

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 23-cv-1077

ROCKY MOUNTAIN GUN OWNERS, and
TATE MOSGROVE,

Plaintiffs,

v.

JARED S. POLIS, in his official capacity as Governor of the State of Colorado

Defendant.

COMPLAINT

Plaintiffs Rocky Mountain Gun Owners (“RMGO”) and Tate Mosgrove (“Mosgrove”) submit the following Complaint.

I. INTRODUCTION

This action is a challenge to the constitutionality of Senate Bill 23-169 enacted by the Colorado General Assembly and signed by Governor Polis on April 27, 2023 (“SB23-169”). SB23-169 will become effective on August 4, 2023. SB-23-169 prohibits persons over the age of 18 but under the age of 21 from purchasing a firearm of any type. As such, it is blatantly unconstitutional under the Second Amendment to the United States Constitution as made applicable to the states by the Fourteenth Amendment. A copy of SB23-169 in its final form is attached as Exhibit A.

II. PARTIES

1. Plaintiff RMGO is a nonprofit organization. RMGO seeks to defend the right of all law-abiding individuals to keep and bear arms. RMGO has members who reside in Colorado who are between the ages of 18 and 20. RMGO represents the interests of these members. Specifically, RMGO represents the interests of those who are affected by SB23-169's unconstitutional prohibition on law-abiding adults from purchasing firearms. It is these members' present intention and desire to lawfully purchase a firearm for lawful purposes, including self-defense in their home. These members are precluded from purchasing a firearm by SB23-169, which bars them from exercising their fundamental right to keep and bear arms for lawful purposes protected by the Second Amendment.

2. Plaintiff Mosgrove is a natural person, over the age of 18 but under the age of 21, and a citizen Colorado and the United States. Mosgrove has never been charged with nor convicted of any misdemeanor or felony offense. It is his present intention and desire to lawfully purchase a firearm for lawful purposes, including self-defense in his home. Mosgrove is or soon will be precluded from purchasing a firearm by SB23-169, which bars him from exercising his fundamental right to keep and bear arms for lawful purposes protected by the Second Amendment.

3. Defendant Jared S. Polis is the Governor of the State of Colorado. This action is brought against him in his official capacity.

4. Defendant is or will enforce the unconstitutional provisions of the law against Plaintiffs under color of state law within the meaning of 42 U.S.C. § 1983.

III. JURISDICTION AND VENUE

5. The Court has original jurisdiction of this civil action under 28 U.S.C. § 1331, because the action arises under the Constitution and laws of the United States. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the deprivation, under color of the laws, ordinances, regulations, customs and usages of the State, of rights, privileges or immunities secured by the United States.

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys' fees is authorized by 42 U.S.C. § 1988.

7. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

IV. GENERAL ALLEGATIONS

8. The Second Amendment to the United States Constitution declares that "the right of the people to keep and bear arms shall not be infringed." U.S. CONST. amend. II; *see also D.C. v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

9. The right to keep and bear arms recognized in the Second Amendment is made applicable to the states by the Fourteenth Amendment. *McDonald, supra*.

10. SB23-169 states in relevant part: “It is unlawful for a person who is less than twenty-one years of age to purchase a firearm.”

11. In *Bruen*, the Court held: “We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*, 142 S. Ct. at 2129-30.

12. Plaintiffs desire to purchase firearms for lawful purposes (including defense of their homes). The right to keep arms necessarily implies the right to acquire arms. SB23-169 prohibits or soon will prohibit Plaintiffs from doing so. “[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms.” *Bruen*, 142 S. Ct. at 2132. Therefore, because the Second Amendment’s plain text covers Plaintiffs’ conduct – i.e., acquiring bearable arms – “the Constitution *presumptively* protects that conduct.” *Id.*, 142 S. Ct. at 2126 (emphasis added). Plaintiffs have met their burden under *Bruen*, and SB23-169 is presumptively unconstitutional.

13. Since the Second Amendment presumptively protects Plaintiffs’ conduct, the State must justify SB23-169 by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. But it is impossible for the State to meet this burden, because there is no such historical tradition of firearms regulation in this Nation.

14. In *Worth v. Harrington*, 2023 WL 2745673 (D. Minn. Mar. 31, 2023), the court held that there is no historical tradition supporting a statutory prohibition on 18-20-year-olds from carrying firearms in public. *See also Firearms Pol’y Coal., Inc. v. McCraw*, 2022 WL 3656996 (N.D. Tex. Aug. 25, 2022) (same). *A fortiori* there is no historical tradition supporting a statutory prohibition on 18-20-year-olds from purchasing firearms to possess for the self-defense and other lawful uses, including self-defense in the home.

15. In summary, the plain text of the Second Amendment covers Plaintiffs’ conduct. Therefore, SB23-169 is presumptively unconstitutional. The State is unable to rebut this presumption, because the law is not consistent with Nation’s historical tradition of firearm regulation. Therefore, SB23-169 is unconstitutional to the extent it prohibits law-abiding adults from purchasing firearms for lawful purposes.

V. FIRST CLAIM FOR RELIEF
Right to Keep and Bear Arms
U.S. Const., amends. II and XIV

16. Paragraphs 1-15 are realleged and incorporated by reference.

17. SB23-169 prohibits residents of the State, including Plaintiffs, from exercising their right to acquire arms protected by the Second Amendment. There are significant penalties for violations of the law.

18. These restrictions infringe on the right of the people of the State, including Plaintiffs, to keep and bear arms as guaranteed by the Second Amendment and made applicable to Colorado and its political subdivisions by the Fourteenth Amendment.

19. SB23-169's prohibitions prohibit purchasing arms even for the purpose of self-defense in the home, where Second Amendment protections are at their zenith.

20. The State cannot satisfy its burden of justifying these restrictions on the Second Amendment right of the People by demonstrating that they are consistent with this Nation's historical tradition of firearm regulation.

VI. PRAYER FOR RELIEF

Plaintiffs pray that the Court:

21. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 that SB23-169 is unconstitutional on its face or as applied to the extent it prohibits adults from acquiring firearms for lawful purposes;

22. Enter preliminary and permanent injunctive relief enjoining Defendant and his officers, agents, and employees from enforcing SB23-169 against adults;

23. Award remedies available under 42 U.S.C. § 1983 and all reasonable attorneys' fees, costs, and expenses under 42 U.S.C. § 1988, or any other applicable law;

24. Award actual or nominal damages to the individual Plaintiff (RMGO does not seek damages); and

25. Grant any such other and further relief as the Court may deem proper.

Respectfully submitted this 28th day of April 2023.

/s/ Barry K. Arrington

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NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



Exhibit A

SENATE BILL 23-169

BY SENATOR(S) Mullica and Danielson, Bridges, Coleman, Cutter, Exum, Fields, Gonzales, Hansen, Jaquez Lewis, Kolker, Moreno, Rodriguez, Sullivan, Fenberg;
also REPRESENTATIVE(S) Duran and Hamrick, Kipp, Amabile, Bacon, Bird, Boesenecker, Brown, Daugherty, deGruy Kennedy, Dickson, English, Froelich, Gonzales-Gutierrez, Herod, Jodeh, Joseph, Lindsay, Lindstedt, Mabrey, McCormick, Michaelson Jenet, Parenti, Ricks, Sirota, Snyder, Valdez, Velasco, Weissman, Willford, Woodrow, McCluskie.

CONCERNING INCREASING THE LEGAL AGE TO PURCHASE A FIREARM TO TWENTY-ONE YEARS OF AGE, WITH LIMITED EXCEPTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-12-101, **add** (1)(b.7) and (1)(c.5) as follows:

18-12-101. Peace officer affirmative defense - definitions. (1) As used in this article 12, unless the context otherwise requires:

(b.7) "FIREARM" MEANS ANY WEAPON, INCLUDING A STARTER GUN, THAT CAN, IS DESIGNED TO, OR MAY READILY BE CONVERTED TO EXPEL A

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

PROJECTILE BY THE ACTION OF AN EXPLOSIVE; THE FRAME OR RECEIVER OF A FIREARM; OR A FIREARM SILENCER. "FIREARM" DOES NOT INCLUDE AN ANTIQUE FIREARM, AS DEFINED IN 18 U.S.C. SEC. 921 (a)(16). IN THE CASE OF A LICENSED COLLECTOR, "FIREARM" MEANS ONLY CURIOS AND RELICS. "FIREARM" INCLUDES A WEAPONS PARTS KIT THAT IS DESIGNED TO OR MAY READILY BE COMPLETED, ASSEMBLED, RESTORED, OR OTHERWISE CONVERTED TO EXPEL A PROJECTILE BY THE ACTION OF AN EXPLOSIVE. "FIREARM" DOES NOT INCLUDE A WEAPON, INCLUDING A WEAPONS PARTS KIT, IN WHICH THE FRAME OR RECEIVER OF THE FIREARM, AS DEFINED IN SUBSECTION (1)(c.5) OF THIS SECTION, OR THE WEAPON, IS DESTROYED.

(c.5) "FRAME OR RECEIVER OF A FIREARM" MEANS A PART OF A FIREARM THAT, WHEN THE COMPLETE FIREARM IS ASSEMBLED, IS VISIBLE FROM THE EXTERIOR AND PROVIDES HOUSING OR A STRUCTURE DESIGNED TO HOLD OR INTEGRATE ONE OR MORE FIRE CONTROL COMPONENTS, EVEN IF PINS OR OTHER ATTACHMENTS ARE REQUIRED TO CONNECT THE FIRE CONTROL COMPONENTS. ANY PART OF A FIREARM IMPRINTED WITH A SERIAL NUMBER IS PRESUMED TO BE A FRAME OR RECEIVER OF A FIREARM, UNLESS THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES MAKES AN OFFICIAL DETERMINATION OTHERWISE OR THERE IS OTHER RELIABLE EVIDENCE TO THE CONTRARY.

SECTION 2. In Colorado Revised Statutes, 18-12-112, **add** (2)(e), (2)(f), and (2)(g) as follows:

18-12-112. Private firearms transfers - sale and purchase - background check required - penalty - definitions. (2) (e) A PERSON WHO IS NOT A LICENSED GUN DEALER SHALL NOT MAKE OR FACILITATE THE SALE OF A FIREARM TO A PERSON WHO IS LESS THAN TWENTY-ONE YEARS OF AGE.

(f) IT IS UNLAWFUL FOR A PERSON WHO IS LESS THAN TWENTY-ONE YEARS OF AGE TO PURCHASE A FIREARM.

(g) SUBSECTIONS (2)(e) AND (2)(f) OF THIS SECTION DO NOT APPLY IF:

(I) THE PERSON IS AN ACTIVE MEMBER OF THE UNITED STATES ARMED FORCES WHILE ON DUTY AND SERVING IN CONFORMANCE WITH THE POLICIES OF THE UNITED STATES ARMED FORCES; OR

(II) THE PERSON IS A PEACE OFFICER, AS DESCRIBED IN SECTION 16-2.5-101, WHILE ON DUTY AND SERVING IN CONFORMANCE WITH THE POLICIES OF THE EMPLOYING AGENCY, AS SET FORTH IN SECTION 16-2.5-101 AND SECTION 16-2.5-135; OR

(III) THE PERSON IS CERTIFIED BY THE P.O.S.T. BOARD PURSUANT TO SECTION 16-2.5-102.

SECTION 3. In Colorado Revised Statutes, 18-12-112.5, **amend** (1) as follows:

18-12-112.5. Firearms transfers by licensed dealers - sale and purchase - background check required - penalty - definitions. (1) (a) It is unlawful for a licensed gun dealer to transfer a firearm to a transferee until the dealer has obtained approval for the firearms transfer from the bureau after the bureau has completed any background check required by state or federal law.

(a.3) A PERSON WHO IS A LICENSED GUN DEALER SHALL NOT MAKE OR FACILITATE THE SALE OF A FIREARM TO A PERSON WHO IS LESS THAN TWENTY-ONE YEARS OF AGE.

(a.5) IT IS UNLAWFUL FOR A PERSON WHO IS LESS THAN TWENTY-ONE YEARS OF AGE TO PURCHASE A FIREARM. THIS SUBSECTION (1)(a.5) AND SUBSECTION (1)(a.3) OF THIS SECTION DO NOT APPLY IF:

(I) THE PERSON IS AN ACTIVE MEMBER OF THE UNITED STATES ARMED FORCES WHILE ON DUTY AND SERVING IN CONFORMANCE WITH THE POLICIES OF THE UNITED STATES ARMED FORCES; OR

(II) THE PERSON IS A PEACE OFFICER, AS DESCRIBED IN SECTION 16-2.5-101, WHILE ON DUTY AND SERVING IN CONFORMANCE WITH THE POLICIES OF THE EMPLOYING AGENCY, AS SET FORTH IN SECTION 16-2.5-101 AND SECTION 16-2.5-135; OR

(III) AN INDIVIDUAL CERTIFIED BY THE P.O.S.T. BOARD PURSUANT TO SECTION 16-2.5-102.

(b) Transferring OR SELLING a firearm in violation of this subsection (1) is a class 1 misdemeanor.

(c) PURCHASING A FIREARM IN VIOLATION OF THIS SUBSECTION (1)
IS A CLASS 2 MISDEMEANOR.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect

unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO