

2. Proposition KK, enacted at C.R.S. §§ 39-37-101 *et seq.*, imposes a 6.5% excise tax on the retail sale of “any firearm, firearm precursor part, or ammunition.” *Id.* § 39-37-104.

3. While Colorado’s tax on the legal purchase of firearms will be levied on “[e]very vendor” of the products protected by the Second Amendment, the effects of the tax will be felt by all citizens of Colorado who elect to exercise their constitutional right to keep and bear arms as vendors pass the cost of the tax on to ordinary individuals who purchase firearms, firearm precursor parts, or ammunition in Colorado. Both sides of the transaction will be meaningfully harmed. Vendors will lose valuable business while individuals will face a tax on the exercise of their legal and constitutionally protected activity.

4. Colorado’s excise tax is unconstitutional under the United States Supreme Court’s decision in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). The tax on the exercise of Second Amendment rights implicates conduct protected by the Second Amendment’s plain text by adding to the cost of acquiring a firearm. Meanwhile, this infringement-by-taxation scheme is unsupported by this country’s history and tradition of firearm regulation. For this reason, Defendants will be unable to marshal widespread, relevantly similar analogues from the Founding Era as required under the Supreme Court’s precedent to justify the taxation scheme. *Id.* at 28–29.

5. The United States Supreme Court has repeatedly held in various contexts that the exercise of a constitutional right cannot be singled out for special taxation. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105, 114 (1943); *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 668 (1966); *Minneapolis Star & Trib. Co. v. Minn. Comm’r of Rev.*, 460 U.S. 575, 591 (1983). Colorado’s excise tax singles out the exercise of Second Amendment rights for special, disfavored treatment. Because the Second Amendment is “not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees[.]’” *Bruen*, 597 U.S. at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)), these precedents independently bar Colorado’s infringement-by-taxation scheme.

6. As the Supreme Court cautioned: a “right to tax, without limit or control, is essentially a power to destroy.” *McCulloch v. Maryland*, 17 U.S. 316, 391 (1819). And Colorado’s governor has acknowledged that the obvious and intended effect of targeted taxes like this one is to discriminate against and disincentivize the taxed activity: “[W]hen you tax something, you penalize it. And there’s things you actually want to penalize in society.” John LaConte, *Polis, in Beaver Creek, says state income tax should be zero*, STEAMBOAT PILOT & TODAY (Aug. 31, 2021), <https://perma.cc/TM8C-6T9T>. Here, Colorado seeks to penalize the exercise of the right to keep and bear arms and expose it to this destructive taxation power. If this tax is permitted, there is nothing stopping States from imposing 50% or even 100% taxes on the exercise of any constitutional rights they disfavor—whether it be the right to free exercise of religion, the right to free speech, or any other protected individual right. Moreover, calling upon the courts to decide how much tax is too much would be an exercise in arbitrary line-drawing. The only rule that accords with Supreme Court precedent and common sense is that the exercise of protected constitutional rights cannot be singled out for special taxation.

7. Colorado's taxation scheme is set to take effect on April 1, 2025, at which point both retailers and ordinary consumers who purchase firearms or would consider purchasing firearms in Colorado will suffer an immediate attack on their constitutional rights under the Second Amendment. C.R.S. § 39-37-104(1) ("On and after April 1, 2025, there is levied an excise tax upon every vendor at the rate of six and one-half percent of the net taxable sales from the retail sale in this state of any firearm, firearm precursor part, or ammunition.").

8. Zachary Langston is an ordinary, peaceable, law-abiding citizen who wishes to exercise his Second Amendment rights in Colorado without infringement. He has purchased firearms and ammunition for lawful purposes in the past and plans to do so again in the future. But, because of the challenged laws, the cost of his future purchases will be inflated by a 6.5% unconstitutional excise tax.

9. Magnum Shooting Center is a licensed firearms dealer that sells firearms and ammunition directly to customers in Colorado. Plaintiff Magnum Shooting Center will be subject to the 6.5% excise tax when it takes effect, and it will pass that tax on to its customers. Colorado's taxation scheme requires Plaintiff Magnum Shooting Center to register with Defendant or else face civil and even criminal penalties. C.R.S. § 39-37-107(3)(a) ("Any vendor who makes retail sales subject to the excise tax without registering commits a petty offense and shall be punished."). The statute further subjects Plaintiff Magnum Shooting Center to strict new record-keeping requirements: "Every vendor shall keep complete and accurate records necessary for the determination of the correct tax liability including itemized invoices of *all* retail sales of any firearms, firearm precursor parts, or ammunition in this state." *Id.* § 39-37-108(1). Finally, Plaintiff Magnum Shooting Center will lose valuable business as Colorado's taxation scheme seeks to deter its citizens from purchasing legal firearms.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action and authority to issue declaratory relief, *see* C.R.S. §§ 13-51-114, -112, and injunctive relief, *see* C.R.S. § 24-34-507; C.R.C.P. 65.

11. Venue is proper in this Court because some part of the claim arose in Denver County. C.R.C.P. 98(b) ("Against a public officer . . . for an act done by him in virtue of his office . . . [the case] shall be tried in the county where the claim, or some part thereof, arose.").

THE PARTIES

12. Plaintiff Zachary Langston is a peaceable, law-abiding citizen and a resident of El Paso County, Colorado.

13. Langston frequently purchases ammunition from Colorado retailers, including from Magnum Shooting Center. He uses that ammunition to train at the range, to load the handgun he keeps at home and carries for self-defense, and to engage in recreational sport shooting.

14. Langston owns several firearms and also purchases new firearms from time to time, including handguns, to use at the range and for self-defense purposes.

15. Langston plans to continue purchasing ammunition approximately once a month going forward, despite the tax. Langston was also planning to purchase a new Daniel Defense rifle chambered in .308 Winchester from Magnum Shooting Center when it becomes financially reasonable to do so. But such firearms are expensive—with added features it likely would run approximately \$4,000. Because the firearm will soon cost 6.5% more, Langston has decided to defer purchasing it due to the increased cost from the tax. Langston would purchase this firearm within the coming months if it did not cost 6.5% more than it would without the tax.

16. Plaintiff Magnum Shooting Center is a licensed dealer of firearms and ammunition, which it sells at its retail location in Colorado Springs, El Paso County, Colorado.

17. On April 1, 2025, Magnum Shooting Center will, in compliance with the laws challenged here, begin collecting from its customers Colorado's 6.5% excise tax on qualifying sales of firearms, firearm precursor parts, and ammunition. Magnum Shooting Center will add the 6.5% excise tax as a line item on its customers' receipts.

18. Plaintiff Colorado State Shooting Association ("CSSA") is a Colorado nonprofit corporation whose members include individuals and shooting sports ranges, clubs, and firearm dealers residing or located within the State of Colorado. CSSA works on behalf of its members and other Coloradans to preserve and protect their constitutional right to keep and bear arms. CSSA also coordinates and sanctions shooting competitions and other firearm-related programs within the state, and promotes and encourages Colorado hunter safety, conservation of the state's wildlife and other natural resources, and responsible private ownership and use of firearms. CSSA brings this action on behalf of its members, including Langston and Magnum Shooting Center, who are adversely and directly harmed by Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein.

19. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a nonprofit membership organization that works to create a world of maximal human liberty and freedom and to promote and protect individual liberty, private property, and economic freedoms. It seeks to promote, defend, and advance the People's rights, especially but not limited to the inalienable, fundamental, and individual right to keep and bear arms and protect the means by which individuals may exercise the right to carry and use firearms. FPC brings this action on behalf of its members, including Langston and Magnum Shooting Center, who are adversely and directly harmed by Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein.

20. Plaintiff Second Amendment Foundation ("SAF") is a nonprofit educational

foundation incorporated in 1974. SAF's mission is to preserve the individual constitutional right to keep and bear arms through public education, judicial, historical, and economic research, publishing, and legal action programs focused on the civil right guaranteed by the Second Amendment to the United States Constitution. SAF brings this action on behalf of its members, including Langston and Magnum Shooting Center, who are adversely and directly harmed by Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein.

21. Plaintiff National Rifle Association of America ("NRA") is a nonprofit corporation founded in 1871. NRA is America's oldest civil rights organization and America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. NRA has millions of members across the nation, including in Colorado. NRA brings this action on behalf of its members, including Langston and Magnum Shooting Center, who are adversely and directly harmed by Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged herein.

22. Defendant Heidi Humphreys is the Executive Director of the Department of Revenue. The Executive Director is required by statute to "administer and enforce the tax." C.R.S. § 39-37-106(1).

23. Defendant Michael J. Allen is the District Attorney of the County of El Paso. In this capacity, he is charged with prosecuting the criminal penalties imposed by Proposition KK. *See, e.g., id.* § 39-37-107(3)(a) (citing *id.* § 18-1.3-503 (defining petty offense)).

GENERAL ALLEGATIONS

24. Under the Colorado Taxpayer's Bill of Rights ("TABOR"), certain increases in taxation must be approved by a direct vote on the general ballot, not simply an act of the Colorado General Assembly.

25. In the November 2024 general election, the Colorado General Assembly submitted to the registered voters of Colorado the following ballot issue, known as Proposition KK:

Shall state taxes be increased by \$39,000,000 annually to fund mental health services, including for military veterans and at-risk youth, school safety and gun violence prevention, and support services for victims of domestic violence and other violent crimes by authorizing a tax on gun dealers, gun manufacturers, and ammunition vendors at the rate of 6.5% of the net taxable sales from the retail sale of any gun, gun precursor part, or ammunition, with the state keeping and spending all of the new tax revenue as a voter-approved revenue change?

C.R.S. § 39-37-201(2). The ballot measure was approved.

26. The excise tax will take effect on April 1, 2025.

27. Proposition KK added Article 37 to Title 39 of the Colorado Taxation Code. The new Article imposes “upon every vendor at the rate of six and one-half percent of the net taxable sales from the retail sale in this state of any firearm, firearm precursor part, or ammunition.” *Id.* § 39-37-104(1).

28. Proposition KK declares that every vendor “shall file a return with the executive director each month.” *Id.* § 39-37-109(1). “The return, which must be upon forms prescribed and furnished by the executive director, must contain the net taxable sales from the retail sale in this state of any firearm, firearm precursor part, or ammunition by the vendor during the preceding month, the tax due thereon, and *any other information* that the executive director may reasonably require.” *Id.* (emphasis added). If a vendor fails to timely file these monthly tax returns, does not accurately calculate the tax owed, or does not keep complete and accurate records, Defendants may impose financial penalties. *Id.* § 39-37-109(4).

29. Proposition KK also imposes stringent registration and record-keeping requirements. For example, the law makes it “unlawful for any person to engage in the business of an ammunition vendor, a firearms dealer, or a firearms manufacturer in this state without first having registered as a vendor with the executive director.” *Id.* § 39-37-107(1)(a). Any vendor who makes retail sales subject to the excise tax without registering commits a petty offense and shall be punished,” and may also be subject to a “civil penalty.” *Id.* at § 39-37-107(3)(a), (b). As for record-keeping, Proposition KK dictates that “[e]very vendor shall keep complete and accurate records necessary for the determination of the correct tax liability, including itemized invoices of all retail sales of any firearms, firearm precursor parts, or ammunition in this state.” *Id.* § 39-37-108(1). Further, Proposition KK gives the Executive Director sweeping authority to demand any internal records she deems necessary. *Id.* § 39-37-108(2). Each vendor must furnish copies of the records the statute requires vendors to keep *and* “any other records deemed necessary by the executive director for the determination of the correct tax liability.” *Id.* All vendors must provide these internal records “if so requested.” *Id.*

30. To comply with this taxation regime, Plaintiff Magnum Shooting Center will add a line to customer receipts reflecting that the 6.5% tax is passed on to the purchaser of firearms and ammunition, and will charge consumers 6.5% more than the item otherwise would cost. Plaintiff Magnum Shooting Center will also take steps to comply with the record-keeping requirements of Proposition KK, including maintaining a log of consumer sales and preparing to furnish any record the Executive Director deems necessary.

31. To comply on his part, Plaintiff Langston will pay 6.5% more on every purchase of firearms, firearm precursor parts, and ammunition.

32. Proposition KK will—as intended—financially burden both vendors and consumers seeking to exercise or facilitate the exercise of Second Amendment rights.

33. Plaintiff Magnum Shooting Center will also be threatened with criminal prosecution if it fails to comply with the strictures of Proposition KK. Proposition KK makes it “unlawful for any person to engage in the business of an ammunition vendor, a firearms dealer, or a firearms manufacturer in this state without first having registered as a vendor with the executive director.” *Id.* § 39-37-107(1)(a).

34. Compliance with these provisions of Proposition KK is complicated. For example, vendors must renew their registration “on or before January 1 of each even-numbered year,” *id.* § 39-37-107(1)(b), and a vendor must file and then renew this registration for *every* retail location, *id.* § 39-37-107(1)(c) (“If a vendor makes retail sales at two or more separate places of business in this state, a separate registration for each place of business is required). If a vendor fails to comply with this extensive registration regime, the vendor will face criminal penalties. *Id.* § 39-37-107(3)(a) (“Any vendor who makes retail sales subject to the excise tax without registering commits a petty offense and shall be punished.”). Such an offense carries a penalty of up to six months’ imprisonment. *See id.* § 18-1.3-503 (“The penalty for commission of a class 1 petty offense, upon conviction, is a fine of not more than five hundred dollars, or imprisonment for not more than six months.”).

35. Further, Proposition KK also makes it “unlawful for any vendor to willfully make any false or fraudulent return or false statement on any return or to willfully evade the payment of the tax, or any part of the tax.” *Id.* § 39-37-111. Any vendor caught in violation of this provision “shall be punished” pursuant to C.R.S. § 39-21-118, which denotes violations as a felony. *Id.* § 39-21-118 (1), (2)(a). In addition to “imprisonment,” the sentence can include a fine of up to “five hundred thousand dollars in the case of a corporation.” *Id.*

36. A vendor may also face civil penalties in addition to criminal charges under Proposition KK. *Id.* § 39-37-107(3)(b) (“Any vendor who makes retail sales subject to the excise tax without registering may also be subject to a civil penalty of fifty dollars per day up to a maximum penalty of one thousand dollars.”).

37. As Executive Director of the Department of Revenue, Defendant Humphreys is empowered to “make a refund or allow a credit to any vendor that establishes that the vendor has overpaid the tax due pursuant to this article 37.” *Id.* § 39-37-106(3)(a). But that process is inapposite here. Plaintiffs do not argue that they have “overpaid” the tax, *id.*—they argue that the tax regime itself is unconstitutional. And, as far as Plaintiffs are aware, the Executive Director has been given no authority to declare a tax unconstitutional in the first instance and refund payment on that basis. Rather, that power and duty belongs to the courts.

38. The Executive Director, in turn, is required to execute a court’s judgment that a tax was unconstitutional or unlawful by providing a refund with interest. *See* C.R.S. § 39-21-108(2) (“[U]pon final judgment of a *court* that the tax, penalty, or interest paid by any taxpayer . . . has been illegally or erroneously collected, then the executive director shall issue in favor of the taxpayer his voucher to the controller for the refund of such illegally collected tax, penalty, or interest, . . . together with interest[.]” (emphasis added)). The statutory scheme

thus envisions a challenge in court against an allegedly unconstitutional tax. And once the court has made that judgment, the Executive Director has only a limited role to play, simply enforcing the court's judgment without any discretion or independent judgment of the tax's constitutionality.

39. Further, as to Plaintiff Langston, there is no administrative process available to redress the harm caused by the 6.5% tax on firearm and ammunition purchases. Plaintiff Langston therefore has no other recourse to vindicate his Second Amendment rights other than suing for prospective relief in this Court. Plaintiffs thus have no adequate remedy at law.

40. Colorado caselaw is in accord. Even if there *were* some applicable administrative process available to Plaintiffs to challenge the tax regime itself, Plaintiffs would not need to exhaust administrative remedies before bringing this constitutional challenge. "The exhaustion requirement" does not apply "when the matters in controversy are matters of law that the agency lacks the authority or capacity to determine, such as constitutional issues." *Colo. Stormwater Council v. Water Quality Control Div. of the Colo. Dep't of Pub. Health & Env't*, 529 P.3d 134, 138, *cert. denied sub nom. Colo. Stormwater Council v. Water Quality Control Div. of Colo. Dep't of Pub. Health & Env't*, No. 23SC190, 2023 WL 5031669 (Colo. Aug. 7, 2023); *see also, e.g., City & Cnty. of Denver v. United Air Lines, Inc.*, 8 P.3d 1206, 1213 (Colo. 2000); *State v. Golden's Concrete Co.*, 962 P.2d 919, 923 (Colo. 1998) (en banc); *Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1197–98 (Colo. 1993); *Kuhn v. Dep't of Rev.*, 817 P.2d 101, 104 (Colo. 1991); *Fred Schmid Appliance & Television Co. v. City & Cnty. of Denver*, 811 P.2d 31, 33 (Colo. 1991).

CLAIM FOR RELIEF

COUNT I: UNCONSTITUTIONAL TAXATION

Violation of U.S. Const. amend. II – The Right to Keep and Bear Arms

41. Plaintiffs incorporate here by reference paragraphs 1–40 above, as if fully set forth herein.

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

43. The Second Amendment is applicable to the States through the Fourteenth Amendment. *McDonald*, 561 U.S. at 750 (plurality); *id.* at 805 (Thomas, J., concurring).

44. The Second Amendment right to keep and bear arms for self-defense "wouldn't mean much' without the ability to acquire arms." *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc) (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)); *see also Luis v. United States*, 578 U.S. 5, 26–27 (2016) (Thomas, J., concurring in judgment) (just as "the First Amendment right to speak would be largely ineffective if it did

not include the right to engage in financial transactions that are the incidents of its exercise,” the Second Amendment “right to keep and bear arms . . . would be toothless” “without protection for [the] closely related rights” of acquiring firearms and ammunition (cleaned up)).

45. Colorado’s 6.5% excise tax on firearms and ammunition therefore infringes Plaintiffs’ rights under the Second Amendment because it implicates conduct protected by the Second Amendment’s plain text—acquiring firearms and ammunition—and is not part of this Nation’s history of gun or arms regulation. *Bruen*, 597 U.S. at 24. Defendants will be unable to present widespread, relevantly similar analogues from the Founding era, which would be required to save the tax under the Supreme Court’s Second Amendment precedents. *Id.* at 28–29.

46. Additionally, the excise tax impermissibly singles out the exercise of a constitutional right for special taxation. The United States Supreme Court has repeatedly held that the exercise of constitutional rights cannot be targeted through taxation. *See, e.g., Murdock*, 319 U.S. at 114 (striking down tax on religious activities under the First Amendment’s Free Exercise Clause); *Harper*, 383 U.S. at 668 (striking down \$1.50 poll tax under the Fourteenth Amendment’s Equal Protection Clause); *Minneapolis Star & Trib. Co.*, 460 U.S. at 591 (striking down use tax on the paper and ink products used by a newspaper under the First Amendment’s Free Press Clause). The excise tax on its face singles out Second Amendment rights for disfavored treatment. Because the Second Amendment is “not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees[.]’” *Bruen*, 597 U.S. at 70 (quoting *McDonald*, 561 U.S. at 780), these precedents apply with equal force to Colorado’s infringement-by-taxation regime.

47. An actual and judicially cognizable controversy exists between Plaintiffs and Defendants regarding whether Defendants’ administration of the 6.5% excise tax on the sale of firearms, firearm precursor parts, and ammunition violates the Second Amendment to the United States Constitution.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment as follows:

1. A declaratory judgment stating that Colorado’s 6.5% excise tax on firearms and ammunition, C.R.S. §§ 39-37-101 *et seq.*, violates the right to keep and bear arms secured by the Second Amendment to the United States Constitution.

2. A permanent injunction enjoining Defendants from enforcing C.R.S. § 39-37-104, and associated provisions established by Proposition KK, including collection of the 6.5% excise tax, the record-keeping and inspection requirements, and imposition of the civil and criminal penalties for failing to remit the tax.

3. Costs of suit, including reasonable attorney's fees available pursuant to applicable law.

4. All other appropriate relief as the Court deems equitable and just.

Dated: March 31, 2025

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**Application for pro hac vice admission
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