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| DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80523 Phone Number: (720) 865-8301 | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| Plaintiffs: Rocky Mountain Gun Owners, a Colorado nonprofit corporation, National Association for Gun Rights, Inc., a Virginia nonprofit corporation, John A. Sternberg, and DV-S, LLC, a Colorado limited liability company d/b/a Alpine Arms Defendant: John C. Hickenlooper | |
| Barry K. Arrington, #16,486 Arrington Law Firm 7340 East Caley Avenue, Suite 360 Centennial, Colorado 80111 Phone Number: (303) 205-7870 FAX Number: (303) 463-0410 E-mail: barry@arringtonpc.com Attorney for Plaintiffs | Case Number: _____ Division ____ |
| COMPLAINT | |

Plaintiffs submit the following complaint against defendant:

I. PARTIES

1. Plaintiff Rocky Mountain Gun Owners (“RMGO”) is a Colorado nonprofit corporation with a principal address of 501 Main Street, Suite 200, Windsor, Colorado 80550. RMGO advocates for the right to keep and bear arms on behalf of thousands of Colorado citizens and brings this complaint on behalf of those citizens.

2. Plaintiff National Association for Gun Rights, Inc. (“NAGR”) is a Virginia nonprofit corporation with a principal address of 101 Washington Street, Fredericksburg, Virginia 22405 and a Colorado address of 501 Main Street, Suite 200, Windsor, Colorado 80550. NAGR advocates for the right to keep and bear arms on behalf of thousands of Colorado citizens and brings this complaint on behalf of those citizens.

3. Plaintiff John A. Sternberg is an individual with an address of 1309 21st Lane, Pueblo, Colorado 81006.

4. Plaintiff DV-S, LLC d/b/a Alpine Arms (“Alpine”) is a Colorado limited liability company with a principal office of 108 West Second Street, Eagle, Colorado 81631.

5. Defendant John C. Hickenlooper is the Governor of the State of Colorado.

II. VENUE AND STANDING

6. Venue is proper in this Court pursuant to C.R.C.P. 98.

7. Plaintiffs have suffered injury in fact to legally protected interests as contemplated by constitutional provisions. *Barber v. Ritter*, 196 P.3d 238, 245 (Colo. 2008). In particular, plaintiffs allege herein the deprivation of civil liberties protected by the Colorado Constitution. Plaintiffs Sternberg and Alpine bring this action to address deprivation of their own civil liberties. RMGO and NAGR bring this action to address the deprivation of the rights of the citizens they represent.

III. GENERAL ALLEGATIONS

8. In 2013 the Colorado General Assembly enacted House Bill 1229 (“HB 1229”). HB 1229 became effective July 1, 2013.

9. With certain limited exceptions, HB 1229 makes unlawful the transfer of a firearm between private individuals unless the Colorado Bureau of Investigation (“CBI”) first conducts a background check and confirms that the transferee is eligible to possess the firearm.

10. HB 1229 does not, however, allow either a willing transferor nor a willing transferee of a covered firearm transfer to obtain a CBI background check. Rather, HB 1229 requires the transferor to locate — and persuade — a federally-licensed firearms dealer (“FFL”) to obtain the CBI background check, complying with all federal and state laws, and using the same procedure as if the proposed transfer were of a firearm sold out of the FFL’s own firearms inventory. The FFL is permitted to charge the transferor a fee, but that fee may not exceed \$10.00.

11. No FFL is required by law to comply with such requests. Rather, HB 1229 leaves it to FFLs’ absolute, unfettered and unreviewable discretion to deny all or some of such requests. There are a number of reasons that an FFL would not grant such requests, including, but not limited to, the following:

(a) The \$10 cap does not reflect the value of the service requested, the going rate for which is currently \$25 or even \$50.

(b) The FFL has a financial interest in selling a firearm from its own inventory on which it would make a profit rather than assisting a private sale. Thus, HB 1229 creates a financial conflict of interest between private individuals who desire to

transfer firearms and the FFLs upon whom they must depend to obtain a background check.

(c) HB 1229 imposes upon FFLs the same compliance requirements, such as completion of the ATF Form 4473, as if the transfer were of a firearm from its own inventory. Each time an FFL completes a Form 4473 it risks committing errors that could expose it to criminal prosecution under federal law. FFLs have no incentive to risk substantial criminal penalties in exchange for a \$10.00 fee.

(d) FFLs dealer will be disinclined to perform the service if either the transferor or the transferee are not known to the FFL.

12. Without the services of an FFL, a transfer of a firearm between private parties could not be legally completed and, if attempted, would expose the transferor and the transferee to criminal and civil liability.

13. In 2013 the Colorado General Assembly enacted House Bill 1224 (“HB 1224”). HB 1224 became effective July 1, 2013.

14. HB 1224 bans outright all ammunition magazines sold or acquired after July 1, 2013 that hold more than 15 rounds of ammunition. HB 1224 also bans most other magazines of any size because it prohibits smaller magazines that are “designed to be readily converted” to hold more than 15 rounds of ammunition, and imposes a condition of continuous possession that makes it impossible to lawfully possess a magazine of any capacity.

15. HB 1224, also, effectively operates as a ban on having a functional, operating unit for most handguns and a very large fraction of rifles.

IV. FIRST CLAIM FOR RELIEF
(Violation of the Due Process and Equal Protection
Provisions of Article II, Section 25 of the Colorado Constitution)

16. The allegations of paragraphs 1 through 15 are incorporated herein.

17. Subsection 18-12-112(a), C.R.S., states that, before completing a transfer, a transferor “shall require that a background check . . . be conducted,” as if a private transferor has the authority to require such a check to be conducted, but in fact a private transferor has no such authority.

18. Only an FFL may conduct the required background check, but the FFL is not required by law to perform this service for any private transferor. Neither the transferor nor the transferee has any authority to require any FFL to perform the check. Nor is any governmental official authorized to require any FFL to conduct the required check. Nor is there any penalty imposed on any FFL who declines to accommodate any

covered firearms transfer. Nor is there any process for review of an FFL's decision to refuse to complete the required check.

19. Not only does the statutory scheme impose no duty on any FFL to perform the required check, it actually creates substantial disincentives for FFLs to conduct the check. Any FFL who chooses to provide such an accommodation may not charge a fee commensurate with the value of its services, because HB 1229 caps any such fee at \$10. Moreover, HB 1229 requires FFLs to comply with all state and federal requirements, as if they were selling a firearm out of their own inventory. Thus, FFLs are put at risk of noncompliance with laws that could result in substantial criminal penalties and the loss of their license — all for a meager \$10 fee.

20. Additionally, there is nothing in HB 1229 that would prohibit an FFL from arbitrarily denying the check service to one person and granting it to another. Under the statute an FFL has complete discretion to grant or to deny such assistance. Moreover, an FFL can set whatever non-monetary terms it wishes to complete the check. For example, it may provide assistance only to transferors who are regular customers or require parties to buy items from its inventory as a condition of performing the check.

21. In summary, under the statutory scheme, firearms transferors and transferees must depend absolutely on a private third party in order to effect a lawful firearms transfer, and if they fail to effect a legal transfer they are subject to criminal liability and punishments. Yet that third party – the FFL – has complete and unfettered discretion. “Criminal liability and punishments should not be predicated upon a third party's unfettered discretion.” *People v. Vinnola*, 494 P.2d 826, 831 (Colo. 1972). Such discretion is at odds with constitutional due process and equal protection. *Id. Heninger v. Charnes*, 200 Colo. 194, 613 P.2d 884, 886 (Colo. 1980) (Article II, Section 25 incorporates equal protection).

22. Accordingly, HB 1229 violates the Due Process and Equal Protection Provisions of Article II, Section 25 of the Colorado Constitution and is therefore void.

V. SECOND CLAIM FOR RELIEF
**(Unconstitutional Delegation of Executive Authority/
Unconstitutional Delegation of Legislative Power)**

23. The allegations of paragraphs 1 through 22 are incorporated herein.

24. The General Assembly could have established direct access to the CBI by private firearms transferors, thus guaranteeing equal and fair access. Instead, the legislature has chosen to substitute FFLs as intermediate agents to administer the law at no cost to the state. In so doing, it has unconstitutionally delegated executive power to FFLs, empowering them to take care – if they choose to perform checks – that the provisions of HB 1229 are faithfully executed. This is a power vested and duty assigned to the Governor by Article IV, Section 2 of the Colorado Constitution. Accordingly,

HB 1229 violates the executive powers provision of Article IV, Section 2 of the Colorado Constitution and is therefore void.

25. HB 1229 unconstitutionally vests legislative power in Colorado FFLs, contrary to Article V, Section 1 of the Colorado Constitution which vests all legislative powers in “the general assembly consisting of a senate and a house of representatives, both to be elected by the people” According to HB 1229, an FFL has absolute discretion to decide whether it would be in the “public good” to assist any proposed transfer of a firearm, without any policy constraint or standards specified by the General Assembly. Such unrestrained discretion may not be delegated. *See Panama Refining Co. v. Ryan*, 293 U.S. 388, 420-21 (1935). It is for the legislature — not for private entities such as a FFLs — to dictate policy and to set standards governing whether any proposed firearms transfer should be submitted to a criminal background check. *See Colorado Auto & Truck Wreckers Ass’n. v. Dept. of Revenue*, 618 P.2d 646, 651 (Colo. 1980). Accordingly, HB 1229 violates the legislative powers provision of Article V, Section 1 of the Colorado Constitution and is therefore void.

VI. THIRD CLAIM FOR RELIEF
(HB 1229 Violates Article II, Section 13 of the Colorado Constitution)

26. The allegations of paragraphs 1 through 25 are incorporated herein.

27. The Colorado Supreme Court has held that various provisions of the Colorado constitution provide greater protection to civil liberties than their federal counterparts. *See, e.g., Bock v. Westminster Mall Co.*, 819 P.2d 55, 59 (Colo. 1991) (free expression); *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1054 (Colo. 2002) (same); *People v. Ford*, 773 P.2d 1059 (Colo. 1989) (same); *Parrish v. Lamm*, 758 P.2d 1356, 1365 (Colo. 1988) (same); *People v. Seven Thirty-Five East Colfax, Inc.*, 697 P.2d 348, 356 (Colo. 1985) (same); *People v. Berger*, 185 Colo. 85, 521 P.2d 1244 (1974) (same); *In Re Hearings Concerning Canon 35*, 132 Colo. 591, 296 P.2d 465 (1956) (same); *Cooper v. People*, 13 Colo. 337, 22 P. 790 (1889) (same); *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1054 (Colo. 2002) (searches and seizures); *People v. Oates*, 698 P.2d 811, 818 (Colo. 1985) (same); *People v. Corr*, 682 P.2d 20, 27 (Colo. 1984) (same); *People v. Sporleder*, 666 P.2d 135, 139-40 (Colo. 1983) (same); and *Charnes v. DiGiacomo*, 200 Colo. 94, 98-100, 612 P.2d 1117, 1119-21 (1980) (same). Whether the Colorado constitution affords greater protection than the federal constitution depends on the text of the provision in question and the history and traditions of the people of Colorado.

28. Article II, Section 13 of the Colorado Constitution states in pertinent part:

The right of no person to keep and bear arms in defense of his home, person and property . . . shall be called in question . . .

29. On its face, the text of Article II, Section 13 offers more specific, and therefore, greater protection to the right to keep and bear arms in defense of home, person

and property than does the text of the Second Amendment. By enumerating broader areas of significance, the state provision protects a broader class of rights. Moreover, the Second Amendment states that the right to bear arms “shall not be infringed.” Article II, Section 13 states that the right shall not even be called into question, much less infringed. Thus, the language of the state provision is clearly broader than the language of the federal provision. Finally, the negative provision about concealed carry does not change this conclusion. The state free speech clause contains a similar negative provision. Nevertheless, the Colorado Supreme Court has held that the earlier text in the provision provides greater rights than the First Amendment.

30. Colorado was part of the old west. As such it has a strong libertarian history stretching back over 150 years insofar as firearms are concerned. Thus, the history and traditions of the state also support the conclusion that the state constitution protects a broader class of rights than the Second Amendment.

31. The Colorado Supreme Court has not expressly stated that Article II, Section 13 provides greater protections to the right to keep and bear arms than those provided by the Second Amendment. Nevertheless, the Colorado Supreme Court has in fact interpreted the state constitution to provide greater protection to the right to keep and bear arms than that provided by the Second Amendment. Compare *McDonald v. Chicago*, __ U.S. __, 130 S.Ct. at 3047 (2010) (Second Amendment does not protect the right of convicted felons to keep and bear arms) to *People v. Ford*, 193 Colo. 459, 568 P.2d 26, 28 (1977), in which the Colorado Supreme Court held that a flat prohibition on the right of felons to possess firearms violates the guarantee of Article II, Section 13. Compare *United States v. Carpio-Leon*, 701 F.3d 974 (4th Cir. 2012) (no right for illegal alien to possess firearm) to *People v. Nakamura*, 99 Colo. 262, 62 P.2d 246 (1936), in which the Colorado Supreme Court struck down a statute prohibiting unnaturalized foreign-born residents from owning or possessing a firearm of any kind, stating that while the state may preserve wild game and prevent the killing of the same by aliens, “**it cannot disarm any class of persons** or deprive them of the right guaranteed under section 13, article II of the Constitution, to bear arms in defense of home, person and property.” (emphasis added).

32. Implicit in the meaning of keep and bear arms is the authority to make use of the object, including not just for self-defense, but a whole range of activity that arises out of a keeper’s “power or possession,” including for hunting and for sale, in exchange for money, or another firearm. Indeed, it is unclear how anyone would “keep” something if he had no power to receive that thing by purchase or gift. After all, the right is to “keep,” not to create or make. The right to “keep” would certainly contemplate a right to manufacture, but it would also extend to a right to receive a thing made by others by sale or gift. And a right to receive would imply in another the power to transfer. Without protecting the right of a transferor to convey a firearm, a transferee of that firearm would be prohibited from exercising his right to “keep,” and therefore “bear,” arms in self-defense, a core right secured by the Colorado Constitution. The state is, therefore, not

permitted to prohibit transfers of firearms from one citizen to another; otherwise the right of the people to keep and bear arms would be “infringed.”

33. If the state may not enact an outright prohibition on the transfer of firearms, it follows that it may not place unreasonable burdens on the transfer of firearms, including by making such transfers subject to the absolute, unfettered and unreviewable discretion of third parties, such as FFLs. This is exactly what HB 1229 does and therefore the statute violates Article II, Section 13 of the Colorado Constitution and is void.

VII. FOURTH CLAIM FOR RELIEF
(HB 1224 Violates Article II, Section 13 of the Colorado Constitution)

34. The allegations of paragraphs 1 through 33 are incorporated herein.

35. H.B. 1224 outlaws magazines that hold more than 15 rounds of ammunition, all tubular shotgun magazines that hold more than 28 inches of shells, and all nontubular shotgun magazines that hold more than 8 shells.

36. Additionally, the chief sponsor of HB 1224 and Governor Hickenlooper have both publicly confirmed that HB 1224 bans all magazines with removable floor plates, even if they do not violate the limits, arguing that they can be “readily converted to accept” additional rounds of ammunition.

37. The magazines for most handguns, for many rifles, and for some shotguns are detachable box magazines. The very large majority of detachable box magazines contain a removable floor plate. The removable floor plate allows the user to clear ammunition jams, clean the inside of the magazine, and perform maintenance on the internal mechanics of the magazine.

38. The fact that a magazine floor plate can be removed “inherently creates the possibility” that the magazine can be extended through commercially available extension products or readily fabricated extensions, such that nearly every magazine can be readily converted to exceed the capacity limits set by HB 1224.

39. Some rifles have fixed box magazines, which are permanently attached to the rifle. However, some of these also have removable floor plates. The possibility that the fixed magazine’s floorplate can be removed means that the rifle itself is banned by HB 1224, since it cannot be separated from, or used without the magazine.

40. Instead of a box magazine, some rifles have fixed tube magazines, which lie underneath the rifle barrel. Many tube magazines have removable end caps for cleaning, to which extenders can be added. A ban on certain types of fixed magazines is necessarily a ban on the rifles to which they are fixed.

41. HB 1224 allows the possession of grandfathered magazines only if two separate requirements are satisfied: First, they must be owned on July 1, 2013. Second, the owner must maintain “continuous possession” of the magazine.

42. The requirement for “continuous possession” makes it impossible for firearms to be used or shared in ordinary and innocent ways, such as a gun owner loaning his or her firearm with the magazine to a spouse, family member, or friend; entrusting it to a gunsmith for repair; a military reservist leaving firearms and their associated magazines with a spouse when he or she is called into service away from home; or even temporarily handing a firearm with its magazine to a firearms safety instructor so that the owner can be shown by the instructor how to better grip, aim, or otherwise use the firearm.

43. The requirement of “continuous possession” prohibits the grandfathered owner from ever allowing anyone to hold or use his firearm if the firearm is in a functional state (with a magazine inserted) – calling into question the right to keep and bear arms secured by Article II, Section 13 of the Colorado Constitution.

44. Thus, the magazine ban and possession limits are a patent violation of the Colorado Constitution.

45. Additionally, by outlawing most box and tube magazines, HB 1224 outlaws an essential component of many common firearms. An overwhelming percentage of handguns and substantial number of rifles currently manufactured in the United States are semi-automatic, which means that most of them store their ammunition in detachable box magazines. Rifles which use box or tube magazines are not limited to semi-automatics, but also include pump action, bolt action, and lever action rifles. (HB 1224 exempts lever action guns which use tube magazines, but not lever action guns which use box magazines; the bill also exempts rimfire rifles which use tube magazines, but does not exempt such rifles that use box magazines.)

46. The effect of HB 1224’s various provisions is the widespread ban on functional firearms. The prohibition of so many box and tube magazines of any size, and the prohibition of magazines greater than 15 rounds, directly and gravely harm the ability of law-abiding citizens to use firearms for lawful purposes, especially self-defense.

47. Thus, HB 1224 amounts to a ban on having a functional, operating unit for most handguns and a very large fraction of rifles in patent violation of the Article II, Section 13 of the Colorado Constitution.

VIII. RELIEF REQUESTED

Plaintiffs pray that this Court:

A. Enter a declaratory judgment that HB 1229 violates the Due Process and Equal Protection Provisions of Article II, Section 25 of the Colorado Constitution and is therefore void.

B. Enter a declaratory judgment that HB 1229 is an unconstitutional Delegation of Executive Authority in violate of Article IV, Section 2 of the Colorado Constitution and is therefore void.

C. Enter a declaratory judgment that HB 1229 is an unconstitutional Delegation of Legislative Authority in violate of Article V, Section 1 of the Colorado Constitution and is therefore void.

D. Enter a declaratory judgment that HB 1229 violates Article II, Section 13 of the Colorado Constitution and is therefore void.

E. Enter a declaratory judgment that HB 1224 violates Article II, Section 13 of the Colorado Constitution and is therefore void.

F. Issue preliminary and permanent injunctions enjoining Defendant John Hickenlooper and any officers, agents, and employees of the State of Colorado from administering or enforcing any provisions of HB 1224 and 1229 found to violate the Colorado Constitution.

G. Award plaintiffs attorneys' fees and costs and grant other such relief as the Court deems proper.

/s/ Barry K. Arrington

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