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13 THE UNITED STATES DISTRICT COURT  
14 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA  
15

16 SEAN SILVEIRA; JACK SAFFORD;  
PATRICK OVERSTREET; DAVID K.  
17 MEHL; SGT. STEVEN FOCHT; SGT.  
DAVID BLALOCK; MARCUS  
18 DAVIS; VANCE BOYCE; KEN  
DEWALD,

19 Plaintiffs,

20 vs.

21 BILL LOCKYER Attorney General,  
22 State of California; GRAY DAVIS,  
Governor, State of California.

23 Defendants.  
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CASE NO.: CIV S 00 411 WBS/JFM

**FIRST AMENDED COMPLAINT  
FOR:**

- 1) 42 U.S.C. § 1983 (Second and Fourteenth Amendment - unconstitutional firearms statute)
- 2) 42 U.S.C. § 1983 (Fifth and Fourteenth Amendment- deprivation of property without due process)
- 3) 42 U.S.C. § 1983 (Fifth and Fourteenth Amendment- Liberty Interest)
- 4) 42 U.S.C. § 1983 (Fourteenth Amendment- Equal Protection - Assault Weapons owned by retired and off duty Law Enforcement officers)
- 5) 42 U.S.C. § 1983 (Fourteenth

Amendment- Equal Protection -  
CCW)

- 6) 42 U.S.C. § 1983 (Fifth and Fourteenth Amendment- Right to Privacy - Gun Registration)
- 7) 42 U.S.C. § 1983 (First and Fourteenth Amendment- Freedom of Association)
- 8) 42 U.S.C. § 1983 (Ninth and Fourteenth Amendment- Right to Keep and Bear Arms - keeping and bearing arms is a natural right which pre-existed the rights enumerated in the Constitution)

**DEMAND FOR JURY TRIAL**  
**[F.R.C.P. 38(b)]**

REQUEST FOR PRELIMINARY  
INJUNCTION

NOTICE OF  
UNCONSTITUTIONALITY OF STATE  
STATUTE

**INTRODUCTION**

1. “This year will go down in history. For the first time a civilized nation has full gun registration! Our streets will be safer, our police more efficient, and the world will follow our lead into the future.” *Adolph Hitler*, 1935. These plans went into affect again in 2000 when the new California firearm registration law took affect.

2. “I ask, sir, what is the militia? It is the whole people . . . to disarm the people is the best and most effectual way to enslave them.” *George Mason*, during Virginia’s ratification convention (1788).

3. “No free man shall ever be debarred the use of arms.” Thomas Jefferson.

4. This case challenges the Constitutionality of California’s so called “Assault Weapons” law, and other nuisance firearms legislation.

5. “God grants liberty only to those who love it, and are always ready to guard and defend it.” *Daniel Webster*, speech, June 3, 1834.

**THE UNDERLYING FACTS**

1 6. Since about half of U.S. households have a gun, broadly directed restrictions on the  
2 acquisition, possession, and use of guns impinge on the lives and liberties of millions of  
3 Americans and Californians, not just a small, politically powerless subset of them.

4 7. In response to this simple fact, the advocates of more restrictive controls have directed  
5 their focus away from measures which result in either an all out ban or regulation of all types of  
6 guns; as such, current gun laws are targeted toward those which regulate special subtypes of  
7 firearms, i.e. types of guns which are owned by smaller numbers of voters and which are  
8 consequently more vulnerable to regulation.

9 8. For instance, "if I could have gotten 51 votes in the Senate of the United States for an  
10 out-right ban, picking up every one of them... 'Mr. and Mrs. America, turn 'em all in,' I would  
11 have done it. I could not do that. The votes weren't here." Senator Dianne Feinstein: CBS-TV's  
12 "60 Minutes", February 5, 1995. "Semi-automatic assault weapons are turning America's streets  
13 into war zones. True, **they are not responsible for a large number of homicides**, but what they  
14 do is offer the possibility..." [*emphasis added*] Senator Dianne Feinstein: Congressional Record,  
15 November 9, 1993. In fact, the actual number is statistically insignificant that DOJ and the FBI  
16 do not even maintain statistics on alleged assault weapons."

17 9. California's laws have thus increasingly stressed the need to control various special  
18 weapon categories such as "assault rifles" and "Saturday Night Special" ("Junk Guns")  
19 handguns, and "cop-killer" bullets, or sometimes all handguns. For each weapon or ammunition  
20 type, it is argued that the object is especially dangerous or particularly useful for criminal  
21 purposes, while having little or no counterbalancing utility for lawful purposes. A common  
22 slogan is "This type of gun is good for only one purpose - killing people."

23 10. The specific weapon type so described shifts from one year to the next, in response to  
24 shifts in the political winds rather than actual criminologically significant shifts in criminal use of  
25 guns. For example, the so-called "cop killer bullets" which were restricted in 1986, have never  
26 killed a cop.

27 11. "Assault rifles" and "assault weapons" became important objects of gun control efforts  
28 in the 1980s.

12. Contrary to widespread claims, these semi-automatic "military-style" weapons are

1 rarely used by criminals in general or by drug dealers or juvenile gang members in particular, are  
2 almost never used to kill police officers, are generally less lethal than ordinary hunting rifles, and  
3 are not easily converted to fully automatic fire. They do offer a rate of fire somewhat higher than  
4 other gun types and can be used with magazines holding large numbers of cartridges, but there is  
5 **absolutely no evidence** demonstrating that so called “assault weapons” are relevant to the  
6 outcome of any significant number of gun crimes. Guns and Violence: A Summary of the Field,  
7 Gary Kleck, Ph.D., School of Criminology and Criminal Justice, Florida State University,  
8 Tallahassee, Florida.

9 13. In fact, fewer than 2% of gun homicides involve the military-style semiautomatic  
10 weapons which are commonly labeled "assault weapons." Guns and Violence: A Summary of  
11 the Field, Gary Kleck, Ph.D., School of Criminology and Criminal Justice, Florida State  
12 University, Tallahassee, Florida.

13 14. Saturday Night Specials (SNSs) or “Junk Guns” are small, cheap handguns. The U.S.  
14 Bureau of Alcohol, Tobacco and Firearms (BATF) definition of SNSs is a barrel length under  
15 three inches, .32 caliber or less, and price under \$50 in mid-1970's dollars. California changed  
16 this definition dramatically by defining a SNS as any handgun lacking a “manually operated  
17 safety.” Thus, California has redefined BATF’s criteria of a SNS.

18 15. Considering the obvious target of California’s SNS gun law (i.e. Glock’s and Sig’s),  
19 SNSs are not the real target of the policies, but rather that all handguns are. Given the obscure  
20 and technical definitions that are actually used in legislation and administrative regulations in  
21 California, it was easy to manipulate such a definition in a politically low-profile way such that  
22 most handguns fell within the SNS category.

23 16. Each year about 1,500-2,800 criminals are lawfully killed by gun-wielding American  
24 civilians in justifiable or excusable homicides, far more than are killed by police officers. There  
25 are 600,000-1 million defensive uses of guns each year, significantly more than the number of  
26 crimes committed with guns.

27 17. About a third of U.S. households keep a gun at least partially for defensive reasons; at  
28 any one time nearly a third of gun owners have a firearm in their home (usually a handgun)  
which is loaded; about a quarter of retail businesses have a gun on the premises; and

1 approximately 5% of U.S. adults (including celebrities, politicians, judges, and off-duty and  
2 retired law enforcement personnel) regularly carry a gun for self-defense.

3 18. According to the State of California, Center for Health Statistics and Department of  
4 Justice, in 1997, out of 3,849 firearm/explosives deaths [DHS fails to identify the actual number  
5 of deaths caused by the use of firearms versus explosives] in California, **1,727 were suicides** and  
6 175 were accidental; thus, approximately half were inflicted by another person; however, out of  
7 this number, 93% of the deaths were caused by handguns, not so called "assault weapons."  
8 DOJ's own records reflect that between 1990 to 1998, 10% were coded justifiable home  
9 shootings, and 5% were justifiable police shootings. Thus, a minimum of 15% of the homicides  
10 were justifiable, leaving only approximately **1,500 homicides**. In fact, this Homicide rate is in  
11 fact declining. See Plaintiff's Exhibit "A" attached.

12 19. This is a mere pittance when compared to the number of people killed in 1997 by auto  
13 accidents [**3,809** (Plaintiff's Exhibit "B" attached.)], or by ingesting too much alcohol all at once  
14 [**3,345** (Plaintiff's Exhibit "C" attached.)].

15 20. Firearm Mortality (All figures are for U.S.) - Annual Firearm Deaths from Homicide  
16 have ranged from approximately 12,000 in 1976 to a peak of approximately 17,000 in 1993. In  
17 1998, they have reached an all time low of 10,900. Handguns are used in a majority of the  
18 homicides. In 1998, 2,160 were from all other guns, other than handguns.

19 21. Age-Adjusted Death Rate: 12.2 deaths per 100,000 population (1997) Death Rate for  
20 Males Ages 15-24: 38.9 deaths per 100,000 population (1997) **Death Rate for Black Males**  
21 **Ages 15-24: 119.9 deaths per 100,000 population** (1997) Firearm suicide deaths: 6.6 per  
22 100,000 population (1997) Fire Homicide Deaths: 5.1 per 100,000 population (1997). Source:  
23 National Vital Statistics Reports, Vol. 47, No.19.

24 22. In 1997, there were 3,319 alcohol induced deaths in California out of 19,576  
25 Alcohol-induced deaths in the United States, not including motor vehicle fatalities. In 1997,  
26 there were 25,175 deaths in the United States from Chronic Liver Disease and Cirrhosis. [All  
27 statistical information compiled from CDC and DHS.]

28 23. State Health Director Kim Belshé announced that the majority of Californians--82  
percent--do not smoke. Secondhand smoke is the third leading cause of preventable death in this

1 country, killing 53,000 nonsmokers in the U.S. each year. In the largest study ever conducted on  
2 the issue, Harvard Medical School found that a high exposure to secondhand smoke nearly  
3 doubles a woman's risk of having a heart attack.

4 24. Over **400,000 people die** each year from the physiological effects of **tobacco** alone.  
5 California being the most with **43,000 annually**.

6 25. Even though firearms are responsible for a fraction of all deaths and is steadily  
7 declining, and alcohol and tobacco are the leading causes of death as they are responsible for  
8 over half of all deaths in the United States. See Plaintiffs' Exhibit "D." Thus, the Defendants are  
9 enforcing gun laws that lack any *rationale basis*. It is apparent that if Defendants' were  
10 concerned about saving lives, they would enforce legislation which would ban alcohol and  
11 tobacco products, thus eliminating half of all deaths. As such, it defies reason as to why guns are  
12 specifically targeted and declared a "public nuisance," especially in light of this Country's  
13 history regarding the right to keep and bear arms in defense of self and liberty.

14 26. As such, this is a claim for retrospective and/or prospective relief, as well as monetary  
15 damages, if applicable.

#### 16 **JURISDICTION**

17 27. Jurisdiction conferred on this court by 28 U.S.C. §§ 1331 and 1343 which provides for  
18 original jurisdiction of this court and all actions authorized by 42 U.S.C. § 1983. Supplemental  
19 Jurisdiction is founded upon 28 U.S.C. § 1367.

#### 20 **VENUE**

21 28. The unlawful actions alleged herein have taken place within the jurisdiction of the  
22 United States District Court for the Eastern District of California. The illegal acts took place in  
23 Sacramento County, California. Venue is proper under 20 U.S.C. § 1391(b).

#### 24 **ATTORNEY'S FEES**

25 29. Plaintiffs are entitled to attorney's fees pursuant to 42 U.S.C. § 1988, and as private  
26 attorney generals.

#### 27 **PARTIES**

28 30. At all relevant times mentioned herein, Plaintiffs JACK SAFFORD; SEAN SILVEIRA;  
PATRICK OVERSTREET; DAVID K. MEHL; STEVEN FOCHT; MARCUS DAVIS; VANCE

1 BOYCE; and KEN DEWALD, (hereinafter "Plaintiffs" unless otherwise noted), are at all times  
2 herein mentioned, adult male United States citizens and residents of California.

3 31. Plaintiffs own, or would like to own, semi-automatic rifles and/or pistols subject to the  
4 terms of the statute which prohibits and/or restricts possession, use, transfer and/or sale of semi-  
5 automatic rifles and/or pistols.

6 32. Plaintiffs' would like to exercise their right to possess, carry and conceal firearms,  
7 subject to *reasonable* restrictions, such as mandatory background checks and appropriate  
8 classes demonstrating proficiency in the safe use of firearms for protection and sport.

9 33. Plaintiff JACK SAFFORD is a resident of Corning, California, husband and father, and  
10 owns substantial acreage/farm land. He owns his own insurance agency and is a model citizen.  
11 He is a graduate of California State University, Chico.

12 34. Plaintiff SEAN SILVEIRA is a resident of Marin County, California, husband and  
13 father of two, and owns real property in Marin. He is a civil engineer, model citizen, and a  
14 graduate of California State University, Chico.

15 35. Plaintiff PATRICK OVERSTREET is a resident of Marin County, California, husband,  
16 and owns real property in Marin. He is employed by the San Francisco Police Department as a  
17 S.W.A.T. officer, and a graduate of California State University, San Diego.

18 36. Plaintiff DAVID K. MEHL is a resident of Sacramento, California, husband, and owns  
19 real property in Sacramento. He is a chemical engineer, graduate of the University of California,  
20 Davis, and a model citizen.

21 37. Plaintiff SGT. STEVEN FOCHT is a resident of Placer County, husband and father, and  
22 owns real property in Placer County. He was a Marine Corp sniper who performed military  
23 functions in Desert Storm, Rwanda, Ethiopia, Kenya, Thailand, in addition to Mogadishu,  
24 Somalia. He was honorably discharged, and currently a Sergeant in the California Army  
25 National Guard. He is a model citizen.

26 38. Plaintiff SGT. DAVID BLALOCK is a resident of Sacramento County and owns real  
27 property in Sacramento County. He was assigned to the 82<sup>nd</sup> Airborne Division who is a Purple  
28 Heart recipient from combat injuries (AK 47 round through his arm) occurring in the Noriega  
police operation (invasion of Panama) and currently a Sergeant in the California Army National

Guard. He is a model citizen.

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39. Plaintiff MARCUS DAVIS is a resident of Sacramento, California, husband and expecting father, and real property owner. He is mortgage broker, graduate of the University of California, Davis, and a model citizen.

40. Plaintiff VANCE BOYCE is a resident of Colusa, California, husband and father, and real property owner. He is a of California State University, Fresno.

41. Plaintiff KEN DEWALD is a resident of Paradise, California, husband and father, and real property owner. He was honorably discharged from the Air Force, and is currently employed as a California Correctional Officer and a model citizen.

42. Defendant GRAY DAVIS is the Governor of the State of California, and holds those powers specifically granted to him by virtue of his office and the State constitution.

43. Article V, Section 1, of the California Constitution describes the responsibilities of the Governor with the following words: "The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed."

44. Defendant BILL LOCKYER was elected as California's 30th Attorney General in November of 1998 and began his term in January of 1999. The Attorney General is the Chief Law Officer of the State of California and is elected and charged by the State constitution with the responsibility to ensure that State laws are uniformly and adequately enforced.

45. Article V, Section 13, of the California Constitution describes the responsibilities of the Attorney General with the following words: "Subject to the powers and duties of the Governor, the Attorney General shall be the chief officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their representative offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have



1 jurisdiction, and in such cases the Attorney General shall have all the powers of a district  
2 attorney. When required by the public interest or directed by the Governor, the Attorney General  
3 shall assist any district attorney in the discharge of the duties of that office."

4 46. The Attorney General represents the people of California before trial, appellate, and  
5 Supreme Courts of California and the United States in criminal and civil matters; serves as legal  
6 counsel to State officers, boards, commissions, and departments; and assists district attorneys in  
7 the administration of justice.

8 47. Section 11042 of the Government Code requires state agencies to employ only the  
9 Attorney General, with few exceptions, as legal counsel to centralize legal work done on behalf  
10 of the State. Section 11041 lists those agencies that can represent themselves.

11 48. It is the responsibility of the Attorney General to assist city, county, state, federal, and  
12 international criminal justice agencies to ensure the uniformity and adequacy of enforcement of  
13 California State laws.

14 49. To support California's local law enforcement community, the Attorney General  
15 coordinates State-wide law enforcement efforts, participates in criminal investigations, provides  
16 forensic science services, and provides identification and information services and  
17 telecommunication support.

18 50. At all relevant times mentioned herein, Defendants are public officials subject to the  
19 limitations as set forth in the United States Constitution and the laws of the United States of  
20 America, including, but not limited to, the Second, Fourth, Fifth and Fourteenth Amendments.

21 51. Defendants, and each of them, were policy makers and ratified and/or supplemented the  
22 conduct of the other named defendants, and were in a position of power to enforce the laws of the  
23 United States of America, and uphold the Constitution.

24 52. Defendants were, at all times herein mentioned, legally responsible for the acts of their  
25 employees, agents, and servants committed in the scope of their employment.

26 53. As a direct and proximate result of the herein acts, omissions, and systematic  
27 deficiencies, policies and customs of all and/or part of Defendants, Plaintiffs have been harmed  
28 according to proof.

#### **BACKGROUND INFORMATION**

1 54. As a result of the passage of Senate Bill (SB) 23 (Chapter 129, Statutes of 1999),  
2 effective January 1, 2000 any person who, within the state of California, possesses any of the  
3 firearms identified in 12276 and other firearms described 12276.1 all euphemistically described  
4 as “assault weapon,” except as provided in Penal Code section 12276 et seq., (original  
5 Roberti-Roos Assault Weapons Control Act), is guilty of a criminal offense. The original  
6 Roberti-Roos Assault Weapons Control Act, which was partially unconstitutional, has been  
7 supplemented by SB 23 to define assault weapons by their physical characteristics and  
8 functionality, rather than just by make and model.

9 55. Assault Weapons as defined under the original Roberti-Roos Assault Weapons Control  
10 Act are not allowed registration under this legislation. The passage of SB 23 also prohibits,  
11 except as provided, the manufacture, import, sale, giving or lending of large capacity magazines  
12 (defined as any ammunition feeding device with the capacity to accept more than 10 rounds, but  
13 not to include .22 caliber tube ammunition feeding devices) effective January 1, 2000.

14 56. Enforcement relative to the illegal possession of assault weapons will go into effect  
15 January 1, 2001, following the one-year registration period. Persons who lawfully possessed  
16 assault weapons prior to January 1, 2000 are required to either 1) register them with the  
17 Department of Justice between January 1, 2000 and December 31, 2000, 2) render them  
18 permanently inoperable, 3) remove them from California, 4) relinquish them to a police or  
19 sheriff's department, or 5) sell them to a California licensed firearms dealer who possesses a valid  
20 assault weapon dealer permit.

21 57. However, these prohibitions do not apply to off-duty or retired California peace officers.

22 58. In addition, citizens who associate with certain Government officials, and off-duty or  
23 retired California peace officers are entitled to carry concealed weapons.

24 59. Article I, Section 8 of the California Constitution provides that “[a] citizen or class of  
25 citizens may not be granted privileges or immunities not granted on the same terms to all  
26 citizens.”

27 60. Though the Roberti-Roos Assault Weapon Control Act of 1989 was augmented with the  
28 current legislation, these acts cumulatively infringe upon Plaintiffs’ rights guaranteed by the  
Second Amendment, and rights retained by the People.

1 61. In addition, Penal Code Section 12125 et seq. prohibits the manufacture, sale,  
2 importation, use, possession, use and/or lending of any handgun failing to satisfy the enumerated  
3 requirements, including among other things, handguns lacking a “manually operated safety.”  
4 This means that Sig Saur’s, Glock’s and other very expensive and well engineered handguns are  
5 now on the prohibited list.

6 62. In addition, magazines for both long arms and pistols exceeding ten rounds are now  
7 prohibited, in certain circumstances. However, the sale or purchase of these magazines is now  
8 currently prohibited by law as well.

9 63. “A well regulated militia, being necessary to the security of a free state, the right of the  
10 people to keep and bear arms, shall not be infringed.” Second Amendment of the United States  
11 Constitution.

12 64. “The State of California is an inseparable part of the United States of America, and the  
13 United States Constitution is the supreme law of the land.” Article III, Section 1 of the  
14 California Constitution.

15 **FIRST CAUSE OF ACTION**  
16 42 U.S.C. § 1983

17 (Second and Fourteenth Amendments)

18 65. Plaintiffs incorporate by reference paragraphs 1 through 64 as though the same were set  
19 forth herein at length.

20 66. Plaintiffs are now prohibited from arming themselves with standard firearms under  
21 California law.

22 67. California law criminalizes firearms with certain, arbitrary characteristics.

23 68. California law criminalizes certain firearm components, i.e. magazines with a capacity  
24 of more than 10 rounds.

25 69. California law requires registration of firearms.

26 70. Such registration is the equivalent of registering rights, such as speech.

27 71. Plaintiffs are prohibited from keeping and bearing arms, including concealed weapons.

28 72. The Second Amendment is part of the Bill of Rights of the United States Constitution,  
and is thereby directly applicable to all the states.

73. In addition thereto, the United States constitution, including the Bill of Rights, has been

declared to be “the supreme law of the land.” Art. III, Sect. Cal. Const.

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74. The Second Amendment, by virtue of its incorporation into the State constitution and by virtue of the Fourteenth Amendment, prohibits government officials from enforcing laws which would interfere with an “**individual’s**” right to “keep and bear arms.”

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75. Defendants, acting under color of law, are engaging in conduct that infringes on Plaintiffs’ rights guaranteed and protected by the Second Amendment.

76. Defendants' acts include, but are not limited to,

- (1) enforcing numerous statutes which infringe upon Plaintiffs’ rights which are guaranteed by the Second Amendment,
- (2) requiring Plaintiffs to register firearms, and making noncompliance with registration a criminal act,
- (3) regulating and controlling firearms and their accessories in a way which obviously infringes upon Plaintiffs' rights of acquisition, ownership, possession, and to keep and bear arms,
- (4) depriving Plaintiffs of their individual rights to protect themselves, property and their country.

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77. In addition, the California Constitution, Article I, Section 1 specifically provides that “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

78. But by virtue of the current firearms laws, Plaintiffs' ability to exercise those rights have been infringed.

79. In essence, the result of Defendants enforcement of California statutes, Plaintiffs are precluded from being able to exercise those inalienable rights, except in very limited circumstances.

80. As a direct and proximate result, if Defendants are not enjoined from enforcing the subject laws, Plaintiffs will be irreparably harmed according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

81. As a direct and proximate result, Plaintiffs have been damaged according to proof,

including, but not limited to the loss of use and enjoyment of constitutional rights.

**SECOND CAUSE OF ACTION**

42 U.S.C. § 1983

(Plaintiffs)

(DUE PROCESS)

82. Plaintiffs incorporate by reference paragraphs 1 through 81 as though the same were set forth herein at length.

83. Plaintiffs (excluding Sgt. BLALOCK) own firearms (property) and/or magazines which were legal to buy and sell under prior law.

84. After the subject law was passed, Plaintiffs wanted to sell their firearms and magazines. However, they are now prohibited by law, and are likewise precluded from entering into such a transaction.

85. As such, Plaintiffs' property is now devalued since they are unable to obtain the highest value that their property would be worth in an open and free market. In essence, Plaintiffs' property has now been rendered worthless.

86. As a direct and proximate result, Plaintiffs are being deprived their constitutional rights under color of law.

87. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights and property.

88. As a direct and proximate result, Plaintiffs are being deprived their constitutional rights under color of law.

89. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

**THIRD CAUSE OF ACTION**

42 U.S.C. § 1983

(Plaintiffs)

(DUE PROCESS - Liberty Interest)

90. Plaintiffs incorporate by reference paragraphs 1 through 90 as though the same were set forth herein at length.

91. Firearm possession is a valuable liberty interest imbedded in both the Second Amendment and Fourteenth Amendment to the United States Constitution. "[T]here is a long tradition of widespread lawful gun ownership by private individuals in this country." Staples v.

1 United States, 511 U.S. 600, 610 (1994). Thus, Plaintiffs have a protected liberty interest in  
2 firearm possession under the Fifth Amendment.

3 92. "It is wrong to convict a person of a crime if he had no reason to believe that the act for  
4 which he was convicted was a crime, or even that it was wrongful. This is one of the bedrock  
5 principles of American law. It lies at the heart of any civilized system of law." United States v.  
6 Wilson, 159 F.3d 280, 293 (7th Cir.1998) (Posner, C.J., dissenting). It offends both substantive  
7 and procedural due process for Plaintiffs to be subjected to criminal prosecution for laws  
8 criminalizing past behavior. Because current gun laws retroactively apply and are obscure  
9 criminal provisions, it is unfair to hold Plaintiffs accountable for their otherwise previous lawful  
10 actions.

11 93. The conduct these statutes criminalize is malum prohibitum, not malum in se. In other  
12 words, there was nothing inherently evil about Plaintiffs possessing certain firearms and  
13 accessories. Plaintiffs conduct is and will become unlawful merely because the statutes  
14 mandated that it be. See Wilson, 159 F.3d at 294 (Posner, C.J., dissenting).

15 94. The subject gun laws are also one of those "highly technical statutes that present ... the  
16 danger of ensnaring individuals engaged in apparently innocent conduct," of which the Supreme  
17 Court spoke in Bryan v. United States, 524 U.S. 184, 118 S.Ct. 1939, 1946-47, 141 L.Ed.2d 197  
18 (1998).

19 95. In this case, numerous individuals in California will become criminals for lawful  
20 activities committed in the past since the state does not notify each individual firearm owner of  
21 the supposed duty to register guns and parts. See Lambert v. California, 355 U.S. 225 (1957).

22 96. Because current gun laws are obscure, highly technical statutes with no mens rea  
23 requirement, it violates Plaintiffs' Fifth Amendment due process rights to be subject to  
24 prosecution without proof of knowledge that they were violating the statutes.

25 97. As a direct and proximate result, Plaintiffs are being deprived their constitutional rights  
26 under color of law.

27 98. As a direct and proximate result, Plaintiffs have been damaged according to proof,  
28 including, but not limited to the loss of use and enjoyment of constitutional rights and property.

99. As a direct and proximate result, Plaintiffs are being deprived their constitutional rights

under color of law.

100. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

**FOURTH CAUSE OF ACTION**  
42 U.S.C. § 1983

(Equal Protection - Assault Weapons owned by off-duty and retired Law Enforcement officers)

101. Plaintiffs incorporate by reference paragraphs 1 through 100 as though the same were set forth herein at length.

102. The current so called “Assault Weapons” ban does not apply to off-duty and retired California Peace Officers. In other words, this class of citizens are granted privileges and immunities which are not granted to others.

103. This exemption was implemented to facilitate and enlist law enforcement officers to back the current gun legislation. It is a well known fact that off-duty and retired law enforcement officers, as a group, are the one of the biggest purchasers of Assault Weapons, Rifles, and Semi-Automatic pistols, and that these purchases are unrelated to any law enforcement function they may undertake or have undertaken.

104. This exemption serves no legitimate law enforcement interest. For instance, why does on off-duty or retired officer need an AK-47 as no law enforcement agency in California uses them?

105. Plaintiffs are entitled to equal rights, protections and privileges under the law. However, a class of citizens are given rights simply because they happen to be associated with law enforcement.

106. Article I, Section 8 of the California Constitution provides that “[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.” In this case, off-duty and retired California Peace Officers are “. . . granted privileges or immunities not granted on the same terms to all citizens.”

107. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

**FIFTH CAUSE OF ACTION**  
42 U.S.C. § 1983  
(Plaintiffs, except Overstreet)

(Equal Protection - CCW)

1 108. Plaintiffs incorporate by reference paragraphs 1 through 106 as though the same were  
2 set forth herein at length.

3 109. For any citizen of “good moral character” and who has necessary firearms training, is  
4 still not entitled to obtain a concealed weapons permit, nor are they permitted to carry a loaded  
5 firearm within an incorporated area.

6 110. Instead, they must first apply to the local sheriff or police chief for a permit.

7 111. These permits are issued only to individuals with are politically affiliated with the  
8 issuing authority, made campaign contributions, or are socially related. In other words, they are  
9 used as a powerful tool to be exploited as rewards for those in power.

10 112. Sheriffs’ and State Law Enforcement officials are currently issuing concealed weapons  
11 permits on a discriminatory basis. That is they are issued to campaign contributors and political  
12 supporters of the issuing authority.

13 113. In addition, police officers and retired police officers, including federal officers, obtain  
14 their concealed weapons authorization under a separate statute, which does not demand a  
15 showing of good cause. See Cal. Penal Code S 12031(b).

16 114. In other words, 12031(b) grants to “active or honorably retired” law enforcement  
17 officers preferential access to concealed weapons permits due to their *current or former*  
18 affiliation to the law enforcement community.

19 115. Though the stated reason is to protect California Peace Officers from possible harm due  
20 to their high involvement in crime, other professions carry the same or higher risk, military  
21 personnel subject to terrorist attacks and protests, doctors employed at abortion clinics, attorney’s  
22 dealing with disgruntled litigants and inmates, and so forth.

23 116. There is no rationale basis for this statute as a young black male in California under the  
24 age of 25 has a exceedingly far greater chance of being murdered than all peace officers  
25 combined throughout the entire United States.

26 117. Non-law enforcement citizens of good moral character and who adequate training and  
27 experience in the use of firearms (i.e. hunters, military, etc.) are not granted the same privilege.  
28 Therefore, the law has no rationale purpose other than not to disrupt law endorsements support of



the current firearms laws.

1 118. If defendants enforced the same gun laws against law enforcement officers, the current  
2 gun laws would never have been passed as they would have been opposed by law enforcement.

3 119. Currently, any California resident can purchase a so-called “assault weapon” or carry a  
4 concealed weapon simply by becoming a member of a law enforcement agency.

5 120. Plaintiffs are entitled to equal rights, protections and privileges under the law.  
6 However, peace officers are given rights simply because they happen to be associated with law  
7 enforcement. Enforcement of such laws violates Plaintiffs' equal protection and association  
8 rights.

9 121. Article I, Section 8 of the California Constitution provides that “[a] citizen or class of  
10 citizens may not be granted privileges or immunities not granted on the same terms to all  
11 citizens.”

12 122. As a direct and proximate result, Plaintiffs have been damaged according to proof,  
13 including, but not limited to the loss of use and enjoyment of constitutional rights.

14 **SIXTH CAUSE OF ACTION**

15 42 U.S.C. § 1983

16 (All Plaintiffs)

(Privacy)

17 123. Plaintiffs incorporate by reference paragraphs 1 through 121 as though the same were  
18 set forth herein at length.

19 124. Under both the State and United States Constitution, Plaintiffs have the right to privacy  
20 as to the type of property they own, i.e. firearms.

21 125. Government Code Section § 6250 et seq. provides that members of the public may  
22 access information contained within the Department of Justice, inclusive of gun registration  
23 information. Government Code Section 6254(f) only excludes certain records regarding ongoing  
24 criminal investigations and witness information. Otherwise, any member of the public may  
25 access the name, address and the type of property owned by Plaintiffs if they were to register  
26 their firearms as required by the statute.

27 126. In addition, the Gun registration laws allow government to spy on its citizens who are  
28 involved in legal activities, i.e. owning personal property, without any legitimate law

enforcement interest at stake.

1 127. Furthermore, Plaintiffs' have a right to privacy in the protection of their homes and  
2 property.

3 128. The current gun laws will deprive Plaintiffs' of their lawful right to defend their persons  
4 in the sanctity of their own homes against intrusion by unlawful conduct undertaken by any  
5 person, including government officials. [History has shown over and over what can happen to a  
6 person in their own home when they are unarmed - see Plaintiffs' Exhibit "E" as just one  
7 example as to how a single intruder with a knife killed a father and three children, and severely  
8 injuring the wife as she ran from her own home because she could not defend herself against the  
9 stronger intruder.]

10 129. Why should government or the public be allowed to know what firearms Plaintiffs own,  
11 it to dictate what type of firearm Plaintiffs are allowed to use in defense of their person and  
12 home?

13 130. As a direct and proximate result, Plaintiffs have been damaged according to proof,  
14 including, but not limited to the loss of use and enjoyment of constitutional rights.

15 **SEVENTH CAUSE OF ACTION**  
16 42 U.S.C. § 1983

17 (Freedom of Association)

18 131. Plaintiffs incorporate by reference paragraphs 1 through 130 as though the same were  
19 set forth herein at length.

20 132. The current gun laws permits the head of a law enforcement agency to dictate as to  
21 which Peace Officer may keep an "Assault Weapon" during their employment, or after they retire  
22 or quit.

23 133. If citizens (Plaintiffs) of California refuse to become part of an association known as  
24 "peace officer" or "agent of the Government," or to support a particular "politician," "Sheriff" or  
25 "Chief," then they are not granted the rights, privileges, immunities, and equal protections  
26 afforded to those who wish to associate with Government or elected officials.

27 134. Or, if citizens (Plaintiffs) of California refuse to become politically active in support of  
28 particular law enforcement officials, they are denied the firearm privileges bestowed upon those  
who care to associate with such political/governmental figures.

135. In other words, since Plaintiffs refuse to associate with law enforcement or those politically associated with law enforcement, they are denied equal protection of the laws, and privileges and immunities.

136. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

**EIGHTH CAUSE OF ACTION**

42 U.S.C. § 1983

(Plaintiffs)

(9<sup>th</sup> and 14<sup>th</sup> Amendments)

137. Plaintiffs incorporate by reference paragraphs 1 through 137 as though the same were set forth herein at length.

138. Though, *as held by the Ninth Circuit*, the right to keep and bear arms is a state right, the Ninth Amendment of the U.S. Constitution specifically provides that the rights of the people, though not expressly enumerated, are nevertheless entitled to protection.

139. The Ninth Amendment is directly applicable to Plaintiffs since “The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.” Article III, Section 1 of the California Constitution.

140. In this case, this country has a long and established history of “the people” keeping and bearing military arms; keeping and bearing arms is a natural right which pre-existed the rights enumerated in the constitution.

141. The right to keep and bear arms is a natural right that every law abiding citizen possesses, this right can never be restricted or taken away by Government.

142. Defendants have infringed upon Plaintiffs’ natural right to possess, bear and keep firearms. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

143. “God grants liberty only to those who love it, and are always ready to guard and defend it.” *Daniel Webster*, speech, June 3, 1834.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, including but not limited to:

1. For general damages in a sum to be determined.

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- 2. For special damages in a sum to be determined.
- 3. For attorney fees and costs.
- 4. For issuance of a preliminary and permanent injunction, including, but not limited to, prohibiting further enforcement of any act or law in violation of Plaintiffs' constitutional rights.

DATED:

January 23, 2003

Respectfully submitted,  
LAW OFFICES OF GARY W. GORSKI