

**COMMENTS OF GODFREY HARRIS,  
MANAGING DIRECTOR OF THE  
IVORY EDUCATION INSTITUTE,  
BEFORE THE RULES, ELECTION,  
AND INTERGOVERNMENTAL  
RELATIONS COMMITTEE OF THE  
LOS ANGELES CITY COUNCIL**

ENHANCING  
UNDERSTANDING  
OF THE  
HISTORIC,  
PRACTICAL, AND  
CULTURAL  
IMPORTANCE  
OF IVORY



**Ivory Education Institute  
Political Action Network/  
International Ivory Society**

**Public Comment: Council File: 15-0002-S10**

No one in this country wishes ill of elephants in the wild. No one in this country desires to own something made from or with ivory wrought from poached elephants. Those of us who understand and appreciate the historic, cultural, practical, scientific, and artistic value of ivory applaud anyone who registers their abhorrence to the willful slaughter of elephants by criminal gangs.

But banning the trade and movement of ivory objects in California, as AB 96 seeks to do, won't save elephants in Africa. In fact, it will likely do them more harm than good:

It's basic economics. If supply is squeezed without addressing demand, prices rise. The higher the value of ivory, the more incentive poachers have to take risks to kill elephants to earn more profit.

If, on the other hand, you were to advocate the creation of a sustained, internationally controlled, market for legally taken raw ivory to maintain stable values, the criminals who hire poachers would have to look to other sources of income to prosper.

Given the dismal results of other governmental attempts to change reality, do you really need reminding that:

Prohibition failed to halt the sale of liquor in the U.S., that the War on Drugs has not stopped the sale of banned substances on our streets, and that giant fences, electronic devices, and added boots on the ground have not stemmed the flow of illegal immigrants.

Why, then, would anyone think that banning the sale of ivory in California will somehow magically make the demand for ivory in Asia go away? All it will do is push California's small market in ivory objects underground or drive it across the desert to Nevada.

Let me pose another, more basic LA question:

How is your vote to suppress any further enrichment to be derived from objects made from or with ivory any different from the Taliban blowing up Buddhist statues in Bamiyan, Afghanistan, or from what the Islamic State has just done with sledge hammers and flames in Mosul, Iraq? How is banning all private

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LOS ANGELES CITY CLERK

ownership of ivory objects something a world cultural center like Los Angeles can openly condone?

Do you really want the record to show that you favored prohibiting musical instruments, chess boards, heirloom jewelry, religious symbols, serving pieces with ivory handles, guns and knives with ivory grips, and historic medical and scientific instruments, as well as some of the finest art pieces on the planet, from being part of the culture of Los Angeles?

Now some truth to counter the constantly repeated, but generally erroneous mantras about the current situation with ivory:

**FACT** The UN's elephant monitoring program just released figures that show poaching has been level for the past two years and is the same as it was in 2010. While still unsustainably high in Central African countries, it is nowhere near the 96 elephants killed per day in AB 96's designation. Moreover, elephant poaching is no longer a real threat to Eastern or Southern African countries where herds are thriving in conjunction with populations who benefit from the animals in their midst.

**FACT** Many forms of ivory do not come from elephants or endangered species. How can anyone think that banning ivory from extinct animals such as Mastodons and mammoths or ivory from non-threatened animals such as walruses, narwhals, boars and warthogs will save elephants in Africa?

**FACT** The states of Washington, Oklahoma, Iowa and Virginia have already rejected similar bans on the trade and movement of ivory in their states. They have recognized the futility of trying to influence the behavior of East Asian consumers by penalizing Americans for their cultural interests.

Finally, why not ask Los Angeles to do something meaningful for wildlife in Africa. You can start by using LA-based talent to help Asians, particularly in countries outside of China, understand the plight of some elephant herds while bringing the demand for ivory in Southeast Asia and the Philippines, into balance with supply. Wouldn't that be better than being an accessory to the shameless programs of animal rights groups? They misuse facts to generate money for other causes while punishing Americans and potentially increasing the profits of those who kill elephants — all to keep the same immoral fund-raising cycle spinning year after year.

Thank you.

March 25, 2015



**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**  
THE STATE OF CALIFORNIA, by and through its agency the  
Department of Fish and Wildlife

**FILED**  
Superior Court of California  
County of Los Angeles

NOV 30 2015

Sherril R. Carter, Executive Officer/Clerk  
By Shaunya Bolden Deputy

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
IVORY EDUCATION INSTITUTE, a California non profit, unincorporated association, on  
behalf of itself and its participants and the taxpayers of California who own ivory objects of  
historic, artistic, cultural and practical importance created prior to 1977

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte pueda decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):  
**LOS ANGELES SUPERIOR COURT - CENTRAL DISTRICT**  
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:  
(Número de Caso) **BC 6 02 584**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Michael Harris - SBN 30144 --- ROGERS & HARRIS** 310-471-3276  
520 S. Sepulveda Blvd., Suite 204, Los Angeles, CA 90049-3534 Phone No.: 310-471-3170

DATE: (Fecha) **NOV 30 2015** Clerk, **SHERRIL R. CARTER**, Deputy (Adjunto) (Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons POS-010.)



- NOTICE TO THE PERSON SERVED:** You are served
- 1.  as an individual defendant.
  - 2.  as the person sued under the fictitious name of (specify):
  - 3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
  - 4.  by personal delivery on (date):

1 Michael Harris - Bar #30144  
2 **ROGERS & HARRIS**  
3 520 South Sepulveda Boulevard, Suite 204  
4 Los Angeles, California 90049-3534  
5 (310) 471-3170 - FAX (310) 471-3276  
6 rogersharris1@verizon.net

6040  
9049

**FILED**  
Superior Court of California  
County of Los Angeles

NOV 30 2015

Sheri R. Carter, Executive Officer/Clerk  
By Shaunye Bolden Deputy

7 Attorneys for Plaintiff Ivory Education Institution

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

10 **BC 6 02 5 8 4**

11 **IVORY EDUCATION INSTITUTE,**  
12 **a California non profit, unincorporated**  
13 **association, on behalf of itself and its**  
14 **participants and the taxpayers of**  
15 **California who own ivory objects of**  
16 **historic, artistic, cultural and practical**  
17 **importance created prior to 1977,**

CASE NO. \_\_\_\_\_

**COMPLAINT FOR INJUNCTION  
TO PROHIBIT IMPLEMENTATION  
OF CALIFORNIA ASSEMBLY  
BILL 96 (California Fish and Game  
Code Section 2022)**

18 **Plaintiff,**

19 vs.

20 **THE STATE OF CALIFORNIA, by and**  
21 **through its agency the Department of**  
22 **Fish and Wildlife,**

23 **Defendant.**

24 PLAINTIFFS allege,

25 1. Plaintiff, Ivory Education Institute now and at all times herein mentioned,  
26 nonprofit, unincorporated, association, formed for the purpose of improving understanding and  
27 appreciation of objects made from or with ivory, and advancing the interests of collectors and  
28 possessors of objects made from or with ivory, and particularly those of historic, artistic  
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CARD: \$0.00

69 William Jolley

11/30/2015

CIT/CASE: BC602584  
LEA/DEF#:



1 cultural, and practical importance. Such articles include sculptures, jewelry pieces, flatware and  
2 serving pieces, inlay decoration, and a myriad of other items worked from ivory prior to 1977.

3           2. Plaintiff Ivory Education Institute brings this action pursuant to C.C.P. Section  
4 369.5 for itself and on behalf of its participants and California taxpayers who own ivory objects  
5 of historic, artistic, cultural and practical importance existing before 1977 and include taxpayers.  
6 The pre-1977 period is appropriate because that accepts a date in conformity to the coming into  
7 force of the Convention on International Trade in Endangered Species of Wild Fauna and Flora  
8 (CITES), a United Nations treaty ratified by the United States.

9  
10           3. The legislature of the State of California passed Assembly Bill 96, in the 2015  
11 Legislative session signed by the governor, to be codified as California Fish and Game Code  
12 Section 2022 (hereafter “the Law”), which provides in general that the sale of most ivory or  
13 most products containing ivory will be illegal for sale after July 1, 2016. In essence, the Law  
14 makes it a crime with certain modest exceptions to sell any tooth or tusk from a species of  
15 elephant, hippopotamus, mammoth, mastodon, walrus, warthog, whale or narwhal or a piece  
16 thereof, whether raw ivory or worked ivory, and regardless of the age of the item.

17  
18           4. The Law goes into effect on July 1, 2016 and this case is brought to enjoin  
19 enforcement of the Law because the Law deprives Plaintiffs of due process, deprives Plaintiffs  
20 of their property without compensation and is otherwise unconstitutional in that pre-1977 ivory  
21 objects legally acquired owned by Plaintiffs will be rendered worthless as of July 1, 2016.  
22 Furthermore, implementation of the Law will mean that state and local taxes on the sale of these  
23 objects will not be available, constituting a loss to the citizens of California, including the  
24 Plaintiffs. A true and correct copy of the Law is attached hereto marked Exhibit 1 and is  
25 incorporated herein by this reference.  
26  
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1           5.       Pre-1977 elephant ivory objects are too important to the artistic and cultural  
2 heritage of this State to have them rendered worthless. Objects worked from elephant ivory have  
3 been venerated for thousands of years by virtually every culture, and have been used in creating  
4 extraordinary miniature sculptures, exquisite jewelry, fine decorations, and other objects of  
5 historic, artistic, cultural and practical importance. To reduce the value of these holdings which  
6 predate 1977 in the State of California to nothing, is an improper and unconstitutional taking of a  
7 vast artistic heritage. Banning the trade in historic, artistic, cultural and practical artifacts  
8 containing ivory is no less a destruction of a valuable artifact because it is taken by the Law than  
9 the destruction of other works of art in the name of an extreme religion. Here the destruction is  
10 in the name of the state encouraged by misguided animal rights groups operating under the  
11 unproven assertion that criminalizing Californians because of their ownership of antique objects  
12 somehow saves elephants in Africa from being poached by international criminals to feed a  
13 demand centered in Asia.

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16           6.       As a result of the Law, works of art carved from ivory, and other ivory artifacts of  
17 importance that can no longer be legally bought or sold, may as a consequence deteriorate, fall  
18 into disrepair, become lost or destroyed, or become a part of an illegal underground commercial  
19 market. Ivory objects of historic, artistic, cultural and practical importance constitute a record of  
20 our shared past, a way of understanding ourselves and each other. The reduction of art and  
21 artifacts to non saleable objects represents an attack on history, identity and civilization. The  
22 loss to Plaintiffs and the taxpayers of California of the value of these artifacts of cultural history  
23 and the vitality of their collections is enormous. Such a loss cannot be justified where, as here,  
24 there has been and can be no demonstrated benefit to current African elephant herds by banning  
25 sales of art, antiques and artifacts carved prior to 1977 containing ivory. The potential loss is  
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1 considerably more than tens of millions of dollars. The Plaintiffs' due process rights are  
2 abridged by the Law in that the effect of the Law is not reasonably related to a proper California  
3 constitutional or legislative goal. There are no endangered elephants in California and no proven  
4 reason to warrant rendering private property, bought and owned legally, worthless.

5  
6 7. Based on the legislature's findings, the committee hearings, and other  
7 commentary, the Law was passed as an effort to protect endangered species, particularly African  
8 elephants and rhinoceroses from being killed to support an illegal, international, commercial  
9 ivory trade. The preamble to the Law overstates the problem and is based on a fallacy. It states  
10 that "an average of 96 elephants per day are killed in Africa." That would mean 35,000  
11 elephants per year die at the hands of poachers and therefore an absolute minimum of 700,000  
12 pounds of ivory would become part of the annual commercial trade in this commodity. That  
13 would be enough ivory for more than 46 million individual objects of jewelry, an amount far  
14 beyond anything ever seen in the California marketplace. The number of killings as stated, is a  
15 hoax, and fails to take into account elephant deaths due to age, disease, primacy battles,  
16 environmental issues, overcrowding, accidents, and elephants as a food source. The number of  
17 96 per day has been used and bandied about, and because it has been repeated so often, it has  
18 become accepted as fact by the legislature, but it is a number without evidentiary support. The  
19 number is bogus, and intended to overstate the problem in order to promote and encourage  
20 passage of the Law.

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23 8. While the commercial ivory trade in poached tusks is a scourge and a root cause  
24 of the reprehensible killing of elephants in Central Africa, the Law, as written will have  
25 absolutely no impact or effect on preventing future such trade in Africa or Asia. No credible  
26 evidence has been produced that links the deaths of Central African forest or savannah elephants  
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1 to the market for sales of objects in California worked from ivory taken before 1977. In fact, the  
2 Law could have the opposite effect. It could encourage an increase in the likelihood of illegal  
3 elephant killings in Africa. By legislating the removal of nearly all ivory objects from  
4 commerce in California, it would lead to the scarcity of such objects which would ultimately  
5 increase the market price of ivory objects elsewhere. The higher the price of raw ivory, the  
6 greater the incentive to the criminal gangs that control the poachers, and the illegal ivory market.  
7

8 9. The Law is not reasonably related to the purpose of the act because:

9 a) Existing holdings in California of artistic, historic, cultural and practical  
10 ivory objects include carved statues, netsuke, brooches, billiard balls, and many other  
11 such items. These ivory objects held throughout California will be rendered worthless  
12 because it will be illegal to sell such items of whatever age. Such a prohibition can have  
13 no direct, indirect or collateral impact or effect whatsoever on the present day problem of  
14 killing elephants in Central Africa by criminal gangs engaged by Asian interests. There  
15 is simply no rational connection to the conservation and protection of African  
16 wildlife to the sale of ivory objects in California worked from ivory taken prior to 1977.  
17

18 b) An ivory object owned in California and derived from the tusks of an  
19 extinct animal, especially those carved from fossilized and preserved mastodons and  
20 mammoth tusks, as well as from the tusks of such non endangered species as warthog,  
21 boar, and walrus simply cannot have any impact on current elephant poaching, and the  
22 proponents of the Law have offered no credible evidence to the contrary.  
23

24 10. The Law simply goes too far and is over broad in casting a wide net to prohibit  
25 items that cannot be a factor in the current illegal poaching of elephants in Central Africa.  
26 Further, because there is certainly no perceived problem in California requiring legislative action  
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1 to preserve non-existent California elephant herds, the Law infringes on the U.S. Constitution  
2 which requires that international matters be restricted to actions by the Federal Government. It  
3 is also an area where the Federal Government has acted in the Federal Endangered Species Act  
4 of 1973, as amended (16 USC 1531-1544), which means that the Law should be deemed  
5 preempted by federal law.  
6

7 11. There are other problems with the Law which include but are not limited to:

8 a) There is no provision for funding the enforcement of the Law by local  
9 government as required by Article 13 of the California Constitution. Without funding,  
10 the California Department of Fish and Wildlife will not be able to plan and staff for the  
11 implementation of the Law in 2016. As a result, the Law potentially becomes a  
12 statement of policy only, with little actual effect. This leads to potential illicit behavior  
13 and disrespect for the Law in general.  
14

15 b) The generic reference by the Legislature to the “plight of elephants and  
16 rhinoceroses” killed in Africa is contrary to the actual situation and facts regarding  
17 elephants in Africa. There are reports from experienced and well reported wildlife  
18 experts that there is an over population of elephants in Southern Africa due to human  
19 population encroachment on preserves and lack of sufficient habitat to sustain elephant  
20 populations. It is arrogant to think that Botswana, Namibia, Zaire, Zimbabwe and other  
21 countries in Southern Africa are in need of California protection of their wildlife. The  
22 over population of Southern African elephants may require the expertise of African  
23 conservationists, but certainly not the interference of the California legislature. The  
24 elephants of Central Africa in Tanzania, Kenya, and the Democratic Republic of the  
25 Congo, and other countries are endangered by the criminal poachers, but the problem  
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1 cannot rationally be solved by banning trades in tusks of extinct species, or ivory items  
2 worked from tusks taken prior to 1977 held by residents in California.

3 c) While there is clearly a need to protect endangered Central African  
4 elephants from criminal gangs, this Law will have no impact on the problem because  
5 there is no factual basis to conclude that there is a significant market in California for raw  
6 or newly worked ivory. There is significant evidence that the demand for this commerce  
7 is in China and other countries of East Asia, but not in California.  
8

9 The statute therefore is unconstitutional because the theories supporting the Law are  
10 devoid of any rational connection with the misguided public interest objectives it seeks to  
11 address.  
12

13 12. The effect of the Law additionally is that it violates the dormant commerce clause  
14 also known as the negative commerce clause which in principle prohibits a State from enforcing  
15 any law that negatively impacts interstate commerce. The absolute prohibition on any trade of  
16 ivory, whether or not worked prior to 1977, would improperly burden interstate commerce. The  
17 U.S. Constitution reserves for the Federal Government, the exclusive right to regulate commerce  
18 with foreign nations, and among the several States and with the Indian Tribes. (Art 1 § 8.)  
19

20 13. By rendering the sale of practically all ivory objects, regardless of their age or  
21 artistic or cultural value, illegal, the Law constitutes an improper taking by the government, of  
22 the property of its citizens and taxpayers without fair compensation. (Amendments 5  
23 and 14 to the U.S. Constitution.) The statute is therefore facially invalid as overboard and  
24 without a rational relation to the perceived objective sought to be accomplished.  
25

26 ///



1           14.     There is simply no factual basis to justify the ban on mastodon, mammoth,  
2 fossilized walrus or other extinct species, which constitute specific exemptions in the Federal  
3 Endangered Species Act., as amended, but which are expressly included as prohibited items  
4 within the Law. As such, the Law violates Plaintiff's due process rights because it constitutes  
5 arbitrary legislative action which deprives Plaintiffs of their property without compensation.  
6

7           15.     Plaintiffs seek hereby to enjoin the implementation of the Law as unconstitutional  
8 and a violation of Plaintiffs' due process rights additionally in the following respects:

9           It is a violation of due process to prohibit conduct that is in terms so vague that one must  
10 guess at its meaning. In this regard, the Law prohibits sales of musical instruments of which the  
11 ivory content is more than 20% "by volume of the instrument." The meaning of an instrument's  
12 "volume" is without definition. How volume is to be determined is not specified. In addition, an  
13 antique which is less than 5% ivory by "volume" is exempt, but again, the definition of  
14 "volume" is absent, and requires guess work. The statute is therefore unconstitutional by virtue  
15 of its uncertainty.  
16

17           16.     Plaintiffs bring this action based upon the following general principles:

- 18           a)     Courts do not pass on the wisdom of laws. As a result legislative power  
19 must be upheld unless the laws infringe on constitutional guarantees.  
20  
21           b)     If a statute encroaches on constitutional limitations, the Courts must act.  
22  
23           c)     The fact determination underlying a statute will be accepted unless error  
24 clearly appears.  
25  
26           d)     Invalidity must be clear before a statute may be declared unconstitutional.  
27  
28           e)     The legislature under the guise of its police power may not impose  
unnecessary and unreasonable restrictions on the use of private property and the

1 legislation in exercise of its police powers must bear a rational relation to the objective  
2 sought to be accomplished.

3 Plaintiffs contend that the foregoing principles weigh heavily on the side of the Law's  
4 invalidity.

5  
6 17. At various times before the passage of the Law and at various other times  
7 between that date and the present time, Plaintiffs requested that the California legislature and the  
8 Defendants refrain from passing or implementing the Law, but Defendants have refused and  
9 threatens to enforce the Law as of July 1, 2016 unless enjoined and restrained by the court.

10  
11 18. Because the Law will, when implemented, cause Plaintiff's participants,  
12 taxpayers, and citizens to suffer great and irreparable injury by rendering practically all of their  
13 ivory holdings worthless, by preventing their sale, Plaintiff's members will be deprived of their  
14 personal and constitutional rights such that it will be practically impossible to ascertain the  
15 precise damages sustained if Defendant is not enjoined from implementing and enforcing the  
16 Law and Plaintiff is otherwise without any adequate remedy at law.

17 WHEREFORE, Plaintiff prays for judgment as follows:

18  
19 1. For a preliminary and permanent injunction enjoining and restraining Defendant  
20 the State of California and its Department of Fish and Wildlife, and their agencies, departments,  
21 commissions, employees and persons acting in concert with them, from implementing, enforcing  
22 or otherwise upholding the provisions of Assembly Bill 96 codified as California Fish and Game  
23 Code Section 2022.

24  
25 2. For an order that Defendant show cause at a time and place to be fixed by the  
26 court, why a preliminary injunction should not issue as prayed for above.

27 3. For a determination that the Law is unconstitutional.  
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4. For Plaintiff's attorneys' fees, pursuant to C.C.P. § 1021.5.
5. For Plaintiff's cost of suit.
6. For such other and further relief as the court may deem proper.

DATED: Nov 25, 2015.

**ROGERS & HARRIS**

By:   
**MICHAEL HARRIS, Attorneys for  
Plaintiff**

11/30/2015

EXHIBIT 1

**BILL NUMBER: AB 96 CHAPTERED**

BILL TEXT CHAPTER 475

FILED WITH SECRETARY OF STATE OCTOBER 4, 2015 APPROVED BY GOVERNOR

OCTOBER 4, 2015 PASSED THE SENATE SEPTEMBER 2, 2015 PASSED THE ASSEMBLY

SEPTEMBER 4, 2015 AMENDED IN SENATE JUNE 17, 2015 INTRODUCED BY

Assembly Member Atkins (Principal coauthor: Senator Lara) (Coauthors: Assembly Members Bloom, Bonta, Chiu, Dababneh, Gatto, Levine, Low, Maienschein, McCarty, Rendon, Ting, Thurmond, Waldron, and Williams) (Coauthors: Senators Allen, Hancock, Pan, and Pavley)

JANUARY 7, 2015 An act to add Section 2022 to the Fish and Game Code, and to repeal Section 5 of Chapter 692 of the Statutes of 1976, relating to animal parts and products.

LEGISLATIVE COUNSEL'S DIGEST AB 96, Atkins. Animal parts and products: importation or sale of ivory and rhinoceros horn. Existing law makes it a crime to import into the state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of an elephant. Existing law exempts the possession with intent to sell, or sale of the dead body, or any part or product thereof, of any elephant before June 1, 1977, or the possession with intent to sell or the sale of any such item on or after June 1, 1977, if the item was imported before January 1, 1977. This bill would delete this exemption. By changing the definition of a crime, this bill would impose a state-mandated local program. This bill would make it unlawful to purchase, sell, offer for sale, possess with intent to sell, or import with intent to sell ivory or rhinoceros horn, except as specified, and would make this prohibition enforceable by the Department of Fish and Wildlife. The bill would make a violation of this provision or any rule, regulation, or order adopted pursuant to this provision a misdemeanor subject to specified criminal penalties. By creating a new crime, the bill would impose a state-mandated local program. In addition to the specified criminal penalties, the bill would authorize the department to impose an administrative penalty of up to \$10,000 for a violation of this provision or any rule, regulation, or order adopted pursuant to this provision. This bill would provide that the provisions of this bill are severable. This bill would make these provisions operative on July 1, 2016. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

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NOTE: The outline structure provided to the bill here has been created from the block paragraphs at: <https://legiscan.com/CA/text/AB96/2015> for easier reading.



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) There is worldwide concern regarding the plight of elephants and rhinoceroses, who are being poached at alarming rates -- an average of 96 elephants per day are killed in Africa.

(b) Illegal poaching and wildlife trafficking is the fourth largest transnational crime and ivory helps fund the military operations of notorious terrorist groups. Smuggling gangs move tons of tusks to markets thousands of miles away.

(c) International, federal, and state laws are all being strengthened to protect these iconic species from cruelty and extinction. The states of New York and New Jersey recently enacted strong prohibitions on intrastate ivory and rhinoceros horn commerce and the federal government has proposed strengthened ivory trade and import regulations.

(d) California has prohibited the ivory trade since 1977, but a loophole has rendered the law unenforceable -- allowing illegal sales to flourish. San Francisco and Los Angeles have consistently ranked among the top trading markets for illegal ivory in the United States.

SEC. 2. Section 2022 is added to the Fish and Game Code, to read: 2022.

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Bona fide educational or scientific institution" means an institution that establishes through documentation either of the following:

(A) Educational or scientific tax exemption, from the federal Internal Revenue Service or the institution's national, state, or local tax authority.

(B) Accreditation as an educational or scientific institution, from a qualified national, regional, state, or local authority for the institution's location.

(2) "Ivory" means a tooth or tusk from a species of elephant, hippopotamus, mammoth, mastodon, walrus, warhog, whale, or narwhal, or a piece thereof, whether raw ivory or worked ivory, and includes a product containing, or advertised as containing, ivory.

(3) "Rhinoceros horn" means the horn, or a piece thereof, or a derivative such as powder, of a species of rhinoceros, and includes a product containing, or advertised as containing, a rhinoceros horn.

(4) "Sale" or "sell" means selling, trading, bartering for monetary or nonmonetary consideration, giving away in conjunction with a commercial transaction, or giving away at a location where a commercial transaction occurred at least once during the same or the previous calendar year.

(5) "Total value" means either the fair market value or the actual price paid for ivory or rhinoceros horn, whichever is greater.

(b) Except as provided in subdivision (c), it is unlawful to purchase, sell, offer for sale, possess with intent to sell, or import with intent to sell ivory or rhinoceros horn.

(c) The prohibitions set forth in subdivision (b) shall not apply to any of the following:

(1) An employee or agent of the federal or state government undertaking a law enforcement activity pursuant to federal or state law, or a mandatory duty required by federal law.

(2) An activity that is authorized by an exemption or permit under federal law or that is otherwise expressly authorized under federal law.

(3) Ivory or rhinoceros horn that is part of a musical instrument, including, but not limited to, a string or wind instrument or piano, and that is less than 20 percent by volume of the instrument, if the owner or seller provides historical documentation demonstrating provenance and showing the item was manufactured no later than 1975.

(4) Ivory or rhinoceros horn that is part of a bona fide antique and that is less than five percent by volume of the antique, if the antique status is established by the owner or seller of the antique with historical documentation demonstrating provenance and showing the antique to be not less than 100 years old.

(5) The purchase, sale, offer for sale, possession with intent to sell, or importation with intent to sell ivory or rhinoceros horn for educational or scientific purposes by a bona fide educational or scientific institution if both of the following criteria are satisfied:

(A) The purchase, sale, offer for sale, possession with intent to sell, or import with intent to sell the ivory or rhinoceros horn is not prohibited by federal law.

(B) The ivory or rhinoceros horn was legally acquired before January 1, 1991, and was not subsequently transferred from one person to another for financial gain or profit after July 1, 2016.

(d) Possession of ivory or rhinoceros horn in a retail or wholesale outlet commonly used for the buying or selling of similar items is prima facie evidence of possession with intent to sell. This evidence shall not preclude a finding of intent to sell based on any other evidence that may serve to establish that intent independently or in conjunction with this evidence.

(e) For a violation of any provision of this section, or any rule, regulation, or order adopted pursuant to this section, the following criminal penalties shall be imposed:

(1) For a first conviction, where the total value of the ivory or rhinoceros horn is two hundred fifty dollars (\$250) or less, the offense shall be a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000), or more than ten thousand dollars (\$10,000), imprisonment in the county jail for not more than 30 days, or by both the fine and imprisonment.

(2) For a first conviction, where the total value of the ivory or rhinoceros horn is more than two hundred fifty dollars (\$250), the offense shall be a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000), or more than forty thousand dollars (\$40,000), imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(3) For a second or subsequent conviction, where the total value of the ivory or rhinoceros horn is two hundred fifty dollars (\$250) or less, the offense shall be a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000), or more than forty thousand dollars (\$40,000), imprisonment in county jail for not more than one year, or by both the fine and imprisonment.

(4) For a second or subsequent conviction, where the total value of the ivory or rhinoceros horn is more than two hundred fifty dollars (\$250), the offense shall be a misdemeanor punishable by a fine of not less than ten thousand dollars (\$10,000), or more than fifty thousand dollars (\$50,000) or the amount equal to two times the total value of the ivory or rhinoceros horn involved in the violation, whichever is greater, imprisonment in county jail for not more than one year, or by both the fine and imprisonment.

(f) In addition to, and separate from, any criminal penalty provided for under subdivision (e), an administrative penalty of up to ten thousand dollars (\$10,000) may be imposed for a violation of any provision of this section, or any rule, regulation, or order adopted pursuant to this section. Penalties authorized pursuant to this subdivision may be imposed by the department consistent with all of the following:

(1) The chief of enforcement issues a complaint to any person or entity on which an administrative civil penalty may be imposed pursuant to this section. The complaint shall allege the act or failure to act that constitutes a violation, relevant facts, the provision of law authorizing the administrative penalty to be imposed, and the proposed penalty amount.

(2) The complaint and order is served by personal notice or certified mail and informs the party served that the party may request a hearing no later than 20 days from the date of service. If a hearing is requested, it shall be scheduled before the director or his or her designee, which designee shall not be the chief of enforcement issuing the complaint and order. A request for hearing shall contain a brief statement of the material facts the party claims support his or her contention that no administrative penalty should be imposed or that an administrative penalty of a lesser amount is warranted. A party served with a complaint pursuant to this subdivision waives the right to a hearing if no hearing is requested within 20 days of service of the complaint, in which case the order imposing the administrative penalty shall become final.

(3) The director, or his or her designee, shall control the nature and order of the hearing proceedings. Hearings shall be informal in nature, and need not be conducted according to the technical rules relating to evidence. The director, or his or her designee, shall issue a final order within 45 days of

the close of the hearing. A final copy of the order shall be served by certified mail upon the party served with the complaint.

(4) A party may obtain review of the final order by filing a petition for a writ of mandate with the superior court within 30 days of the date of service of the final order. The administrative penalty shall be due and payable to the department within 60 days after the time to seek judicial review has expired or, where the party has not requested a hearing of the order, within 20 days after the order imposing an administrative penalty becomes final.

(g) For any conviction or other entry of judgment imposed by a court for a violation of this section resulting in a fine, the court may pay one-half of the fine, but not to exceed five hundred dollars (\$500), to any person giving information that led to the conviction or other entry of judgment. This reward shall not apply if the informant is a regular salaried law enforcement officer, or officer or agent of the department.

(h) Upon conviction or other entry of judgment for a violation of this section, any seized ivory or rhinoceros horn shall be forfeited and, upon forfeiture, either maintained by the department for educational or training purposes, donated by the department to a bona fide educational or scientific institution, or destroyed.

(i) Administrative penalties collected pursuant to this section shall be deposited in the Fish and Game Preservation Fund and used for law enforcement purposes upon appropriation by the Legislature.

(j) This section does not preclude enforcement under Section 6530 of the Penal Code.

SEC. 3. Section 5 of Chapter 692 of the Statutes of 1976 is repealed.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 6. This act shall become operative on July 1, 2016.