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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

LAWRENCE HARTFORD; DOUGLAS MITCHELL; BRETT BASS; SPORTING SYSTEMS VANCOUVER, INC.; SECOND AMENDMENT FOUNDATION, INC.; AND FIREARMS POLICY COALITION, INC.,

Plaintiffs,

v.

BOB FERGUSON, in his official capacity as Washington State Attorney General; JOHN R. BATISTE, in his official capacity as Chief of the Washington State Patrol; JOHN GESE, in his official capacity as Sheriff for Kitsap County, Washington; CLAYTON MYERS, in his official capacity as Sheriff for Kittitas County, Washington; JOHN HORCH, in his official capacity as Sheriff for Clark County, Washington; ADAM FORTNOY, in his official capacity as Sheriff for Snohomish County, Washington; CHAD M. ENRIGHT, in his official capacity as County Prosecutor for Kitsap County, Washington; GREG ZEMPEL, in his official capacity as County Prosecutor for Kittitas County, Washington; TONY GOLIK, in his official capacity as County Prosecutor for Clark County, Washington; and JASON CUMMINGS, in his official capacity as County Prosecutor for Snohomish County, Washington,

Defendants.

No. 3:23-cv-5364
COMPLAINT

1 Lawrence Hartford, Doug Mitchell, Brett Bass, Sporting Systems Vancouver Inc., Second
2 Amendment Foundation, and Firearms Policy Coalition, Inc., by and through the undersigned
3 attorneys, file this Complaint against the above-captioned Defendants, in their official capacities
4 as the officials responsible under Washington law for administering and enforcing the State’s laws
5 and regulations governing the manufacturing, importation, distribution, sale, and offering for sale
6 of commonly possessed semiautomatic rifles tendentiously and inaccurately labeled “assault
7 weapons.” Plaintiffs seek declaratory and injunctive relief: a declaration that Washington’s ban on
8 manufacturing, importing, distributing, selling, or offering for sale commonly possessed
9 semiautomatic rifles violates the Second and Fourteenth Amendments and an injunction
10 compelling Defendants to refrain from enforcing the invalid ban. In support of their Complaint
11 against Defendants, Plaintiffs hereby allege as follows:

12 I. INTRODUCTION

13 1. The Second Amendment to the United States Constitution guarantees “the right
14 of the people to keep and bear Arms.” U.S. CONST. amend. II. This Amendment guarantees a
15 fundamental right to keep and bear common firearms for defense of self and family and for other
16 lawful pursuits.

17 2. But the State has enacted, and Defendants have authority to enforce, a flat
18 prohibition on the manufacture, import, distribution, sale, and offering for sale of many common
19 firearms—tendentiously labeled “assault weapons”—by ordinary citizens (“the Washington
20 Ban”), making it a crime for law-abiding citizens to exercise their fundamental right to keep and
21 bear such arms. *See* SHB 1240 § 3.

22 3. In so doing, the State of Washington has criminalized one of the most common and
23 important means by which its citizens can exercise their fundamental right to self-defense. By
24 banning manufacturing, importation, distribution, and sale of common semiautomatic rifles, the
25 State has barred law-abiding residents from legally acquiring common rifles and has deprived them
26 of an effective means of self-defense and their fundamental individual right to keep and bear arms.
27

1 4. The plain text of the Second Amendment covers the conduct in which the Plaintiffs
2 wish to engage because it “extends, *prima facie*, to all instruments that constitute bearable arms,
3 even those that were not in existence at the time of the founding.” *New York State Rifle & Pistol*
4 *Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (quoting *District of Columbia v. Heller*, 554 U.S.
5 570, 582 (2008)). By prohibiting Plaintiffs from possessing and carrying popular semiautomatic
6 firearms, Washington has prevented them from “keeping and bearing Arms” within the meaning
7 of the Amendment’s text. As a result, “[t]o justify its regulation, the government . . . must
8 demonstrate that the regulation is consistent with this Nation’s tradition of firearm regulation.”
9 *Bruen*, 142 S. Ct. at 2126.

10 5. Here, Defendants will be unable to meet their burden. *Heller* and *Bruen* have already
11 established the only historical tradition that can remove a firearm from the Second Amendment’s
12 protective scope—the tradition of banning dangerous and unusual weapons. *Heller*, 554 U.S. at
13 627; *Bruen*, 142 S. Ct. at 2143. But to be banned, a firearm must be both dangerous and unusual.
14 *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring). Arms that are in common
15 use—as the firearms Washington has banned unquestionably are—are neither unusual nor
16 dangerous. Therefore, they cannot be banned, and the Washington laws challenged herein must be
17 declared unconstitutional.

18 6. Plaintiffs Doug Mitchell, Brett Bass, Lawrence Hartford, Sporting Systems
19 Vancouver, Inc., Second Amendment Foundation, and Firearms Policy Coalition, Inc., bring this
20 action to vindicate the rights that Defendants infringe.

22 II. JURISDICTION AND VENUE.

23 7. This Court has subject-matter jurisdiction over Plaintiffs’ claim under 28 U.S.C.
24 §§ 1331 and 1343.

25 8. Plaintiffs seek remedies under 28 U.S.C. §§ 1651, 2201, and 2202 and 42 U.S.C. §§
26 1983 and 1988, as well as *Ex parte Young*, 209 U.S. 123 (1908).

27 9. Venue lies in this Court under 28 U.S.C. § 1391(b)(1) & (b)(2).

III. PARTIES.

1
2 10. Plaintiff Doug Mitchell is a natural person and a citizen of Kittitas County,
3 Washington. He owns firearms that qualify as “assault weapons” under the Washington Ban. He
4 intends to continue purchasing semiautomatic rifles which qualify as “assault weapons.”
5 However, because of the Washington Ban, he has been forced to abandon these plans to avoid
6 facing prosecution for violating the law. Mitchell is a member of Plaintiffs SAF and FPC.

7 11. Plaintiff Lawrence Hartford is a natural person and a citizen of Kitsap County,
8 Washington. He owns firearms that qualify as “assault weapons” under the Washington Ban. He
9 intends to continue purchasing semiautomatic rifles which qualify as “assault weapons.”
10 However, because of the Washington Ban, he has been forced to abandon these plans to avoid
11 facing prosecution for violating the law. Hartford is a member of Plaintiffs SAF and FPC.

12 12. Plaintiff Brett Bass is a natural person and a citizen of Snohomish County,
13 Washington. He owns firearms that qualify as “assault weapons” under the Washington Ban. He
14 intends to continue purchasing semiautomatic rifles which qualify as “assault weapons.”
15 However, because of the Washington Ban, he has been forced to abandon these plans to avoid
16 facing prosecution for violating the law. Bass is a member of Plaintiffs SAF and FPC.

17 13. Plaintiff Sporting Systems Vancouver, Inc. is a federally licensed firearm dealer
18 located in Clark County, Washington. Sporting Systems specializes in high end rifles, pistols, and
19 shotguns as well as parts, optics, and accessories. Because of the Washington Ban, Sporting
20 Systems has been forced to stop selling those rifles to civilians and to limit its sale of these items to
21 government purchasers exempted from the state-wide ban. That has substantially constricted
22 Sporting Systems’ market and harm its business.

23 14. Plaintiff Second Amendment Foundation (“SAF”) is a nonprofit educational
24 foundation incorporated in 1974 under the laws of Washington with its principal place of business
25 in Bellevue, Washington. SAF is a 501(c)(3) organization under Title 26 of the United States Code.
26 SAF’s mission is to preserve the individual constitutional right to keep and bear arms through
27

1 public education, judicial, historical, and economic research, publishing, and legal-action programs
2 focused on the civil right guaranteed by the Second Amendment to the United States Constitution.
3 SAF has members nationwide, including in the State of Washington. SAF brings this action on
4 behalf of its members, including the individual Plaintiffs, who are adversely and directly harmed
5 by Defendants' enforcement of the laws, regulations, policies, practices, and customs challenged
6 herein.

7 15. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a 501(c)(4) non-profit
8 organization incorporated under the laws of Delaware with its principal place of business in
9 Sacramento, California. The purposes of FPC include defending and promoting the People's
10 rights—especially the fundamental, individual Second Amendment right to keep and bear arms—
11 advancing individual liberty, and restoring freedom. FPC serves its members and the public
12 through legislative advocacy, grassroots advocacy, litigation and legal efforts, research, education,
13 outreach, and other programs. FPC's members reside both within and outside Washington brings
14 this action on behalf of its members, including the individual Plaintiffs, who are adversely and
15 directly harmed by Defendants' enforcement of the laws, regulations, policies, practices, and
16 customs challenged herein.

17 16. Defendant Bob Ferguson is sued in his official capacity as Washington State
18 Attorney General. As Attorney General, Ferguson has the authority to assist in the prosecution of
19 crimes, including violations of the Washington Ban, and to institute and prosecute actions on
20 behalf of the state that are "necessary in the execution of the duties of any state officer." RCW §
21 43.10.030.

22 17. Defendant John R. Batiste is sued in his official capacity as the Chief of the
23 Washington State Patrol. As Chief of the State Patrol, Batiste has the power and duty to enforce
24 the law, including the Washington Ban, throughout the state. RCW § 43.43.030.

25 18. Defendant Clayton Myers is sued in his official capacity as Sheriff for Kittitas
26 County, Washington. As Sheriff, Myers is responsible for arresting and imprisoning "all persons
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1 guilty of public offenses” in Kittitas County, including individuals who violate the Washington
2 Ban. RCW § 36.28.010.

3 19. Defendant John Horch is sued in his official capacity as Sheriff for Clark County,
4 Washington. As Sheriff, Horch is responsible for arresting and imprisoning “all persons guilty of
5 public offenses” in Clark County, including individuals who violate the challenged ban. *Id.*

6 20. Defendant John Gese is sued in his official capacity as Sheriff for Kitsap County,
7 Washington. As Sheriff, Gese is responsible for arresting and imprisoning “all persons guilty of
8 public offenses” in Kitsap County, including individuals who violate the challenged ban. *Id.*

9 21. Defendant Adam Fortney is sued in his official capacity as Sheriff for Snohomish
10 County, Washington. As Sheriff, Fortney is responsible for arresting and imprisoning “all persons
11 guilty of public offenses” in Snohomish County, including individuals who violate the challenged
12 ban. *Id.*

13 22. Defendant Greg Zempel is sued in his official capacity as County Prosecutor for
14 Kittitas County. As County Prosecutor, Zempel is responsible for “prosecut[ing] all criminal and
15 civil actions” including for violations of the challenged ban, “in which the state or the county may
16 be a party.” RCW § 36.27.020.

17 23. Defendant Tony Golik is sued in his official capacity as County Prosecutor for Clark
18 County. As County Prosecutor, Golik is responsible for “prosecut[ing] all criminal and civil
19 actions” including for violations of the challenged ban, “in which the state or the county may be a
20 party.” *Id.*

21 24. Defendant Dan Chad M. Enright is sued in his official capacity as County
22 Prosecutor for Kitsap County. As County Prosecutor, Enright is responsible for “prosecut[ing] all
23 criminal and civil actions” including for violations of the challenged ban, “ in which the state or
24 the county may be a party.” *Id.*

25 25. Defendant Jason Cummings is sued in his official capacity as County Prosecutor for
26 Snohomish County. As County Prosecutor, Cummings is responsible for “prosecut[ing] all
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1 criminal and civil actions” including for violations of the challenged ban, “in which the state or the
2 county may be a party.” *Id.*

3 **IV. FACTUAL ALLEGATIONS.**

4 **A. Washington’s Ban on Common Semiautomatic Rifles.**

5 26. On April 25, 2023 Governor Jay Inslee signed Substitute House Bill 1240
6 (hereinafter cited as “Act”), which made it illegal for any person in Washington to, with a handful
7 of exceptions, “manufacture, import, distribute, sell, or offer for sale any assault weapon,” Act §
8 3(1). The State identifies a firearm as an “assault weapon” based on the presence of certain
9 characteristics. RCW § 9.41.010(2) It also lists by name several models of banned “assault rifles”.
10 *Id.*

11 27. By the terms of its own title, this criminal prohibition provides only “limited
12 exemptions applicable to licensed firearm manufacturers and dealers for purposes of sale to armed
13 forces branches and law enforcement agencies and for purposes of sale or transfer outside the state,
14 and to inheritors.” Act at Preamble.

15 28. The Act exempts from its tendentious label of “assault weapons” only “antique
16 firearms, any firearm that has been made permanently inoperable, [and] any firearm that is
17 manually operated by bolt, pump, lever, or slide action,” but it makes commerce in many of the
18 most common firearms in Washington—and indeed the country—illegal. RCW § 9.41.010(2)(c).

19 29. As a result, the Act makes it impossible for a law-abiding resident of Washington to
20 lawfully acquire those rifles by making it illegal to either sell them in-state or bring them in from
21 another state.

22 30. Violating the “assault weapons” ban is a gross misdemeanor, punishable by up to
23 364 days imprisonment and a fine of up to \$5,000. Act § 3(4); RCW § 9A.20.021(2).

24 31. The Act takes effect immediately upon enactment. Act § 6.
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1 **B. Washington Has Criminalized A Common And Important Means Of Self-Defense.**

2 32. Among other things, the Ban defines as an “assault weapon” and bans any
3 semiautomatic center fire rifle with the capacity to accept a detachable magazine, if it has any one
4 of the following features:

- 5 (A) A grip that is independent or detached from the stock that protrudes conspicuously
6 beneath the action of the weapon. The addition of a fin attaching the grip to the stock
7 does not exempt the grip if it otherwise resembles the grip found on a pistol;
- 8 (B) Thumbhole stock;
- 9 (C) Folding or telescoping stock;
- 10 (D) Forward pistol, vertical, angled, or other grip designed for use by the nonfiring hand
11 to improve control;
- 12 (E) Flash suppressor, flash guard, flash eliminator, flash hider, sound suppressor,
13 silencer, or any item designed to reduce the visual or audio signature of the firearm;
- 14 (F) Muzzle brake, recoil compensator, or any item designed to be affixed to the barrel to
15 reduce recoil or muzzle rise;
- 16 (G) Threaded barrel designed to attach a flash suppressor, sound suppressor, muzzle
17 break, or similar item;
- 18 (H) Grenade launcher or flare launcher; or
- 19 (I) A shroud that encircles either all or part of the barrel designed to shield the bearer's
20 hand from heat, except a solid forearm of a stock that covers only the bottom of the barrel.

21 RCW § 9.41.010(2)(a)(iv).

22 33. Further, the Statute bans any “conversion kit, part, or combination of parts, from
23 which an assault weapon can be assembled or from which a firearm can be converted into an assault
24 weapon if those parts are in the possession or under the control of the same person.” RCW §
25 9.41.010(2)(a)(iii).

26 34. Finally, the Statute lists specific banned firearms “regardless of which company
27 produced and manufactured the firearm”:

- 28 i. AK-47 in all forms
- 29 ii. AK-74 in all forms
- 30 iii. Algimec AGM-1 type semiautomatic
- 31 iv. American Arms Spectre da semiautomatic carbine
- 32 v. AR15, M16, or M4 in all forms
- 33 vi. AR 180 type semiautomatic
- 34 vii. Argentine L.S.R. semiautomatic
- 35 viii. Australian Automatic
- 36 ix. Auto-Ordnance Thompson M1 and 1927 semiautomatics
- 37 x. Barrett .50 cal light semiautomatic

- 1 xi. Barrett .50 cal M87
- 2 xii. Barrett .50 cal M107A1
- 3 xiii. Barrett REC7
- 4 xiv. Beretta AR70/S70 type semiautomatic
- 5 xv. Bushmaster Carbon 15
- 6 xvi. Bushmaster ACR
- 7 xvii. Bushmaster XM-15
- 8 xviii. Bushmaster MOE
- 9 xix. Calico models M100 and M900
- 10 xx. CETME Sporter
- 11 xxi. CIS SR 88 type semiautomatic
- 12 xxii. Colt CAR 15
- 13 xxiii. Daewoo K-1
- 14 xxiv. Daewoo K-2
- 15 xxv. Dragunov semiautomatic
- 16 xxvi. Fabrique Nationale FAL in all forms
- 17 xxvii. Fabrique Nationale F2000
- 18 xxviii. Fabrique Nationale L1A1 Sporter
- 19 xxix. Fabrique Nationale M249S
- 20 xxx. Fabrique Nationale PS90
- 21 xxxi. Fabrique Nationale SCAR
- 22 xxxii. FAMAS .223 semiautomatic
- 23 xxxiii. Galil
- 24 xxxiv. Heckler & Koch G3 in all forms
- 25 xxxv. Heckler & Koch HK-41/91
- 26 xxxvi. Heckler & Koch HK-43/93
- 27 xxxvii. Heckler & Koch HK94A2/3
- xxxviii. Heckler & Koch MP-5 in all forms
- xl. Heckler & Koch PSG-1
- xli. Heckler & Koch SL8
- xlii. Heckler & Koch UMP
- xliii. Manchester Arms Commando MK-45
- xliv. Manchester Arms MK-9
- xlv. SAR-4800
- xlvi. SIG AMT SG510 in all forms
- xlvii. SIG SG550 in all forms
- xlviii. SKS
- xlix. Spectre M4
- l. Springfield Armory BM-59
- li. Springfield Armory G3
- lii. Springfield Armory SAR-8
- liii. Springfield Armory SAR-48
- liv. Springfield Armory SAR-3
- lv. Springfield Armory M-21 sniper
- lv. Springfield Armory M1A

- 1 lvi. Smith & Wesson M&P 15
- 2 lvii. Sterling Mk 1
- 3 lviii. Sterling Mk 6/7
- 4 lix. Steyr AUG
- 5 lx. TNW M230
- 6 lxi. FAMAS F11
- 7 lxii. Uzi 9mm carbine/rifle

8 RCW § 9.41.010(a)(ii).

9 35. The banned semiautomatic rifles “traditionally have been widely accepted as lawful
10 possessions,” *see Staples v. United States*, 511 U.S. 600, 612 (1994) (so categorizing an AR-15
11 semiautomatic rifle), and they are in common use, *see Heller v. Dist. of Columbia*, 670 F.3d 1244,
12 1261 (D.C. Cir. 2011) (“*Heller II*”) (“We think it clear enough in the record that semi-automatic
13 rifles . . . are indeed in ‘common use’ as the plaintiffs contend.”).

14 36. Rifles built on an “AR-style” platform are a paradigmatic example of the type of
15 arm Washington bans (“AR” is short for ArmaLite Rifle; ArmaLite originally designed the
16 platform).

17 37. AR-15 rifles are among the most popular firearms in the nation, and they are owned
18 by millions of Americans. A recent survey of gun owners indicates that about 24.6 million
19 Americans have owned AR-15 or similar modern semiautomatic rifles, with the “median owner”
20 identified as owning a single rifle. William English, *2021 National Firearms Survey: Updated*
21 *Analysis Including Types of Firearms Owned* at 2, 33 (May 13, 2022), <https://bit.ly/3yPfoHw>. A
22 recent industry publication similarly estimated that over 24 million AR-15 or similar rifles have
23 been produced for the U.S. market. NAT’L SHOOTING SPORTS FOUND., *Commonly Owned: NSSF*
24 *Announces Over 24 Million MSRs in Circulation*, (July 20, 2022), <https://bit.ly/3QBxiyv>. And a
25 recent Washington Post-Ipsos poll reached similar results, finding that 20% of gun owners owned
26 an AR-15 or similar type of rifle. WASHINGTON POST-IPSOS, *Most AR-15 gun owners own AR-15s to*
27 *protect their self, family, and property* (March 27, 2023), *available at* <https://bit.ly/40RtIKz>.

1 38. Approximately 20% of all firearms sold in recent years were rifles of the type banned
2 by Washington. NAT'L SHOOTING SPORTS FOUND., INC., *Firearms Retailer Survey Report, 2021* at
3 9, available at <https://bit.ly/3gWhI8E>. And in 2020, more than 20 million adults participated in
4 target or sport shooting with semiautomatic rifles like those banned by Washington. NAT'L
5 SHOOTING SPORTS FOUND., INC., *Sport Shooting Participation in the U.S. in 2020* at iii, available at
6 <https://bit.ly/3sPuEQI> (last accessed Mar. 23, 2023).

7 39. The banned semiautomatic firearms, like all other semiautomatic firearms, fire only
8 one round for each pull of the trigger. They are not machine guns. *Staples*, 511 U.S. at 620 n.1.
9 What is more, the designation “assault weapons” is a misnomer, “developed by anti-gun
10 publicists” in their crusade against lawful firearm ownership. *Stenberg v. Carhart*, 530 U.S. 914,
11 1001 n.16 (2000) (Thomas, J., dissenting).

12 40. A comparison to firearms used by the military demonstrates just how disingenuous
13 the “assault weapon” moniker is. According to the United States Army, for example, the
14 maximum effective rate of fire for various M4- and M16-series firearms is between forty-five and
15 sixty-five rounds per minute in semiautomatic mode—the only mode available to an AR-15 user.
16 *Rifle Marksmanship: M16-/M4-Series Weapons*, Dep't of the Army 2-1 tbl. 2-1 (2008),
17 <https://bit.ly/3pvS3SW>. In contrast, an M16 can fire 150-200 rounds per minute in automatic
18 mode. *Id.*

19 41. Central among the common uses of semiautomatic firearms banned in Washington
20 is self-defense. A majority of owners of AR-style rifles said that they owned their firearms for self-
21 defense. English, *2021 National Firearms Survey*, supra, at 34 (61.9% owned for home defense;
22 34.6% owned for defense outside the home); Washington Post-Ipsos Poll, supra at 1 (65% of owners
23 said protection of self, family, and property was a “major reason” for owning an AR-15 style rifle,
24 and another 26% said it was a “minor reason”). Owners of AR-15s and other similar rifles rated
25 “Home/self-defense” as over 8 out of 10 in importance for owning them, the second-highest rating
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1 after recreational target shooting. NAT'L SHOOTING SPORTS FOUND., INC., *Modern Sporting Rifle:*
2 *Comprehensive Consumer Report* 18 (July 14, 2022), available at <https://bit.ly/3SSrVjM>.

3 42. An AR-15 rifle is an optimal firearm to rely on in a self-defense encounter. Most
4 AR-style firearms are chambered for 5.56x45mm NATO, which is similar to .223 Remington
5 ammunition. This is a relatively inexpensive and common cartridge that is particularly well suited
6 for home-defense purposes because it has sufficient stopping power in the event of a home
7 intrusion, but quickly loses velocity after passing through a target and other objects, thus
8 decreasing the chance that an errant shot will strike an unintended target. Although most pistol
9 rounds have less muzzle velocity than a 5.56x45mm NATO round, they have greater mass,
10 maintain velocity after passing through walls and other objects, and pose substantially greater risks
11 to unintended targets in, or even outside, the home. See David B. Kopel, *How powerful are AR*
12 *rifles?*, THE VOLOKH CONSPIRACY (Feb. 27, 2023) <https://bit.ly/3nE0dgG>. And bullets fired in
13 larger hunting rifle calibers, like .30-06, are much more powerful still. See NAT'L SHOOTING
14 SPORTS FOUND., INC., *Modern Sporting Rifle: The Facts*, available at <https://bit.ly/42VayVO>.

15 43. It has been argued that the .223 Remington/5.56x45mm NATO rounds are
16 incredibly destructive, and that bans like Washington's are necessary for that reason. See *Delaware*
17 *State Sportsmen's Assoc., Inc. v. Delaware Dep't of Safety & Homeland Sec'y*, --- F. Supp. 3d ---, 2023
18 WL 2655150, at *10 (D. Del. Mar. 27, 2023). But there are two major flaws with this claim. The
19 first, and most basic, is that the Washington Ban, like the other laws it mimics, does not say
20 anything about what ammunition may or may not be used. Firearms that use the .223 round but
21 lack the banned features may still be bought in Washington, and firearms that have the banned
22 features but shoot even much smaller ammunition are still banned. If the concern is the
23 ammunition, the Washington Ban does not address it.

24 44. Second, the destructive power of these rounds is greatly overstated. Claims that
25 these cartridges "can decapitate or dismember . . ." can be traced to a U.S. military report from
26 Vietnam in 1962" which described "theatrically grotesque wounds" which the Army's Wound
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1 Ballistic Laboratory tried but could not ever replicate “no matter what they did.” Kopel, *How*
2 *powerful are AR rifles*, supra. Combat veterans with significant experience with the ammunition in
3 question have derided the claims that these are “powerful” rounds, noting instead that the rounds
4 are often considered by soldiers to be *too small* to be adequate for use in war. See, Maj. Anthony F.
5 Milavic (U.S.M.C. Ret.), *It’s the Cartridge, Stupid—Not the Rifle*, PROCEEDINGS, U.S. NAVAL
6 INSTITUTE (Aug. 2002), available at <https://bit.ly/3nAaPNJ>.

7 45. Like the AR-15 generally, many of the specific features banned by Washington aid
8 home defense. A flash suppressor, for example, not only reduces the chances that a home-invader
9 will identify his victim’s position but also protects a homeowner against momentary blindness
10 when firing in self-defense. David B. Kopel, *Rational Basis Analysis of “Assault Weapon”*
11 *Prohibition*, 20 J. CONTEMP. L. 381, 397 (1994).

12 46. Folding and telescoping stocks increase the likelihood of successful home defense
13 by permitting safe storage of defense instruments in accessible spaces and making the rifle
14 maneuverable in confined spaces. *Id.* at 398–99. A telescoping stock also allows a firearm to be
15 better fitted to an individual shooter, thereby enhancing the ability of an individual to use the
16 firearm safely and effectively.

17 47. Pistol grips and improve accuracy and reduce the risk of stray shots by stabilizing
18 the firearm while firing from the shoulder. *Id.* at 396.

19 48. Thumbhole stocks serve precisely the same function. James B. Jacobs, *Why Ban*
20 *“Assault Weapons”?*, 37 CARDOZO L. REV. 681, 690 (2015).

21 49. Most common semiautomatic rifles, including those banned under Washington’s
22 law, can accept a detachable magazine. Detachable magazines not only assist law-abiding shooters
23 in reloading their firearm in stressful defense circumstances, but in the case of some platforms,
24 including the common AR-15, they are required to safely and quickly remedy malfunctions.

25 50. Encounters with criminal intruders in the home, where the AR-style rifle may be
26 most useful, are not uncommon. For instance, according to a report by the U.S. Department of
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1 Justice, Bureau of Justice Statistics, household members are present for almost a third of all
2 burglaries and become victims of violent crimes in more than a quarter of those cases. Studies on
3 the frequency of defensive gun uses in the United States have determined that there are up to 2.5
4 million instances each year in which civilians use firearms to defend themselves or their property.
5 Gary Kleck, Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with*
6 *a Gun*, 86 J. OF CRIM. L. & CRIMINOLOGY 150, 164 (1995); see also English, *National Firearms*
7 *Survey*, supra at 9 (finding 31.1% of firearms owners, or approximately 25.3 million adult Americans,
8 have used a firearm in self-defense and there are 1.67 million defensive firearm uses a year). Both
9 Kleck and English found that over 100,000 of these annual defensive gun uses were with rifles. See
10 Kleck, *Armed Resistance to Crime*, supra, at 185, English, *2021 National Firearms Survey*, supra, at
11 11.

12 51. Other common, lawful uses of the banned firearms are hunting and sport. At least
13 a third of all gun-owners use a firearm for hunting or sport shooting, and recreational target
14 shooting is a top reason for owning semiautomatic rifles like those banned by Washington.

15 52. Here, again, the banned features of semiautomatic firearms—mischaracterized as
16 assault weapons—serve lawful purposes. Folding and telescoping stocks, for example, allow for
17 safe transportation, including in a hiking pack, an ATV, or a boat. These stocks also ease carriage
18 over long distances while hunting.

19 53. Both telescoping stocks and protruding grips open hunting and sport-shooting to
20 those for whom recoil poses a challenge. Detachable magazines have the same benefits in hunting
21 and sport-shooting as they do in home defense—improved reloading and remedying of
22 malfunctions. And flash suppressors promote accuracy in target-shooting and hunting (especially
23 at dawn).

24 54. By contrast, one use that is not common for so-called assault weapons is crime.
25 According to a widely cited 2004 study, these arms “are used in a small fraction of gun crimes.”
26 Christopher Koper, et al., *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun*
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1 *Markets and Gun Violence, 1994-2003* (2004), U.S. DEP'T OF JUST., *available at*
2 <https://bit.ly/3hZiy5v>. This has long been true. Gary Kleck, *TARGETING GUNS: FIREARMS AND*
3 *THEIR CONTROL* 112 (1997) (evidence indicates that “well under 1% [of crime guns] are ‘assault

4 rifles.’”). Indeed, according to FBI statistics in 2021 there were only 510 homicides known to be
5 committed with rifles of any type, compared to 5,363 with handguns, 1,018 with knives or other
6 cutting instruments, 510 with personal weapons (hands, feet, etc.) and 267 with blunt objects. *U.S.*
7 *Homicide Offense characteristics: Type of Weapon Involved by Offense*, FBI Crime Data Explorer.
8 (2023), *available at* <https://bit.ly/40NHSMC>.

9 55. The rifles that Washington bans as “assault weapons” are, in all respects, ordinary
10 semiautomatic rifles. To the extent they are different from other semiautomatic rifles, their
11 distinguishing features make them safer and easier to use. But even if they are considered as a
12 separate group of “assault weapons,” they cannot be banned because they are not dangerous and
13 unusual.

14 56. The arms banned as “assault weapons” by Washington are common by all counts:
15 (1) They are common categorically, as they are all semiautomatic in their function and operation;
16 (2) they are common characteristically, as they are all popular configurations of arms (e.g., rifles)
17 with varying barrel lengths and common characteristics like pistol grips; and (3) they are common
18 jurisdictionally, lawful to possess and use in the vast majority of states now and throughout relevant
19 history, for a wide variety of lawful purposes that include self-defense, proficiency training,
20 competition, recreation, hunting, and collecting.

21 57. The Statute’s ban on manufacturing, importing, distributing, selling, or offering for
22 sale an “assault weapon” is, therefore, a ban on keeping and bearing semiautomatic firearms that
23 are commonly possessed and used for lawful purposes, including self-defense in the home.
24

25 **C. Statement Of Facts Relating To Lawrence Hartford.**

26 58. The foregoing paragraphs are hereby incorporated herein as if set forth in full.

27 59. Plaintiff Lawrence Hartford is an adult resident of Kitsap County, Washington.

1 60. Mr. Hartford is a peaceable, law-abiding, responsible citizen.

2 61. Mr. Hartford is a member of Plaintiffs SAF and FPC.

3 62. Mr. Hartford would buy a BCM M4 Mod 2, an AR-type firearm, but he cannot do
4 so because the enactment of the Ban has destroyed the legal market for that firearm.

5 63. Additionally, Mr. Hartford enjoys target shooting on his property, and in an effort
6 to minimize noise he prefers to use firearms that can be fitted with suppressors. When he purchases
7 firearms, he prefers to buy firearms with threaded barrels designed to accept a suppressor, but
8 because of the law challenged here, he will not be able to do so.

9 64. It is Mr. Hartford's present intention and desire to purchase additional
10 semiautomatic rifles of the kind that are banned by Washington, were it lawful to do so. Because of
11 Washington's Ban, he cannot lawfully purchase additional semiautomatic rifles, because the
12 existence of the Ban, and Defendants' enforcement of it, has extinguished the legal market for
13 those items in Washington, and made it unlawful for Mr. Mitchell to import them himself.

14 **D. Statement Of Facts Relating To Doug Mitchell.**

15 65. The foregoing paragraphs are hereby incorporated herein as if set forth in full.

16 66. Plaintiff Doug Mitchell is an adult resident of Kittitas County, Washington.

17 67. Mr. Mitchell is a peaceable, law-abiding, responsible citizen.

18 68. Mr. Mitchell is a member of Plaintiffs SAF and FPC.

19 69. Mr. Mitchell would purchase a Sig Sauer MCX Spear LT, an AR-type firearm, but
20 he cannot do so because the enactment of the Ban has destroyed the legal market for that firearm.

21 70. It is Mr. Mitchell's present intention and desire to purchase additional
22 semiautomatic rifles of the kind that are banned by Washington, were it lawful to do so. Because of
23 Washington's Ban, he cannot lawfully purchase additional semiautomatic rifles, because the
24 existence of the Ban, and Defendants' enforcement of it, has extinguished the legal market for
25 those items in Washington, and made it unlawful for Mr. Mitchell to import them himself.
26

1 **E. Statement Of Facts Relating To Brett Bass.**

2 71. The foregoing paragraphs are hereby incorporated herein as if set forth in full.

3 72. Plaintiff Brett Bass is an adult resident of Snohomish County, Washington.

4 73. Mr. Bass is a peaceable, law-abiding, responsible citizen.

5 74. Mr. Bass is a member of Plaintiffs SAF and FPC.

6 75. Mr. Bass owns a semiautomatic pistol which he would equip with a threaded barrel,
7 but because the law challenged herein makes manufacturing a so-called “assault weapon”
8 unlawful, he will be unable to do so.

9 76. Additionally, Mr. Bass would buy a Palmetto State Armory AK-103, but he cannot
10 do so because the enactment of the Ban has destroyed the legal market for that firearm.

11 77. It is Mr. Bass’s present intention and desire to purchase additional semiautomatic
12 rifles of the kind that are banned by Washington, were it lawful to do so. Because of Washington’s
13 Ban, he cannot lawfully purchase additional semiautomatic rifles, because the existence of the Ban,
14 and Defendants’ enforcement of it, has extinguished the legal market for those items in
15 Washington, and made it unlawful for Mr. Mitchell to import them himself.

16 **F. Statement Of Facts Relating To Sporting Systems Vancouver, Inc.**

17 78. The foregoing paragraphs are hereby incorporated herein as if set forth in full.

18 79. Plaintiff Sporting Systems Vancouver, Inc. is a corporation located in Clark County,
19 Washington. Sporting Systems Vancouver, Inc. is owned and operated by Dan Mitchell, a member
20 of Plaintiffs SAF and FPC.

21 80. Sporting Systems Vancouver, Inc. is a federally licensed firearm dealer. Before the
22 Washington Ban, every month it sold hundreds of rifles and lower receivers that have been
23 erroneously labeled “assault weapons” by Washington to law-abiding citizens in the State.

24 81. It is Sporting Systems Vancouver, Inc.’s present intention and desire to continue
25 to sell banned semiautomatic rifles. Because of Washington’s Ban, however, it has been forced to
26 stop selling many common semiautomatic rifles to members of the general public. As a result,
27

1 Sporting Systems Vancouver, Inc. is losing and will lose profits from sales of common
2 semiautomatic rifles as a direct result of Washington's Ban.

3 82. In addition to risking prosecution, Sporting Systems Vancouver, Inc. could also
4 jeopardize its federal firearms license if it were to violate the Ban. As a vendor who is harmed by
5 the "assault weapons" ban, Sporting Systems Vancouver, Inc. challenges the ban to vindicate the
6 Second Amendment protected rights of its itself and customers. *See Teixeira v. County of Alameda*,
7 873 F.3d 670, 678 (9th Cir. 2017); *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011).

8 V. CAUSE OF ACTION.

9 **A. Count One: 42 U.S.C. § 1983 & *Ex parte Young*, 209 U.S. 123 (1908)- Deprivation of**
10 **Plaintiffs' Rights under the Second and Fourteenth Amendments of the United**
11 **States Constitution.**

12 83. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth
13 herein.

14 84. The Second Amendment to the United States Constitution provides: "A well-
15 regulated Militia being necessary to the security of a free State, the right of the people to keep and
16 bear Arms shall not be infringed."

17 85. The Second Amendment is fully applicable to the States through the Fourteenth
18 Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *id.* at 805 (Thomas, J.,
19 concurring).

20 86. "Just as the First Amendment protects modern forms of communications, and the
21 Fourth Amendment applies to modern forms of search, the Second Amendment extends, *prima*
22 *facie*, to all instruments that constitute bearable arms, even those that were not in existence at the
23 time of the founding." *Heller*, 554 U.S. at 582 (citations omitted).

24 87. The firearms at issue in this case are the sorts of bearable arms in common use for
25 lawful purposes that law-abiding people possess at home by the millions. They are, therefore,
26 neither dangerous nor unusual and they cannot be banned.
27

1 88. 42 U.S.C. § 1983 creates a cause of action against state actors who deprive
2 individuals of federal constitutional rights under color of state law.

3 89. *Ex parte Young*, 209 U.S. 123 (1908) provides an exception to state sovereign
4 immunity by permitting parties to sue state officials in their official capacity for prospective
5 injunctive and declaratory relief from unconstitutional state laws.

6 90. Plaintiffs are peaceable citizens of Washington and the United States who wish to
7 purchase and possess firearms that have been banned as “assault weapons” by Washington.

8 91. Outright bans on manufacturing, distributing, importing, selling, or offering for sale
9 common semiautomatic rifles violate the Second Amendment by prohibiting all Washington
10 residents from acquiring those firearms and denying them the fundamental right to keep and bear
11 arms.

12 92. An outright ban on manufacturing, importing, selling, or offering for sale
13 constitutionally protected magazines violates the Second Amendment by prohibiting retailers from
14 engaging in commerce necessary for individuals to exercise their fundamental right to keep and
15 bear arms. *Cf. Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 62 (1976)

16 **VI. PRAYER FOR RELIEF.**

17 WHEREFORE, Plaintiffs respectfully pray for the following relief:

- 18
- 19 1. Declare that Washington’s ban on commonly possessed semiautomatic firearms violates
20 the right to keep and bear arms, as guaranteed under the Second and Fourteenth
21 Amendments to the United States Constitution;
 - 22 2. Preliminarily and permanently enjoin each Defendant, each Defendant’s respective
23 employees, officers, agents, and representatives, and all those acting in concert or
24 participation with him or her, from enforcing Washington’s ban on commonly possessed
25 semiautomatic firearms;
 - 26 3. Award Plaintiffs attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, and any other
27 applicable law; and,

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4. Grant any and all other and further legal and equitable relief against Defendants as necessary to effectuate the Court’s judgment, or as the Court otherwise deems just and proper.

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April 25, 2023.

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