relative burden of
13 the tax at any particular time, that was the source of the constitutional infirmity. *Id.* at 583
14 (majority op.).

15 The Third Circuit’s now-vacated decision in *Koons v. Attorney General of New Jersey* is
16 also instructive. There, a panel of the Third Circuit held that a \$50 fee imposed on handgun-carry-
17 permit applicants, which went beyond defraying the costs of administering the permitting program,
18 was likely unconstitutional. *Koons v. Att’y Gen. N.J.*, 156 F.4th 210, 246–47 (3d Cir. 2025), *reh’g*
19 *en banc granted, vacated by* 162 F.4th 100 (3d Cir. 2025) (mem.). Because the fee served a
20 purpose beyond administration of the licensing program itself, it effectively was a tax targeting
21 constitutional conduct. *Id.* The part of the Third Circuit panel’s decision holding the “fee” likely
22 unconstitutional was unanimous, *see id.* at 274 (Porter, J., concurring the judgment in part and
23 dissenting in part), and the rehearing petitions targeted other aspects of the panel’s ruling, Pls.-
24 Appellees’ Pets. for Reh’g En Banc, *Koons v. Att’y Gen. N.J.*, 162 F.4th 100 (3d Cir. Oct. 8, 2025)
25 (No. 23-2043), ECF Nos. 126, 127. It therefore seems unlikely that the en banc court will disturb
26 it. The Third Circuit’s persuasive opinion in *Koons* stands for the proposition that States may not
27 place a financial tax on the exercise of protected Second Amendment conduct.

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B. DIRECTOR GONZALES IS A PROPER DEFENDANT.

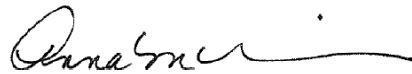
Defendants briefly state that Director Gonzales is not a proper Defendant because Section 55243 requires that an action for refund be brought against CDTFA itself. *See* Demurrer Br. at 20. To be clear, Plaintiffs have also named CDTFA as a Defendant in its own right. But Director Gonzales is a proper Defendant here because Plaintiffs do not *only* seek a refund. They also seek a declaratory judgment and a permanent injunction enjoining enforcement of § 36011. *See* Verified Compl., Prayer for Relief. By statute, Director Gonzales is required to enforce § 36011. CAL. REV. & TAX. CODE § 36031(a). Thus, an action for injunctive relief is properly directed to her.

V. CONCLUSION

For the reasons set out above, Plaintiffs have stated a case. The demurrer should be denied.

Dated: April 8, 2026

MICHEL & ASSOCIATES, P.C.



Anna M. Barvir
Attorneys for Plaintiffs

PROOF OF SERVICE

1 STATE OF CALIFORNIA
2 COUNTY OF SACRAMENTO

3 I, Laura Fera, am employed in the City of Long Beach, Los Angeles County, California. I
4 am over the age of eighteen (18) and am not a party to the within action. My business address is
180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

5 On April 8, 2026, I served the foregoing document described as:

6 **PLAINTIFFS’ MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
7 DEFENDANTS’ DEMURRER.**

7 on the interested parties in this action by placing
8 the original
9 a true and correct copy
thereof by the following means, addressed as follows:

10 Asha Albuquerque
11 Deputy Attorney General
12 455 Golden Gate Ave., Suite 11000
13 San Francisco, CA 94102
Asha.Albuquerque@doj.ca.gov
*Attorneys for Defendants California
Department of Tax and Fee Administration
and Trista Gonzalez*

- 14 (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and
15 processing correspondence for mailing. Under the practice it would be deposited with the
16 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
17 California, in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date is more than one day after
date of deposit for mailing an affidavit.
- 18 (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
19 transmission. Said transmission was reported and completed without error.

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

21 Executed on April 8, 2026, at Long Beach, California.

22 
23 _____
24 Laura Fera