

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
Docket No. _____

VERMONT FEDERATION OF)
SPORTSMEN'S CLUBS,)
14 Stafford Ave.)
Morrisville, VT 05661,)

VERMONT STATE RIFLE & PISTOL)
ASSOCIATION, INC.,)
454 South Main Street)
Northfield, VT 05663,)

POWDERHORN OUTDOOR SPORTS)
CENTER, INC.,)
5755 Williston Rd.)
Williston, VT 05495,)

WILLOW LLC, dba LOCUST CREEK)
OUTFITTERS)
1815 River St.)
Bethel, VT 05032, and)

LEAH STEWART,)
9178 VT RT 12)
Bethel, VT 05032,)

Plaintiffs,)

v.)

MATTHEW BIRMINGHAM, in his Official)
Capacity as Director of the Vermont State)
Police,)
Vermont State Police Headquarters)
45 State Drive)
Waterbury, VT 05671,)

T. J. DONOVAN, in his Official Capacity as)
Attorney General of the State of Vermont,)
Office of the Attorney General)
109 State Street)
Montpelier, VT 05609,)

SARAH GEORGE, in her Official Capacity as)
 State’s Attorney for Chittenden County,)
 32 Cherry Street, Suite 305)
 Burlington, VT 05401, *and*)
)
 DAVID CAHILL, in his Official Capacity as)
 State’s Attorney for Windsor County,)
 5 South Main Street, Suite 208)
 White River Junction, VT 05001,)
)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, the Vermont Federation of Sportsmen’s Clubs, the Vermont State Rifle & Pistol Association, Powderhorn Outdoor Sports Center, Inc., Willow LLC, and Leah Stewart, by and through the undersigned attorneys, file this Complaint against the above-captioned Defendants, in their official capacities as state and local officials responsible under Vermont law for enforcing the State’s laws and regulations governing the sale and possession of firearms. Plaintiffs seek declaratory and injunctive relief: a declaration that Vermont’s law banning the manufacture, sale, transfer, or possession of certain commonly-owned ammunition magazines is unconstitutional under Article 16 of the Vermont Constitution, and an injunction compelling Defendants to refrain from enforcing that invalid ban and to allow Plaintiffs and their customers and members to purchase and possess the prohibited magazines. In support of their Complaint against Defendants, Plaintiffs hereby allege as follows:

INTRODUCTION

1. Vermont has a long history of using firearms. That history began before Vermont elected to join the United States in 1791. In its earliest days, individual Vermonters protected their property from the claims of various governments to that property. Since 1777, Vermont has sought to provide legal protection to the right of individuals to engage in lawful pursuits such as self-defense, training for self-defense, and recreational shooting. Along with millions of law-abiding

Americans, Vermonters use long gun magazines capable of holding more than ten rounds of ammunition or handgun magazines capable of holding more than fifteen rounds of ammunition. Indeed, such magazines come standard on some of the most popular firearms in the country. There is nothing unusual or uncommonly “large” about these magazines; if anything, they are best described as *standard* capacity magazines.

2. Despite the legal protection Vermont’s Constitution provides, the General Assembly banned the sale, purchase, and even possession of these standard magazines on April 11, 2018. Vermont statutes now ban magazines for long guns that have a capacity of more than ten rounds, and magazines for handguns that have a capacity of more than fifteen.

3. Violent criminals—who by definition have little respect for the law and who generally acquire the firearms they use illegally—will not be deterred from acquiring the prohibited magazines (in neighboring New Hampshire or elsewhere) or from using prohibited magazines to commit crimes. Indeed, magazines carry no markings or indication of date of manufacture, making the law—which exempts from its coverage possession of magazines possessed before its enactment—all but unenforceable. Moreover, criminals generally plan their misdeeds in advance and, unlike their targeted victims, know when and where they plan to attack and can thus come to the scene of the crime carrying *multiple* ammunition magazines. Law-abiding citizens, however, who use firearms in defense of themselves, their families, and their homes, are now barred by Vermont’s new ban from owning and using prohibited, standard-capacity magazines. The new law will thus not prevent violent criminals from obtaining and using prohibited magazines, but it will make law-abiding Vermont citizens more vulnerable to criminal attack by depriving them of commonly-owned ammunition magazines.

4. This impediment to self-defense is especially pernicious in Vermont, due to the State's rural nature. Even well-populated areas of the State have significant police response times, especially late at night when police coverage is low or non-existent and violent criminals are most apt to attack.

5. Chapter 1, Article 16 of the Vermont Constitution guarantees "[t]hat the people have a right to bear arms for the defence of themselves and the State." The text of Article 16 confirms that Vermont offers broad protection. Under Vermont's Constitution, an individual may use arms both for personal protection and for defense of the State. The preference for strong individual autonomy is confirmed by the remainder of the provision, which discourages the existence of standing armies and encourages civil control over the military: "as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power."

6. The history of Article 16 demonstrates that it provides the most robust form of protection for the right to keep and bear arms. "Keeping and bearing arms was not only an abstract right, but also a constant practice of Vermont's founding fathers." Stephen P. Halbrook, *The Right to Bear Arms in the First State Bills of Rights: Pennsylvania, North Carolina, Vermont, and Massachusetts*, 10 VT. L. REV. 255, 288 (1985). Two of the principal political figures in Vermont's founding—Ethan Allen and his brother Ira—"carried a gun and a brace of pistols on their persons as a common practice," *id.* at 292, and won Vermont's independence by *exercising* the right to bear arms in defense of self and state, first against the government in New York and later against the British, *id.* at 288–90. Indeed, Ethan Allen and his Green Mountain Boys seized Fort Ticonderoga in 1775 using their private arms—"small arms, without a single bayonet." IRA ALLEN, *NATURAL & POLITICAL HISTORY OF THE STATE OF VERMONT* 60 (1798). And when the

constitutional protection of the right to keep and bear arms was first drafted in 1777, the Vermont militia was at that very moment engaged in bearing arms in *defense* of Ticonderoga against siege by British General John Burgoyne. Rev. Pliny H. White, Before the Vermont Historical Society (July 2, 1863), in 1 COLLECTIONS OF THE VERMONT HISTORICAL SOCIETY 56, 60–62 (1873).

7. Cognizant that the Vermont Constitution was thus adopted at the very height of revolutionary fervor, the state courts have long interpreted it as especially protective of individual liberty. See *Selectman of Windsor v. Jacob*, 2 Tyler 192 (1802) (holding slavery unconstitutional under the Vermont constitution, notwithstanding its constitutionality under the U.S. Constitution). That spirit of interpretation extends to Article 16. The Supreme Court has held this provision protects the right of carrying firearms, either openly or concealed, which cannot be infringed even by a general permitting requirement. *State v. Rosenthal*, 75 Vt. 295 (1903) (invalidating ordinance that required special permission to carry a pistol because it was “inconsistent with and repugnant to the Constitution and the laws of the state”).

8. Consistent with its history, Vermont continues to enjoy robust, responsible gun ownership. The State has long been known for the extent to which it entrusts its law-abiding citizens to possess and use firearms responsibly, see Giffords Law Center to Prevent Gun Violence, *Annual Gun Law Scorecard*, <https://goo.gl/uJnYyT> (remarking on Vermont’s permissive gun laws), and levels of firearm ownership in the State are well above the national average, see Siegel, et al., *The Relationship Between Gun Ownership and Stranger and Nonstranger Firearm Homicide Rates in the United States, 1981–2010*, 104 AM. J. PUB. HEALTH 1912, 1916 & tbl. A (2014), available at <https://goo.gl/s2zbRk>. Yet Vermont is tied for the lowest homicide rate in the Nation. See Centers for Disease Control & Prevention, *Homicide Mortality by State*, <https://goo.gl/8U3Vou>.

9. The State's new magazine ban departs from this unique tradition and impermissibly burdens and infringes the fundamental right of law-abiding Vermont citizens to bear arms in their own defense. Accordingly, it is unconstitutional and invalid, and this Court should strike it down.

JURISDICTION AND VENUE

10. This Court has subject-matter jurisdiction over Plaintiffs' claims under 4 V.S.A. § 31, because it is an original civil action. Plaintiffs seek remedies pursuant to, *inter alia*, 12 V.S.A. § 4711.

11. Venue is proper in this Court under 12 V.S.A. § 402(a) because at least one party resides in Washington County.

PARTIES

12. Plaintiff Vermont Federation of Sportsmen's Clubs ("VTFSC") is a nonprofit association incorporated under the laws of Vermont. VTFSC is an association of 52 sporting clubs across the State, with a combined membership of approximately 16,000 individuals. VTFSC is organized for the purpose of promoting and encouraging hunting, fishing, trapping, and competitive target shooting, and educating the public and lobbying the government on issues related to these and other types of sportsmanship in Vermont. Because many of the activities promoted by VTFSC, and engaged in by their member clubs and those clubs members, involve the use of magazines the State has now deemed "high capacity," Vermont's ban on the purchase, transfer, or possession of these magazines is a direct affront to VTFSC's central mission. VTFSC's principal place of business is 14 Stafford Ave. Morrisville, VT 05661.

13. Plaintiff Vermont State Rifle and Pistol Association, Inc. ("VSRPA") is a nonprofit association incorporated under the laws of Vermont. VSRPA is organized for the purpose of actively advancing and supporting competitive shooting in Vermont, with a particular emphasis

on expanding the participation of Vermont's youth. Because many of the activities promoted by VSRPA, and engaged in by its members, involve the use of magazines the State has now deemed "large capacity," Vermont's ban on the purchase, transfer, or possession of these magazines is a direct affront to VSRPA's central mission. VSRPA has hundreds of members who reside throughout the state of Vermont. Its principal place of business is 454 South Main Street, Northfield, VT 05663.

14. Plaintiff Powderhorn Outdoor Sports Center, Inc. ("Powderhorn") is a for-profit enterprise incorporated under the laws of Vermont and licensed under federal law to engage in the business of selling firearms. Powderhorn sells rifles, shotguns, pistols, knives, firearm accessories, and magazines. Powderhorn's principal place of business is 5755 Williston Rd, Williston, VT 05495.

15. Plaintiff Willow LLC is a Limited Liability Company registered under the laws of Vermont and doing business as Locust Creek Outfitters ("Locust Creek"). Locust Creek is a family-friendly gun and outdoor sporting-goods consignment store, licensed under federal law to engage in the business of selling firearms. Locust Creek sells hunting and fishing gear; firearms, including numerous types of rifles, shotguns, and handguns; and firearm accessories, including magazines. Locust Creek's principal place of business is 1815 River St., Bethel, VT 05032.

16. Plaintiff Leah Stewart is a citizen of the United States and a resident and citizen of the State of Vermont. She resides at 9178 VT RT 12, Bethel, VT 05032. Plaintiff Stewart is a co-owner and manager of Plaintiff Locust Creek.

17. Defendant Matthew Birmingham is the Director of the Vermont State Police. As Director, he exercises, delegates, or supervises all the powers and duties of the Department, which is charged under Vermont law with administering Vermont's criminal laws governing the sale,

transfer, and possession of firearms. His official address is Vermont State Police Headquarters, 45 State Drive, Waterbury, VT 05671. He is being sued in his official capacity.

18. Defendant T.J. Donovan is the Attorney General of Vermont. As Attorney General, he is responsible for directing and supervising the prosecution of all offenses against Vermont's criminal law, including the law governing ammunition magazines that is at issue in this case. His official address is Office of the Attorney General, 109 State Street, Montpelier, VT 05609. He is being sued in his official capacity.

19. Defendant Sarah George is the State's Attorney for the county of Chittenden, where Plaintiff Powderhorn has its principal place of business. As State's Attorney, she is responsible for prosecuting, or directing and supervising the prosecution of, all offenses against Vermont's criminal law, including the law governing ammunition magazines that is at issue in this case. Her official address is 32 Cherry Street, Suite 305, Burlington, VT 05401. She is being sued in her official capacity.

20. Defendant David Cahill is the State's Attorney for the county of Windsor, where Plaintiff Stewart resides and Plaintiff Locust Creek has its principal place of business. As State's Attorney, he is responsible for prosecuting, or directing and supervising the prosecution of, all offenses against Vermont's criminal law, including the law governing ammunition magazines that is at issue in this case. His official address is 5 South Main Street, Suite 208, White River Junction, VT 05001. He is being sued in his official capacity.

FACTUAL ALLEGATIONS

Vermont's Ban on Standard-Capacity Magazines

21. On April 11, 2018, Vermont Governor Phil Scott signed into law Senate Bill 55.

22. Senate Bill 55, among other provisions, amends 13 V.S.A. to add a new Section, Section 4021, that bans standard ammunition magazines that are widely-owned and in common use for lawful purposes, which the act misleadingly refers to as “large capacity ammunition feeding devices.”

23. A firearm magazine or “feeding device” is a device that stores individual rounds of ammunition and delivers them, one by one, into the firing chamber of a rifle, pistol, or shotgun. A magazine of some kind is integral to the operation of the vast majority of firearms.

24. Section 4021 provides that “A person shall not manufacture, possess, transfer, offer for sale, purchase, or receive, or import into this State a large capacity ammunition feeding device,” which the statute defines generally as an ammunition magazine that has the capacity to accept “more than 10 rounds of ammunition for a long gun,” or “more than 15 rounds of ammunition for a hand gun.” 13 V.S.A. § 4021 (a), (e)(1).

25. Section 4021 contains minor exceptions that, *inter alia*, grandfather the possession of magazines “lawfully possessed on or before the effective date” of the statute and allow licensed dealers to lawfully sell their existing stock of magazines if they do so by October 1, 2018. *See id.* § 4021 (c)(1), (c)(2).

26. Section 4021 also does not apply to federal or state agencies, law enforcement officers, or, in certain circumstances, retired law enforcement officers. *Id.* § 4021(d)(1).

27. An individual who sells, transfers, or possesses a magazine in violation of this ban is subject to imprisonment for up to 1 year, a fine of up to \$500, or both. *Id.* § 4021(b).

The Impact of the Ban on Plaintiffs

28. The ammunition magazines now categorized as “large capacity” are and have been commonly owned and used by law-abiding citizens in Vermont and throughout the United States for lawful purposes, including self-defense and target shooting.

29. The magazines now banned by Vermont are lawfully owned by the tens of millions across the United States. Indeed, magazines capable of holding more than 10 rounds make up nearly half of the total stock of magazines owned by law-abiding citizens, and magazines that hold more than 15 rounds come standard on many of the nation’s most popular firearms. The best-selling rifle in the country, for example, is typically sold equipped with a 20 or 30-round magazine, and many widely-owned pistols come standard with magazines that hold up to 17 rounds.

30. VTFSC has 52 member clubs throughout the State of Vermont. Those clubs regularly conduct numerous competitions, shooting matches, and other events that involve the use of the common magazines that Vermont has now prohibited. Because of the popularity of the events that involve these magazines, those member clubs reasonably fear that participation in their events will be significantly curtailed by Vermont’s ban. While the ban allows individuals from other States that permit the possession of the prohibited magazines to bring them into the State for the purpose of participating in established shooting competitions, these clubs nonetheless reasonably expect a decrease in participation as the number of magazines legally owned within the State dwindles. Moreover, by the terms of Vermont’s new ban that exception for out-of-state participation in shooting competitions will expire on July 1, 2019. Member clubs charge for participation in these events, and they therefore reasonably fear that this decline in participation will negatively affect their income.

31. VTFSC also itself holds a number of events that involve the prohibited magazines. For example, one of VTFSC's principle sources of donations is an annual banquet, in which it has historically given away magazines now prohibited by Vermont Law as prizes. Because of the popularity of these common magazines, VTFSC reasonably fears that attendance at its annual banquet—and, therefore, the number of donations it receives through this event—will be negatively impacted.

32. VTFSC's member clubs themselves have as members thousands of law-abiding adult citizens who reside in Vermont. Many of those members are qualified and desire to purchase and possess the common magazines that Vermont deems "large capacity," to use them for lawful purposes such as self-defense and target shooting. These members do not fall within any of the exceptions enumerated in 13 V.S.A. § 4021(d).

33. Some of these members did not own any of the prohibited magazines as of Section 4021's effective date and would like to purchase them for lawful purposes but are now prevented (or soon will be) from doing so by Vermont law. Some members who currently own prohibited magazines will be prevented from purchasing additional or replacement magazines when grandfathered magazines break. Some members may purchase new firearms that accommodate prohibited magazines, but will only be able to acquire the limited capacity magazines allowed by Vermont's ban.

34. While Section 4021 allows licensed dealers to sell off their existing stock of prohibited magazines before October 1, for several reasons this exception does not lessen the injury of those of VTFSC's club's members who wish to purchase the prohibited magazines. First, the members in question fear that high demand for the last few remaining magazines will cause existing stocks of the prohibited magazines to be rapidly depleted such that they will become

unavailable or their prices will escalate to prohibitively high levels. Second, these members in Vermont frequently purchase firearms equipped with magazines that the State deems “large-capacity,” and but for Section 4021 they would continue to acquire such magazines after October 1, 2018 on a regular basis.

35. But for Section 4021’s ban, these members would purchase the prohibited magazines for lawful purposes, some immediately and some after October 1. Some of these members would purchase prohibited long-gun magazines with capacities of greater than 10 rounds. Others would purchase prohibited handgun magazines with capacities greater than 15 rounds. Section 4021’s ban therefore infringes on the constitutional rights of these members.

36. VSRPA has hundreds of members throughout the State of Vermont. VSRPA’s members include law-abiding adult citizens who reside in Vermont, who are qualified to purchase firearm magazines, and who desire to purchase and possess the common magazines that Vermont deems “large capacity,” to use them for lawful purposes such as self-defense and target shooting. These members do not fall within any of the exceptions enumerated in 13 V.S.A. § 4021(d).

37. Some of VSRPA’s members did not own any of the prohibited magazines as of Section 4021’s effective date and would like to purchase them for lawful purposes but are now prevented (or soon will be) from doing so by Vermont law. Some members who currently own prohibited magazines will be prevented from purchasing additional or replacement magazines when grandfathered magazines break. Some members may purchase new firearms that accommodate prohibited magazines, but will only be able to acquire the limited capacity magazines allowed by Vermont’s ban.

38. While Section 4021 allows licensed dealers to sell off their existing stock of prohibited magazines before October 1, for several reasons this exception does not lessen the injury

of those of VSRPA's members who wish to purchase the prohibited magazines. First, the members in question fear that high demand for the last few remaining magazines will cause existing stocks of the prohibited magazines to be rapidly depleted so that they become unavailable or their prices escalate to prohibitively high levels. Second, these members in Vermont frequently purchase firearms equipped with magazines that the State deems "large-capacity," and but for Section 4021 they would continue to acquire such magazines after October 1, 2018 on a regular basis.

39. But for Section 4021's ban, these members would purchase the prohibited magazines for lawful purposes, some immediately and some after October 1. Some of these members would purchase prohibited long-gun magazines with capacities of greater than 10 rounds. Others would purchase prohibited handgun magazines with capacities greater than 15 rounds. Section 4021's ban therefore infringes on the constitutional rights of these members.

40. Each year, the VSRPA conducts the New England Civilian Marksmanship Program ("CMP") Cup and Games at the Camp Ethan Allen Training Site in Jericho, VT. Several events during this program, traditionally attended by hundreds of competitors, involve the use of the magazines that Vermont now prohibits. Because of the popularity of the events that involve these magazines, VSRPA reasonably fears that participation in the CMP Cup and Games will be significantly curtailed by Vermont's ban. While the ban allows individuals from other States that allow the possession of the prohibited magazines to bring them into the State for the purpose of participating in established shooting competitions, VSRPA nonetheless reasonably expects a decrease in participation as the number of magazines legally owned within the State dwindles. Moreover, by the terms of Vermont's new ban that exception for out-of-state participation in shooting competitions will expire on July 1, 2019. VSRPA charges for participation in the CMP

Cup and Games, and it therefore reasonably fears that this decline in participation will negatively affect its income.

41. For many years, Powderhorn has sold long-gun magazines with a capacity greater than 10, handgun magazines with a capacity greater than 15, and firearms that come equipped with magazines with capacities greater than allowed by Section 4021. These magazine sales have historically made up a substantial and profitable portion of Powderhorn's business. Because of Vermont's new ban, however, Powderhorn is now forced to exit this segment of the market entirely, causing it to suffer significant financial loss. While Vermont's ban allows Powderhorn to sell off its existing inventory of prohibited magazines, it cannot replenish its inventory—and even these sales must cease entirely by October 1. Powderhorn brings this action to protect the constitutional rights of its customers to acquire the prohibited magazines.

42. For many years, Locust Creek has sold long-gun magazines with a capacity greater than 10, handgun magazines with a capacity greater than 15, and firearms that come equipped with magazines in these respective sizes. These magazine sales have historically made up a substantial and profitable portion of Locust Creek's business. Because of Vermont's new ban, however, Locust Creek is now forced to exit this segment of the market entirely, causing it to suffer significant financial loss. While Vermont's ban allows Locust Creek to sell off its existing inventory of prohibited magazines by October 1, it cannot replenish its inventory—and even these sales must cease entirely by October 1. Locust Creek brings this action to protect the constitutional rights of its customers to acquire the prohibited magazines.

43. Plaintiff Stewart is a law-abiding, adult citizen who wishes to acquire the prohibited magazines for purposes of home defense. Ms. Stewart meets all of the qualifications required under state law to purchase a firearm magazine—apart from the challenged ban—and she does not fall

within any of the exceptions enumerated in 13 V.S.A. § 4021(d). Ms. Stewart owns an AR-15, which is typically equipped with a 20 or 30-round magazine, and but for the challenged ban, she would purchase additional magazines with a capacity of greater than 10 rounds for use with this firearm. She also owns handguns that can be equipped with magazines holding more than 15 rounds and, but for the ban, she would purchase additional prohibited magazines for use with those handguns. Ms. Stewart and her husband also were planning to build a firearm for the personal use of their son that would use magazines with a capacity of greater than ten rounds, and but for the challenged ban, she would purchase such magazines for use with this firearm.

COUNT ONE

Violation of VERMONT CONST. art. 16

44. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

45. Article 16 of Vermont’s Constitution provides “[t]hat the people have a right to bear arms for the defence of themselves and the State.” That constitutional provision protects the individual right of law-abiding citizens to possess firearms that are in common use for lawful purposes such as self-defense, practice, and recreational shooting.

46. Because many firearms in common use are inoperable without ammunition magazines, VERMONT CONST. art. 16 also protects the individual right to possess ammunition magazines that are in common use for lawful purposes such as self-defense, practice, and recreational shooting.

47. Because the right to possess firearms and magazines is meaningless without the ability to *acquire* them in the first place, VERMONT CONST. art. 16 also protects the corresponding individual right to purchase or otherwise acquire protected firearms and magazines.

48. 13 V.S.A. § 4021 bans law-abiding, responsible, adult citizens from acquiring and possessing ammunition magazines that are in common use for lawful purposes.

49. This ban infringes upon, and imposes an impermissible burden upon, the rights of Plaintiff Stewart, Plaintiff Powderhorn's and Plaintiff Locust Creek's customers, and Plaintiffs VTFSC and VSRPA and their members described above, under VERMONT CONST. art. 16. It is therefore unconstitutional, void, and invalid, both facially and as applied to Plaintiffs and their customers and members.

PRAYER FOR RELIEF

50. WHEREFORE, Plaintiffs pray for an order and judgment:

a. Declaring that 13 V.S.A. § 4021 violates Article 16 of the Vermont Constitution and is thus devoid of any legal force or effect;

b. Enjoining Defendants and their employees and agents from enforcing 13 V.S.A. § 4021;

c. Enjoining Defendants and their employees and agents from applying 13 V.S.A. § 4021 so as to prohibit Plaintiff Stewart, Plaintiff Powderhorn's and Plaintiff Locust Creek's customers, and Plaintiffs VTFSC's and VSRPA's members from purchasing and possessing the prohibited magazines;

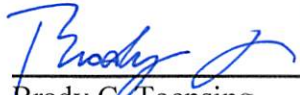
d. Awarding Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action; and

e. Granting such other and further relief as this Court deems just and proper.

Dated at Charlotte, Vermont this 18th day of April 2018.

Respectfully submitted,

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**Pro hac vice* application
forthcoming

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