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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 AMANDA BANTA, SHARP
11 SHOOTING INDOOR RANGE &
12 GUN SHOP, INC., THE RANGE, LLC,
13 AERO PRECISION, LLC, and
14 NATIONAL SHOOTING SPORTS
15 FOUNDATION, INC.

16 Plaintiffs,

17 v.

18 ROBERT W. FERGUSON,
19 ATTORNEY GENERAL OF THE
20 STATE OF WASHINGTON; and
21 JOHN R. BATISTE, CHIEF OF THE
22 WASHINGTON STATE PATROL

23 Defendants.

No.
COMPLAINT

24 Amanda Banta, Sharp Shooting Indoor Range & Gun Shop, Inc., The Range,
25 LLC, Aero Precision, LLC, and the National Shooting Sports Foundation, Inc.
(collectively, "Plaintiffs") hereby bring this complaint against Robert W. Ferguson,
Attorney General of Washington State, and John R. Batiste, Chief of the Washington
State Patrol (collectively, "Defendants"). Plaintiffs bring this complaint based on

COMPLAINT - 1

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1 personal knowledge as to all Plaintiff facts, and on information and belief as to all
2 other matters.

3 INTRODUCTION

4 1. “[T]he Second Amendment protects the possession and use of weapons
5 that are ‘in common use.’” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct.
6 2111, 2128 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 627
7 (2008)). “[A]ll instruments that constitute bearable arms, even those that were not
8 in existence at the time of the founding,” come within the ambit of the Second
9 Amendment. *Id.* at 2132 (quoting *Heller*, 554 U.S. at 582); see *Caetano v.*
10 *Massachusetts*, 577 U.S. 411, 412 (2016) (per curiam) (reversing state court decision
11 upholding blanket ban on stun guns). And if an arm is “typically possessed by law-
12 abiding citizens for lawful purposes” today, then it may not be banned, full stop.
13 *Heller*, 554 U.S. at 625; see *Bruen*, 142 S. Ct. at 2143 (contrasting “weapons that
14 are unquestionably in common use today,” which may not be banned, with “those
15 that ‘are highly unusual in society at large’” (quoting *Heller*, 554 U.S. at 629)). That
16 is the irreducible minimum of the fundamental “right of the people to keep and bear
17 Arms.” U.S. Const. amend. II. A state may not “prohibit[] . . . an entire class of
18 ‘arms’ that is overwhelmingly chosen by American society for [a] lawful purpose.”
19 *Heller*, 554 U.S. at 628.

20 2. Yet that is precisely what Washington State has just done. On April 25,
21 Washington Governor Jay Inslee signed into law House Bill 1240 (“HB 1240”). HB
22 1240 takes the radical step of banning nearly every modern semiautomatic rifle—
23 the single most popular type of rifle in the country, possessed by Americans in the
24 tens of millions. Indeed, Americans buy more of the most popular type of
25 semiautomatic rifle (the AR-15) each year than the most popular type of automobile

1 (the Ford F-150), and there are more AR-15-style rifles in private hands in America
2 today than subscribers to all daily newspapers nationwide combined.

3 3. Few states have ever tried to adopt such an extreme measure—and for
4 good reason, as no less an authority than the Supreme Court has already recognized
5 that semiautomatic rifles “traditionally have been widely accepted as lawful.”
6 *Staples v. United States*, 511 U.S. 600, 612 (1994).

7 4. All of that dooms any effort to claim that prohibiting these ubiquitous
8 arms is consistent with “the historical tradition that delimits the outer bounds of the
9 right to keep and bear arms.” *Bruen*, 142 S. Ct. at 2127.

10 5. Not content with effectively banning the modern rifle, HB 1240 also
11 bans many semiautomatic *pistols*, even though “semiautomatic pistols” are “the
12 weapons most commonly used today for self-defense.” *Caetano*, 577 U.S. at 417–
13 18 (Alito, J., concurring in the judgment).

14 6. None of that is consistent with the Second Amendment, which protects
15 the right of law-abiding Americans to keep and bear arms that are “in ‘common use’
16 for self-defense today.” *Bruen*, 142 S. Ct. at 2143. Because the arms that
17 Washington has banned unquestionably are in common use today by law-abiding
18 Americans, its ban is unquestionably unconstitutional.

19 7. Plaintiffs thus seek, among other things, declaratory and injunctive
20 relief to prevent Washington, including Defendants Ferguson and Batiste, and all of
21 their respective agents and assigns, from enforcing HB 1240 against Plaintiffs or any
22 of their members.

23 JURISDICTION AND VENUE

24 8. Plaintiffs’ causes of action arise under 42 U.S.C. §1983 and the United
25 States Constitution, so this Court has jurisdiction pursuant to 28 U.S.C. §1331.

1 9. This Court also has jurisdiction under 28 U.S.C. §1343(a)(3) because
2 this action seeks to “redress the deprivation, under color of a[] State law,” of “right[s],
3 privilege[s] or immunit[ies] secured by . . . an[] Act of Congress providing for equal
4 rights of citizens or of all persons within the jurisdiction of the United States.”

5 10. Venue lies in this district pursuant to 28 U.S.C. §1391 because
6 Defendants are located and perform their official duties in the Eastern District of
7 Washington and are therefore considered to reside within this District as a matter of
8 law.

9 **THE PARTIES**

10 11. Plaintiff Amanda Banta is a law-abiding, adult resident of Spokane,
11 Washington. A 2012 Olympian for Team USA in the 50-meter rifle three positions
12 event and member of the U.S. Rifle Team for ten years, Banta won a bronze medal
13 at the 2007 Pan American Games, and also competed on Ohio State University’s
14 NCAA Rifle Team. She is legally eligible under federal and state law to possess and
15 acquire firearms. But for Washington’s new ban, she would be in the market for one
16 or more new firearms that fall within the scope of what is banned under HB 1240.

17 12. Plaintiff Sharp Shooting Indoor Range & Gun Shop, Inc. (“Sharp
18 Shooting”) is a retail firearms business located in Spokane, Washington, and is
19 authorized to sell firearms as a Federal Firearms Licensee (FFL 01) licensed by the
20 Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). Before HB 1240
21 was enacted, Sharp Shooting sold many of the semiautomatic firearms and
22 magazines the state now prohibits. But for HB 1240, Sharp Shooting would continue
23 to sell these products in Washington. Sharp Shooting also has entered into a contract
24 with the Kitsap County Sheriff’s Office to provide new firearms in exchange for
25 partial payment of AR-platform rifles to Sharp Shooting from the Sheriff’s Office.

1 Under HB 1240, Sharp Shooting can no longer take lawful possession of 25 rifles it
2 is still owed by the Sheriff's Office, nor can it lawfully sell in Washington the 100
3 rifles it has already received from the Sheriff's Office.

4 13. Plaintiff The Range, LLC, is a retail firearms business located in
5 Yakima, Washington, and is authorized to sell firearms as a Federal Firearms
6 Licensee (FFL 01 & SOT 02) licensed by the ATF. Before HB 1240's enactment,
7 The Range sold many of the firearms and magazines the state now prohibits. But
8 for HB 1240, The Range would continue to sell these products in Washington.

9 14. Plaintiff Aero Precision, LLC ("Aero") is a manufacturer of firearms,
10 firearm parts, and firearm accessories, based in Tacoma, Washington. Aero is
11 authorized to manufacture firearms as a Federal Firearms Licensee (FFL 07)
12 licensed by the ATF. Nearly all of the firearms Aero manufactures are now banned
13 under HB 1240, and nearly all of the related products Aero manufactures are
14 designed for firearms that are now banned under HB 1240 as well.

15 15. Plaintiff National Shooting Sports Foundation, Inc. ("NSSF") is a
16 Connecticut nonprofit, tax-exempt, non-stock corporation with its principal place of
17 business in Connecticut. It is the trade association for the firearm, ammunition, and
18 hunting and shooting sports industry. It has a membership of more than 10,000
19 throughout the United States (including Washington), including manufacturers,
20 distributors, and retailers of firearms, ammunition, and related products, as well as
21 other industry members. NSSF's mission is to promote, protect, and preserve
22 hunting and shooting sports by providing leadership in addressing industry
23 challenges, advancing participation in and understanding of hunting and shooting
24 sports, reaffirming and strengthening its members' commitment to the safe and
25 responsible sale and use of their products, and promoting a political environment

1 supportive of America’s traditional hunting and shooting heritage. NSSF is
2 authorized to bring this action on its members’ behalf, in light of the injuries HB
3 1240 is causing and will cause NSSF members if allowed to take effect.

4 16. Defendant Robert W. Ferguson is Washington’s Attorney General.
5 Attorney General Ferguson is “the legal adviser of the state officers,” and he has the
6 duty to “institute and prosecute all actions and proceedings for . . . the state,” as well
7 as to “defend all actions and proceedings against any state officer.” Wash. Const.
8 art. III, §21; Wash. Rev. Code §43.10.030. He is a resident of Washington, and his
9 principal place of business is 1125 Washington Street SE, PO Box 401001, Olympia,
10 WA 98504. At all relevant times, Attorney General Ferguson, as well as those
11 subject to his supervision, direction, or control, are and will be acting under color of
12 state law.

13 17. Defendant John R. Batiste is the Chief of the Washington State Patrol.
14 As Chief, Batiste has the duty to exercise the “powers and duties as are prescribed
15 by law.” Wash. Rev. Code §43.43.030. Chief Batiste is a resident of Washington,
16 and his principal place of business is Helen Sommers Building, 106 11th Avenue
17 SW, Olympia, WA 98501. At all relevant times, he, as well as those subject to his
18 supervision, direction, or control, are and will be acting under color of law.

19 **FACTS**

20 **Semiautomatic Firearms Are The Modern Standard—And For Good Reason.**

21 18. A “semiautomatic” firearm is a firearm that discharges a single
22 projectile with each pull of the trigger, no matter how long the trigger is depressed.
23 The “automatic” part of this term refers to the fact that the chamber will
24 automatically reload and be ready for the next trigger pull; semiautomatic firearms
25 remain only “semi-automatic” because the trigger must still be depressed each time

1 the shooter wishes to fire. By contrast, a fully automatic firearm, often known as a
2 “machine gun,” will discharge rounds for as long as the trigger is depressed. *Staples*,
3 511 U.S. at 600.

4 19. Semiautomatic rifles and pistols have been in safe and effective use by
5 civilians in this country—including in Washington—for more than a century, and
6 they “traditionally have been widely accepted as lawful.” *Id.* at 603, 612.¹

7 20. That is hardly surprising. The history of the advancement of firearms
8 technology reflects a persistent trend of trying to increase firing capacity and
9 speed—and thus utility for self-defense—without sacrificing accuracy or
10 functionality, which is precisely what semiautomatic technology accomplishes.

11 21. “[T]he first firearm that could fire more than ten rounds without
12 reloading was invented around 1580,” and several such handguns and long guns
13 “pre-date[] the American Revolution.” *Duncan v. Becerra*, 970 F.3d 1133, 1147
14 (9th Cir. 2020), *reh’g en banc granted, opinion vacated*, 988 F.3d 1209 (9th Cir.
15 2021), *and on reh’g en banc sub nom. Duncan v. Bonta*, 19 F.4th 1087 (9th Cir.
16 2021), *cert. granted, judgment vacated*, 142 S. Ct. 2895 (2022), *and vacated and*
17 *remanded*, 49 F.4th 1228 (9th Cir. 2022). “British soldiers were issued magazine-
18 fed repeaters as early as 1658,” while the Pepperbox-style pistol, with multiple
19

20 ¹ Fully automatic firearms, by contrast, have long been heavily regulated, *see*
21 National Firearms Act, ch. 757, 48 Stat. 1236 (1934); any commerce in fully
22 automatic firearms manufactured after May 19, 1986, has been explicitly banned for
23 nearly 40 years, *see* Pub. L. No. 99–308, 100 Stat. 449 (1986). Washington bans
24 “machine guns,” which is defined to include fully automatic firearms, a law that
25 Plaintiffs do not challenge. *See* Wash. Rev. Code §9.41.190(1)(a).

1 barrels, was popular on both sides of the Atlantic for a century before the founding.
2 *Id.*; *see also id.* (“As a predecessor to modern revolvers, the Pepperbox pistol design
3 pre-dates the American Revolution by nearly one hundred years, with common
4 variants carrying five to seven shots at the ready and with several European variants
5 able to shoot 18 or 24 shots before reloading individual cylinders.”).

6 22. A major breakthrough in modern firearms came around the time of the
7 Civil War, when a combination of new technologies produced rifles that could be
8 fed self-contained metallic cartridges, which contained both powder and bullet, from
9 a magazine. *See* David B. Kopel, *The History of Firearms Magazines and Magazine*
10 *Prohibitions*, 78 Albany L. Rev. 849, 854 (2015). Using a lever action, arms such
11 as the Spencer repeating rifle or the Henry rifle enabled users to fire as fast as their
12 hands could work the lever and pull the trigger—a rate of 28 rounds per minute for
13 the Henry, even accounting for the need to reload. Nicholas J. Johnson, et al.,
14 *Firearms Law and the Second Amendment* 403 (2d ed. 2018).

15 23. By the end of the Civil War, “repeating, cartridge-fed firearms” were
16 ubiquitous, and many of the most popular models had magazines that held more than
17 10 rounds. *Id.* at 1148. For example, the Winchester 66 had a 17-round magazine
18 and could fire all 17 rounds, plus the one in the chamber, in under nine seconds. *Id.*
19 Later Winchester repeater models, including the famed Winchester 73 (“the gun that
20 won the West”), likewise had magazines that held more than 10 rounds, and they
21 sold a combined “over 1.7 million total copies” between 1873 and 1941. *Id.*

22 24. The flintlocks of the Revolutionary War era had taken 26 steps to reload;
23 the lever action rifles of the Civil War reduced this to two (or four for the new bolt
24 action). *Id.* at 463. In 1885, the invention of the semiautomatic action dropped this
25 down to zero. *Id.* In a semiautomatic, the gas that is released by the gunpowder

1 explosion when the arm is fired is harnessed “to eject the empty case, and then move
2 a fresh cartridge from the magazine into the firing chamber.” *Id.* Thus, while the
3 user must still pull the trigger to fire each bullet—just as with bolt-action, lever-
4 action, pump-action, or flintlock arms—the chamber reloads automatically, making
5 the firearm “semiautomatic.”

6 25. Semiautomatics were marketed as personal-defense and sport firearms
7 for half a century before they were deployed in significant numbers by the United
8 States military—or any military, for that matter, as the United States was the first
9 nation to do so. *See id.* at 463, 519.

10 26. Hand-in-hand with the development of the semiautomatic firearm came
11 the development of the detachable box magazine, a device that holds the ammunition
12 in a stack typically underneath the firearm and can be replaced with a new magazine
13 when needed. *See id.* at 520. The first such firearm was the Jarre harmonica pistol
14 of 1862, but its horizontal-feeding magazine made it awkward to use. The modern
15 detachable box magazine, which sits in the grip of the pistol, first enjoyed
16 commercial success with the “broomhandle” Mauser in 1896. By 1911, the Colt
17 M1911 semiautomatic pistol—which many still regard as one of the finest available
18 handguns today—came with a detachable magazine. *Id.* at 518. And as the twentieth
19 century wore on, many citizens purchased rifles and handguns with box magazines
20 capable of holding more than 10 rounds, such as Auto Ordnance Company’s
21 semiautomatic rifle (1927, 30 rounds) and the Browning Hi-Power pistol (1935, 13
22 rounds). *Id.* Indeed, the U.S. government subsidized the spread of these popular
23 arms: In 1963, it sold hundreds of thousands of surplus 15- and 30-round M-1
24 carbines to civilians at a steep discount, chiefly through the congressionally
25 established Civilian Marksmanship Program. *Duncan*, 970 F.3d at 1148.

1 27. That same year, the first AR-15, Colt Sporter, rifle was released
2 commercially.² *See id.* (“The ultimate successor to the M-1 was the M-16, with a
3 civilian version dubbed the ArmaLite Model 15, or AR-15.”).

4 28. Made with modern materials such as plastic polymers rather than wood,
5 the AR-15 was lighter and more durable than traditional rifles. Moreover, the AR-
6 15 is a “platform,” not just a single model of semiautomatic rifle. It has an “open
7 source” design that can be modified with “countless variations and adaptations,”
8 with “ready-made retail parts” “made by numerous manufacturers under different
9 product names,” thus making it accessible to the needs of many different types of
10 users. *Miller v. Bonta*, 542 F. Supp. 3d 1009, 1020 (S.D. Cal. 2021), *vacated and*
11 *remanded*, 2022 WL 3095986 (9th Cir. Aug. 1, 2022).

12 29. These modern semiautomatic rifles quickly became—and have
13 remained—extremely popular; indeed, the AR-15 is still the most popular type of
14 rifle sold today. “Over the last three decades, 19,797,000 modern rifles”—i.e.,
15 “rifle[s] built on the AR-15 platform”—have been manufactured or imported into
16 the United States and the numbers have been steadily increasing.”³ *Miller*, 542 F.

17
18
19 ² “AR” stands for ArmaLite Rifle; ArmaLite was the company that originally
20 designed the platform. AR does not stand for “assault rifle.” An “assault rifle” is a
21 *fully* automatic firearm that has a selector switch enabling it to fire multiple rounds
22 automatically. *Johnson, supra*, at 1136.

23 ³ As “used in th[at] opinion,” “the term ‘modern rifle’ . . . principally refers to a rifle
24 built on the AR-15 platform.” *Miller*, 542 F. Supp. 3d at 1020. That term makes
25 sense given the ubiquity of AR-15-types in modern America.

1 Supp. 3d at 1020, 1022; *accord Kolbe v. Hogan*, 813 F.3d 160, 174 (4th Cir. 2016)
2 (similar), *rev'd*, 849 F.3d 114 (4th Cir. 2017) (en banc).

3 30. The most recent sales and ATF data available indicate that, in 2020
4 alone, 2,798,000 AR-15-style rifles were produced or imported into the United
5 States. See National Shooting Sports Foundation, Inc., *Commonly Owned: NSSF*
6 *Announces over 24 Million MSRs in Circulation* (July 20, 2022),
7 <https://bit.ly/3CRHhQl> (citing data). And AR-15-style rifles accounted for “one-half
8 of all rifles (48%) produced in 2018.” *Miller*, 542 F. Supp. 3d at 1022.

9 31. Recent data showed that approximately 24,446,000 AR-15-style rifles
10 are currently owned nationwide. NSSF, *Commonly Owned, supra*. A recent survey
11 of gun owners found the same: approximately 24,600,000 Americans have owned
12 or continue to own one or more AR-15- style rifles. See William English, PhD, *2021*
13 *National Firearms Survey: Updated Analysis Including Types of Firearms Owned*
14 at 2 (May 13, 2022), <https://bit.ly/3HaqmKv>.

15 32. To put that in perspective, that dwarfs sales of the most popular
16 automobile in the country, the Ford F-150: In 2020, Ford sold 787,442 F-Series
17 pickup trucks, including, but not limited to, the F-150, the most popular model.
18 *Fourth-Quarter 2020 Sales* at 2, Ford (Dec. 2020), <https://ford.to/3H87Y5T>; see
19 *Kolbe*, 813 F.3d at 174 (finding the difference between F-150 sales and AR-15 sales
20 telling in the commonality inquiry); *Miller*, 542 F. Supp. 3d at 1022–23 (same). As
21 opposed to the 24 million-plus AR-15-style rifles in circulation, there are
22 approximately 16 million F-150s on the road. Brett Foote, *There Are Currently 16.1*
23 *Million Ford F-Series Pickups on U.S. Roads*, Ford Authority (Apr. 9, 2021),
24 <https://bit.ly/3GLUtaB>. The number of AR-15- style rifles sold per year (more than
25 2 million) is also significantly more than the number of New York Times print

1 subscribers (761,000). *See* Kate Robertson, *New York Times Reports a Gain of*
2 *180,000 Digital Subscribers*, N.Y. Times (Aug. 3, 2022), <https://nyti.ms/3H8bz3T>.
3 And the total number of AR-15-style rifles in circulation is slightly more than the
4 “total U.S. daily newspaper circulation (print and digital combined) in 2020 . . . 24.3
5 million for weekday[s],” and only slightly less than the “25.8 million for Sunday[s].”
6 *Newspapers Fact Sheet*, Pew Research Center (June 29, 2021), *available at*
7 <https://pewrsr.ch/3CNXFS0> (last visited April 25, 2023).

8 33. Purchasers consistently report that one of the most important reasons
9 they purchase semiautomatic rifles is for self-defense. “In 2018, . . . 34% of buyers
10 purchased a modern rifle [predominantly] for personal protection, while 36%
11 purchased [predominantly] for target practice or informal shooting,⁴ and 29%
12 purchased [predominantly] for hunting.” *Miller*, 542 F. Supp. 3d at 1022. Contrast
13 that with non-semiautomatic rifles, “only 5% of [which] were bought for personal
14 protection.” *Id.*

15 34. In addition to the benefits of the semiautomatic technology itself,
16 semiautomatic rifles and pistols offer several features that make them popular for
17 self-defense and other lawful uses.

18 35. **Detachable magazines.** Most models accept detachable magazines,
19 making it easier to reload the firearm, which can be critical in the stressful situation
20 of being forced to defend self, family, or home. Many of the most popular models
21 of rifles, including every AR-15-style rifle, come standard with magazines with a
22

23 ⁴ “During 2018, approximately 18,327,314 people participated nationally in target
24 and sport shooting specifically with [AR-15-style] rifles.” *Miller*, 542 F. Supp. 3d at
25 1022.

1 capacity of 15, 20, or 30 rounds. Many popular semiautomatic pistols likewise come
2 standard with capacities of 15 or more rounds. To take just one of numerous
3 examples, the Beretta Model 92, a “popular handgun used for self-defense” “which
4 entered the market in 1976,” “comes standard with a sixteen-round magazine.”
5 *Duncan*, 970 F.3d at 1142.

6 36. **Pistol grips.** Many semiautomatic rifles are fitted with pistol grips,
7 which improve accuracy and reduce the risk of stray shots by stabilizing the firearm
8 while firing from the shoulder. David B. Kopel, *Rational Basis Analysis of “Assault*
9 *Weapon” Prohibition*, 20 J. Contemp. L. 381, 396 (1994). “By holding the pistol
10 grip, the shooter keeps the barrel from rising after the first shot, and thereby stays on
11 target for a follow-up shot. The defensive application is obvious, as is the public
12 safety advantage in preventing stray shots.” *Kolbe v. Hogan*, 849 F.3d 114, 159 (4th
13 Cir. 2017) (en banc) (Traxler, J., dissenting).

14 37. **Thumbhole, folding, or telescoping stocks.** Many semiautomatic
15 rifles have the capacity to accept thumbhole, folding, and/or telescoping stocks.
16 Thumbhole stocks give the user a more comfortable and stable grip, which provides
17 for greater accuracy and decreases the risk of dropping the firearm or firing stray
18 shots. Folding stocks make a rifle more maneuverable in confined spaces and
19 facilitate safe storage in easily accessible spaces. And a telescoping stock allows a
20 firearm to be better fitted to an individual shooter’s arm length, thereby enhancing
21 the ability to use the firearm safely and effectively, particularly if multiple people of
22 different sizes may need to use the same rifle.

23 38. **Flash suppressors.** Many semiautomatic rifles and pistols can be fitted
24 with a flash suppressor, which is a device designed to reduce or redirect muzzle
25 flash—the sudden flash of light caused by the explosion of gunpowder when a rifle

1 user fires a shot—from the shooter’s field of vision. Flash suppressors prevent users
2 from being blinded in low lighting conditions, such as at dusk or dawn, or during the
3 nighttime. They also reduce recoil and muzzle movement, increasing accuracy and
4 making the firearm less painful to use—crucial in self-defense situations. Kopel,
5 *supra*, 20 J. Contemp. L. at 397–99.

6 39. **Threaded barrels.** Many pistol models come standard with a threaded
7 barrel. See Wm. Alan Bartley & Geoffrey Fain Williams, *What Is an Assault*
8 *Weapon? Definitions, Attributes, and Implications Regarding Legislation*, 57 Gonz.
9 L. Rev. 515, 534 (2022) (citing statistics showing that “threaded barrels/flash
10 suppressors are . . . common features”). That is particularly true of so-called AR-
11 type pistols, which, as the ATF recently noted, are “popular large handgun[s]”
12 among law-abiding Americans. 86 Fed. Reg. 30,826, 30,831 (June 10, 2021). A
13 threaded barrel allows users to attach, e.g., a muzzle brake to a firearm, which
14 “reduces the gun’s recoil and makes it easier to control.” Kopel, *supra*, 20 J.
15 Contemp. L. at 396. Muzzle brakes are designed to redirect propellant gases to
16 counter recoil and its resultant poor accuracy, and for that reason are often used in
17 competitive shooting.

18 40. **Arm braces.** Many popular semiautomatic pistols, including AR-type
19 pistols, come standard with stabilizing braces. A stabilizing brace (or “arm brace”)
20 “help[s] a shooter ‘stabilize’ his or her arm to support single-handed firing.” 86 Fed.
21 Reg. at 30,827. In general, “the intent of the brace [is] to facilitate one-handed firing
22 of the AR-15 pistol for those with limited strength or mobility due to a disability,
23 and to reduce bruising to the forearm when firing with one hand.” *Id.*

24 41. None of these features increases a firearm’s rate of fire or capacity for
25 firepower. By making the firearm more comfortable and/or easier to operate, they

1 simply “make rifles [and pistols] easier to control and more accurate—making them
2 safer to use” for lawful purposes such as self-defense. *Murphy v. Guerrero*, No.
3 1:14-CV-00026, 2016 WL 5508998, at *18 (N.D. Marian Isl. Sept. 28, 2016).

4 42. It is little surprise, then, that there is no tradition in this country—
5 historical or otherwise—of prohibiting firearms with these common features. To the
6 contrary, the vast majority of states place no special restrictions on semiautomatic,
7 centerfire rifles with a detachable magazine and a pistol grip, thumbhole stock, flash
8 suppressor, or adjustable stock. Indeed, only eight states other than California (plus
9 the District of Columbia) have singled out such arms for special restrictions, and all
10 those restrictions are of recent vintage.⁵

11 **Washington Enacts A Ban On Ubiquitous Firearms.**

12 43. On April 25, 2023, Governor Inslee signed HB 1240 into law, making
13 Washington the tenth state to impose severe restrictions on some of the most
14 commonly owned firearms in America. Indeed, HB 1240 goes even farther than
15 many of the handful of so-called “assault weapon” bans that have cropped up over
16 the past few decades, as its ban encompasses nearly all semiautomatic rifles and
17 prohibits many common semiautomatic pistols.

21 ⁵ California first enacted its restrictions in 1989, and D.C. enacted its restrictions in
22 2009. The other eight states that restrict such arms are New Jersey (first enacted in
23 1990), Hawaii (1992), Connecticut (1993), Massachusetts (1994), Maryland (2002),
24 New York (2013), Delaware (2022), and Illinois (2023). Hawaii bans “assault pistols”
25 only.

1 44. Under HB 1240, “[n]o person in this state may manufacture, import,
2 distribute, sell, or offer for sale any assault weapon, except” under certain narrow
3 exceptions “as authorized in this section.” §3(1).

4 45. The ban “takes effect immediately.” §6.

5 46. Unlike the term “assault rifle,” *see supra* n.2, “assault weapon” is not a
6 term with any historical pedigree or fixed meaning. Indeed, “the term ‘assault
7 weapon’ did not exist in the lexicon of firearms” until the 1980s, when “anti-gun
8 publicists” coined it to try “to expand the category of ‘assault rifles’ so as to allow
9 an attack on as many additional firearms as possible on the basis of undefined ‘evil’
10 appearance.” *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J.,
11 dissenting).

12 47. HB 1240 defines “assault weapon” extremely broadly.

13 48. First, HB 1240 includes any “semiautomatic, center fire rifle” that has
14 both “the capacity to accept a detachable magazine” and a “grip that is independent
15 or detached from the stock that protrudes conspicuously beneath the action of the
16 weapon” (i.e., a pistol grip) in the definition of a prohibited “assault weapon.”
17 §2(a)(iv).

18 49. That feature-based definition alone captures approximately 20% of all
19 firearms sold in the U.S. in 2020, the most recent year for which data is available, as
20 the most popular class of modern semiautomatic rifles—the AR platform—has both
21 the capacity to accept a detachable magazine and a pistol grip. See National
22 Shooting Sports Foundation, Inc., *2021 Firearms Retailer Survey Report* at 9,
23 <https://bit.ly/3CXJwC1> (last visited Apr. 24, 2023).

24 50. Lest there be any doubt about the breadth of its prohibitions, HB 1240
25 also bans the AR15 “in all forms” and other AR variants explicitly. §2(a)(i). And

1 HB 1240 lists more than 50 other semiautomatic rifles by name or type and deems
2 all of them banned “assault weapons.” *Id.*

3 51. Not content with wiping out the single most popular class of rifles in
4 America, HB 1240 also includes within its sweeping definition of prohibited “assault
5 weapons” any “semiautomatic, center fire rifle” that has both “the capacity to accept
6 a detachable magazine” and any “grip designed for use by the nonfiring hand to
7 improve control.” §2(a)(iv)(D).

8 52. HB 1240 further includes within the definition any “semiautomatic,
9 center fire rifle” that has both “[t]he capacity to accept a detachable magazine” and
10 “one or more of” a “thumbhole stock,” “a folding or telescoping stock,” “a flash
11 suppressor, flash guard, flash eliminator, flash hider, sound suppressor, silencer, or
12 any item designed to reduce the visual or audio signature of the firearm,” “a shroud
13 that encircles either all or part of the barrel,” or “a grenade launcher.” §2(a)(iv)(B),
14 (C), (E), (I), (H). That definition captures nearly any modern rifle, as most modern
15 rifles come standard with a “grip designed for use by the nonfiring hand” and/or a
16 forend “that encircles either all or part of the barrel,” which the statute calls a
17 “shroud.” §2(a)(iv)(A), (I).⁶ Washington has banned these features even though, as
18 explained, most (with the notable, one-of-these-things-is-not-like-the-other
19 exception of “grenade launcher”⁷) increase the ability to use rifles safely and
20 effectively for lawful purposes like self-defense. *See supra.*

21 _____
22 ⁶ The statute’s definition of shroud exempts standard forends if they are “solid.”

23 ⁷ “Grenade launchers” are very rare and already illegal as a general matter, as are
24 grenades themselves. *See Kopel, supra*, 20 J. Contemp. L. at 399–400; *Staples*, 511
25 U.S. at 608. Plaintiffs do not challenge this redundant prohibition.

1 53. HB 1240 then goes on to sweep in any “semiautomatic rifle that has an
2 overall length of less than 30 inches” to the definition of a prohibited “assault
3 weapon.” §2(2)(a)(ii).

4 54. HB 1240 further prohibits any semiautomatic rifle with a fixed (i.e.,
5 non-detachable) magazine that has “the capacity to accept more than 10 rounds.”
6 §2(a)(v).

7 55. All in all, HB 1240 bans hundreds of models of rifle, including all of
8 the most popular models in circulation.

9 56. And Washington did not stop there. In addition to effectively banning
10 all modern semiautomatic rifles, HB 1240 deems prohibited “assault weapons” any
11 semiautomatic pistol “that has the capacity to accept a detachable magazine” if it has
12 “one or more of the following”: “a threaded barrel, capable of accepting a flash
13 suppressor, forward handgrip, or silencer”; “a second hand grip”; a barrel shroud
14 that “encircles either all or part of the barrel”; or “[t]he capacity to accept a
15 detachable magazine at some location outside of the pistol grip.” §2(a)(vi)(A)–(D).

16 57. Again, some of these features, e.g., a threaded barrel, are common in
17 modern semiautomatic pistols, including AR-type and other similar heavy pistols.

18 58. In one final catchall, HB 1240 also bans any “conversion kit, part, or
19 combination of parts, from which an assault weapon can be assembled or from which
20 a firearm can be converted into an assault weapon.” §2(2)(a)(iii).

21 59. HB 1240 makes it a “gross misdemeanor” to “manufacture, import,
22 distribute, sell, or offer for sale” any of these firearms. §3(1), (4). It does not contain
23 any explicit ban on *possessing* these weapons, which effectively means that it
24 implicitly grandfathers the possession (but *not* the re-sale) of firearms already
25 lawfully possessed in the state..

1 the answer is “yes,” then the ban is unconstitutional, because a state cannot prohibit
2 ordinary law-abiding Americans from possessing what the Constitution explicitly
3 entitles them to “keep.” *See* U.S. Const. amend. II.

4 66. The multitude of semiautomatic firearms that HB 1240 prohibits are
5 indisputably “arms” within the meaning of the Second Amendment. Indeed,
6 “[p]ractically all modern rifles, pistols, and shotguns are semiautomatics.” James B.
7 Jacobs, *Why Ban “Assault Weapons”?*, 37 *Cardozo L. Rev.* 681, 686 (2015). And
8 a state cannot “prohibit[] . . . an entire class of ‘arms’ that is overwhelmingly chosen
9 by American society for [a] lawful purpose.” *Heller*, 554 U.S. at 628.

10 67. The semiautomatic firearms that HB 1240 prohibits are also
11 indisputably in “common use.” *See Heller*, 553 U.S. at 624–25 (the “arms”
12 protected by the Second Amendment are those “typically possessed by law-abiding
13 citizens for lawful purposes” today). That is not a close call. As noted, the
14 ownership of even one type of the thousands of firearms covered by this ban—those
15 on the AR-15 platform—dwarfs ownership of the most popular car on the road and
16 of all newspaper subscriptions in the United States. Indeed, if the 200,000 stun guns
17 in circulation in *Caetano* were sufficiently numerous to qualify as commonly
18 possessed, then the 24+ million AR-15-style rifles in circulation do a *fortiori*.
19 *Caetano*, 577 U.S. at 420 (Alito, J., concurring in the judgment). Millions of
20 Americans own these arms for lawful purposes, including self-defense, sporting, and
21 hunting.

22 68. Because modern semiautomatic rifles and the hundreds of other arms
23 banned under HB 1240 are arms in common use today, they are protected by the
24 Second Amendment, full stop, rendering Washington’s effort to flatly ban them
25 flatly unconstitutional. *Bruen*, 142 S. Ct. at 2134. *Bruen* made clear what the

1 “historical tradition” establishes when it comes to efforts to ban a type of arm
2 entirely: The government may not ban “weapons ‘in common use’ today for self-
3 defense.” *Id.* Indeed, even before *Bruen*, the Supreme Court emphasized in *Caetano*,
4 a per curiam summary reversal, that it is irrelevant to the constitutional inquiry that
5 a certain type of arm was “not in common use at the time of the Second
6 Amendment’s enactment” or is not “readily adaptable to use in the military.”
7 *Caetano*, 577 U.S. at 411–12. If a “weapon belongs to a class of arms commonly
8 used for lawful purposes,” then it cannot be banned, regardless of its “relative
9 dangerousness.” *Id.* at 418 (Alito, J., concurring in the judgment); *accord Bruen*,
10 142 S. Ct. at 2143 (“[E]ven if [certain] colonial laws prohibited the carrying of
11 handguns because they were considered ‘dangerous and unusual weapons’ in the
12 1690s, they provide no justification for laws restricting the public carry of weapons
13 that are unquestionably in common use today.”).

14 69. At a minimum, these arms are “presumptively protect[ed]” by the
15 Second Amendment, so Washington would have to “affirmatively prove that its . . .
16 regulation is part of the historical tradition that delimits the outer bounds of the right
17 to keep and bear arms.” *Bruen*, 142 S.Ct at 2126–27.

18 70. Washington cannot make that showing. There were no restrictions on
19 firing capacity, reloading mechanisms, or the kinds of attachments the state has
20 singled out, when either the Second Amendment or the Fourteenth Amendment was
21 ratified. Although many states and the federal government began restricting fully
22 automatic firearms in the 1920s and 1930s, only a handful ever imposed restrictions
23 on semiautomatic firearms. Just three states and the District of Columbia outlawed
24 semiautomatic weapons that could fire more than a certain number of rounds
25 semiautomatically without reloading. *See* 1927 Mich. Pub. Acts 887, 888; 1927 R.I.

1 Acts & Resolves 256, 256-57; 1933 Minn. Laws ch. 190; Act of July 8, 1932, Pub.
2 L. No. 72-275, §§1, 14, 47 Stat. 650, 650, 652 (1932). And each of those laws was
3 either repealed outright within a few decades or replaced with a law that restricted
4 only fully automatic weapons, i.e., machine guns—which, unlike semiautomatics,
5 were never widely adopted by law-abiding citizens for lawful purposes. *See* 1959
6 Mich. Pub. Acts 249, 250; 1959 R.I. Acts & Resolves 260, 260, 263; 1963 Minn.
7 Sess. L. ch. 753, at 1229; 48 Stat. 1236 (1934). Moreover, none of these early laws
8 took the extreme approach of banning semiautomatic firearms (whether rifles or
9 pistols) entirely.

10 71. Even if the handful of less extreme variants of “assault weapon” bans
11 that mostly target only smaller subsets of rifles and pistols could serve as an analog
12 for Washington’s draconian approach, the earliest of those laws dates back only to
13 1989, which is far too late to serve as an indicator of a “historical tradition.” *Bruen*,
14 142 S.Ct at 2126; *see id.* at 2138 (rejecting reliance on “late-19th-century [laws]”).
15 As for the federal government, it did not restrict “assault weapons” until 1994—and
16 Congress allowed that (narrower) law to expire in 2004 after a study by the
17 Department of Justice revealed that the law had produced “no discernable reduction”
18 in gun violence. Koper et al., *supra*, at 96. In short: “Prior to the 1990’s, there was
19 no national history of banning weapons because they were equipped with furniture
20 like pistol grips, collapsible stocks, flash hidens, flare launchers, or barrel shrouds.”
21 *Miller*, 542 F. Supp. 3d at 1024. And even now, such laws remain exceedingly rare.

22 72. That is not owing to some “dramatic technological change[]” that came
23 about in the past few decades or some “unprecedented societal concern[]” that did
24 not exist until 1989. *Bruen*, 142 S. Ct. at 2132. As detailed above, semiautomatic
25 firearms have been around for more than a century and were popular with civilians

1 long before they were issued in serious numbers to any military. *See supra*. And
2 soon after that, the federal government itself sold hundreds of thousands of surplus
3 15- and 30-round M-1 carbines to civilians at a steep discount just as the AR-15 and
4 its standard 30-round magazine came on the market. *Duncan*, 970 F.3d at 1148.
5 Small wonder that the Supreme Court has explicitly recognized that these arms are
6 “civilian” in nature and “traditionally have been widely accepted as lawful
7 possessions.” *Staples*, 511 U.S. at 612.

8 73. In sum, there is no “enduring American tradition of state regulation”
9 forbidding the purchase and/or sale of semiautomatic rifles and pistols by law-
10 abiding citizens for lawful purposes. *Bruen*, 142 S. Ct. at 2155. To the contrary, the
11 enduring American tradition is one of protecting the right of the people to own
12 firearms that, like semiautomatic rifles and pistols, are “typically possessed by law-
13 abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 624–25. Because
14 Washington cannot “affirmatively prove that its firearms regulation is part of the
15 historical tradition that delimits the outer bounds of the right to keep and bear arms,”
16 *Bruen*, 142 S. Ct. at 2127, HB 1240 unconstitutionally infringes upon Second
17 Amendment rights, *id.* at 2130.

18 **PRAYER FOR RELIEF**

19 Plaintiffs pray for the following relief from the Court:

- 20 1. A declaratory judgment under 28 U.S.C. §2201 that HB 1240 is
21 unconstitutional;
- 22 2. A temporary injunction enjoining Defendants and their officers, agents,
23 and employees from enforcing HB 1240 against Plaintiffs and their members;
- 24 3. A permanent injunction enjoining Defendants and their officers, agents,
25 and employees from enforcing HB 1240 against Plaintiffs and their members;

1 4. Any attorneys' fees, costs, and expenses to which Plaintiffs may be
2 entitled by law;

3 5. Nominal damages; and

4 6. Any further relief the Court deems just and proper.

5 DATED this 25th day of April, 2023.

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