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# Proposition 63: Firearms. Ammunition Sales. “Safety for All Act of 2016”

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**Proposition 63:  
Firearms. Ammunition Sales.  
“Safety for All Act of 2016”**

Initiative Statute

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## I. EXECUTIVE SUMMARY

Proposition 63, the Safety For All Act of 2016, creates and enforces more penalties for prohibited firearms and ammunition possession. This could mean more correctional costs to house individuals in prisons and jails. The Legislative Analyst's Office states that this cost depends on how many violations occur and how the initiative will be enforced, but it likely would not exceed the low millions of dollars annually. Lieutenant Governor Gavin Newsom is the initiative's proponent.

Proposition 63 is intended to accomplish the following: (1) implement reforms to make California's gun laws the toughest in the country, while protecting the Second Amendment rights of law-abiding citizens; (2) keep guns and ammunition out of the hands of those prohibited by law from possessing them; (3) enact background checks for ammunition; (4) ensure vendors report lost or missing ammunition; (5) ensure California shares information with Federal agencies concerning who cannot have guns; (6) report lost or stolen guns to police; (7) require relinquishment of firearms when people are convicted; (8) prohibit military-style ammunition magazines; and (9) take guns out of the hands of those who steal them.

Voting "yes" on Proposition 63 would mean enacting a new court process for the removal of firearms from individuals upon conviction of certain crimes and creating new requirements related to selling and purchasing ammunition.

Voting "no" on Proposition 63 would mean no new firearm or ammunition related requirements would be implemented.

## II. THE LAW

### A. Current Laws

#### 1. Federal Law

Federal law has requirements on who can and cannot sell, transfer, or purchase firearms. Only licensed firearms dealers may engage in the sale and transfer of firearms.<sup>1</sup> In addition, "[u]nder federal and state law, certain individuals are not allowed to have firearms. These 'prohibited persons' include individuals (1) convicted of felonies and some misdemeanors (such as assault or battery), (2) found by a court to be a danger to themselves or others due to mental illness, and (3) with a restraining order against them."<sup>2</sup> Also, under the Brady Handgun Violence Prevention Act of 1993, firearms dealers must conduct background checks of individuals seeking to buy firearms using the National Instant Criminal Background Check System ("NICS"), a

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<sup>1</sup> U.S DEPARTMENT OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, ATF FEDERAL FIREARMS REGULATIONS REFERENCE GUIDE 2014, at 20, available at <https://www.atf.gov/file/11241/download> ["FEDERAL FIREARMS REGULATIONS GUIDE"].

<sup>2</sup> LEGISLATIVE ANALYST OFFICE, Proposition 63, at 2, available at <http://www.lao.ca.gov/ballot/2016/Prop63-110816.pdf>; CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 8, 2016, at 84, available at <http://voterguide.sos.ca.gov/pdf/complete-vig.pdf> ["NOVEMBER 2016 VOTER GUIDE"].

national system that provides checks of available records on persons ineligible to receive firearms.<sup>3</sup> Furthermore, federal law also bans the sale, transfer, or purchase of semi-automatic weapons.<sup>4</sup>

## 2. California Law

In addition to federal laws regulating firearms, California also has laws regulating them. California law accomplishes the following: (1) prohibit certain persons from obtaining, using, and possessing firearms; (2) require background checks; and (3) provide for the removal of firearms in certain situations.<sup>5</sup> The prohibited individuals include any person convicted of certain violent offenses and any person a court finds to be a mentally disordered sex offender or mentally incompetent to stand trial.<sup>6</sup> California processes all background checks using the NICS and other various state databases.<sup>7</sup> The California Department of Justice (“DOJ”) also maintains a database of individuals who have legally bought and registered a firearm with the state.<sup>8</sup> DOJ agents use this information to remove firearms from individuals who are no longer allowed to have them.<sup>9</sup>

California also regulates the sale and transfer of firearms. First, only licensed firearms dealers may sell or transfer firearms; however, infrequent transfers between immediate family members are exempt.<sup>10</sup> Second, persons who are at least 18 years old can purchase a long rifle (a rifle or a shotgun), and persons who are at least 21 years old can purchase a handgun (a pistol or a revolver).<sup>11</sup> There is a mandatory ten-day waiting period to purchase a firearm, during which the DOJ conducts a background check, and California law also limits each person to one handgun purchase or transfer within a 30-day period.<sup>12</sup> Also, to purchase or transfer firearms, the purchaser or transferee must satisfy the following: (1) provide a valid driver’s license or identification card; (2) provide proof of California residency; (3) have a firearm safety certificate (a written objective test); (4) undergo a safe handling demonstration; and (5) have accompanying firearm safety devices with all firearms.<sup>13</sup> California law also imposes fees on firearm dealers and buyers, which generally offset the state’s costs to regulate firearms.<sup>14</sup>

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<sup>3</sup> About NICS, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/nics/about-nics> (last visited Oct. 5, 2016).

<sup>4</sup> FEDERAL FIREARMS REGULATIONS GUIDE, *supra* note 1, at 34.

<sup>5</sup> CALIFORNIA OFFICE OF THE ATTORNEY GENERAL, CALIFORNIA FIREARMS LAWS SUMMARY at 1, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/pdf/cfl2016.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> LEGISLATIVE ANALYST OFFICE, *supra* note 2, at 2.

<sup>10</sup> CALIFORNIA OFFICE OF THE ATTORNEY GENERAL, *supra* note 5, at 3, 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 3, 5.

<sup>13</sup> *Id.* at 3-5.

<sup>14</sup> *Id.*

Prior to 2016, ammunition sales had not been regulated as firearms sales have been.<sup>15</sup> The California Legislature passed, and Governor Jerry Brown signed, new firearm and ammunition laws in July 2016, but they will not take effect for several years.<sup>16</sup>

## **B. New Legislation**

### *1. Approved New Legislation*

Governor Jerry Brown signed state legislation that regulates firearms in July 2016.<sup>17</sup> These laws regulate and limit the following: (1) the sale and transfer of ammunition; (2) ownership of large-capacity magazines and assault weapons; (3) the required serial number or identification mark; and (4) gun lending. The new laws also create a penalty for filing a false lost or stolen firearm report to law enforcement.<sup>18</sup> Most of the new laws become operative in the next three years if no referendum occurs, which places the laws before the voters to determine whether they should be overturned.

Such an instance has occurred; the same month the new legislation was signed, referenda were filed in an attempt to overturn it. The Office of the Attorney General issued six titles and summaries on these referenda.<sup>19</sup> They were filed by one proponent, but did not receive the required 365,880 signatures by September 29, 2016, to qualify for the November 2016 ballot.<sup>20</sup> There is currently one referendum to overturn the law requiring serial numbers on manufactured or assembled firearms still working to collect signatures. The deadline to obtain the necessary signatures is October 20, 2016 to qualify for the November 2018 ballot.<sup>21</sup>

Regarding the new legislation, Governor Brown signed six new gun control laws and vetoed five. Only one of the bills sent to him addressed Proposition 63: SB 1235, which regulates sales and transfers of ammunition. SB 1235's provisions are mostly consistent with Proposition 63. However, the provisions regarding authorization of the sale or transfer of ammunition do conflict with Proposition 63. SB 1235 states that its provisions will prevail over Proposition 63's provisions that conflict with it if Proposition 63 passes. There is a provision in Proposition 63 that allows an amendment for SB 1235's provision to prevail. Moreover, if Proposition 63 does not pass, the entirety of SB 1235 takes effect. If Proposition 63 does not pass, the entirety of SB 1235 takes effect.

### *2. SB 1235: Ammunition Sales*

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<sup>15</sup> LEGISLATIVE ANALYST OFFICE, *supra* note 2, at 3.

<sup>16</sup> Bill Chappell, *6 New Gun Control Laws Enacted in California, As Gov. Brown Signs Bills*, NPR (July 1, 2016, 5:56 PM), <http://www.npr.org/sections/thetwo-way/2016/07/01/484399958/6-new-gun-control-laws-enacted-in-california-as-gov-brown-signs-bills>.

<sup>17</sup> *Id.*

<sup>18</sup> NOVEMBER 2016 VOTER GUIDE, *supra* note 2, at 85.

<sup>19</sup> *Initiatives – Active Measures*, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL, , <https://www.oag.ca.gov/initiatives/active-measures> (last visited Oct. 6, 2016).

<sup>20</sup> *Initiatives and Referenda Cleared for Circulation*, CAL. SEC'Y OF STATE, <http://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/initiatives-referenda-cleared-circulation/> (last visited Oct. 6, 2016).

<sup>21</sup> *Id.*

SB 1235 requires the Attorney General to maintain records of ammunition vendor licenses and only allow licensed ammunition vendors (and individuals who are not prohibited) to sell or transfer ammunition in the state.<sup>22</sup> The DOJ will issue the licenses, which are valid for one year.<sup>23</sup> Furthermore, it requires ammunition vendors to record information about the sale or transfer of any ammunition, not just handgun ammunition, including the purchaser's or transferee's driver's license or identification number, and have the information submitted to the DOJ for verification and approval of the sale or transfer.<sup>24</sup> The submitted information is retained in a database for two years as the Ammunition Purchase Records File, which the DOJ uses to approve and verify purchases or transfers of any ammunition.<sup>25</sup> In addition, under existing law, a person who is prohibited from owning or possessing firearms is also prohibited from owning or possessing ammunition.<sup>26</sup> The DOJ maintains records, including fingerprints, licenses to carry concealed firearms permits, and information from firearms dealers pertaining to firearms.<sup>27</sup> These are all for the purpose of assisting in the investigation of crimes and specified civil actions.<sup>28</sup> A vendor cannot sell or transfer ammunition without DOJ verification or approval.<sup>29</sup>

Current law requires the use of the Automated Firearms System ("AFS") and the Prohibited Armed Persons Files, which verify and authorize firearms transactions and transfers, since transactions are only authorized if a person matches an entry in AFS and is not on the Prohibited Armed Persons Files.<sup>30</sup> SB 1235 extends this process to the purchase of ammunition, as it requires cross-references of the AFS and the Prohibited Armed Persons File of persons who attempt to purchase or acquire ammunition in order to determine if they are prohibited from doing so.<sup>31</sup> Thus, before an ammunition sale or transfer is authorized, the licensed vendor must check that the person's information matches an entry in the AFS and is eligible to possess ammunition or has a current certificate of eligibility issued by the DOJ.<sup>32</sup>

### 3. *SB 1446: Ban of High-Capacity Magazines*

Existing law prohibits the sale, gift, or loan of large-capacity magazines.<sup>33</sup> SB 1446 bans any possession of high-capacity magazines.<sup>34</sup> Owners of magazines that hold more than ten rounds would have to sell them out of state or to licensed firearms dealers, turn them over to police, or destroy them within a year.<sup>35</sup> Violation of this law is punishable as a misdemeanor or a

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<sup>22</sup> SB 1235, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>23</sup> *Id.* at § 11(d).

<sup>24</sup> *Id.* at § 12(a).

<sup>25</sup> *Id.*

<sup>26</sup> SB 1235, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> SB 1446, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

felony.<sup>36</sup> SB 1446 requires a person in lawful possession of a large-capacity magazine to dispose of it.<sup>37</sup>

#### 4. SB 880/AB 1135: Revised Definition of “Assault Weapon”

Existing law prohibits the transfer of assault weapons, except for sale, purchase, or importation, or for specified individuals (i.e., law enforcement).<sup>38</sup> The current definition of assault weapon is “a semiautomatic centerfire rifle or semiautomatic pistol that has the capacity to accept a detachable magazine and has any one of specified attributes, including for rifles, a thumbhole stock, and for pistols, a second handgrip.”<sup>39</sup> SB 880 and AB 1135 revised the definition of “assault weapon” to mean a semiautomatic centerfire rifle or semiautomatic pistol that has or does not have a fixed magazine.<sup>40</sup> They also define “fixed magazine” as “an ammunition feeding device contained in, or permanently attached to, a firearm in such manner that the device cannot be removed without disassembly of the firearm action.”<sup>41</sup> Existing law punishes any person who possesses an assault weapon with a felony, unless they fall within either of the following exceptions: (1) it was lawfully possessed weapon prior to January 1, 2001, or; (2) the firearm is registered with the DOJ.<sup>42</sup>

#### 5. AB 1511: Gun Lending

AB 1511 allows firearm lending to parents, children, grandchildren, spouses, and domestic partners, but to no one else.<sup>43</sup> “Existing law generally requires the loan of a firearm to be conducted through a licensed firearms dealer.”<sup>44</sup> Existing law also allows the loan of a firearm to individuals who personally know each other if the loan is infrequent and does not exceed 30 days.<sup>45</sup> AB 1511 limits the firearm loaning to a spouse or registered domestic partner, or to a parent, child, sibling, grandparent, or grandchild. The firearm must be registered to the lender.<sup>46</sup>

#### 6. AB 857: Identification Number or Mark

Existing law authorizes the DOJ to assign a distinguishing identification number or mark to any firearm when it lacks a manufacturer’s number or mark.<sup>47</sup> The bill requires that a person

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> SB 880, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016); AB 1135, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> AB 1511, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> AB 857, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

who manufactures or assembles a firearm to apply to the DOJ to obtain such a unique serial number or identifying mark.<sup>48</sup>

### *7. AB 1695: Misdemeanor for False Reporting of Stolen Firearm*

Existing law under AB 1695 makes it a misdemeanor to knowingly make a false report of a lost or stolen firearm.<sup>49</sup> In addition, an individual is prohibited from owning, purchasing, or receiving a firearm for 10 years after being convicted for making such a false report.<sup>50</sup>

## **C. Vetoed Legislation**

Governor Brown vetoed five of the bills presented to him in July 2016. Despite the Governor not signing the legislation, two of the vetoed bills, SB 894 and AB 1146, are addressed in Proposition 63. These two bills cover reporting lost and stolen firearms and the punishment of firearm theft.

### *1. AB 1674: One Rifle Per Month*

Existing law prohibits a person from applying for and purchasing more than one handgun within a 30-day period.<sup>51</sup> AB 1674 would have made the existing prohibition applicable to all types of firearms, not just handguns.<sup>52</sup> Governor Brown vetoed this bill, stating in the veto message: “While well-intentioned...this bill would have the effect of burdening lawful citizens who wish to sell certain firearms that they no longer need.”<sup>53</sup>

### *2. AB 1673: Firearms Components*

Existing law regulates the transfer and possession of firearms.<sup>54</sup> AB 1673 would have defined the frame or receiver as part of the firearm (which provides housing for the hammer, bolt, or breechblock, and firing mechanism), meaning the parts would have been treated and regulated similar to firearms.<sup>55</sup> Governor Brown vetoed the bill, describing it as “...unduly vague and could have far reaching and unintended consequences. By defining certain metal

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<sup>48</sup> *Id.*

<sup>49</sup> AB 1695, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>50</sup> *Id.*

<sup>51</sup> AB 1674, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>52</sup> *Id.*

<sup>53</sup> AB 1674 Veto Message from Edmund G. Brown, Jr., Governor, State of Cal., to Members of the Cal. State Assemb. (July 1, 2016), available at [https://www.gov.ca.gov/docs/AB\\_1674\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/AB_1674_Veto_Message.pdf).

<sup>54</sup> AB 1673, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>55</sup> *Id.*

components as firearms because they could ultimately be made into a homemade weapon...could trigger potential application of myriad and serious criminal penalties.”<sup>56</sup>

### 3. *AB 2607: Restraining Order to Prevent Gun Ownership*

Existing law authorizes a court to issue a gun violence restraining order prohibiting the person who is the subject of the order from owning, purchasing, possessing, receiving, or attempting to purchase or receive a firearm or ammunition.<sup>57</sup> The restraining order is in place for one year with possibility of renewal within three months of the order’s expiration.<sup>58</sup> AB 2607 would have authorized an employer, coworker, mental health worker, or a school employee to file a gun violence restraining order against a person.<sup>59</sup> Governor Brown vetoed the bill, and in his message stated: “In 2014, I signed Assembly Bill 1014, which allowed immediate family members and members of law enforcement to petition for a gun violence restraining order. That law took effect on January 1, 2016, so at this point it would be premature to enact a further expansion.”<sup>60</sup>

### 4. *SB 894: Misdemeanor for Not Reporting a Stolen Firearm*

Existing law requires law enforcement to record and submit descriptions of firearms reported lost or stolen to the DOJ.<sup>61</sup> SB 894 would have required every person to report the theft or loss of his or her firearms to law enforcement within five days of the theft or loss.<sup>62</sup> Governor Brown vetoed the bill, and in his veto message referred to similar measures vetoed in 2012 and 2013: “Because I did not believe that a measure of this type would help identify gun traffickers or enable law enforcement to disarm people prohibited from having guns...[I] continue to believe that responsible people report the loss or theft of a firearm and irresponsible people do not; it is not likely that this bill would change that.”<sup>63</sup>

Moreover, the substance of this bill is addressed in Proposition 63.<sup>64</sup> The initiative requires individuals who know or reasonably know that their firearm is lost or stolen to report it.<sup>65</sup> Similar to this vetoed bill, the initiative makes it a misdemeanor for failing to report a lost or stolen firearm, and also includes requiring persons to report lost or stolen ammunition.<sup>66</sup>

### 5. *AB 1176: Punishment for Firearm Theft*

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<sup>56</sup> AB 1673 Veto Message from Edmund G. Brown, Jr., Governor, State of Cal., to Members of the Cal. State Assemb. (July 1, 2016), available at [https://www.gov.ca.gov/docs/AB\\_1673\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/AB_1673_Veto_Message.pdf).

<sup>57</sup> AB 2607, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> AB 2607 Veto Message from Edmund G. Brown, Jr., Governor, State of Cal., to Members of the Cal. State Assemb. (July 1, 2016), available at [https://www.gov.ca.gov/docs/AB\\_2607\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/AB_2607_Veto_Message.pdf).

<sup>61</sup> SB 894, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>62</sup> *Id.*

<sup>63</sup> SB 894 Veto Message from Edmund G. Brown, Jr., Governor, State of Cal., to Members of the Cal. State Senate (July 1, 2016), available at [https://www.gov.ca.gov/docs/SB\\_894\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/SB_894_Veto_Message.pdf).

<sup>64</sup> Cal. Proposition 63, § 4 (2016).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

Proposition 47, passed by the voters in 2014, makes theft of property that does not exceed \$950 petty theft, which includes the theft of firearms.<sup>67</sup> AB 1176 would have amended Proposition 47 by making the buying or receiving of a stolen firearm, with knowledge that it was stolen, a misdemeanor or felony.<sup>68</sup> Governor Brown vetoed the bill, stating: “This bill proposes to add an initiative that is nearly identical to one which will already appear on the November 2016 ballot. While I appreciate the authors’ intent in striving to enhance public safety, I feel that the objective is better attained by having the measure appear before the voters only once.”<sup>69</sup> Indeed, Section 11 of Proposition 63 states that such theft would be a felony automatically.<sup>70</sup>

#### **D. Path to the Ballot**

Lieutenant Governor Gavin Newsom announced, on October 15, 2015, the initiative that would become Proposition 63, “[i]n an effort to circumvent the national gun lobby’s reach and ‘go directly to the public.’”<sup>71</sup> Lieutenant Governor Newsom stated in an interview with MSNBC that going through the legislative process for more gun control would be frustrating, especially going up against the National Rifle Association on their “home court.”<sup>72</sup> Proposition 63 is the first firearm-related initiative since Proposition 15 in 1982.<sup>73</sup> Notably, Lieutenant Governor Newsom is running for governor in 2018.

The initiative comes in the wake of several high-profile killings by gunfire in California, as well as other mass shootings in the country.<sup>74</sup> California gun control laws are already the strictest in the country.<sup>75</sup> In 2013, the Center to Prevent Gun Violence, which helped write Proposition 63, and the Brady Campaign to End Gun Violence gave California the highest mark in the nation for gun control.<sup>76</sup> The initiative qualified for the November 2016 ballot days before the California legislature was scheduled to act on a package of gun control measures.<sup>77</sup>

Furthermore, there is tension between the SB 1235 author, Senate President pro Tempore Kevin de Leon, and Lieutenant Governor Newsom regarding SB 1235 and Proposition 63.<sup>78</sup> Proposition 63 addresses background checks for ammunition differently; it would require

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<sup>67</sup> AB 1176, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>68</sup> *Id.*

<sup>69</sup> AB 1176 Veto Message from Edmund G. Brown, Jr., Governor, State of Cal., to Members of the Cal. State Assemb. (July 1, 2016), available at [https://www.gov.ca.gov/docs/AB\\_1176\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/AB_1176_Veto_Message.pdf).

OFFICE OF THE GOVERNOR, AB 1176 Veto Message (July 1, 2016).

<sup>70</sup> Cal. Proposition 63, § 11 (2016).

<sup>71</sup> Emma Margolin, *California Gubernatorial Candidate Introduces Gun Safety Ballot Initiative*, MSNBC (Oct. 15, 2015, 8:57PM), <http://www.msnbc.com/msnbc/gavin-newsom-california-gun-safety-ballot-initiative>.

<sup>72</sup> *Id.*

<sup>73</sup> *California Proposition 63, Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban (2016)*, BALLOTPEdia, [https://ballotpedia.org/California\\_Proposition\\_63,\\_Background\\_Checks\\_for\\_Ammunition\\_Purchases\\_and\\_Large-Capacity\\_Ammunition\\_Magazine\\_Ban\\_\(2016\)](https://ballotpedia.org/California_Proposition_63,_Background_Checks_for_Ammunition_Purchases_and_Large-Capacity_Ammunition_Magazine_Ban_(2016)) (last visited Oct. 6, 2016).

<sup>74</sup> *Id.*

<sup>75</sup> Nora Kelly, *California Weighs Stricter Gun Laws*, THE ATLANTIC (Dec. 3, 2015), <http://www.theatlantic.com/politics/archive/2015/12/san-bernadino-shooting-california-gun-laws/418701/>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Ben Adler, *Brown Signs Six Gun Control Bills, Vetoes*, CAPITAL PUBLIC RADIO (July 1, 2016), <http://www.capradio.org/articles/2016/07/01/brown-to-act-on-gun-bills-friday/>.

potential buyers to obtain permits similar to a firearms permit.<sup>79</sup> SB 1235 would require a driver's license check, which is then sent to the DOJ after the purchase. Pro Tem de Leon amended his bill so that if Lieutenant Governor Newsom's Proposition 63 passes, the Senate measure would take precedence regarding the conflicting provision.<sup>80</sup>

## E. Proposed Law

Proposition 63 is intended to implement common-sense reforms and keep guns and ammunition out of the hands of those prohibited from possessing them by (i) changing the state regulation of ammunition sales; (ii) creating a new court process to ensure the removal of firearms from prohibited persons after they are convicted of a felony or certain misdemeanors, and (iii) implementing various other provisions.<sup>81</sup>

### 1. Background Checks for Ammunition Purchases

Proposition 63 would create a background check system for ammunition sales, requiring purchasers to obtain what is deemed an "ammunition purchase authorization" through the DOJ.<sup>82</sup> While the authorization would be valid for four years, it could be revoked at any time.<sup>83</sup> In determining if an applicant is approved, the DOJ will examine records such as the California Department of State Hospitals and the NICS.<sup>84</sup>

The DOJ would create a database of all those who apply and are approved, allowing ammunition vendors and law enforcement agencies to have access.<sup>85</sup> One would qualify for an authorization if the following criteria are met: the person is at least 18 years old, he or she is not prohibited from possessing ammunition under any law, and the applicable fees are paid.<sup>86</sup> An applicant would receive a response to their application within 30 days, otherwise it would be automatically granted.<sup>87</sup>

Regarding renewal, it would automatically be done by the DOJ as long as the person is not prohibited from possessing ammunition and pays the required renewal fee.<sup>88</sup> Such fees would be set at a level to recover the reasonable costs of the program and would be placed in a fund called the "Ammunition Safety and Enforcement Special Fund".<sup>89</sup> These funds would be used to implement the background check program for ammunition.<sup>90</sup> The funds would also be used to

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> NOVEMBER 2016 VOTER GUIDE, *supra*, note 2, at 85.

<sup>82</sup> Cal. Proposition 63, § 8 (2016), *adding* Cal. Penal Code 30370 (2016).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

repay the \$25,000,000 loan for the start-up costs for this program, appropriated by Proposition 63 to the DOJ from the state's General Fund.<sup>91</sup>

## 2. Department of Justice and the NICS

In an effort to strengthen the NICS, Proposition 63 requires the DOJ to participate in it.<sup>92</sup> By doing so, the DOJ must notify the vendor and the chief of police in the jurisdiction a sale is made if the purchaser is prohibited from acquiring a firearm.<sup>93</sup> Once such a report is required, it must include the person's name, date of birth, and physical description, and is entitled to confidentiality.<sup>94</sup>

## 3. Large-Capacity Ammunition Magazines

Under Proposition 63, Section 32310 of the Penal Code is amended such that possession of any large-capacity magazine, regardless of its date of acquisition, is a punishable offense.<sup>95</sup> Proposition 63 imposes fines for violations on a per-magazine basis.<sup>96</sup> The law currently allows those who obtained large-capacity magazines prior to January 1, 2000 to keep them.<sup>97</sup> Proposition 63 removes this allowance and prohibits even those individuals from possessing large-capacity magazines.<sup>98</sup>

If Proposition 63 were to become law, those who possess large-capacity magazines must dispose of them using one of the following three options: (i) remove the magazine from the state, (ii) sell the magazine to a licensed firearms dealer, or (iii) surrender it to a law enforcement agency for destruction.<sup>99</sup>

There are some groups that are exempt from the amended Section 32310, and Proposition 63 notes such groups are also exempted from the rule against possession of large-capacity magazines.<sup>100</sup> The exempted parties include law enforcement agencies, sworn peace officers (active or retired), federal law enforcement officers, properly licensed firearms dealers, gunsmiths, armored vehicle businesses, and those with a special weapons permit for purposes such as the use of a magazine as a movie prop.<sup>101</sup> However, as previously noted, no exception applies to those who possessed a magazine prior to 2000. Proposition 63 removes that exception.

## 4. Ammunition Sales

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<sup>91</sup> Cal. Proposition 63, § 8 (2016), *adding* Cal. Penal Code 30371 (2016).

<sup>92</sup> Cal. Proposition 63, § 5 (2016), *amending* Cal. Penal Code 28220(b) (2016).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Cal. Proposition 63, § 6 (2016), *amending* Cal. Penal Code § 32310 (2016).

<sup>96</sup> *Id.*

<sup>97</sup> Cal. Penal Code § 32310(a).

<sup>98</sup> Cal. Proposition 63, § 6 (2016), *repealing* Cal. Penal Code § 32420 (2016).

<sup>99</sup> Cal. Proposition 63, § 6 (2016) *adding* Cal. Penal Code § 32310(d) (2016).

<sup>100</sup> Cal. Proposition 63, § 6 (2016).

<sup>101</sup> *Id.*

Proposition 63 outlines new procedures for selling ammunition. All sales must go through a licensed vendor, and if neither the buyer nor the seller is a licensed vendor, the ammunition must be delivered to one to process the sale.<sup>102</sup> At that point, the vendor treats the ammunition as if it were his own merchandise, conducting appropriate background checks as needed and returning the ammunition to the seller if the buyer is a prohibited owner.<sup>103</sup> Ammunition vendors must also require all of their employees to obtain a certificate of eligibility from the DOJ, and must not allow certain people to handle ammunition in the scope of their employment (this also applies to agents or employees of a firearms dealer).<sup>104</sup> In addition, Proposition 63 makes it so an ammunition vendor license is needed for anyone to sell more than 500 rounds of ammunition in one 30-day period.<sup>105</sup>

Licensed vendors may only sell ammunition at the location specified in the license.<sup>106</sup> Selling at a gun show is permitted as long as the show is not conducted from any motorized or towed vehicle.<sup>107</sup> Once a sale is made, the vendor is to report the sale to the DOJ on a prescribed electronic form, which it will keep in an Ammunition Purchase Records File.<sup>108</sup>

Proposition 63 again extends exemptions to those in law enforcement, peace officers and federal law enforcement officers, specially licensed handgun importers, and certain exempted federal firearms licensees.<sup>109</sup> Beginning on July 1, 2019, these parties can still purchase ammunition without the aforementioned procedures followed.<sup>110</sup> However, Proposition 63 fully applies to ammunition purchased out of state and brought in; a person transporting a firearm from another state, with certain exceptions similar to those noted in this paragraph, must still have the ammunition delivered through a licensed vendor.<sup>111</sup>

The DOJ will issue licenses to ammunition vendors upon approval of their application.<sup>112</sup> Fees from these applications will go into the new “Ammunition Vendor’s Special Account,” whose funds will go toward the processing and issuance of these licenses.<sup>113</sup>

Proposition 63 deems any licensed firearms dealer an ammunition vendor as well, and removes any distinction between handgun ammunition and any other type.<sup>114</sup> It requires that anyone who sells ammunition to someone with cause to believe that person is not the actual purchaser, but will rather transfer the ammunition to someone not allowed to possess it, is subject to an infraction.<sup>115</sup>

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<sup>102</sup> Cal. Proposition 63, § 8 (2016), *amending* Cal. Penal Code § 30312 (2016).

<sup>103</sup> *Id.*

<sup>104</sup> Cal. Proposition 63, § 8 (2016), *amending* Cal. Penal Code § 30347(a) (2016).

<sup>105</sup> Cal. Proposition 63, § 8 (2016), *adding* Cal. Penal Code § 30342(a) (2016).

<sup>106</sup> Cal. Proposition 63, § 8 (2016), *adding* Cal. Penal Code § 30348 (2016).

<sup>107</sup> *Id.*

<sup>108</sup> Cal. Proposition 63, § 8 (2016), *amending* Cal. Penal Code § 30352 (2016).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Cal. Proposition 63, § 8 (2016), *adding* Cal. Penal Code § 30314 (2016).

<sup>112</sup> Cal. Proposition 63, § 8 (2016), *adding* Cal. Penal Code § 30385 (2016).

<sup>113</sup> Cal. Proposition 63, § 8 (2016), *adding* Cal. Penal Code § 30390 (2016).

<sup>114</sup> Cal. Proposition 63, § 8 (2016), *amending* Cal. Penal Code § 30312 (2016).

<sup>115</sup> Cal. Proposition 63, § 8 (2016), *amending* Cal. Penal Code § 30306 (2016).

## 5. *Lost or Stolen Firearms and Ammunition*

Proposition 63 inserts a new Division into the Penal Code to require those who own or possess firearms to report their firearms' loss or theft within five days.<sup>116</sup> It uses a reasonableness standard; the five days commences from the time the owner knew or should have known of such a loss or theft.<sup>117</sup> The report must be made to a local law enforcement agency in the jurisdiction where the theft or loss occurred, and the person must report if he or she recovers the firearm as well.<sup>118</sup> Failure to do so would be punishable by law, with penalties ranging from an infraction and a \$100 fine for the first offense to a misdemeanor with a \$1,000 fine and six-month imprisonment for a third offense.<sup>119</sup>

Each report of loss or theft must contain such details as the firearm's make, model, and serial number, in addition to any other relevant information, and must be submitted to the DOJ's Automated Firearms System by the agency receiving the report. Proposition 63 includes an infraction for those who knowingly submit false reports, and notes that those licensed to sell firearms must post of this reporting requirement.

Proposition 63 outlines exceptions for reporting lost or stolen firearms, including reports for antique firearms, a law enforcement agency or peace officer who reports the loss to his employing agency in the scope of his official duties, any member of the United States Armed Forces or National Guard, or those who are licensed and report such losses under federal law.<sup>120</sup>

Proposition 63 extends the reporting requirement to apply to lost or stolen ammunition. Both licensed firearms dealers and licensed ammunition vendors must report such a loss with 48 hours of its discovery.<sup>121</sup>

## 6. *Prohibition from Possessing Firearms*

Under Proposition 63, the possession of a firearm worth less than \$950 would no longer be punishable as a misdemeanor.<sup>122</sup> Such an offense would be a felony, and if the person possesses a firearm within 10 years of the felony conviction, the possession would be punishable by imprisonment, a fine, or both.<sup>123</sup>

## 7. *Procedures Enforcing Prohibition of Firearm Possession*

Proposition 63 would allow a search warrant to be issued for the seizure of a firearm from one who is prohibited from possessing it and has not relinquished it as required by law.<sup>124</sup> In addition, if a person is convicted of a felony or has a narcotics addiction, they must relinquish all

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<sup>116</sup> Cal. Proposition 63, § 4 (2016), *adding* Cal. Penal Code § 25250 (2016).

<sup>117</sup> *Id.*

<sup>118</sup> Cal. Proposition 63, § 4 (2016), *adding* Cal. Penal Code § 25255 (2016).

<sup>119</sup> Cal. Proposition 63, § 4 (2016), *adding* Cal. Penal Code § 25265 (2016).

<sup>120</sup> Cal. Proposition 63, § 4 (2016), *adding* Cal. Penal Code § 25255 (2016).

<sup>121</sup> Cal. Proposition 63, § 7 (2016), *amending* Cal. Penal Code § 26885 (2016).

<sup>122</sup> Cal. Proposition 63, § 11 (2016), *amending* Cal. Penal Code § 490.2 (2016).

<sup>123</sup> Cal. Proposition 63, § 11 (2016), *amending* Cal. Penal Code § 29805 (2016).

<sup>124</sup> Cal. Proposition 63, § 10 (2016), *amending* Cal. Penal Code § 1524 (2016).

of their firearms under court order.<sup>125</sup> The person must use a Prohibited Persons Relinquishment Form to name a designee to transfer and dispose of any firearms possessed by the person.<sup>126</sup> The designee would be a local law enforcement agency or another third party, and he or she must surrender the firearms to law enforcement, sell them, or transfer them to storage.<sup>127</sup> The Form would also inform the person of their rights and obligations, and a probation officer must be assigned to oversee the person's compliance.<sup>128</sup>

A court would have to approve the probation's officer fulfillment of his duties in having the person relinquish all firearms, and if the person had failed to do so, the court could order for search and removal of any and all firearms.<sup>129</sup>

### III. DRAFTING AND STATUTORY ISSUES

As the bills referenced above advanced through the Legislature during the summer of 2016, tension grew between Lieutenant Governor Newsom and Pro Tem de Leon. There are provisions of SB 1235 that are addressed in and consistent with Proposition 63 and others that are in conflict. If Proposition 63 does not pass, the entirety of SB 1235 becomes operative on July 1, 2019.<sup>130</sup> If Proposition 63 does pass, the provisions of SB 1235 that are consistent with the initiative will not become operative, and the same provisions addressed in Proposition 63 will take effect.<sup>131</sup>

Pro Tem de Leon urged Lieutenant Governor Newsom to pull his initiative as SB 1235 advanced, but Newsom refused. Both parties believed their method of regulating ammunition is the most effective. As a result of this tension, Pro Tem de Leon amended SB 1235 so that if both the bill and Proposition 63 are passed, SB 1235's approach would preempt and replace the corresponding provision in Proposition 63.<sup>132</sup>

Regarding the conflicting provisions, SB 1235 provides that its provisions will be operative regardless of the result of Proposition 63's passage.<sup>133</sup> The conflicting provision relates to the cross-reference of AFS and the Prohibited Armed Persons Files for ammunition transactions.<sup>134</sup> SB 1235 requires this process of cross-referencing both systems and files in the authorization of any ammunition transactions. Proposition 63 requires an ammunition purchase authorization permit and a creation of a centralized list for ammunition transactions,<sup>135</sup> authorizing any ammunition transactions to persons who obtained the four-year permit from the

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<sup>125</sup> *Id.*

<sup>126</sup> Cal. Proposition 63, § 10 (2016), *adding* Cal. Penal Code § 29810(a) (2016).

<sup>127</sup> *Id.*

<sup>128</sup> Cal. Proposition 63, § 10 (2016), *adding* Cal. Penal Code § 29810(c) (2016).

<sup>129</sup> *Id.*

<sup>130</sup> SB 1235, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>131</sup> *Id.*

<sup>132</sup> Jeremy B. White, *Newsom camp calls de Leon gun change 'shockingly, sickeningly cynical'*, SACRAMENTO BEE, June 24, 2016, <http://www.sacbee.com/news/politics-government/capitol-alert/article85899487.html>.

<sup>133</sup> SB 1235, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

<sup>134</sup> *Id.*

<sup>135</sup> Cal. Proposition 63, § 8.15(a)-(c) (2016).

DOJ.<sup>136</sup> Under Proposition 63, the vendor does not meet to match the information with the AFS or checking the Prohibited Armed Persons Files, which SB 1235 requires.

Such preemption of an initiative provision may be allowed under the section of Proposition 63 regarding its potential future amendment. Section 13 of Proposition 63 states the initiative is to be broadly construed, and that the Legislature can amend it with a 55 percent vote of its members.<sup>137</sup> However, any amendments must be consistent with Proposition 63's intent.<sup>138</sup> Pro Tem de Leon has argued that the preemption of a section of the initiative would fit the amendment standard because it strengthens the measure.<sup>139</sup>

#### **IV. CONSTITUTIONAL ISSUES**

##### **A. Single Subject Challenge**

The California Constitution requires that an initiative measure embrace only one subject; otherwise, it may not be submitted to the voters.<sup>140</sup> The courts have interpreted this to mean that the various provisions of an initiative measure must be reasonably related to a common theme or purpose.<sup>141</sup> Here, it is likely Proposition 63 meets that standard; thus, any challenge to it on a single-subject basis would likely fail. Proposition 63 discusses firearms and ammunition, both likely under the common theme of gun control in general. This is different from *Senate of State of Cal. v. Jones* because in that case, the single subject rule was violated when the initiative covered transferring reapportionment to the State Supreme Court and the compensation of state legislators and other officials.<sup>142</sup>

##### **B. Constitutional Challenge under the Second Amendment**

While opponents may attempt to assert a challenge to Proposition 63 under the Second Amendment to the United States Constitution, such a challenge would likely fail. The Second Amendment states that "...the right of the people to keep and bear arms, shall not be infringed."<sup>143</sup> In 2008, in *District of Columbia v. Heller*, the United States Supreme Court held that the Second Amendment conferred an individual right to keep and bear arms.<sup>144</sup> This holding was affirmed two years later in *McDonald v. City of Chicago, Ill.*, where the Court held the Second Amendment also binds the states.<sup>145</sup>

However, in *Heller*, the Court ensured that any prohibitions on possession of firearms by felons or those with mental illness would be upheld.<sup>146</sup> The Court's repeated references to

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<sup>136</sup> *Id.*

<sup>137</sup> Cal. Proposition 63, § 13 (2016).

<sup>138</sup> *Id.*

<sup>139</sup> White, *supra* 132.

<sup>140</sup> CAL. CONST. art. II, § 8(d).

<sup>141</sup> Senate of State of Cal. v. Jones, 21 Cal. 4th 1142, 1157 (1999).

<sup>142</sup> *Id.* at 1168.

<sup>143</sup> U.S. CONST. amend. II.

<sup>144</sup> District of Columbia v. Heller, 554 U.S. 570, 595 (2008).

<sup>145</sup> McDonald v. City of Chi., 561 U.S. 742, 758 (2010).

<sup>146</sup> *Heller*, 554 U.S. at 626.

weapons “typically possessed by law-abiding citizens for lawful purposes” as receiving protection is evidence of how restrictions on some types of weapons, such as those in Proposition 63, would be allowed.<sup>147</sup>

However, there may be a challenge that regulating ammunition in such a way as Proposition 63 does, which is not a “weapon”, is not permissible. In *Parker v. State*,<sup>148</sup> a California Appellate Court held that a statute regulating “handgun ammunition” was impermissibly vague, thus a violation of due process. However, such a challenge would not exist here, as Proposition 63 specifically removes any discussion of “handgun ammunition” and applies its provisions to all types of ammunition. While it might be argued that distinction is even more vague as it refers to a broader category of ammunition, it is clearer what “ammunition” is than what “handgun ammunition” is. In *Parker*, “handgun ammunition” was deemed to have no common understanding or objective meaning, because many types of ammunition could be used in multiple types of guns and it would be difficult to distinguish the types of ammunition used only in handguns.<sup>149</sup> However, ammunition in general is known to be for firearms in general, making it more clearly defined.

### **C. Attorney General as an Administrative Officer**

Proposition 63 invokes a number of duties and responsibilities upon the Attorney General of California and the DOJ. The Attorney General and the DOJ receive their powers from Article 5 of the California Constitution: “Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced.”<sup>150</sup>

If Proposition 63 were to pass, it immediately becomes law, and it is the duty of the Attorney General to enforce it.<sup>151</sup> The 1874 case of *Love v. Baehr*<sup>152</sup> held that the Legislature may exercise wide discretion in prescribing the duties of the Attorney General.<sup>153</sup> This applies when the people create law through the initiative process as well.

In addition, Section 12 of Proposition 63 allows the DOJ to adopt interim standards without complying with APA procedures.<sup>154</sup> While they would be temporary, this Section gives the DOJ greater leeway in enforcing Proposition 63 and enacting necessary steps to see it into law.<sup>155</sup>

### **D. Severability**

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<sup>147</sup> *Id.* at 625.

<sup>148</sup> *Parker v. State*, 221 Cal. App. 4th 340, *review granted and opinion superseded*, 317 P. 3d 1184 (Cal. 2014).

<sup>149</sup> *Id.* at 368.

<sup>150</sup> CAL. CONST. art. V, § 13.

<sup>151</sup> *Id.*

<sup>152</sup> *Love v. Baehr*, 47 Cal. 364 (1874).

<sup>153</sup> *Id.*

<sup>154</sup> Cal. Proposition 63, § 12 (2016).

<sup>155</sup> *Id.*

As is standard of most initiative measures, Proposition 63 contains a severability clause.<sup>156</sup> It states that if any part of Proposition 63 is found invalid or unconstitutional, the remaining portions are to remain in full effect.<sup>157</sup> A court would likely find Proposition 63 is indeed severable. An initiative measure can be found severable if three tests are met.<sup>158</sup> First, the language of the initiative must be mechanically severable, in terms of grammatical structure.<sup>159</sup> Here, Proposition 63 does appear grammatically complete and distinct, so there is likely no issue with severability in that regard.

Second, the severed sections must be capable of independent application.<sup>160</sup> This means the remaining provisions must stand on their own and be capable of separate enforcement.<sup>161</sup> This test is also likely met, as the various provisions of Proposition 63 are complete in themselves, and could be enforced independently, such as the provisions on ammunition background checks versus the provisions banning possession of large-capacity magazines.

Lastly, the initiative must be such that the electorate would have passed the remaining provisions independently in light of the initiative's purpose.<sup>162</sup> Here, that is likely also met with Proposition 63. In Section 3, it outlines its various purposes and intents, which independently relate to its various provisions.<sup>163</sup> Therefore, it is likely that in the event of severability, a court would find the remaining provisions were considered and intended to be adopted by the people on their own, because of the purposes and intents outlined in Section 3.

### **E. Proponent Standing**

Section 16 of Proposition 63 states that if the State fails to defend its constitutionality in court after it is passed, another government employer, the proponent, or a citizen of the State can have the authority to intervene in a court action.<sup>164</sup> Under the California Supreme Court's decision in *Perry v. Brown*, such a provision is permissible.<sup>165</sup> In that case, the court held the proponents of an initiative measure have the authority to defend an initiative's validity when state officials decline to do so.<sup>166</sup> Because of that holding, Section 16 is likely valid and Proposition 63's proponent could defend its constitutionality in a court of law.

However, if the challenge were brought in federal court, Proposition 63's proponent would likely not have standing to defend it. In 2013, the United States Supreme Court held that the proponents of 2008's Proposition 8 did not have standing to appeal the District Court's order declaring it unconstitutional.<sup>167</sup> One who brings suit in a federal court must have standing to do so under Article III of the U.S. Constitution, and the Court emphasized that once Proposition 8

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<sup>156</sup> Cal. Proposition 63, § 15 (2016).

<sup>157</sup> *Id.*

<sup>158</sup> *People's Advocate, Inc. v. Superior Court*, 181 Cal. App. 3d 316 (1986).

<sup>159</sup> *Id.* at 330.

<sup>160</sup> *Id.* at 331.

<sup>161</sup> *Id.* at 332.

<sup>162</sup> *Id.* at 333.

<sup>163</sup> Cal. Proposition 63, § 3 (2016).

<sup>164</sup> Cal. Proposition 63, § 16 (2016).

<sup>165</sup> 52 Cal. 4th 1116, 1139 (2011).

<sup>166</sup> *Id.*

<sup>167</sup> *Hollingsworth v. Perry*, 570 U.S. \_\_\_, 133 S. Ct. 2652, 2668 (2013).

was approved, it was a duly enacted constitutional amendment, and the petitioners had no role in its enforcement.<sup>168</sup> This gave them no “personal stake” in defending it to amount to the necessary interest sufficient to create a “case or controversy” under Article III.<sup>169</sup>

Therefore, because Proposition 63 would become duly enacted upon its approval by the voters, its proponent no longer has a role in enforcing it. Any authority granted by the California Supreme Court is a generalized one to assert legal arguments<sup>170</sup>, and does not give the proponent standing in federal court.

## V. PUBLIC POLICY ISSUES

### A. Funding Information

If Proposition 63 passes, the Legislative Analyst’s Office (“LAO”) projects increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually. There would relate to a new court process for removing firearms from prohibited persons implemented in Section 10 of Proposition 63.<sup>171</sup> The LAO states that there will be potential increase in state costs, but it will not likely be in the tens of millions and would likely be offset by fee revenues.<sup>172</sup> Furthermore, there will likely be a potential net increase in state and local correctional costs that will not likely exceed the low millions of dollars annually; this is related to changes in firearm and ammunition penalties.<sup>173</sup>

Proposition 63 makes changes to ammunition sales.<sup>174</sup> As outlined in Section 8, there would be changes to the requirements for individuals who purchase ammunition and for the DOJ to regulate those purchases, mainly a purchaser’s application for a four-year permit. Proposition 63 allows the DOJ to charge each person applying for such a permit a fee of up to \$50 to support the various administrative and enforcement costs related to ammunition sales.<sup>175</sup> This fee is charged upon renewal of the permit as well.

The fees from these applications will be placed in a fund called the “Ammunition Safety and Enforcement Special Fund”, which will be used to implement the background check program. The funds will also be used to repay the \$25,000,000 loan for the start-up costs for this program, appropriated by Proposition 63 to the DOJ from the state’s General Fund.<sup>176</sup>

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<sup>168</sup> *Id.* at 2656; U.S. Const. Art. III.

<sup>169</sup> *Hollingsworth*, 133 S. Ct. at 2656.

<sup>170</sup> *Id.* at 2657.

<sup>171</sup> LEGISLATIVE ANALYST OFFICE, *supra* note 2, at 1.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 5-6.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

In addition, Proposition 63 requires individuals to obtain a one-year license from the DOJ to sell ammunition, which likely would require state costs.<sup>177</sup> It also prohibits most from bringing ammunition into the state without first having it delivered to a licensed ammunition dealer, which will also likely have costs.<sup>178</sup> The DOJ is required to store information in a database indefinitely rather than for the current law's requirement of two years, and there will probably be costs attached to the maintenance of the database.<sup>179</sup>

Furthermore, Proposition 63 creates a new court process to ensure that individuals who are prohibited from owning firearms do not continue to have them.<sup>180</sup> Proposition 63 requires courts to inform convicted offenders that they must: (1) turn over their firearms to local enforcement; (2) sell their firearms to a licensed firearm dealer; or (3) give the firearms to a licensed firearm dealer for storage.<sup>181</sup> The initiative requires courts to assign probation officers to report and check what offenders have done with their firearms.<sup>182</sup> Also, local governments or state agencies could charge a fee to reimburse for costs implementing the measure.<sup>183</sup> This new court process for removing firearms from prohibited persons would mean an increase in workload for state courts and county probation departments, since they are in charge of determining which individuals who will be prohibited from possessing firearms.<sup>184</sup> There also will be some storage costs of the removed firearms, and increased law enforcement costs to both remove and enforce this requirement when offenders fail to remove their firearms.<sup>185</sup> The LAO states that potential costs could be in the tens of millions of dollars annually.<sup>186</sup>

Also, the initiative would potentially increase regulatory costs for law enforcement and corrections. Proposition 63 will likely have reporting costs because the initiative requires individuals report lost or stolen ammunition to law enforcement.<sup>187</sup> Individuals who violate this requirement will be charged with either a misdemeanor or a felony, and the DOJ is required to keep records of newly prohibited persons.<sup>188</sup> Proposition 63 likely will also include costs to enforce and ensure that individuals who are not exempt from possessing large capacity magazines cannot obtain them.<sup>189</sup> Proposition 63 also enforces more penalties for prohibited firearms and ammunition possession for certain offenses.<sup>190</sup> This could mean more correctional costs to house individuals in prison and jails.<sup>191</sup> LAO states that this cost depends on how many violations and how it will be enforced, which likely would not exceed the low millions of dollars annually.<sup>192</sup>

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<sup>177</sup> *Id.* at 6.

<sup>178</sup> *Id.* at 7.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 9-10.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

## **B. Proponents' Arguments**

### *1. Reduces Gun Violence*

Proponents of Proposition 63 emphasize public safety. The main argument is that the initiative will keep people safe by reducing gun violence.<sup>193</sup> The proponents cite the mass shootings that have occurred over the past few years and argue that the new provisions will reduce gun violence and mass shootings.<sup>194</sup> One of the central purposes of Proposition 63 is to ensure that prohibited persons, such as convicted felons and dangerous criminals, cannot obtain firearms and ammunition.<sup>195</sup>

### *2. Closes Loopholes*

In addition, the proponents contend that the initiative will close loopholes and help enforce existing laws; it goes further than the recent gun legislation that passed this summer because it provides five new provisions that the new gun control legislation does not.<sup>196</sup> The new gun laws reinforced California's already strict gun control laws. A 2011 study found that states with stricter gun control laws "have 'significantly lower' gun deaths."<sup>197</sup> Along with recently passed gun laws, Proposition 63 would further restrict who can obtain and use firearms by improving background checks and enforcing stricter penalties for lost or stolen firearms in an attempt to remove guns from dangerous criminals.<sup>198</sup>

## **C. Opponents' Arguments**

### *1. Burdens Law-Abiding Gun Owners*

Opponents of Proposition 63 focus on how the initiative will unnecessarily burden law-abiding gun owners and the costs that the initiative will have on the state.<sup>199</sup> Opponents claim Proposition 63 creates new firearms and ammunition restrictions that burden and prevent law-abiding gun owners from owning guns and ammunition and lawfully using their firearms.<sup>200</sup> Critics argue that the costs burdens taxpayers, and the resources needed to implement Proposition 63 could be better used elsewhere.<sup>201</sup>

### *2. Criminals Do Not Follow the Law*

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<sup>193</sup> NOVEMBER 2016 VOTER GUIDE, *supra* note 2, at 88.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> Kelly, *supra* note 75.

<sup>198</sup> NOVEMBER 2016 VOTER GUIDE, *supra* note 2, at 88.

<sup>199</sup> *Id.* at 88-89.

<sup>200</sup> YES ON PROP 63, *10 Gun Lobby Myths vs. Facts*, <http://safetyforall.com/wp-content/uploads/2016/08/Yes-on-Prop-63-Myths-vs-Facts.pdf> (last visited Oct. 19, 2016).

<sup>201</sup> *Id.*

Critics of the initiative contend that criminals do not follow the law, so new regulations will only further burden lawful gun owners since criminals can always find a way to obtain firearms.<sup>202</sup> They claim that no new gun laws are necessary, but rather the state should just enforce the gun laws that are already in place.<sup>203</sup> The opponents argue that no new gun restrictions are needed because California just passed a set of new gun control laws in July 2016.<sup>204</sup> In addition, opponents do not see the initiative’s proposed regulations to be effective in preventing firearms and ammunition from falling into the prohibited individuals because criminals can make or steal firearms.<sup>205</sup>

### 3. *Burdens Law Enforcement and Courts*

There is a law enforcement argument against Proposition 63. The claim is that the costs needed to implement the requirements and enforce the provisions of the initiative takes away from law enforcement resources used to investigate and target dangerous persons and terrorists.<sup>206</sup> This argument follows the claim that Proposition 63 will be ineffective and only overburdens not just law-abiding gun owners, but also law enforcement and courts that have to enforce the provisions.<sup>207</sup>

#### **D. Campaign Finance**

Currently, those supporting Proposition 63 have raised more than seven times the amount than those opposing it.<sup>208</sup> The largest supporters of Proposition 63 are the California Democratic Party and Lieutenant Governor Newsom’s 2014 campaign committee.<sup>209</sup> While the largest donors to the opposition are the National Rifle Association and the California Rifle and Pistol Association, most of the contributions in opposition to Proposition 63 are of small dollar amount.<sup>210</sup>

## **VI. CONCLUSION**

Proposition 63 would create new gun control regulations for California. A “yes” vote on Proposition 63 would mean a new court process for the removal of firearm and new ammunition regulations. A “no” vote on Proposition 63 would mean no additional firearm or ammunition requirements. The Legislative Analyst’s Office has projected that Proposition 63 may increase

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<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> NOVEMBER 2016 VOTER GUIDE, *supra* note 2, at 88-89.

<sup>206</sup> *Id.* at 89.

<sup>207</sup> *Id.*

<sup>208</sup> *CAMPAIGN FINANCE: PROPOSITION 063 – FIREARMS. AMMUNITION SALES. INITIATIVE STATUTE.*, CAL. SEC’Y OF STATE, <http://cal-access.sos.ca.gov/Campaign/Measures/Detail.aspx?id=1381803&session=2015> (last visited Oct. 6, 2016).

<sup>209</sup> *November 2016 General Election*, FAIR POLITICAL PRACTICES COMM’N, <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> (last visited Oct. 6, 2016).

<sup>210</sup> *BALLOTPEdia*, *supra* note 73.

costs because of the additional requirements on courts, law enforcement, and prisons. Opponents of the initiative focus on these costs and burdens that the initiative imposes not just on the state, but also on law-abiding citizens. On the other hand, proponents of Proposition 63 argue that the initiative will close loopholes and provide stronger enforcement of firearm and ammunition laws.