

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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| New York State Rifle and Pistol Association, Inc.; | : |
| Westchester County Firearms Owners Association, Inc.; | : |
| Sportsmen's Association for Firearms Education, Inc.; | : Civil Action Number: |
| New York State Amateur Trapshooting Association, Inc.; | : 1:13-cv-00291 (WMS) |
| Bedell Custom; Beikirch Ammunition Corporation; | : |
| Blueline Tactical & Police Supply, LLC; Batavia Marine & | : |
| Sporting Supply, LLC; William Nojay; Thomas Galvin; | : |
| and Roger Horvath, | : |
| | : |
| Plaintiffs, | : |
| | : |
| -against- | : |
| | : |
| | : |
| Andrew M. Cuomo, Governor of the State of New York; | : |
| Eric T. Schneiderman, Attorney General of the State of | : |
| New York; Joseph A. D'Amico, Superintendent of the | : |
| New York State Police; Lawrence Friedman, District | : |
| Attorney for Genesee County; and Gerald J. Gill, Chief of | : |
| Police for the Town of Lancaster, New York, | : |
| | : |
| | : |
| Defendants. | : |

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SUPPLEMENTAL DECLARATION of CHRISTOPHER S. KOPER

Christopher S. Koper, Ph.D., declares and states, under penalty of perjury, as follows:

1. I am an Associate Professor for the Department of Criminology, Law and Society at George Mason University, in Fairfax, Virginia, and a senior fellow at George Mason’s Center for Evidence-Based Crime Policy.

2. I previously submitted an expert declaration in this action, dated June 21, 2013, in support of the cross-motion to dismiss and/or for summary judgment filed by Defendants Andrew M. Cuomo, Governor of the State of New York; Eric T. Schneiderman, Attorney General of the State of New York; and Joseph A. D’Amico, Superintendent of the New York State Police (collectively the “State Defendants”) and in opposition to Plaintiffs’ motion for a

preliminary injunction. (A copy of my June 21, 2013 declaration (“Koper June Decl.”) is attached hereto as Exhibit A).

3. As I noted in my prior declaration, to my knowledge, I have authored the only published academic studies to have examined the impact and efficacy of the federal government’s bans on assault weapons and large-capacity magazines (or “LCMs”), which were in effect nationwide from 1994 until 2004 (referred to hereinafter as the “federal assault weapons ban” or the “federal ban”). First, in 1997, my colleague Jeffrey Roth and I conducted a study on the impact of the federal ban for the United States Department of Justice and the United States Congress.¹ Then, in 2004, I updated the original 1997 study.² And, most recently, I revisited the issue again by re-examining my 2004 report in 2013.³

4. In my prior declaration, I summarized some of the key findings of those detailed studies regarding the federal ban and its impact on crime prevention and public safety. As I stated in that prior declaration, and I reiterate here, based upon my findings in those studies, as well as my nineteen years as a criminologist studying firearms generally, it is my considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity

¹ Jeffrey A. Roth & Christopher S. Koper, *Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994: Final Report* (1997) (hereinafter, “*Koper 1997*”). (A copy of my 1997 report was attached as Exhibit B to my prior declaration in this action). I note that throughout their submissions in this case Plaintiffs incorrectly cite to my 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to my 1997 report.

² Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (2004) (hereinafter, “*Koper 2004*”). (A copy of my 2004 report was attached as Exhibit C to my prior declaration in this action).

³ Christopher S. Koper, *America’s Experience with the Federal Assault Weapons Ban, 1994-2004: Key Findings and Implications*, ch. 12, pp. 157-171 in *Reducing Gun Violence in America: Informing Policy with Evidence* (Daniel S. Webster & Jon S. Vernick eds. 2013) (hereinafter “*Koper 2013*”). (A copy of my 2013 report was attached as Exhibit D to my prior declaration in this action).

magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.

5. I submit this supplemental declaration in further support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment to: (i) specifically address certain instances where Plaintiffs, as well as *amici curiae* who have submitted memoranda of law in support of Plaintiffs, have misconstrued and misused my work in their submissions in this action; (ii) bring to the Court's attention a very recent analysis conducted by a George Mason graduate student, working under my direction, which found both an increase in gunshot victimizations in mass shootings involving an assault weapon and an increase in the numbers of fatalities and casualties in mass shootings conducted with a large-capacity magazine; and (iii) briefly reiterate some of the core findings and conclusions summarized in my prior declaration and set forth in my reports.

I. Plaintiffs' Misconstruction and Misuse of My Reports on the Federal Ban

6. I have reviewed the Plaintiffs' memorandum of law in support of their motion for preliminary injunction (Document No. 23-1), their memorandum of law submitted in support of their motion for summary judgment (Document No. 114), and their Local Rule 56(a)(2) counterstatement (Document No. 116). I also have reviewed the briefs submitted by *amici curiae* in support of the Plaintiffs' motions (Documents Nos. 46, 56, and 119).

7. Each of these documents filed in this action attempts to rely on my studies of the federal assault weapons ban, citing to portions of my 1997 and 2004 reports.⁴ Plaintiffs' and their *amici*'s reliance on, and characterizations of, my reports constitutes a misconstruction of my findings and conclusions.

8. As a general matter, Plaintiffs and their *amici* frequently cherry-pick isolated statements from my studies and take them out of context. While the majority of their references to my works accurately quote from the passages they cite, Plaintiffs' and their *amici*'s selective and incomplete use of my reports does not reflect the totality of my findings or the conclusions that I actually reached. Plaintiffs and *amici* also rely heavily on my 1997 report which was, for the most part, superseded by the more complete and up to date evidence contained in my 2004 and 2013 reports. I respond to some of the specific, and most serious, misuses of my reports by Plaintiffs and their *amici* below.

9. First, Plaintiffs cite to my work for the propositions that assault weapons are "not used disproportionately in crimes," that they "are not 'disproportionately used' in murders of any kind," and that police officers are rarely murdered with assault weapons. (Doc. 114 at 15, 31; Doc. 116 ¶¶ 28, 37). But, in truth, my studies showed that assault pistols were used disproportionately in crime in general, and that assault weapons more broadly were disproportionately involved in murder and other serious crimes in some data sources I analyzed. (See *Koper 2004*, pp. 15, 17). As I set forth clearly in my prior declaration, assault weapons and LCMs have been used disproportionately in the murders of law enforcement officers and mass shootings, crimes for which weapons with greater firepower are particularly useful. (See *Koper*

⁴ My 2013 report is only briefly mentioned, in one footnote in the *amicus* brief filed by Pink Pistols. And while three of these documents (Docs. 114, 116, and 119) were filed afterwards, none of the documents discusses the prior declaration I submitted in this action.

June Decl. ¶¶ 8, 11-14, 20-21). And there is also some evidence to suggest that assault weapons are more attractive to criminals, due to the weapons' military-style features and particularly large magazines. (*See id.* ¶¶ 15-16).

10. Second, Plaintiffs, as well their *amicus* Pink Pistols, assert that my reports support the conclusion that “this kind of legislation has no discernible impact on firearms violence.” (Doc. 119 at 18-20; *see* Doc. 114 at 4-5; Doc. 116 ¶ 60). They selectively quote a variety of statements primarily from my 1997 and 2004 reports to the effect that the federal assault weapons ban had no discernible effect on crime generally and that there is little evidence that such bans will have an impact on the lethality and injuriousness of gun violence based on indicators such as the number of victims per gun homicide incident, the number of gunshot wounds per victim, or the proportion of gunshot victims with multiple wounds. (Doc. 119 at 18-20; Doc. 114 at 4-5; Doc. 116 ¶¶ 45-61). In doing so, Plaintiffs and their *amicus* fail to fully and accurately convey my conclusions.

11. My research revealed that gun crimes involving assault weapons and other guns with LCMs do result in more shots fired, more victims shot, more gunshots per victim, and more lethal injuries. (*See* Koper June Decl. ¶¶ 7, 22-26, 51, 62). Although it is true that my research team and I cannot clearly credit the federal ban with decreasing gunshot victimizations during the time it was in effect, as explained in my prior declaration, that is due in large part to the delay in the ban's effectiveness caused by its grandfather provision and the large stock of pre-ban LCMs that remained in circulation.⁵ (*See* Koper June Decl. ¶¶ 47, 59). In other words,

⁵ Pink Pistols cites my 1997 report for the proposition that “in fact, both ‘victims per incident’ and ‘the average number of gunshot wounds per victim’ *actually increased* under the Ban -- although not by a statistically significant margin.” (Doc. 19 n.55, citing *Koper 1997* at 85-86, 88, 91). Notably, the increase to which I referred in my 1997 report occurred during a period in which we also saw an increase in the use of LCMs in gun crime due to the

had the federal ban remained in effect long enough to reduce the stock of those pre-ban LCMs - which the *Washington Post* study I discussed in my prior declaration suggests it may have begun to do just as it expired in 2004 (*see* Koper June Decl. ¶¶ 49-50, 59) -- it is more likely that we would have seen a corresponding drop in the gun violence lethality indicators referenced above.⁶

12. Pink Pistols quotes, and Plaintiffs cite, my 2004 report for the proposition that “[s]hould it be renewed, the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement” and my 1997 report for the proposition that “the evidence is not strong enough for us to conclude that there was any meaningful effect [on gun murders] (i.e., that the effect was different from zero),” and Pink Pistols also quotes my 2004 report for the proposition that “there is not a clear rationale for expecting the ban to reduce assaults and robberies with guns.” (Doc. 119 at 18-20; *see* Doc. 116 ¶¶ 44, 61). While those are accurate quotes, they do not fully reflect the conclusions in my report on the efficacy of this

federal ban’s grandfathering provision and the large numbers of LCMs being imported into the country. (*See* Koper June Decl. ¶ 36). If anything, therefore, that finding corroborates the link between LCMs and increased lethality of gunshot victimizations.

⁶ Pink Pistols contends that I concluded in my 2013 report that the *Washington Post* study nevertheless “showed no discernible reduction in the lethality or injuriousness of gun violence during the post-ban years.” (Doc. 119 at 20 n.59, quoting *Koper 2013*, p. 165). That is incorrect. My research team and I did not examine the *Washington Post* data to determine whether the drop in LCM use in Virginia during the last years of the federal ban correlated to a drop in the lethality or injuriousness of gun crime in that jurisdiction. Rather, our examination of the lethality of gun crime in the 2004 report was based on national data and data from a selected number of localities outside of Virginia. Further, the analyses in the 2004 report were limited to the first several years of the federal ban (they covered different portions of the 1995-2002 period, and most extended only through the late 1990s or through 2001), during which time we had not yet observed a reduction in the use of LCMs in crime. The *Washington Post* data suggests that LCM use may have declined more appreciably by 2004, but this was beyond the period I had studied for the 2004 report to the U.S. Department of Justice. Consequently, my conclusion that there was “no discernible reduction in the lethality or injuriousness of gun violence” during earlier portions of the ban when we had not seen a drop in LCM use in gun crime has no bearing on whether there would be such a reduction once the number of LCMs used in crime began to drop.

kind of legislation.

13. Because criminals and mass shooters will be able to substitute legal firearms for the banned assault weapons and LCMs, it is true that this kind of legislation may not substantially reduce the overall number or rate of gun crimes committed. One should not conclude from that, however, that such bans will have no effect on public safety. As noted in my prior declaration, if allowed to operate over the long run, such bans on assault weapons and LCMs seem likely to reduce the number and lethality of gunshot victimizations by forcing criminals to substitute assault weapons and other weapons with LCMs with less destructive firearms. (*See Koper June Decl.* ¶¶ 43-45, 50-51, 58-65). The effects on gun deaths and injuries overall would likely be small in percentage terms (and thus could be difficult to measure reliably), but, as noted in my prior declaration, even small reductions in gunshot victimizations could produce significant societal benefits. (*See id.* ¶¶ 45 n.21, 51).

14. Pink Pistols similarly cites to my 2004 report for the proposition that “[s]tudies of state-law bans on AWs and LCMs likewise found that such bans ‘have not reduced crime.’” (Doc. 119 at 19 & n.57, quoting *Koper 2004*, p. 81 n.95). That, again, does not accurately reflect my conclusions in the 2004 report. In discussing the effect of state assault weapons bans, I noted that there are a few studies that have suggested that such bans have not reduced crime. I specifically noted, however, that it is hard to draw definitive conclusions from these studies for the following reasons: (1) there is little evidence on how state assault weapon bans affect the availability and use of assault weapons; (2) studies have not always examined the effects of these laws on gun homicides and shootings, the crimes that are arguably most likely to be affected by assault weapon bans; and (3) the state assault weapon bans that were passed prior to the federal ban (those in California, New Jersey, Hawaii, Connecticut, and Maryland)

were in effect for only three months to five years (two years or less in most cases) before the imposition of the federal ban, after which they became largely redundant with the federal legislation and their effects more difficult to predict and estimate. Perhaps more importantly, most of these state laws either lacked LCM bans or had LCM bans that were less restrictive than that of the federal ban or New York's ban. Pink Pistols ignores these important qualifications that undermine the usefulness of the cited studies.

15. Second, both the National Rifle Association ("NRA") and the New York State Sheriffs' Association ("NYSSA") argue that banning large-capacity magazines will not advance public safety. In support of that conclusion they cite the findings in my reports that assailants fire an average of less than four shots in gun crimes, and rarely fire more than ten shots. (Doc. 46 at 19; Doc. 56 at 12). Plaintiffs also cite to my reports for this point. (Doc. 116 ¶¶ 53, 56). While those references to my studies are correct, they also do not fully reflect my conclusions.

16. Based on my study with Darin Reedy of handgun attacks in Jersey City, New Jersey, I found that assailants fired more than ten shots in 2.5% to 3% of gunfire incidents. My report specifically explains, however, that those incidents had a 100% injury rate, and were responsible for 4.7% of the gunshot victimizations in our sample. The *amici* and Plaintiffs ignore this crucial piece of data, which was the whole point of that aspect of my discussion in the report. It shows that, while rare, incidents in which more than ten shots are fired are especially lethal and injurious. They produce a disproportionate share of gunshot victimizations and are more likely to result in gunshot injuries or deaths. (See Koper June Decl. ¶ 24; Koper 2004, pp. 3, 84-85, 90-91).

17. In addition to taking that data out of context, Plaintiffs and *amici* completely

ignore one of my central conclusions: gun crimes involving assault weapons and other weapons with LCMs tend to result in more victims wounded, more wounds per victim, and more lethal injuries than do gun crimes committed with other weapons. They likewise ignore the evidence that both assault weapons and other guns with LCMs are used disproportionately in mass killings and murders of law enforcement officers.

18. Third, Plaintiffs and their *amici* argue that assault weapons bans are not likely to reduce overall gun violence based on the finding in my reports that such weapons are only used in between 2% and 8% of gun crimes. (Doc. 114 at 15; Doc. 25 ¶¶ 25, 61; Doc. 46 at 13-14; Doc. 56 at 11; Doc. 119 at 18 & nn. 53, 54). While these selective references to my studies technically are correct (*i.e.*, studies prior to the 1994 federal ban did show that assault weapons were used in between about 2% and 8% of all gun crimes), they omit important considerations. It ignores the fact that assault weapons were used in a higher share of mass murders and killings of law enforcement officers. It ignores the level of LCM use in gun crime. It also ignores the fact that gun crimes involving semiautomatics -- including assault weapons and other firearms with LCMs -- generally result in more shots fired, more victims, and more wounds per victim. Thus, although reducing the number of such weapons may not reduce the overall number of gun crimes due to the weapon substitution effect, it could reduce the number and lethality of gunshot victimizations in crimes in which such weapons otherwise would have been used. Any such reduction in gun crime or gun crime lethality -- even if difficult to measure precisely relative to the overall level of gun violence in the nation -- would have a meaningful impact for the victims of such crimes, and for society more broadly.

II. Recent Analysis Conducted Under My Direction of Assault Weapons and LCMs Used in Mass Shootings

19. In my prior declaration, I discussed a recent investigation by reporters at *Mother Jones* magazine that analyzed and compiled data on 62 public mass shooting incidents that involved the death of four or more people, over the period 1982-2012. (See Koper June Decl. ¶¶ 13 & n.12, 21 & n.14).

20. Working under my direction, a graduate student at George Mason University recently analyzed the *Mother Jones* data for his Master's thesis, and compared the number of deaths and fatalities of the 62 mass shootings, identified therein, to determine how the presence of assault weapons and large capacity magazines impacted the outcome. With regard to assault weapons, although he found no difference in the average number of fatalities, he did find an increase in gunshot victimizations. Specifically, he found that an average of 11.04 people were shot in public mass shootings involving assault weapons, compared to 5.75 people shot in non-assault weapon cases. This is a statistically significant finding, meaning that it was not likely due to chance. As a result, the total average number of people killed and injured in assault weapon cases was 19.27, compared to 14.06 in non-assault weapon cases.⁷

21. He also compared cases where an LCM was known to have been used (or at least possessed by the shooter) against cases where either an LCM was not used or not known to have been used. He found that the LCM cases (which included assault weapons) had significantly higher numbers of fatalities and casualties: an average of 10.19 fatalities in LCM cases compared to 6.35 fatalities in non-LCM/unknown cases. He found an average of 12.39 people were shot but not killed in public mass shootings involving LCMs, compared to just

⁷ See Dillon, Luke. (2013). *Mass Shootings in the United States: An Exploratory Study of the Trends from 1982 to 2012*. Master's thesis. Fairfax, VA: Department of Criminology, Law and Society, George Mason University.

3.55 people shot in the non-LCM/unknown LCM shootings. These findings reflect a total victim differential of 22.58 killed or wounded in the LCM cases compared to 9.9 in the non-LCM/unknown LCM cases.⁸ All of these differences were statistically significant and not a result of mere chance.

22. These differences are also significant in terms of the potential monetary cost savings from medical care of gunshot injuries. Some studies have shown that the lifetime medical costs for gunshot injuries are about \$28,894 (adjusted for inflation). Thus, even a 1% reduction in gunshot victimizations at the national level would result in roughly \$18,781,100 in lifetime medical costs savings from the shootings prevented each year. (*See* Koper June Decl. ¶ 51; *Koper 2013*, pp. 166-67; *see also Koper 2004*, p. 100 n.18).

23. The cost savings potentially could be substantially higher if one looks beyond just medical costs. For example, some estimates suggest that the full societal costs of gun violence -- including medical, criminal justice, and other government and private costs (both tangible and intangible) -- could be as high as \$1 million per shooting. Based on those estimates, even a 1% decrease in shootings nationally could result in roughly \$650 million in cost savings to society from shootings prevented each year. (*See* Koper June Decl. ¶ 51; *Koper 2013*, pp. 166-67).

III. Brief Summary of My Findings and Conclusions

24. As noted, my findings and conclusions regarding the federal ban and its impact on crime prevention and public safety, as well as my conclusions regarding the likely impact of New York's recently strengthened bans on assault weapons and large-capacity magazines, are

⁸ *See id.* The patterns were also very similar when comparing the LCM cases against just those cases in which it was clear that an LCM was not used (though this was a very small number).

discussed in my prior declaration in this action. I do not repeat all of that discussion here, but I note, once again, a few of the key points:

- Assault weapons pose particular dangers to public safety because of their disproportionate involvement in mass shootings and killings of law enforcement officers (*see* Koper June Decl. ¶¶ 11-14);
- In addition, there is evidence that assault weapons are more attractive to criminals because of their military-style features and their ability to accommodate LCMs (*see id.* ¶¶ 15-16);
- LCMs present an even greater danger because they can be used either with an assault weapon, or other firearms, and allow in either instance, increased firing capacity (*see id.* ¶¶ 17-26);
- Like assault weapons, guns with LCMs have also been used disproportionately in murders of police and in mass public shootings (*see id.* ¶¶ 20-23);
- The available evidence also shows that gun attacks with semiautomatics -- especially assault weapons and other guns equipped with large capacity magazines -- tend to result in more shots fired, more persons wounded, and more wounds per victim, than do gun attacks with other firearms; there is evidence that victims who receive more than one gunshot wound are substantially more likely to die than victims who receive only one wound; and thus, it appears that crimes committed with these weapons are likely to result in more injuries, and more lethal injuries, than crimes committed with other firearms (*see id.* ¶¶ 22-26; *Koper 2004*, p. 87);

- The federal ban's exemption of millions of pre-ban assault weapons and LCMs meant that the effects of the law would occur only gradually, and that those effects were still growing when the ban expired in 2004. Nevertheless, while the ban did not appear to have a measurable effect on the overall number or rate of gun crimes committed (due to criminals' ability to substitute other guns in their crimes), the evidence does suggest a significant impact on the number of gun crimes involving assault weapons. Had it remained in effect over the long-term, moreover, it could have had a potentially significant impact on the number of crimes involving LCMs. (*See* Koper June Decl. ¶ 50);

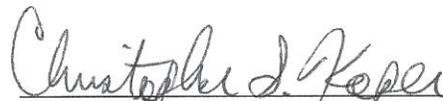
- Moreover, there is evidence that, had the federal ban remained in effect longer (or were it renewed), it could conceivably have yielded significant additional benefits as well, potentially preventing hundreds of gunshot victimizations annually and producing millions of dollars of cost savings per year in medical care alone (*see* Koper June Decl. ¶ 51); and

- New York's recent strengthening of its bans on assault weapons and LCMs -- by eliminating the grandfathering of pre-ban LCMs, limiting to seven the number of rounds of ammunition that may be loaded into a magazine, and moving from a two-feature to a one-feature test for its assault weapons ban -- addresses some of the weaknesses that were present in the federal ban. Thus, New York's law appears to have even greater potential for reducing gun deaths and injuries, and doing so more immediately, than did the federal ban. (*See id.* ¶¶ 58-65).

25. Accordingly, as I stated in my prior declaration, it is my considered opinion that

New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety. In particular, they are likely to advance New York's interest in protecting its law enforcement personnel from being overwhelmed and murdered in criminal confrontations and in reducing the number and severity of shootings involving high numbers of shots and victims, including mass public shootings.

Pursuant to 28 U.S.C. § 1746 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on September 23, 2013


Christopher S. Koper, Ph.D.