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12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF SAN DIEGO**

15 DANIELLE JAYMES, JOSHUAH GERKEN,  
16 SECOND AMENDMENT FOUNDATION,  
FIREARMS POLICY COALITION,  
17 CALIFORNIA RIFLE & PISTOL  
ASSOCIATION, and NATIONAL RIFLE  
ASSOCIATION OF AMERICA,

18 Plaintiffs,

19 v.

20 NICOLAS MADUROS, in his official capacity  
21 as Director of the California Department of Tax  
and Fee Administration,  
22

23 Defendant.  
24

Case No.:

**VERIFIED COMPLAINT FOR  
DECLARATORY, INJUNCTIVE, OR  
OTHER RELIEF**

1 Plaintiffs Danielle Jaymes, Joshuah Gerken, Second Amendment Foundation, Firearms  
2 Policy Coalition, California Rifle & Pistol Association, and National Rifle Association of America  
3 complain of Defendant Nicolas Maduros, in his official capacity as Director of the California  
4 Department of Tax and Fee Administration, and allege:

## 5 INTRODUCTION

6 1. Plaintiffs sue to challenge the constitutionality of Assembly Bill 28, which imposes  
7 an 11% excise tax on gross receipts from the retail sale of firearms, “firearm precursor parts,”<sup>1</sup> and  
8 ammunition. *See* Assem. Bill 28, 2023-2024 Reg. Sess. (Cal. 2023) (“AB 28”); CAL. REV. CODE §  
9 36001 *et seq.*; CAL. PENAL CODE §§ 26700, 26705, 30395, 34400. While this excise tax is technically  
10 levied on the sellers of these goods, in practice, it is passed through to individuals purchasing  
11 firearms, “firearm precursor parts,” and ammunition in California.

12 2. California’s 11% excise tax is unconstitutional under the Supreme Court’s decision  
13 in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), because it implicates conduct  
14 protected by the Second Amendment’s plain text and is not part of this Nation’s history of gun  
15 regulation. Defendant will be unable to present widespread, relevantly-similar analogues from the  
16 Founding era to support the tax. *Id.* at 28–29.

17 3. Additionally, the United States Supreme Court has repeatedly held that constitutional  
18 rights cannot be singled out for special taxation. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105,  
19 114 (1943); *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 668 (1966); *Minneapolis Star & Trib. Co.*  
20 *v. Minn. Comm’r of Rev.*, 460 U.S. 575, 591 (1983). The excise tax plainly singles out Second  
21 Amendment rights for disfavored treatment. Because the Second Amendment is “not ‘a second-class  
22 right, subject to an entirely different body of rules than the other Bill of Rights guarantees[,]’” *Bruen*,  
23 597 U.S. at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)), these precedents  
24 apply with equal force to California’s excise tax.

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26 <sup>1</sup> A “firearm precursor part” is defined by California law, as “any forging, casting, printing,  
27 extrusion, machined body or similar article that has reached a stage in manufacture where it may  
28 readily be completed, assembled or converted to be used as the frame or receiver of a functional  
firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a  
functional firearm once completed, assembled or converted.” CAL. PENAL CODE § 16531(a).

4. As the Supreme Court famously cautioned, “[a] right to tax, without limit or control, is essentially a power to destroy.” *McCulloch v. Maryland*, 17 U.S. 316, 391 (1819). Here, California effectively seeks the power to destroy the exercise of a constitutional right by singling it out for special taxation. If this tax is permitted, there is nothing stopping California from imposing a 50% or even 100% tax on a constitutional right it disfavors—whether it be the right to keep and bear arms, the right to free exercise of religion, or any other right. Moreover, calling upon the courts to decide how much tax is too much would be a completely arbitrary exercise. The only rule that accords with precedent and common sense is that constitutional rights cannot be singled out for special taxation.

5. Individual Plaintiffs are ordinary, peaceable, law-abiding citizens. Each has purchased firearms and/or ammunition for lawful purposes—such as self-defense and training—and was forced to pay the 11% excise tax. Additionally, Individual Plaintiffs plan to continue purchasing ammunition in the coming months that will be subject to the tax. One Plaintiff, Ms. Jaymes, had also planned to purchase a new firearm that will be available soon, but she has put off doing so due to the increased cost imposed by the tax. If California’s excise tax were enjoined, Plaintiff Jaymes would promptly purchase the firearm she has been saving up to buy.

6. The Organizational Plaintiffs—Second Amendment Foundation, Firearms Policy Coalition, California Rifle & Pistol Association, and National Rifle Association of America—sue on behalf of their members, such as Individual Plaintiffs, who have purchased firearms and ammunition in California that are subject to the 11% excise tax, and who will continue to purchase firearms and ammunition in California subject to the 11% tax. Organizational Plaintiffs also have members, including Individual Plaintiffs, who will refrain from or reduce the frequency of their purchases to mitigate the effect of the tax.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action and authority to issue declaratory relief. See CAL. CODE CIV. PROC. § 1060. This Court likewise has jurisdiction over Plaintiffs’ federal constitutional claim brought under 42 U.S.C. § 1983. *Ochoa v. Super. Ct. of Santa Clara Cnty.*, 39 Cal.3d 159, 173 n.10 (1985).

1 8. Venue is appropriate in this Court because this action involves a Department of the  
2 State and the Attorney General maintains an office in San Diego. CAL. CODE CIV. PROC. § 401.

3 **THE PARTIES**

4 9. Plaintiff Danielle Jaymes is an ordinary, peaceable, law-abiding citizen and a resident  
5 of San Diego County. She is licensed to carry in California and possesses an active California Carry  
6 Concealed Weapons (“CCW”) license.

7 10. Ms. Jaymes frequently purchases ammunition from Poway Weapons & Gear  
8 (“PWG”), the largest indoor shooting range in San Diego County. Ms. Jaymes uses that ammunition  
9 to train at the range and to load the handgun she carries for self-defense. Ms. Jaymes also purchases  
10 firearms from PWG, including handguns, to use at the range and to carry for self-defense purposes.

11 11. On July 1, 2024, Ms. Jaymes purchased a handgun and ammunition from PWG for  
12 both self-defense and training purposes. Her receipt listed California’s 11% excise tax as a line item  
13 at the bottom, and the typical cost of the firearms and ammunition she purchases had increased by  
14 11%. *See* Jaymes Receipt, attached as Ex. 1.

15 12. Ms. Jaymes typically purchases ammunition from PWG and plans to purchase  
16 ammunition once a month going forward, despite the tax. Ms. Jaymes was also planning to purchase  
17 a new handgun, namely a Sig Sauer P365 Macro, from PWG when it becomes available in the  
18 coming weeks. But after realizing that the Sig Sauer purchase would cost 11% more, Ms. Jaymes  
19 has decided to defer purchasing it due to the increased cost from the tax. Ms. Jaymes would purchase  
20 this handgun within the coming weeks if it did not cost 11% more.

21 13. Plaintiff Joshuah Gerken is an ordinary, peaceable, law-abiding citizen and a resident  
22 of Orange County. He is licensed to carry in California and possesses an active CCW license. Mr.  
23 Gerken also has an instructor’s license issued by the National Rifle Association, and he sometimes  
24 provides firearms instruction at local ranges.

25 14. Mr. Gerken frequently purchases firearms and ammunition for training and self-  
26 defense purposes. Specifically, he has purchased several guns in the last two years and purchases  
27 ammunition about once a month.

28 15. On July 1, 2024, Mr. Gerken purchased ammunition from the Big 5 Sporting Goods

1 store in Buena Park, California for both self-defense and training purposes. His receipt listed  
2 California's 11% excise tax as a line item at the bottom, and the typical cost of the ammunition he  
3 purchases had increased by 11%. *See* Gerken Receipt, attached as Ex. 2.

4 16. Mr. Gerken plans to continue regularly purchasing ammunition in the near future but  
5 will do so less frequently due to the 11% tax.

6 17. Plaintiff Second Amendment Foundation, Inc. ("SAF") is a non-profit membership  
7 organization. It is incorporated under the laws of the state of Washington and was founded in 1974.  
8 SAF has over 720,000 members and supporters nationwide, including thousands of members in  
9 California. SAF is dedicated to promoting a better understanding about our constitutional heritage  
10 to privately own and possess firearms through educational and legal programs designed to better  
11 inform the public about gun control issues. SAF has been a pioneer and an innovator in the defense  
12 of the right to keep and bear arms.

13 18. SAF brings this action on behalf of its members residing in California who intend  
14 and desire to exercise their Second Amendment rights to purchase firearms and ammunition for  
15 training and self-defense purposes. SAF's members in California regularly buy firearms and  
16 ammunition in the state. As illustrated by the Individual Plaintiffs, SAF's members in California are  
17 subject to the tax every time they purchase firearms and ammunition in California, and they plan to  
18 continue to purchase these goods despite the tax.

19 19. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a Delaware nonprofit membership  
20 organization with a primary place of business in Clark County, Nevada. FPC works to create a world  
21 of maximal human liberty and freedom through legal action, grassroots and direct activism, growing  
22 an engaged community of natural rights proponents, and by providing resources to those aligned  
23 with our mission. In FPC's work, including by and through this case, FPC seeks to protect, defend,  
24 and advance the People's rights, especially but not limited to natural right to keep and bear arms.  
25 FPC serves its members and the public through litigation and legal efforts, legislative and regulatory  
26 advocacy, research, education, outreach, and other programs. FPC has thousands of members and  
27 supporters in California.

28 20. FPC brings this action on behalf of its members residing in California who intend

1 and desire to exercise their Second Amendment rights to purchase firearms and ammunition for  
2 training and self-defense purposes. Under California’s regulatory regime, FPC’s members who  
3 reside in California must buy firearms and ammunition in the state through State-licensed retailers.  
4 As illustrated by the Individual Plaintiffs, FPC’s members in California are subject to the tax every  
5 time they purchase firearms and ammunition in California, and they plan to continue to purchase  
6 these goods despite the tax in order to exercise their constitutionally protected right to keep and bear  
7 arms for all lawful purposes.

8 21. Plaintiff California Rifle & Pistol Association, Inc. (“CRPA”) is a nonprofit  
9 membership and donor-sponsored organization qualified as tax-exempt under 26 U.S.C. § 501(c)(4)  
10 with headquarters in Fullerton, California. Founded in 1875, CRPA seeks to defend the civil rights  
11 of all law-abiding individuals, including the enumerated right to bear firearms for lawful purposes  
12 like self-defense. CRPA regularly participates as a party or amicus in litigation challenging unlawful  
13 restrictions on the right to keep and bear arms. It also provides guidance to California gun owners  
14 regarding their legal rights and responsibilities. CRPA members include law enforcement officers,  
15 prosecutors, professionals, firearm experts, and the general public.

16 22. CRPA brings this action on behalf of its members residing in California who intend  
17 and desire to exercise their Second Amendment rights to purchase firearms and ammunition for  
18 training and self-defense purposes without being subjected to additional taxation in a state where  
19 firearms are already more costly than they are in other states. CRPA’s members in California  
20 regularly buy firearms and ammunition in the state. As illustrated by the Individual Plaintiffs,  
21 CRPA’s members in California are subject to the tax every time they purchase firearms and  
22 ammunition in California, and they plan to continue to purchase these goods despite the tax.

23 23. Plaintiff National Rifle Association of America, Inc. (“NRA”) is a nonprofit  
24 corporation organized under the laws of the State of New York with its principal place of business  
25 in Fairfax, Virginia. The NRA is America’s oldest civil rights organization and a foremost defender  
26 of Second Amendment rights. It was founded in 1871 by Union generals who, based on their Civil  
27 War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry.  
28 The NRA has millions of members across the nation, including in California.

1 24. The NRA brings this action on behalf of its members residing in California who  
2 intend and desire to exercise their Second Amendment rights to purchase firearms and ammunition  
3 for training and self-defense purposes. The NRA’s members in California regularly buy firearms  
4 and ammunition in the state. As demonstrated by the Individual Plaintiffs, the NRA’s members in  
5 California are subject to the tax every time they purchase firearms and ammunition in California,  
6 and they plan to continue to purchase these goods despite the tax.

7 25. Defendant Nicolas Maduro is the Director of the California Department of Tax and  
8 Fee Administration. The Department is charged with administering and collecting the 11% excise  
9 tax. CAL. REV. CODE § 36031(a).

10 **GENERAL ALLEGATIONS**

11 26. California enacted AB 28 on September 26, 2023. Its excise tax provision took effect  
12 on July 1, 2024. CAL. REV. CODE § 36011.

13 27. AB 28 adds Section 36011 to the California Revenue and Taxation Code, which  
14 imposes an 11% excise tax on the “gross receipts from the retail sale . . . of any firearm, firearm  
15 precursor part, or ammunition” sold by “licensed firearms dealers, firearms manufacturers, and  
16 ammunition vendors.” *Id.*

17 28. Proceeds from the excise tax “shall be deposited in the Gun Violence Prevention and  
18 School Safety Fund,” *id.* § 36041, which exists to fund various California political initiatives, *id.* §  
19 36005.

20 29. As the Senate Public Safety Committee recognized during consideration of AB 28,  
21 this excise tax will likely “get passed to the consumer via a higher retail price for the good in  
22 question” because “nothing in the bill precludes dealers and manufacturers from raising their prices  
23 to offset the tax and functionally passing the tax on to the consumers.” SEN. COMM. ON PUB. SAFETY,  
24 HR’G REP. ON AB 28, 2023-2024 Reg. Sess., at 9 (July 11, 2023), <https://bit.ly/3VLGBou>.

25 30. As Plaintiffs Jaymes and Gerken observed on July 1, 2024, the sellers of firearms and  
26 ammunition that they purchase from have added a line to customer receipts reflecting that the 11%  
27 tax is passed on to the purchaser of firearms and ammunition.

28 31. Through their purchases on July 1, 2024, Plaintiffs Jaymes and Gerken paid the 11%

1 excise tax. They will be forced to continue paying the tax when purchasing firearms or ammunition  
2 in the future.

3 32. Firearm manufacturers and dealers must remit the 11% excise tax collected from  
4 individual sales and submit quarterly returns. CAL. REV. CODE §§ 36011, 36032, 36033. These  
5 manufacturers and dealers have the option to file for a refund from the Department if they disagree  
6 with the amount of tax paid. *See* Tax Refund Form, attached as Ex. 3 (listing Firearms Tax as option  
7 and requiring the refund seeker to append the “[r]eturns filed and paid” for a certain period).

8 33. However, there is no administrative process available to individuals in California,  
9 such as Individual Plaintiffs, who must now pay an 11% tax on their firearms and ammunition  
10 purchases. Individual Plaintiffs and members of the Organizational Plaintiffs have no other recourse  
11 to vindicate their Second Amendment rights other than suing in this Court. In other words, Plaintiffs  
12 have no adequate remedy at law.

13 34. “[W]here no administrative remedy is provided for the particular issues raised,  
14 recourse to the administrative agency is not required before initiation of court action.” *Andal v. City*  
15 *of Stockton*, 40 Cal. Rptr. 3d 34, 37 (Cal. Ct. App. 2006); *see also Park ‘N Fly of San Francisco,*  
16 *Inc. v. City of South San Francisco*, 234 Cal. Rptr. 23, 28 (Cal. Ct. App. 1987). This is especially  
17 true, where, as here, Plaintiffs bring a “comprehensive constitutional challenge” to the validity of  
18 the excise tax and no factual questions exist that could be resolved by an administrative agency.  
19 *Andal*, 40 Cal. Rptr. 3d at 38; *see also Park ‘N Fly*, 234 Cal. Rptr. 3d at 28 (“The exhaustion doctrine  
20 does not, however, preclude consideration of appellant’s constitutional objections to the ordinance,  
21 which provides the taxpayer with no mechanism either for challenging its essential validity or raising  
22 constitutional questions.”).

23 35. Even if there were an administrative process available to Plaintiffs, Plaintiffs do not  
24 need to exhaust administrative remedies before suing. California courts have recognized that  
25 taxpayers need not exhaust administrative remedies before challenging a tax in court when they  
26 allege that the assessment is a “nullity as a matter of law” and “no factual questions exist” that may  
27 be resolved by the Department in the taxpayer’s favor, such that further litigation on Plaintiffs’  
28 constitutional claims would be unnecessary. *Stenocord Corp. v. City & Cnty. of San Francisco*, 471



1 P.2d 966, 987 (Cal. 1970) (en banc); *Steinhart v. Cnty. of Los Angeles*, 223 P.3d 57, 65–66 (Cal.  
2 2010).

3 36. The nullity exception applies here because the purpose of exhaustion is to allow the  
4 Department to pass on any factual questions within its expertise, thereby eliminating the need for  
5 judicial review of constitutional or statutory questions. *Cf. Stenocard Corp.*, 471 P.2d at 969  
6 (“disputes regarding [property] valuation are within the special competence” of the Department.);  
7 *see also Steinhart*, 223 P.3d at 66. But here, there are no factual questions regarding Plaintiffs’  
8 payment of the tax. Only this Court can adjudicate Plaintiffs’ federal constitutional challenge to the  
9 firearms and ammunition excise tax.

#### 10 CLAIM FOR RELIEF

#### 11 42 U.S.C. § 1983

#### 12 Violation of U.S. Const. amend. II (Right to Keep and Bear Arms)

13 37. Plaintiffs incorporate here by reference paragraphs 1 through 36, *supra*, as if fully set  
14 forth herein.

15 38. The Second Amendment provides: “A well regulated Militia, being necessary to the  
16 security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S.  
17 CONST. amend. II.

18 39. In *Bruen*, the Supreme Court recognized that the Second Amendment ““guarantee[s]  
19 the individual right to possess and carry weapons in case of confrontation.”” 597 U.S. at 32 (quoting  
20 *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008)). Because such confrontation can occur  
21 outside the home, the Second Amendment protects “a right to ‘bear’ arms in public for self-defense.”  
22 *Id.* at 33.

23 40. To secure “the core right to possess a firearm for self-defense[.]” the Second  
24 Amendment’s protections extend to “necessary,” “ancillary rights,” including the right to acquire  
25 and sell firearms and ammunition for lawful purposes. *Teixeira v. Cnty. of Alameda*, 873 F.3d 670,  
26 677–78, 682 (9th Cir. 2017) (en banc) (“Commerce in firearms is a necessary prerequisite to keeping  
27 and possessing arms for self-defense[.]”); *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953,  
28 967 (9th Cir. 2014) (“[W]ithout bullets, the right to bear arms would be meaningless.”); *Jones v.*

1 *Bonta*, 34 F.4th 704, 716 (9th Cir. 2022).<sup>2</sup> In other words, “[c]onstitutional rights . . . implicitly  
2 protect those closely related acts necessary to their exercise.” *Duncan v. Becerra*, 265 F. Supp. 3d  
3 1106, 1117 (S.D. Cal. 2017), *aff’d*, 742 F. App’x 218 (9th Cir. 2018) (cleaned up). After all, “the  
4 core Second Amendment right to keep and bear arms for self-defense ‘wouldn’t mean much’ without  
5 the ability to acquire arms.” *Teixeira*, 873 F.3d at 677 (quoting *Ezell v. City of Chicago*, 651 F.3d  
6 684, 704 (7th Cir. 2011)); *see also Luis v. United States*, 578 U.S. 5, 26–27 (2016) (Thomas, J.,  
7 concurring in judgment) (just as “the First Amendment right to speak would be largely ineffective  
8 if it did not include the right to engage in financial transactions that are the incidents of its exercise,”  
9 the Second Amendment “right to keep and bear arms . . . would be toothless” “without protection  
10 for [the] closely related rights” of acquiring firearms and ammunition (cleaned up)).

11 41. California’s 11% excise tax on firearms and ammunition infringes Plaintiffs’ rights  
12 under the Second Amendment because it implicates conduct protected by the Second Amendment’s  
13 plain text—acquiring firearms and ammunition—and is not part of this Nation’s history of gun  
14 regulation. *Bruen*, 597 U.S. at 1, 34. Defendant will be unable to present widespread, relevantly-  
15 similar analogues from the Founding era to support the tax. *Id.* at 28–29.

16 42. Additionally, the excise tax impermissibly singles out constitutional rights for special  
17 taxation. The United States Supreme Court has repeatedly held that the exercise of constitutional  
18 rights cannot be targeted through taxation. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105, 114  
19 (1943) (striking down tax on religious activities under the First Amendment’s Free Exercise Clause);  
20 *Harper*, 383 U.S. at 668 (striking down \$1.50 poll tax under the Fourteenth Amendment’s Equal  
21 Protection Clause); *Minneapolis Star & Trib. Co.*, 460 U.S. at 591 (striking down use tax on the  
22 paper and ink products used by a newspaper under the First Amendment’s Free Press Clause). The  
23 excise tax—imposed on top of California’s 7.25% generally-applicable sales tax<sup>3</sup>—plainly singles  
24 out Second Amendment rights for disfavored treatment. Because the Second Amendment is “not ‘a  
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26 <sup>2</sup> The decision in *Jones* was subsequently vacated and remanded to the trial court for further  
proceedings in light of the *Bruen* decision. *See* 47 F.4th 1124 (9th Cir. 2022).

27 <sup>3</sup> Plaintiffs do not challenge California’s sales tax as applied to firearms and ammunition  
28 because it applies equally to all goods sold in the state and does not single out Second Amendment  
rights for special taxation like the excise tax.

1 second-class right, subject to an entirely different body of rules than the other Bill of Rights  
2 guarantees[,]” *Bruen*, 597 U.S. at 70 (quoting *McDonald*, 561 U.S. at 780), these precedents apply  
3 with equal force to California’s excise tax.

4 43. An actual and judicially cognizable controversy exists between Plaintiffs and  
5 Defendant regarding whether Defendant’s administration of the 11% excise tax violates the Second  
6 Amendment to the United States Constitution. Plaintiffs desire a judicial declaration of their rights  
7 regarding the validity of this law.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiffs pray for judgment as follows:

10 1. For a declaratory judgment stating that California’s 11% excise tax on firearms and  
11 ammunition, CAL. REV. CODE § 36011 *et seq.*, violates the right to keep and bear arms secured by  
12 the Second Amendment to the United States Constitution.

13 2. For a permanent injunction enjoining enforcement of § 36011 and associated  
14 provisions established by AB 28, including collection of the 11% excise tax from licensed firearms  
15 dealers, firearms manufacturers, and ammunition vendors and any revocations of dealer,  
16 manufacturer, or vendors’ certificates of registration from failure to remit the tax.

17 3. For costs of suit, including reasonable attorney’s fees available pursuant to applicable  
18 law.

19 4. For other appropriate relief the Court deems necessary.

20 Dated: July 2, 2024

MICHEL & ASSOCIATES, P.C.

21 

22 \_\_\_\_\_  
23 C.D. Michel  
24 Attorneys for Plaintiff