

No. 14-15408

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEONARD FYOCK, et al.,
Plaintiffs-Appellants,

v.

CITY OF SUNNYVALE, et al.,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(CV 13-05807-RMW)

APPELLANTS' EXCERPTS OF RECORD VOLUMES II of V

C. D. Michel (S.B.N. 144258)
Clinton B. Monfort (S.B.N. 255609)
Sean A. Brady (S.B.N. 262007)
Anna M. Barvir (S.B.N. 268728)
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Tel. No. (562) 216-4444
Fax No: (562) 216-4445
E-mail: cmichel@michellawyers.com

Counsel for Plaintiffs-Appellants

Pursuant to Ninth Circuit Rule 30-1, Plaintiffs-Appellants Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad Seifers, and Rod Swanson, by and through their counsel of record, hereby confirm to the contents and form of Appellants' Excerpts of Record on appeal.

Date: May 16, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for *Plaintiffs-Appellants*
Leonard Fyock, Scott Hochstetler,
William Douglas, David Pearson,
Brad Seifers, and Rod Swanson

INDEX TO APPELLANTS' EXCERPTS OF RECORD**VOLUME I**

ND. Cal. Docket No	Date	Document Description	Page
56	3/5/2014	Order Denying Plaintiffs' Motion for Preliminary Injunction	ER000001 - ER000019

VOLUME II

ND. Cal. Docket No	Date	Document Description	Page
57	3/5/2014	Notice of Appeal and Representation Statement	ER000020 - ER000042
61	2/21/2014	Transcript of Proceedings: Motion for Preliminary Injunction	ER000043 - ER000071
46	2/10/2014	Supplemental Declaration of Massad Ayooob	ER000072 - ER000080
45	2/10/2014	Plaintiffs' Reply to Opposition to Defendants' Opposition to Motion for Preliminary Injunction	ER000081 - ER000091

INDEX TO APPELLANTS' EXCERPTS OF RECORD**VOLUME II**

ND. Cal. Docket No	Date	Document Description	Page
45	2/10/2014	Supplemental Declaration of Clinton B. Monfort	ER000092 - ER000111
45	2/10/2014	Supplemental Declaration of Gary Kleck	ER000112 - ER000130
42	1/29/2014	Declaration of Roderick M. Thompson	ER000131 - ER000218

VOLUME III

ND. Cal. Docket No	Date	Document Description	Page
40	1/29/2014	Declaration of Anthony Spitaleri	ER000219 - ER000222
39	1/29/2014	Declaration of Christopher S. Koper	ER000223 - ER000383
38	1/29/2014	Declaration of Frank Grgurina	ER000384 - ER000388

INDEX TO APPELLANTS' EXCERPTS OF RECORD**VOLUME IV**

ND. Cal. Docket No	Date	Document Description	Page
37	1/29/2014	Declaration of John J. Donohue III	ER000389 - ER000412
36	1/29/2014	Declaration of Lucy P. Allen	ER000413 - ER000417
34	1/16/2014	Answer to Complaint	ER000418 - ER000426
20	12/23/2013	Declaration of Clinton Monfort In Support of Motion for Preliminary Injunction	ER000427 - ER000549

VOLUME V

ND. Cal. Docket No	Date	Document Description	Page
19	12/23/2014	Declaration of Gary Kleck	ER000550 - ER000594

INDEX TO APPELLANTS' EXCERPTS OF RECORD**VOLUME V**

ND. Cal. Docket No	Date	Document Description	Page
18	12/23/2013	Declaration of Brad Seifers	ER000595 - ER000598
17	12/23/2014	Declaration of William Douglas	ER000599 - ER000602
16	12/23/2013	Declaration of David Pearson	ER000603 - ER000606
15	12/23/2013	Declaration of Rod Swanson	ER000607 - ER000610
14	12/23/2013	Declaration of Leonard Fyock	ER000611 - ER000614
13	12/23/2013	Declaration of James Curcuruto	ER000615 - ER000620
12	12/23/2013	Declaration of Stephen Helsley	ER000621 - ER000628

INDEX TO APPELLANTS' EXCERPTS OF RECORD**VOLUME V**

N. Cal. Docket No	Date	Document Description	Page
11	12/23/2013	Declaration of Massad Ayoob	ER000629 - ER000641
10	12/23/2013	Notice of Motion and Motion for Preliminary Injunction	ER000642 - ER000656
1	12/16/2013	Complaint for Declaratory and Injunctive Relief	ER000657 - ER000675
Docket	5/16/2014	Trial Court Docket	ER000676 - ER000690

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2014, an electronic PDF of **APPELLANTS' EXCERPTS OF RECORD VOLUMES II of V** was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: May 16, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for Plaintiffs-Appellants

C. D. Michel - S.B.N. 144258
Clinton B. Monfort - S.B.N. 255609
Sean A. Brady - S.B.N. 262007
Anna M. Barvir - S.B.N. 268728
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Facsimile: 562-216-4445
Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEONARD FYOCK, SCOTT
HOCHSTETLER, WILLIAM DOUGLAS,
DAVID PEARSON, BRAD SEIFERS, and
ROD SWANSON,

Plaintiffs,

vs.

THE CITY OF SUNNYVALE, THE
MAYOR OF SUNNYVALE, ANTHONY
SPITALERI, in his official capacity, THE
CHIEF OF THE SUNNYVALE
DEPARTMENT OF PUBLIC SAFETY,
FRANK GRGURINA, in his official
capacity, and DOES 1-10,

Defendants.

CASE NO: CV 13-05807 RMW

**PLAINTIFFS' NOTICE OF APPEAL AND
REPRESENTATION STATEMENT**

PRELIMINARY INJUNCTION APPEAL

NOTICE OF APPEAL – PRELIMINARY INJUNCTION APPEAL

NOTICE IS HEREBY GIVEN that Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad Seifers, and Rod Swanson, plaintiffs in the above-named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from an order denying Plaintiffs' Motion for Preliminary Injunction entered in this action on the 5th day of March, 2014 (Docket No. 56) attached as Exhibit A.

Plaintiffs' Representation Statement is attached to this Notice as required by Ninth Circuit Rule 3-2(b).

Date: March 5, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs

REPRESENTATION STATEMENT

The undersigned represents Plaintiffs-Appellants Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad Seifers, and Rod Swanson, and no other party. Pursuant to Rule 12(b) of the Federal Rules of Appellate Procedure and Circuit Rule 3-2(b), Plaintiffs-Appellants submit this Representation Statement. The following list identifies all parties to the action, and it identifies their respective counsel by name, firm, address, telephone number, and e-mail, where appropriate.

PARTIES	COUNSEL OF RECORD
Plaintiffs-Appellants Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad Seifers, and Rod Swanson	C. D. Michel (S.B.N. 144258) Clinton B. Monfort (S.B.N. 255609) Sean A. Brady - S.B.N. 262007 Anna M. Barvir (S.B.N. 268728) MICHEL & ASSOCIATES, P.C. 180 East Ocean Blvd., Suite 200 Long Beach, CA 908502 Tel. No. (562) 216-4444 Fax No: (562) 216-4445 cmichel@michellawyers.com
Defendants-Appellees The City of Sunnyvale, the Mayor of Sunnyvale, Anthony Spitaleri, in His Official Capacity, the Chief of the Sunnyvale Department of Public Safety, Frank Grgurina, in His Official Capacity, and Does 1-10	Roderick M. Thompson Anthony P. Schoenberg Rochelle L. Woods Farella Braun + Martel LLP 235 Montgomery Street, 17 th Floor San Francisco, CA 94104 Tel.: (415) 954-4400 Fax: (415) 954-4480 aschoenberg@fbm.com

Dated: March 5, 2014

MICHEL & ASSOCIATES, P. C.

/s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs

Fyock v. Sunnyvale
Case No.: 13-05807-RMW
Order Denying Plaintiffs Motion for Preliminary Injunction

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEONARD FYOCK, SCOTT
HOCHSTETLER, WILLIAM DOUGLAS,
DAVID PEARSON, BRAD SEIFERS, and
ROD SWANSON,

Plaintiffs,

v.

THE CITY OF SUNNYVALE, THE MAYOR
OF SUNNYVALE, ANTHONY SPITALERI,
in his official capacity, and THE CHIEF OF
THE SUNNYVALE DEPARTMENT OF
PUBLIC SAFETY, FRANK GRGURINA, in
his official capacity,

Defendants.

Case No. C-13-5807-RMW

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

[Re: Docket No. 10]

The issue before the court is whether Sunnyvale's ordinance outlawing the possession of firearm magazines having a capacity to accept more than ten rounds should be preliminarily enjoined for infringing individuals' Second Amendment rights. The core of the Second Amendment right to bear arms is self-defense, especially within the home. *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008); *Peruta v. Cnty. of San Diego*, 10-56971, 2014 WL 555862, at *18 (9th Cir. Feb. 13, 2014). With this right in mind, courts have found unconstitutional a law that forbids handguns, *Heller*, 554 U.S. at 635, and a registration scheme that effectively eliminates the average law-abiding citizen's right to bear a gun, *Peruta*, 2014 WL 555862, at *22. The law challenged here

prohibits the possession of certain protected arms anywhere in Sunnyvale. However, the banned arms—magazines having a capacity to accept more than ten rounds—are hardly central to self-defense. The right to possess magazines having a capacity to accept more than ten rounds lies on the periphery of the Second Amendment right, and proscribing such magazines is, at bare minimum, substantially related to an important government interest. No court has yet entered a preliminary injunction against a law criminalizing the possession of magazines having a capacity to accept more than ten rounds, nor has any court yet found that such a law infringes the Second Amendment. Upon the present record, this court declines to be the first. Plaintiffs’ Motion for Preliminary Injunction is DENIED.

I. BACKGROUND

In early 2013, concerned about gun crime, then-current Mayor of Sunnyvale Anthony Spitaleri proposed a gun control ballot initiative called Measure C. Dkt. No. 40, Spitaleri Decl. ¶¶ 4-8, Ex. 1. Measure C was put to a vote and, on November 5, 2013, the citizens of Sunnyvale passed Measure C with 66.55% of the vote. Dkt. No. 42-9, Thompson Decl., Ex. 9, at 3. Measure C was subsequently codified as Sunnyvale Municipal Code § 9.44.030-60.

Plaintiffs Leonard Fyock, William Douglas, David Pearsons, Brad Seifers, and Rod Swanson (collectively “Plaintiffs”), challenge only one provision of Measure C in this case, § 9.44.050. Section 9.44.050 reads:

No person may possess a large-capacity magazine in the city of Sunnyvale whether assembled or disassembled. For purposes of this section, “large-capacity magazine” means any detachable ammunition feeding device with the capacity to accept more than ten (10) rounds, but shall not be construed to include any of the following:

- (1) A feeding device that has been permanently altered so that it cannot accommodate more than ten (10) rounds; or
- (2) A .22 caliber tubular ammunition feeding device; or
- (3) A tubular magazine that is contained in a lever-action firearm.

Sunnyvale, Cal., Mun. Code § 9.44.050(a). In short, the Sunnyvale ordinance prohibits the possession of magazines having the capacity to accept more than ten rounds. The ordinance carves out nine exceptions:

(1) Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;

(2) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;

(3) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her duties;

(4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;

(5) Any person who has been issued a license or permit by the California Department of Justice pursuant to Penal Code Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, when the possession of a large-capacity magazine is in accordance with that license or permit;

(6) A licensed gunsmith for purposes of maintenance, repair or modification of the large-capacity magazine;

(7) Any person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

(8) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large-capacity magazine solely for use with that firearm.

(9) Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to California Penal Code. (Ord. 3027-13 § 1).

Sunnyvale, Cal., Mun. Code § 9.44.050(c). The ordinance took effect on December 6, 2013, and it gives persons ninety days to dispossess themselves of their now-prohibited magazines. Thus, to avoid prosecution for their possession of magazines having the capacity to accept more than ten rounds, by March 6, 2014 persons must:

(1) Remove the large-capacity magazine from the city of Sunnyvale; or

(2) Surrender the large-capacity magazine to the Sunnyvale Department of Public Safety for destruction; or

(3) Lawfully sell or transfer the large-capacity magazine in accordance with Penal Code Section 12020.

Sunnyvale, Cal., Mun. Code § 9.44.050(b).

On December 16, 2013, Plaintiffs filed the instant suit against the City of Sunnyvale, Anthony Spitaleri (in his official capacity as Mayor of Sunnyvale), and Frank Grgurina (in his official capacity as Chief of the Sunnyvale Department of Public Safety) (collectively “Sunnyvale”) alleging that Sunnyvale Municipal Code § 9.44.050 violates their right to keep and bear arms under the Second Amendment to the United States Constitution. *See* Dkt. No. 1, Complaint. Plaintiffs now bring the present motion to enjoin Sunnyvale “from enforcing Sunnyvale Police Code section 9.44.050 pending resolution of the merits of this case or further order of this Court.” Dkt. No. 21, (Proposed) Order Granting Motion for Preliminary Injunction; *see also* Dkt. No. 10, Motion for Preliminary Injunction (“Motion”). Sunnyvale filed an opposition, Dkt. No. 35 (“Opp.”), Plaintiffs filed a reply, Dkt. No. 45 (“Reply”), and the motion was argued before the court on February 21, 2014.

II. ANALYSIS

Preliminary injunctions are intended to “preserve the relative positions of the parties until a trial on the merits can be held.” *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). It is an “extraordinary and drastic remedy,” requiring the movant to clearly carry the burden of persuasion. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). A movant must show that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

The Ninth Circuit has also held that “serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). “Serious questions” refers to questions “which cannot be resolved one way or the other at the hearing on the injunction and as to which the court perceives a need to preserve the status quo lest one side prevent resolution of the questions or execution of any judgment by altering the status quo.” *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991).

A. Likelihood of Success on the Merits

The Second Amendment methodology adopted by the Ninth Circuit “(1) asks whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny.” *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013); *see also Peruta v. Cnty. of San Diego*, No. 10-56971, 2014 WL 555862, at *3 (9th Cir. Feb. 13, 2014) (“To resolve the challenge to the D.C. restrictions, the *Heller* majority described and applied a certain methodology: it addressed, first, whether having operable handguns in the home amounted to ‘keep[ing] and bear[ing] Arms’ within the meaning of the Second Amendment and, next, whether the challenged laws, if they indeed did burden constitutionally protected conduct, ‘infringed’ the right.”). The court now applies that test here.

1. Burden on conduct protected by the Second Amendment

The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. The Second Amendment is “fully applicable to the States” through the Fourteenth Amendment. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026 (2010). In asking whether the Sunnyvale ordinance burdens conduct protected by the Second Amendment, the court must naturally seek to understand the scope of the Second Amendment’s protections. Indeed, “[u]nderstanding the scope of the right is not just necessary, it is key to our analysis.” *Peruta*, 2014 WL 555862, at *19. On one extreme, if Sunnyvale’s ordinance does not burden conduct protected by the Second Amendment, the law may be upheld without any further inquiry. On the other extreme, the Sunnyvale law may reach so far as to prohibit the exercise of the core Second Amendment right. In that case, “no amount of interest-balancing under a heightened form of means-ends scrutiny can justify” the policy. *Id.*

“*Heller* instructs that text and history are our primary guides in” determining the Second Amendment’s scope. *Id.* at *18. The Second Amendment, by its text, “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” *Heller*, 554 U.S. at 592. Throughout our nation’s history, “the inherent right of self-defense has been central to the Second Amendment right.” *Id.* at 628. The strength of this self-defense right is at its height in the home, “where the need

for defense of self, family, and property is most acute.” *Id.* Still, the right also applies outside the home. *Peruta*, 2014 WL 555862, at *18.

Besides these broad findings, the Second Amendment’s history is less useful when confronting the much narrower question of whether a prohibition on magazines having a capacity to accept more than ten rounds falls within the scope of the Second Amendment. The parties apparently agree, as neither has provided the court with any historical sources or argument. Surely the reason is that magazines apparently did not even exist when the Second Amendment was ratified.¹ Despite this, the results of the historical heavy lifting done by the *Heller* and *Peruta* courts clearly illustrate that the Sunnyvale law burdens within the scope of the Second Amendment right. The court therefore sees no use in revisiting that analysis here.

As previously stated, the Second Amendment extends to arms used for self-defense both inside and outside the home. *Heller*, 554 U.S. at 628 (inside the home); *Peruta*, 2014 WL 555862, at *18 (outside the home). Sunnyvale bans the possession of magazines having a capacity to accept more than ten rounds everywhere, so as long as such magazines bear some relation to self-defense, the ordinance burdens conduct protected by the Second Amendment.

Although the extent of the prohibited magazines’ relationship to self-defense is questionable, Plaintiffs’ evidence indicates that such magazines are chosen for self-defense. *Helsley Decl.* ¶ 3; *Monfort Decl. Ex. B* (listing numerous examples of guns having as standard magazines with capacities exceeding ten rounds); *Monfort Decl. Ex. C* (advertisements and more gun listings). Plaintiffs also submit evidence that firearms with magazines having a capacity to accept more than ten rounds are “highly effective for in-home self-defense.” *Motion* at 4; *see, e.g., Ayoob Decl.* ¶¶ 27-28.

Sunnyvale asserts that magazines having a capacity to accept more than ten rounds are dangerous and unusual, and are thus not protected by the Second Amendment. Indeed, there is a “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Heller*, 554

¹ The fact that magazines apparently did not exist when the Second Amendment was ratified is not a reason to find that magazines having a capacity to accept more than ten rounds are not protected by the Second Amendment. As the Supreme Court has held, the argument “that only those arms in existence in the 18th century are protected by the Second Amendment” “border[s] on the frivolous.” *Heller*, 554 U.S. at 582. “[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Id.*

U.S. at 627. To measure whether a weapon is dangerous and unusual, the court looks at whether it is “in common use,” or whether such weapons are “typically possessed by law-abiding citizens for lawful purposes.” *United States v. Miller*, 307 U.S. 174, 179 (1939); *Heller*, 554 U.S. at 627 (“*Miller* said, as we have explained, that the sorts of weapons protected were those ‘in common use at the time.’” (quoting *Miller*, 307 U.S. at 179)); *Heller*, 554 U.S. at 625 (“We therefore read *Miller* to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.”).

The court finds that magazines having a capacity to accept more than ten rounds are in common use, and are therefore not dangerous and unusual. Plaintiffs cite statistics showing that magazines having a capacity to accept more than ten rounds make up approximately 47 percent of all magazines owned. Curcuruto Decl. ¶ 8. Another report indicates that individuals own “millions” of the prohibited magazines, and that sales of pistols—which are more likely than revolvers to take such magazines as standard—have grown substantially at revolvers’ expense. Helsey Decl. ¶ 10. Furthermore, while product offerings may not precisely mirror ownership, approximately one-third of the semiautomatic handgun models and two-thirds of the semiautomatic, centerfire rifles listed in *Gun Digest* (a gun model reference work) are typically sold with magazines having a capacity to accept more than ten rounds. Monfort Decl. Ex. B. Both parties admit that reliable data on the number of the banned magazines owned by individuals does not exist. Nevertheless, “it is safe to say that whatever the actual number of such magazines in United States consumers’ hands is, it is in the tens-of-millions, even under the most conservative estimates.” Curcuruto Decl. ¶ 13.

Sunnyvale refutes Plaintiffs’ evidence by arguing that “[t]here is no evidence of ‘common use’ in California,” or Sunnyvale, Opp. at 13, because a combination of federal and state law has proscribed the sale, purchase, and transfer of magazines having a capacity to accept more than ten rounds since 1994. Thompson Decl., Ex. 8, H.R. Rep. 103-439, at 32-33 (1994); Thompson Decl., Ex. 1, Cal. Stats. 1999, ch. 129, §§ 3, 3.5, codified as Cal. Penal Code § 32310. However, Sunnyvale misunderstands the common use test. The Supreme Court did not define the common use test as a local test, but rather evaluated common use as a national test in its historical discussion. *Heller*, 554 U.S. at 621-28. Moreover, it cannot be that common use is measured on anything but a

1 national scale—otherwise, the scope of individuals’ Second Amendment rights as enshrined in the
2 federal Constitution would vary based on location. This result would be wrong: the Second
3 Amendment safeguards individual rights equally throughout the United States.

4 Sunnyvale also responds that magazines having a capacity to accept more than ten rounds
5 are not commonly used for self-defense. Opp. at 13-15. But here again Sunnyvale misinterprets
6 *Heller*, basing its argument on too literal a reading of the term “use.” Second Amendment rights do
7 not depend on how often the magazines are used. Indeed, the standard is whether the prohibited
8 magazines are “typically *possessed* by law-abiding citizens for lawful purposes,” not whether the
9 magazines are often *used* for self-defense. *Heller*, 554 U.S. at 625 (emphasis added). As Plaintiffs
10 explain, “[m]ost people will never need to discharge a firearm in self-defense at all.” Reply at 8. By
11 invoking the phrase “common use,” the Supreme Court simply meant that arms must be commonly
12 kept for lawful self-defense. The fact that few people “will require a particular firearm to effectively
13 defend themselves,” Reply at 8, should be celebrated, and not seen as a reason to except magazines
14 having a capacity to accept more than ten rounds from Second Amendment protection. Evidence
15 that such magazines are “typically possessed by law-abiding citizens for lawful purposes” is
16 enough. *Heller*, 554 U.S. at 625. Sunnyvale has thus failed to prove that the banned magazines are
17 not in common use. Therefore, unlike unregistered short-barreled shotguns, which the *Miller* court
18 found to be unprotected by the Second Amendment, magazines having a capacity to accept more
19 than ten rounds are not dangerous and unusual.

20 Sunnyvale also contends that the prohibited magazines are not “arms” within the meaning of
21 the Second Amendment. This argument is not persuasive. First, while every court that has
22 considered a ban on possession of magazines having a capacity to accept more than ten rounds has
23 upheld the law, no court has found that such magazines do not qualify as “arms” under the Second
24 Amendment. *See Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1264 (D.C. Cir. 2011);
25 *San Francisco Veteran Police Officers Ass’n v. City & Cnty. of San Francisco*, C-13-05351 WHA,
26 2014 WL 644395, at *7 (N.D. Cal. Feb. 19, 2014); *New York State Rifle & Pistol Ass’n, Inc. v.*
27 *Cuomo*, C-13-291S, 2013 WL 6909955, at *18 (W.D.N.Y. Dec. 31, 2013); *Shew v. Malloy*, C-13-
28 739 AVC, 2014 WL 346859, at *9 (D. Conn. Jan. 30, 2014); *Tardy v. O’Malley*, C-13-2861, TRO

Hr'g Tr., at 66-71 (D. Md. Oct. 1, 2013). Second, if Sunnyvale is right that magazines and ammunition are not "arms," any jurisdiction could effectively ban all weapons simply by forbidding magazines and ammunition. This argument's logic would abrogate all Second Amendment protections. Rather, the court finds that the prohibited magazines are "weapons of offence, or armour of defence," as they are integral components to vast categories of guns. *Heller*, 554 U.S. at 581 (quoting 1 Dictionary of the English Language 106 (4th ed.) (reprinted 1978)).

In sum, Sunnyvale's ban on possession of magazines having a capacity to accept more than ten rounds implicates the Second Amendment's protections. The Sunnyvale ordinance forbids possession of such magazines in all locations—in the home and in public—and for all purposes—self-defense or otherwise. The law carves out a number of exceptions, but they are all narrow, and do not apply to the average, law-abiding citizen. Thus the court finds that the Sunnyvale ordinance prohibits average, law-abiding citizens from possessing protected arms that are not dangerous and unusual. As such, Sunnyvale's ban burdens conduct protected by the Second Amendment. In reaching this conclusion, the court does not consider the amount of the burden—this factor is examined below.²

2. Selecting the level of scrutiny

Some regulations are so burdensome on Second Amendment rights that they would fail any scrutiny test, as was the case in *Heller* and *Peruta*. In *Heller*, the Court reasoned that the law at issue would fail any scrutiny test because "[t]he handgun ban amounts to a prohibition of an entire class of 'arms' that is overwhelmingly chosen by American society for th[e] lawful purpose [of self-defense]. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute." *Heller*, 554 U.S. at 628. In *Peruta*, the court confronted a registration scheme that effectively banned the open and concealed carry of handguns to the average, law-abiding citizen. The Ninth Circuit interpreted *Heller* as holding that "[a] law effecting a 'destruction of the right' rather than merely *burdening* it is, after all, an infringement under any light." *Peruta*, 2014 WL 555862, at *20 (emphasis in original). Because the registration scheme

² See *infra* Part II.A.2.b.

1 effected a destruction of the Second Amendment right to keep and bear handguns, the laws were *per*
2 *se* unconstitutional. *Id.* at *22.

3 “It is the rare law that ‘destroys’ the right, requiring *Heller*-style *per se* invalidation.” *Id.* at
4 *21. Unlike the laws in *Heller* and *Peruta*, the Sunnyvale ordinance does not effect a “destruction of
5 the right.” The Sunnyvale law does not ban all, or even most, magazines. Rather, Sunnyvale merely
6 burdens the Second Amendment right by banning magazines having a capacity to accept more than
7 ten rounds. The Second Amendment likely requires that municipalities permit *some form* of
8 magazines, but Sunnyvale’s law is consistent with this requirement. *Id.* at *24 (“But the Second
9 Amendment does require that the states permit *some form* of carry for self-defense outside the
10 home.” (emphasis in original)). As such, the Sunnyvale ordinance is not *per se* unconstitutional, and
11 the court must select the appropriate level of scrutiny under which it will analyze the law.

12 The Ninth Circuit in *Chovan* observed that “the level of scrutiny should depend on (1) ‘how
13 close the law comes to the core of the Second Amendment right,’ and (2) ‘the severity of the law’s
14 burden on the right.’” *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (quoting *Ezell*
15 *v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011)). The court examines each factor in turn.

16 **a. How close the law comes to the core of the Second Amendment right**

17 As outlined earlier, the Second Amendment “right is, *and has always been*, oriented to the
18 end of self-defense.” *Peruta*, 2014 WL 555862, at *8 (emphasis in original). Upon review of the
19 evidence, the court finds that the Sunnyvale ordinance comes relatively near the core of the Second
20 Amendment right.

21 Plaintiffs present a wealth of evidence that magazines having a capacity to accept more than
22 ten rounds are often used with relatively ordinary handguns that individuals use for self-defense
23 both inside and outside the home. The court cited some of this evidence in the context of its
24 determination that the banned magazines are in common use. Curcuruto Decl. ¶¶ 8, 13; Helsey Decl.
25 ¶ 10; Monfort Decl. Ex. B. In addition, Plaintiffs’ evidence suggests that many handguns kept for
26 self-defense come standard with magazines having the prohibited capacity. Helsey Decl. ¶ 3;
27 Monfort Decl. Ex. B (listing numerous examples of guns having as standard magazines with
28 capacities exceeding ten rounds); Monfort Decl. Ex. C (advertisements and more gun listings). This

fact also holds for pistols and rifles. Monfort Decl. Ex. B; Monfort Decl. Ex. C. Each of the individual plaintiffs indicate that they keep the banned magazines for self-defense. Fyock Decl. ¶¶ 5-7; Douglas Decl. ¶¶ 5-7; Pearson Decl. ¶¶ 5-7; Seifers Decl. ¶¶ 5-7; Swanson Decl. ¶¶ 5-7. The evidence also shows that the American public in general prefers many of the firearms that take magazines having a capacity to accept more than ten rounds as standard. Curcuruto Decl. ¶¶ 8, 13; Helsey Decl. ¶ 10; Monfort Decl. Ex. B.

Sunnyvale counters that the connection between the forbidden magazines and their use for self-defense is not strong. However, evidence of use is of limited relevance to determining the level of scrutiny to apply. To understand whether the law approaches core Second Amendment conduct, the court must only consider the preferences of average, law-abiding citizens. *Heller*, 554 U.S. at 625. At least in this instance, the court will not judge whether the public's firearm choices are often used for self-defense, or even whether they are effective for self-defense—the firearms must merely be preferred. Therefore, the court concludes that the Sunnyvale law burdens conduct near the core of the Second Amendment right.

b. Severity of the burden

Although this conclusion points to strict scrutiny as the proper standard for this case, *Chovan* directs courts to also consider the severity of the burden on the Second Amendment right. *Chovan*, 735 F.3d at 1138. Here, the Sunnyvale law's burden on the Second Amendment right is light. Magazines having a capacity to accept more than ten rounds are hardly crucial for citizens to exercise their right to bear arms. The Sunnyvale ordinance does not place any restrictions on smaller magazines, which are the most popular magazines for self-defense. Curcuruto Decl. ¶ 8 (Plaintiffs' expert stating that 47 percent of all magazines owned are capable of holding more than ten rounds, meaning that 53 percent of all magazines are not capable of holding more than ten rounds); *see also* Yurgealitis Decl. ¶ 6. Individuals have countless other handgun and magazine options to exercise their Second Amendment rights. *See, e.g.*, Monfort Decl. Ex. B, C (listing numerous firearms that take magazines that accept ten or fewer rounds as standard). The evidence thus establishes that the banned magazines make up just one subset of magazines, which interoperate only with a subset of

all firearms. Accordingly, a prohibition on possession of magazines having a capacity to accept more than ten rounds applies only the most minor burden on the Second Amendment.

c. Selecting intermediate scrutiny

Considering both how close the Sunnyvale law comes to the core of the Second Amendment right and the law's burden on that right, the court finds that intermediate scrutiny is appropriate. The law bans possession of magazines having a capacity to accept more than ten rounds in all places, at all times, and for all purposes, thus approaching the core of the Second Amendment's protections. However, the ordinance's burden on the Second Amendment right is light because it only bans a less-preferred subset of magazines that cannot have been legally sold in California for twenty years. The conclusion that intermediate scrutiny applies is in accord with every other court that has considered a similar ban on magazines having a capacity to accept more than ten rounds. *See Heller II*, 670 F.3d at 1261-62 (D.C. Cir. 2011); *San Francisco Veteran Police*, 2014 WL 644395, at *5 (N.D. Cal. Feb. 19, 2014); *New York State Rifle & Pistol Ass'n*, 2013 WL 6909955, at *12-13; *Shew v. Malloy*, 2014 WL 346859, at *6-7. Further, in most Second Amendment cases, courts tend to reject strict scrutiny and apply intermediate scrutiny. *See, e.g., Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013); *U.S. v. Masciandaro*, 638 F.3d 458, 474 (4th Cir. 2011); *United States v. Marzzarella*, 614 F.3d 85, 96 (3d Cir. 2010); *U.S. v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010); *U.S. v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010); *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012); *U.S. v. Walker*, 709 F. Supp. 2d 460, 466 (E.D. Va. 2010); *U.S. v. Lahey*, No. 10-CR-765 KMK, 2013 WL 4792852, at *15 (S.D.N.Y. Aug. 8, 2013); *see also U.S. v. Marzzarella*, 595 F. Supp. 2d 596, 604 (W.D. Pa. 2009) ("the Court's willingness to presume the validity of several types of gun regulations is arguably inconsistent with the adoption of a strict scrutiny standard of review"); Thompson Decl., Ex. 28, Dennis A. Henigan, *The Heller Paradox*, 56 UCLA L. Rev. 1171, 1197-98 (2009) ("the *Heller* majority thus implicitly rejected strict scrutiny"). Accordingly, the court applies intermediate scrutiny.

3. Applying Intermediate Scrutiny

Intermediate scrutiny "require[s] (1) the government's stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted

objective.” *Chovan*, 735 F.3d at 1139 (citing *United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010)). Stated differently, “a regulation that burdens a plaintiff’s Second Amendment rights ‘passes constitutional muster if it is substantially related to the achievement of an important government interest.’” *Kwong v. Bloomberg*, 723 F.3d 160, 168 (2d Cir. 2013) (quoting *Kachalsky*, 701 F.3d at 96). Because the Sunnyvale law is substantially related to an important government objective and is reasonably tailored to the objective, the court finds that the challenged ordinance meets the intermediate scrutiny test.

Public safety and crime prevention are compelling government interests. *U.S. v. Salerno*, 481 U.S. 739, 748-50 (1987) (finding not only that public safety and crime prevention are compelling government interests, but also even that “the government’s regulatory interest in community safety can, in appropriate circumstances, outweigh an individual’s liberty interest”); *Schall v. Martin*, 467 U.S. 253, 264 (1984) (“the ‘legitimate and compelling state interest’ in protecting the community from crime cannot be doubted”). The parties, however, hotly dispute what effect the Sunnyvale ordinance will have on public safety. At the outset, the court notes that its judicial role—especially in this Second Amendment context—is to apply the law and not to make policy decisions. *See, e.g., Heller*, 554 U.S. at 634 (“A constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.”); *McDonald*, 130 S. Ct. at 3050 (2010) (Second Amendment analysis does not “require judges to assess the costs and benefits of firearms restrictions and thus to make difficult empirical judgments in an area in which they lack expertise.”). As a result, irrespective of how Sunnyvale’s law impacts public safety, the means-end scrutiny test must concentrate more on the relationship between the challenged ordinance and public safety than on the exact effect the law may have. Otherwise, means-end scrutiny analyses are reduced to courts making policy judgments better left to legislatures and the people.

As stated in Measure C itself, prevention of gun violence lies at the heart of the Sunnyvale ordinance. *See Spitaleri Decl. Exh. A* at 1 (“the People of Sunnyvale find that the violence and harm caused by and resulting from both the intentional and accidental misuse of guns constitutes a clear and present danger to the populace, and find that sensible gun safety measures provide some relief from that danger and are of benefit to the entire community”). Sunnyvale submits substantial

evidence that a ban on the possession of magazines having a capacity to accept more than ten rounds may reduce the threat of gun violence. For example, Professor Koper opines in his declaration that the Sunnyvale law “has the potential to (1) reduce the number of crimes committed with [large capacity magazines]; (2) reduce the number of shots fired in gun crimes; (3) reduce the number of gunshot victims in such crimes; (4) reduce the number of wounds per gunshot victim; (5) reduce the lethality of gunshot injuries when they do occur; and (6) reduce the substantial societal costs that flow from shootings.” Koper Decl. ¶ 57. Professor Koper, relying on a study assessing the 1994 federal assault weapons ban, also states that magazines having a capacity to accept more than ten rounds “are particularly dangerous because they facilitate the rapid firing of high numbers of rounds. This increased firing capacity thereby potentially increases injuries and deaths from gun violence.” *Id.* ¶ 7. Studies also show that the banned magazines are used in 31% to 41% of gun murders of police. *Id.* ¶ 18.

Plaintiffs respond that Sunnyvale’s ordinance will have little effect because criminal users of firearms will not comply with the law. Kleck Decl. ¶¶ 28-29. However, Sunnyvale provides data showing that, among 69 mass shootings, 115 of 153—or 75%—of the guns used were obtained legally. Allen Decl. ¶ 18. Professor Koper refutes this argument with evidence that prohibitions on magazines having a capacity to accept more than ten rounds reduce the availability of such magazines to criminals. *Id.* ¶ 47-52. In that sense, even if the Sunnyvale law has minimal compliance among potential criminal firearm users and is difficult to enforce by police, it may still reduce gun crime by restricting the banned magazines’ availability.

Plaintiffs also argue that Sunnyvale’s ban will have a negative impact on public safety because it imposes magazine size limits on those acting in self-defense. This evidence is relatively unpersuasive for three reasons. First, studies of the NRA Institute for Legislative Action database demonstrates that individuals acting in self-defense fire 2.1-2.2 shots on average. Allen Decl. ¶¶ 6-9. It is rare that anyone will need to fire more than ten rounds in self-defense. *Id.* Second, although Plaintiffs provide several anecdotes of instances when having a magazine with the capacity to accept more than ten rounds was necessary for self-defense, Plaintiffs do not supply any quantitative data showing that banning such magazines would negatively impact public safety. *See* Ayoob Decl.

¶¶ 5-16. The fact that Plaintiffs only present anecdotal examples rather than quantitative studies suggests that in only very rare circumstances is it necessary to possess a larger magazine in self-defense.

Finally, Plaintiffs' evidence does little to show that the Sunnyvale ordinance is not substantially related to the achievement of an important government interest. Means-end scrutiny is meant, *inter alia*, to subject laws to additional examination when there is a fear that they may trample on individual rights. *See Heller*, 554 U.S. at 634-35. Here, Plaintiffs are concerned that the Sunnyvale law infringes their Second Amendment rights, and Sunnyvale argues that its citizens voted for the law out of concern for public safety. Whether or not the law is ultimately effective is yet to be seen. But for now, Sunnyvale has submitted pages of credible evidence, from study data to expert testimony to the opinions of Sunnyvale public officials, indicating that the Sunnyvale ordinance is substantially related to the compelling government interest in public safety. While Plaintiffs present evidence that the law will not be successful, the court cannot properly resolve that question. The court is persuaded that Sunnyvale residents enacted Measure C out of a genuine concern for public safety, and that the law, with its many exceptions and narrow focus on just those magazines having a capacity to accept more than ten rounds, is reasonably tailored to the asserted objective of protecting the public from gun violence.

4. Summary: Plaintiffs are not likely to succeed on the merits

The court concludes that Plaintiffs are not likely to succeed on the merits. Although Plaintiffs demonstrate that the Sunnyvale ordinance imposes some burden on Second Amendment rights, that burden is relatively light. The Sunnyvale law passes intermediate scrutiny, as the court—without making a determination as to the law's likely efficacy—credits Sunnyvale's voluminous evidence that the ordinance is substantially tailored to the compelling government interest of public safety. This determination is based on the record as it stands at this early preliminary injunction stage of the case.³ At this time, the court only holds that, upon this surely incomplete record, Plaintiffs have failed to prove that they are likely to succeed on the merits.⁴

³ In addition to their reply brief, Plaintiffs raise 24 evidentiary objections in a separate fifteen-page filing. Dkt. No. 45-1. Sunnyvale responds by filing separate objections of their own to Plaintiffs' reply evidence. Dkt. No. 48. Local Rule 7-3(c) requires that Plaintiffs file their evidentiary objections "within the reply brief or memorandum." Moreover, a motion for preliminary injunction

B. Irreparable Harm

Irreparable harm is presumed if plaintiffs are likely to succeed on the merits because a deprivation of constitutional rights always constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373; *Ezell v. Chicago*, 651 F.3d 684, 699-700 (7th Cir. 2011). Here, however, the court does not find that enforcement of the Sunnyvale ordinance would likely infringe Plaintiffs' Second Amendment rights. As Plaintiffs base their entire irreparable harm argument on irreparable harm being presumed if they are likely to succeed on the merits, Plaintiffs fail to demonstrate that enforcement of the Sunnyvale law will cause them irreparable harm. The court notes that individuals who turn their prohibited magazines in to the Sunnyvale Department of Public Safety would likely suffer irreparable harm from the subsequent destruction of their property. This argument is more properly analyzed under the balance of the hardships factor, and the court will consider it there.

C. Balance of the Hardships

Plaintiffs must demonstrate that the balance of the equities tips in their favor. *Winter*, 555 U.S. at 20. Plaintiffs contend that their constitutional rights will be infringed should an injunction fail to issue. Constitutional rights, by definition, are of paramount importance, so this concern must be taken seriously. However, because Plaintiffs have failed to show a likelihood of success on the merits, it is unlikely that enforcement of Sunnyvale's ordinance will infringe their constitutional rights.

Plaintiffs also argue that they will suffer hardship because they will have to store their banned magazines outside of Sunnyvale, modify them, or turn them over to the Sunnyvale

must be supported by evidence that goes beyond the unverified allegations of the pleadings, but "the district court may rely on otherwise inadmissible evidence, including hearsay evidence." *Fid. Nat'l Title Ins. Co. v. Castle*, 2011 WL 5882878, at *3 (N.D. Cal. Nov. 23, 2011); *Gonzalez v. Zika*, 2012 WL 4466584, at *1 (N.D. Cal. Sep. 26, 2012); *Murphy v. Bank of N.Y. Mellon*, 2013 WL 3574628, at *3 (N.D. Cal. July 12, 2013). Thus, the parties' requests to strike various pieces of evidence are DENIED.

⁴ Note that this finding accords with every other case to examine a ban on possession of magazines having a capacity to accept more than ten rounds. *See Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1264 (D.C. Cir. 2011); *San Francisco Veteran Police Officers Ass'n v. City & Cnty. of San Francisco*, C-13-05351 WHA, 2014 WL 644395, at *7 (N.D. Cal. Feb. 19, 2014); *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, C-13-291S, 2013 WL 6909955, at *18 (W.D.N.Y. Dec. 31, 2013); *Shew v. Malloy*, C-13-739 AVC, 2014 WL 346859, at *9 (D. Conn. Jan. 30, 2014); *Tardy v. O'Malley*, C-13-2861, TRO Hr'g Tr., at 66-71 (D. Md. Oct. 1, 2013).

1 Department of Public Safety for destruction. The forced destruction of their property is surely a
2 hardship to Plaintiffs, but it is also one that must be weighed against Sunnyvale's public safety
3 concerns, as reflected in the evidence submitted by Sunnyvale to this court and the nearly two-thirds
4 vote by Sunnyvale residents to pass the challenged ordinance.

5 As discussed above, Sunnyvale has a compelling interest in the protection of public safety.
6 *Salerno*, 481 U.S. at 748-50; *Schall*, 467 U.S. at 264. The court has already found that the
7 challenged law is, at minimum, substantially related to this interest. The purpose of the restriction
8 on the possession of magazines having a capacity to accept more than ten rounds is to reduce their
9 availability for criminal use. Although the likelihood that the ordinance will prevent gun violence
10 between March 6, 2014 and whenever this case is finally resolved is hotly debated, the risk that a
11 major gun-related tragedy would occur is enough to at least balance out the inconvenience to
12 Plaintiffs in disposing of their now-banned magazines. Therefore, the court concludes that the
13 balance of the hardships factor is neutral.

14 A corollary to this finding is that an injunction cannot issue based on the "serious questions"
15 doctrine. As noted earlier, Ninth Circuit law allows a court to grant a preliminary injunction if the
16 plaintiff raises "serious questions going to the merits" and the balance of the equities tip sharply in
17 the plaintiff's favor. *Alliance for the Wild Rockies*, 632 F.3d at 1132. Here, because the court finds
18 that the balance of the hardships is neutral, the court need not address whether Plaintiffs have raised
19 "serious questions going to the merits."

20 **D. Public Interest**

21 As the parties focused their briefing and argument on the likelihood of success on the merits,
22 they submitted little evidence and argument as to the public interest. Nonetheless, the court
23 considers this factor and finds it to favor Sunnyvale. To some extent, the public interest analysis
24 mirrors the balance of the hardships. Whereas on the balance of the hardships the court examined
25 only hardship to Plaintiffs, because constitutional rights are at issue, any infringement on the Second
26 Amendment naturally harms the public. Likewise, because gun violence threatens the public at
27 large, the court balances the public's interest in preserving its constitutional rights against the
28 public's interest in preventing gun violence. Again, due to Plaintiffs' failure to prove a likelihood of

1 success on the merits, it is unlikely that the Sunnyvale ordinance infringes the public's
2 constitutional rights, so the court gives this consideration less weight.

3 Moreover, two other aspects of the Sunnyvale law cause the public interest factor to weigh
4 against an injunction. First, the Sunnyvale ordinance was enacted by the will of the people in a vote
5 of 66 percent in favor of Measure C. In so doing, the people of Sunnyvale determined that the ban
6 on magazines having a capacity to accept more than ten rounds would promote public safety. There
7 exists a public interest in deferring to this determination, and in promoting Sunnyvale's decision to
8 engage in direct democracy. Of course, the court recognizes that constitutional rights exist in large
9 part to protect the minority against tyranny by the majority, so this consideration does not weigh
10 heavily. Further, if the Court found that Plaintiffs were likely to succeed in proving that the
11 Sunnyvale ordinance infringes the Second Amendment, the Court would necessarily invoke the
12 Second Amendment to protect the minority against the ordinance's infringement on their rights. In
13 that case, the consideration that a 66 percent majority passed the law would not weigh against an
14 injunction. In this circumstance, however, the fact that the great majority of Sunnyvale voters favor
15 the ordinance supports denial of the preliminary injunction.

16 Finally, the public has an interest in protecting the safety of its police officers. The court
17 credits Sunnyvale's evidence that magazines having a capacity to accept more than ten rounds
18 present special danger to law enforcement officers. Grgurina Decl. ¶ 4; Koper Decl. ¶ 18. Sunnyvale
19 itself has experienced the danger presented to police and the public by a criminal suspect armed
20 with such magazines. In 2011, Shareef Allman killed three co-workers and wounded six others in a
21 shooting incident beginning in Cupertino, California, and ending in Sunnyvale. Grgurina Decl. ¶ 4.
22 Allman, who was in possession of several weapons, including those with magazines having a
23 capacity to accept more than ten rounds, was killed by police in Sunnyvale after a 22 hour manhunt.
24 *Id.* Considering a similar law, another court in this district determined that the "interest in protecting
25 the lives and safety of [] police officers is also central to the public interest." *San Francisco*
26 *Veteran Police*, 2014 WL 644395, at *7. This court credits similar evidence here and finds that the
27 public interest factor counsels against issuance of a preliminary injunction.
28

E. Weighing the Equities

In conclusion, the court holds that Plaintiffs are not likely to succeed on the merits, that Plaintiffs failed to prove that they would suffer irreparable harm absent a preliminary injunction, that the balance of the hardships is neutral, and that the public interest favors Sunnyvale. The equities, therefore, weigh sharply against granting Plaintiffs' motion for a preliminary injunction. As the balance of the hardships is neutral, even if the court were to find that Plaintiffs raised "serious questions going to the merits"—a questionable proposition, but one that the court does not reach here—the court could not grant a preliminary injunction on this alternative basis. Accordingly, the equities clearly favor denial of Plaintiffs' motion for a preliminary injunction.

III. ORDER

For the foregoing reasons, Plaintiffs' Motion for Preliminary Injunction is DENIED.⁵

Dated: March 5, 2014


RONALD M. WHYTE
United States District Judge

⁵ Plaintiffs' Administrative Motion for an Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction is DENIED as moot. *See* Dkt. No. 31.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FYOCK, ET AL,) CV-13-5807-RMW
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) FEBRUARY 21, 2014
)
CITY OF SUNNYVALE, ET AL,) PAGES 1-29
)
DEFENDANT.)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: MICHEL AND ASSOCIATES, PC
BY: ANNA BARVIR
180 E. OCEAN BLVD., STE 200
LONG BEACH, CA 90802

FOR THE DEFENDANT: FARELLA BRAUN & MARTEL, LLP
BY: RODERICK THOMPSON
ANTHONY SCHOENBERG
235 MONTGOMERY ST., 17TH FL
SAN FRANCISCO, CA 94104

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED WITH COMPUTER.

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

1 ALSO PRESENT: JOAN BORGER

2 ALSO PRESENT: REBECCA MOON

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 SAN JOSE, CALIFORNIA

FEBRUARY 21, 2014

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS
4 WERE HELD:)

5 THE CLERK: NEXT MATTER C-13-5807. FYOCK VERSUS CITY
6 OF SUNNYVALE.

7 ON FOR MOTION FOR PRELIMINARY INJUNCTION.

8 MS. BARVIR: YOUR HONOR, ANNA BARVIR WITH MICHEL AND
9 ASSOCIATES FOR PLAINTIFFS FYOCK AND OTHER INDIVIDUAL
10 PLAINTIFFS.

11 MR. THOMPSON: GOOD MORNING, YOUR HONOR.

12 RODERICK THOMPSON, FARELLA BRAUN & MARTEL, FOR THE
13 DEFENDANTS.

14 WITH ME IS MY PARTNER TONY SCHOENBERG. AND ALSO WITH US
15 TODAY IS THE CITY ATTORNEY, JOAN BORGER AND THE DEPUTY CITY
16 ATTORNEY REBECCA MOON.

17 THE COURT: OKAY. GOOD MORNING.

18 MR. MONFORT: GOOD MORNING, YOUR HONOR.

19 CLINTON MONFORT, ALSO FOR PLAINTIFFS AND INDIVIDUAL
20 RESIDENTS OF SUNNYVALE.

21 THE COURT: OKAY.

22 WHY DON'T I HEAR FROM PLAINTIFFS FIRST SINCE THE QUESTION
23 I POSED IS DIRECTED TO THEM

24 MS. BARVIR: THANK YOU, YOUR HONOR.

25 WE SAW YOUR QUESTION ABOUT THE RECENT ORDER DENYING A

1 MOTION FOR PRELIMINARY INJUNCTION IN A VERY SIMILAR CASE IN
2 SAN FRANCISCO ASKING WHETHER THERE WERE SIGNIFICANT FACTS
3 DIFFERENT HERE THAT WOULD COMPEL A DIFFERENT RESULT OR IF THE
4 JUDGE'S ORDER IN SAN FRANCISCO WAS SIMPLY WRONG.

5 PLAINTIFFS WOULD LIKE TO FRAME THIS DISCUSSION BY SAYING
6 THAT IT IS OUR POSITION THAT THE ORDER IN SAN FRANCISCO WAS
7 BASED ON SEVERAL, AT LEAST FOUR FUNDAMENTAL ERRORS.

8 KEEPING THAT ORDER FROM BEING IN LINE WITH SUPREME COURT
9 PRECEDENT IN THE DISTRICT OF COLUMBIA V HELLER AND
10 NINTH CIRCUIT'S RECENT RULING IN PERUTA V SAN DIEGO.

11 THE CITY'S OPPOSITION BRIEFS ARE IN LINE WITH A LOT OF
12 THOSE FUNDAMENTAL ERRORS, AS I WOULD LIKE TO TALK ABOUT THOSE
13 FOUR THINGS HERE.

14 THE COURT: LET ME HAVE YOU ANSWER MY QUESTION
15 THOUGH.

16 I TAKE IT YOU ARE SAYING THAT THE FACTS ARE DIFFERENT BUT
17 THE JUDGE JUST REASONING WAS WRONG; IS THAT CORRECT?

18 MS. BARVIR: THE FACTS ARE LARGELY THE SAME IN THESE
19 TWO CASES. THE LAWS AT ISSUE BOTH ADDRESS BAN MAGAZINES OVER
20 TEN ROUNDS AND THEY ALSO HAVE SIMILAR EXEMPTIONS.

21 OBVIOUSLY, THEY WERE AS PLAINTIFFS DISCUSSED IN THE
22 OPPOSITION TO THE MOTION TO RELATE THE CASES THAT THEY HAD
23 DIFFERENT, ENACTED IN DIFFERENT WAYS, A LOT OF THE SAME EXPERT
24 TESTIMONY HAS BEEN PRESENTED TOO.

25 SO IT HAS A LOT TO DO WITH THE WAY THE JUDGE IN

1 SAN FRANCISCO REVIEWED THOSE FACTS THAT WERE ON THE RECORD,
2 WEIGHED THEM IMPROPERLY, THEN THE LEGAL ANALYSIS HE ENGAGED IN
3 --

4 THE COURT: I'M NOT SURE YOU ARE DIRECTLY ANSWERING
5 MY QUESTION.

6 LET'S ASSUME JUDGE ALSUP'S OPINION WAS NINTH CIRCUIT
7 OPINION. WOULD I BE BOUND TO DENY YOUR MOTION?

8 MS. BARVIR: IF JUDGE ALSUP'S OPINION WAS A
9 NINTH CIRCUIT OPINION IT WOULD BE BINDING ON THIS COURT. OF
10 COURSE IT'S NOT. AND IT WOULD BE GOING UP TO THE SUPREME COURT
11 BECAUSE IT IS IN DIRECT CONFLICT WITH.

12 THE COURT: YEAH, BUT YOU ARE STILL NOT ANSWERING MY
13 QUESTION. IF JUDGE ALSUP'S ORDER WERE BINDING ON ME, WOULD I
14 HAVE TO DENY YOUR MOTION? AND IF NOT, WHY NOT.

15 MS. BARVIR: IF JUDGE ALSUP'S OPINION WERE BINDING ON
16 YOU, THIS COURT THE PLAINTIFFS WOULD THINK THAT YOU WOULD HAVE
17 TO DENY IT, THOUGH IT WOULD BE -- THAT'S THE BEST I CAN SAY.
18 I'M SORRY.

19 THE COURT: OKAY. GO AHEAD WITH YOUR FOUR POINTS.

20 MS. BARVIR: THE COURT SHOULD RECOGNIZE THE FOUR
21 MAJOR FLAWS IN JUDGE ALSUP'S OPINION.

22 FIRST, LACK OF CITY, IT FAILS TO RECOGNIZE THAT MAGAZINES
23 OVER TEN ROUNDS ARE PROTECTED BY THE SECOND AMENDMENT.

24 HELLER, THE SUPREME COURT DECISION, IS VERY CLEAR THAT
25 THE SECOND AMENDMENT PROTECTS ARMS THAT ARE TYPICALLY POSSESSED

1 BY LAW ABIDING CITIZENS FOR LAWFUL PURPOSES.

2 UNDER NINTH CIRCUIT'S OPINION IN CHOVAN, THE CITY'S
3 BURDEN, IT IS THE CITY'S BURDEN TO PROVE THE CONTACT IT
4 RESTRICTS IS PROTECTED.

5 HERE THE ITEMS IT'S BANNING ARE NOT COMMONLY POSSESSED
6 FOR LAWFUL PURPOSES. IT HAS OFFERED NO MEANINGFUL EVIDENCE ON
7 THIS POINT. INSTEAD, THE CITY LIKE THE COURT IN SAN FRANCISCO,
8 IMPROPERLY SHIFTS THE BURDEN IN CONTRAVENTION OF NINTH CIRCUIT
9 OPINIONS TO BURDEN, TO PLAINTIFFS AND THEN CHANGES THE SUPREME
10 COURT'S TEST FOR SECOND AMENDMENT PROTECTION.

11 AGAIN, IT'S THE CITY'S BURDEN, PLAINTIFFS HAVE PROVIDED
12 SUBSTANTIAL EVIDENCE THAT THESE MAGAZINES OVER TEN ROUNDS ARE
13 PROTECTED BY THE SECOND AMENDMENT TO ASSIST THE COURT IN MAKING
14 ITS DETERMINATION.

15 THE CITY SUGGESTS ALSO THAT SECOND AMENDMENT PROTECTION
16 DEPENDS ON THE NUMBER OF TIMES AN ARM IS ACTUALLY USED AND
17 REQUIRED FOR SELF DEFENSE. IT PROVIDES NO SUPPORT FROM CASE
18 LAW REGARDING SECOND AMENDMENT OR IN ANY OTHER FUNDAMENTAL
19 RIGHTS CONTEXT THAT THIS IS WHAT DROLLS.

20 INDEED, THE SUPREME COURT IN HELLER REQUIRED NO SUCH
21 SHOWING. YOU COULD SEARCH ALL OF HELLER AND FIND NO INDICATION
22 THAT A HANDGUN HAS EVER BEEN FIRED IN SELF DEFENSE.

23 WHAT MATTERS IS WHETHER THE ITEMS ARE PREFERRED AND
24 POSSESSED FOR THAT PURPOSE OR OTHER LAWFUL PURPOSES.

25 PERUTA II, JUST RECENTLY HANDED DOWN FROM THE

1 NINTH CIRCUIT, NEVER CONSIDERS HOW OFTEN PEOPLE MUST USE THEIR
2 HANDGUNS IN PUBLIC SELF DEFENSE WHEN THEY ARE WERE FINDING A
3 RIGHT TO CARRY IN PUBLIC IS PROTECTED.

4 SO REQUIRING PROOF THAT THE BANNED ITEMS ARE NEEDED WHEN
5 SOME WIDESPREAD REGULARITY WOULD PERMIT BANS ON ANY AND ALL
6 ARMS FOR IT'S UNLIKELY TO EVER FIRE A WEAPON IN SELF DEFENSE
7 MORE THAN A COUPLE OF ROUNDS.

8 YOU UNDERSTAND THE CITY'S POSITION IT WOULD JUSTIFY A BAN
9 ON THE COMMON SIX ROUND RESOLVER.

10 IN SAN FRANCISCO THE COURT ALSO FAILED TO CATEGORICALLY
11 INVALIDATE THE TEN ROUND MAGAZINE BAN AS PLAINTIFFS ARGUED WAS
12 APPROPRIATE IN THIS CASE FINDING IT DOES NOT DESTROY THE SECOND
13 AMENDMENT.

14 THE NINTH CIRCUIT IN PERUTA RECENTLY QUOTED HELLER AS
15 STATING A LAW THAT UNDER THE PRETENSE OF REGULATING AMOUNTS TO
16 A DISRUPTION OF A RIGHT UNDER THE SECOND AMENDMENT CANNOT PASS
17 CONSTITUTIONAL MUSTER UNDER ANY TEST. IT CANNOT BE JUSTIFIED.

18 THE CITY, THE SAN FRANCISCO COURT IMPROPERLY FOUND THERE
19 TO BE NO DESTRUCTION OF THE SECOND AMENDMENT AS IT BROADLY
20 FRAMED ITS RIGHT ISSUE TO BE A GENERALLY RIGHT TO USE ARMS IN
21 SELF DEFENSE NOTING THAT MAGS UNDER TEN ROUNDS ARE AVAILABLE
22 FOR PLAINTIFFS TO USE AND THAT THEY COULD USE MORE THAN ONE
23 MAGAZINE UNDER TEN ROUNDS IF THEY NEEDED TO FIRE MORE THAN TEN
24 SHOTS.

25 AT THE TIMING ASIDE THE SUBSTANTIAL EVIDENCE ON THIS

1 RECORD THAT THE COURT DIDN'T RECOGNIZE IN SAN FRANCISCO, IT IS
2 VIRTUALLY IMPOSSIBLE TO CHANGE MAGAZINES WHEN ONE IS FACING --
3 WHEN ONE SURROUND ATTACK AS OPPOSED TO THE PERSON CARRYING OUT
4 THE ATTACK WHO CAN CONTROL THE CIRCUMSTANCES AND EASILY CHANGE
5 MAGAZINES.

6 NEITHER THE LAW IN PERUTA OR IN HELLER DESTROYED THAT
7 BROAD RIGHT TO SELF DEFENSE EITHER. THE PERUTA CARRYING
8 LICENSE SCHEME AT ISSUE PERMITTED POSSESSION OF THE USE OF ARMS
9 IN THE HOME FOR SELF DEFENSE BROADLY. IT ALLOWED IT IN PRIVATE
10 BUSINESSES, IT ALLOWED THE USE OF ARMS IN SELF DEFENSE IN
11 PUBLIC WHENEVER THAT RIGHT, WHENEVER SELF DEFENSE WAS
12 NECESSARY.

13 SO IT DIDN'T DESTROY THE RIGHT TO SELF DEFENSE. EVEN IF
14 PUBLIC. BUT IT DID DESTROY THAT RIGHT TO CARRY ARMS BY LAW
15 ABIDING CITIZENS IN PUBLIC FOR SELF DEFENSE.

16 HELLER ALSO DID NOT PROHIBIT THE USE OF SHOTGUNS OR
17 RIFLES FOR SELF DEFENSE.

18 SO IT DIDN'T DESTROY THE RIGHT TO USE THE FIREARM IN SELF
19 DEFENSE EITHER BUT IT DESTROYED THAT VERY SPECIFIC RIGHT OF LAW
20 ABIDING CITIZENS TO POSSESS PROTECTED ARMS IN THEIR HOMES FOR
21 SELF DEFENSE. THAT WAS THE RIGHT THAT WAS AT ISSUE. IT WAS
22 DESTROYED AND IT WAS INVALID WITHOUT REGARD TO MEANS AND
23 SCRUTINY.

24 IN THIS CASE, WE SEE THE POSSESSION, WE HAVE THE
25 POSSESSION OF ITEMS TYPICALLY POSSESSED FOR LAWFUL PURPOSES FOR

1 SELF DEFENSE HERE ZAG KNOW MAGAZINES OVER TEN ROUNDS THAT IS A
2 RIGHT PROTECTED BY THE SECOND AMENDMENT.

3 AND THE CITY'S BAN ON THAT CONDUCT DESTROYS THAT RIGHT.
4 IT TOO IS NECESSARILY INVALID.

5 THE COURT: SO ARE YOU SAYING THAT ANY RESTRICTION ON
6 HAVING A MAGAZINE, LARGE CAPACITY MAGAZINE, I'M GOING TO USE
7 THAT TERM BECAUSE IT'S BEEN USED, FUNDAMENTALLY VIOLATES THE
8 SECOND AMENDMENT AND NO MATTER WHAT THE PURPOSE OF THE BAN IS,
9 IT'S ILLEGAL?

10 MS. BARVIR: THAT'S CORRECT, YOUR HONOR. THAT IS OUR
11 POSITION.

12 AS YOU -- AS WAS HELD IN HELLER, EXCUSE ME, THE COURT
13 FOUND THAT A BAN ON HANDGUNS COULD NOT EVEN WITHSTAND
14 INTERMEDIATE AT SCRUTINY, ANY LEVEL SCRUTINY REALLY, BUT
15 INTERMEDIATE SCRUTINY IF WE ARE GOING TO GO THERE IN THIS CASE,
16 WITHOUT THE REGARD OF THE CITY'S VERY COMPELLING INTEREST.

17 THERE THE HELLER COURT NOTED THAT HANDGUNS ARE
18 OVERWHELMINGLY CHOSEN BY CRIMINALS FOR THEIR CRIMINAL PURPOSES
19 BECAUSE OF THEIR CONCEALABILITY AND OTHER CHARACTERISTICS.

20 I BELIEVE THE DISSSENT IN HELLER RECOGNIZED THAT SOMETHING
21 LIKE 81 PERCENT OF FIREARMS HOMICIDES ARE COMMITTED WITH
22 HANDGUNS.

23 AND ALSO, THE MAJORITY RECOGNIZED THAT THE VAST MAJORITY
24 OF ARMS STOLEN FROM LAW ABIDING CITIZENS ARE HANDGUNS. SO THE
25 CITY OF, DISTRICT OF COLUMBIA VERY CLEARLY HAD A COMPELLING

1 INTEREST IN KEEPING THOSE ARMS OUT OF THE HANDS OF CRIMINALS TO
2 PREVENT MAYHEM.

3 BUT TAKING THEM FROM LAW ABIDING CITIZENS BECAUSE THEY
4 ARE PROTECTED ITEMS IS NOT AN APPROPRIATE MEANS OF
5 ACCOMPLISHING THAT COMPELLING END.

6 HELLER IS QUITE CLEAR ON THAT POINT IN SAYING THAT EACH
7 INTERMEDIATE SCRUTINY WOULDN'T SAVE THE LAW.

8 IN OTHER WORDS, THAT TAKING PROTECTED ITEMS FROM LAW
9 ABIDING CITIZENS IS NOT SUBSTANTIALLY RELATED TO THE GOVERNMENT
10 INTEREST IN KEEPING THEM FROM CRIMINALS PERIOD. BOTH THE CITY
11 AND THE SAN FRANCISCO COURT IN SFBPO IGNORED THAT BINDING
12 AUTHORITY.

13 THE COURT: IS THERE ANY CASE THAT'S APPLIED A STRICT
14 SCRUTINY STANDARD?

15 MS. BARVIR: TO AN ARMS BAN?

16 THE COURT: YES.

17 MS. BARVIR: THE OTHER -- ON THE OTHER CASES THAT ARE
18 DEALING WITH BANS ON ITEMS DEAL WITH SO CALLED ASSAULT WEAPONS
19 AND OTHER MAGAZINE BANS OVER TEN ROUNDS AND SOME OVER OTHER
20 CAPACITIES, AND THEY GENERALLY HAVE APPLIED INTERMEDIATE
21 SCRUTINY BUT IN VERY DIFFERENT SITUATIONS.

22 THREE OF THE FOUR OPINIONS THAT JUDGE ALSUP CITES CAME
23 OUT OF THE SECOND DISTRICT AND THE SECOND DISTRICT IS HAS A
24 DIFFERENT ANALYTICAL FRAMEWORK THAT IS CONTROLLING ON THE
25 SECOND AMENDMENT CONTEXT.

1 AND UNFORTUNATELY TERRY V. O'MALLEY WHICH CAME OUT OF THE
2 DISTRICT IN MARYLAND, IT ISSUED AN OPINION THAT DIDN'T SAY WHY,
3 IT JUST SAID IT WAS GOING TO DENY, IT WAS GOING TO UPHOLD THE
4 LAW. AND THEN OF COURSE JUDGE ALSUP APPLIED A NEUTERED VERSION
5 OF INTERMEDIATE SCRUTINY IN SAN FRANCISCO THIS WEEK.

6 THE COURT: MY QUESTION THOUGH, IS THERE ANY CASE
7 THAT'S APPLIED A STRICT SCRUTINY STANDARD?

8 MS. BARVIR: I'M SORRY, YOUR HONOR, NO.

9 THAT WAS MY LONG ANSWER OF SAYING THERE HASN'T BEEN A
10 SCRUTINY STANDARD APPLIED IN A CASE LIKE THIS YET.

11 THE COURT: HOW WOULD YOU DEFINE THE INTERMEDIATE
12 SCRUTINY THAT SHOULD BE ACCOMPLISHED IF INTERMEDIATE SCRUTINY
13 APPLIES?

14 MS. BARVIR: UNDER INTERMEDIATE SCRUTINY, THE NINTH
15 CIRCUIT PRECEDENT SHOWS THAT THE CITY HAS -- MUST SHOW A
16 SUBSTANTIAL RELATIONSHIP BETWEEN ITS BAND AND A COMPELLING
17 GOVERNMENT INTEREST.

18 AND ALSO THE LAW CANNOT BE MORE EXTENSIVE THAN NECESSARY.
19 WHAT WE SAW IN PERUTA WHAT WHEN IT CAME DOWN LAST WEEK WAS THE
20 COURT APPLIED A CATEGORICALLY INVALIDATED, THE CARRY LICENSE
21 SCHEME, DIDN'T GET DOWN TO WHETHER OR NOT STRICT OR
22 INTERMEDIATE SCRUTINY WOULD APPLY, THOUGH IT DID CAST DOUBT ON
23 THE USE OF INTERMEDIATE SCRUTINY IN CASES THAT WERE SIMILAR IN
24 OTHER CIRCUITS.

25 AND IT WAS VERY CLEAR THAT THE GOVERNMENT IN MAKING ITS,

1 THE GOVERNMENT IN DEFENDING LAWS THAT POTENTIALLY VIOLATE THE
2 SECOND AMENDMENT CANNOT JUST BE, THIS COURT SHOULD NOT JUST
3 EASILY DEFERRING JUDGMENTS ON THE ISSUE THEY HAVE TO HAVE REAL
4 EVIDENCE THAT SOMETHING THAT THEIR LAW IS SUBSTANTIALLY RELATED
5 TO THE ENDS THAT IT'S SEEKING TO SERVE.

6 THE COURT: HISTORICALLY, HAVE THE COURTS DEALT WITH
7 MAGAZINES IN OTHER SETTINGS?

8 MS. BARVIR: I'M SORRY, YOUR HONOR, I'M NOT SURE I
9 UNDERSTAND YOUR QUESTION.

10 THE COURT: ARE THERE ANY CASES, THERE'S -- I THINK
11 ABOUT FOUR DISTRICT COURT CASES NOW, RIGHT, THAT HAVE UPHELD
12 SIMILAR LAWS TO THE ONES WE HAVE HERE.

13 MS. BARVIR: YES, YOUR HONOR.

14 THE FOUR THAT I'VE BRIEFLY MENTIONED EARLIER, THE TWO OR
15 THREE THAT CAME OUT OF THE SECOND CIRCUIT, ONE WAS ONLY ABOUT
16 ASSAULT WEAPONS.

17 ONE OUT OF THE DISTRICT OF MARYLAND AND JUDGE ALSUP'S
18 DISTRICT OPINION LAST WEEK OR THIS WEEK, THEY EACH HAVE UPHELD
19 MAGAZINE BANS REGARDING TEN ROUNDS.

20 UNDER WHAT PLAINTIFF'S SUBMIT IS AN IMPROPER READING OF
21 HELLER AND MCDONALD, SUPREME COURT PRECEDENT.

22 THE COURT: AT THE TIME THE SECOND AMENDMENT WAS
23 ENACTED, WERE THERE MAGAZINES?

24 MS. BARVIR: THAT'S AN INTERESTING QUESTION.

25 THE -- THERE IS HISTORICAL EXPLANATION OF THE USE OF

1 MAGAZINES IN THE DECLARATION SUBMITTED BY STEVEN HELSLEY EXPERT
2 FIREARMS HISTORIAN AND THE FORMER HEAD OF THE CALIFORNIA DOJ.
3 I, MYSELF, AM NOT A FIREARMS EXPERT HISTORY AN. BUT THAT
4 QUESTION REALLY IS NOT RELEVANT TO THE POINT.

5 WHEN JUDGE ALSUP MADE THAT WHEN JUDGE ALSUP ENGAGED IN
6 THAT ANALYSIS IN HIS REASONING JUST THIS WEEK IN DENYING
7 PLAINTIFF'S MSJ'S -- I MEAN MJI THERE, THE COURT SEEMED TO
8 SUGGEST THAT SECOND AMENDMENT PROTECTION HAS SOMETHING TO DO
9 WITH WHETHER OR NOT THOSE ARMS WERE IN COMMON USE AT THE TIME
10 OF THE FINDING OR THE RATIFICATION OF THE SECOND AMENDMENT.

11 BUT THAT'S THE START OF THE READING OF HELLER. AND
12 THAT'S LIKELY WHY THE PARTIES EITHER IN THIS CASE OR THE
13 SAN FRANCISCO CASE HAVE ARGUED THAT'S THE BEST, AND NO OTHER
14 SECOND AMENDMENT CASE HAS ARGUED THAT THAT WAS THE TEST EITHER.

15 HELLER IS VERY CLEAR THAT WHAT CONTROLS FOR SECOND
16 AMENDMENT PROTECTIONS ON ARMS ARE THOSE THAT ARE TYPICALLY
17 POSSESSED OR IN COMMON USE AT THE TIME, STOP. THAT'S THE
18 PRESENT TIME. NOT AT THE TIME OF THE FOUNDING. THERE'S
19 NOTHING IN HELLER THAT WOULD READ THAT WAY.

20 UNDER HELLER THE SCOPE OF THE RIGHT AS HISTORICALLY
21 UNDERSTOOD IS WHAT ARMS ARE COMMONLY POSSESSED AT THE TIME
22 TODAY.

23 JUST AS THE FIRST AMENDMENT IS NOT LIMITED TO NEWSPAPERS
24 OR TELEGRAMS OR PRINTED BOOKS, IT DOES PROTECT THE INTERNET AND
25 SMARTPHONES AND MODERN RADIO. THE SECOND AMENDMENT ISN'T

1 LIMITED TO MUSKETS OR BAYONETS, IT PROTECTS COMMON MODERN ARMS
2 INCLUDING MAGAZINES THAT ARE COMMONLY USED EVEN THOUGH THEY
3 HAVE THE CAPACITY TO HOLD MORE THAN 10 ROUNDS.

4 SAN FRANCISCO FUNDAMENTALLY MISREAD HELLER ON THAT POINT.

5 THE COURT: AND YOU WOULDN'T DISTINGUISH BETWEEN A
6 BAN ON MORE THAN 10 FROM A BAN ON MORE THAN 5000?

7 MS. BARVIR: THAT'S A VERY GOOD QUESTION, YOUR HONOR.

8 WHILE THERE IS CERTAINLY GOING TO BE SOME LEVEL OF
9 MAGAZINE CAPACITY THAT EXCEEDS WHAT ORDINARY CITIZENS CAN AND
10 SHOULD RIGHTLY HAVE, IT'S PLAINLY NOT TEN. MAGAZINES OVER TEN
11 ROUNDS ARE COMMONLY POSSESSED FOR LAWFUL PURPOSES. THOSE ARE
12 PROTECTED BY THE SECOND AMENDMENT AND THEY CAN'T BE BANNED.

13 WHEN BEE ARE TALKING ABOUT HUNDRED ROUND MAGS OR 5,000
14 ROUND MAGS IF THOSE EXIST, IT COMES DOWN TO WHETHER THEY ARE
15 COMMONLY USED OR COMMONLY POSSESSED FOR LAWFUL PURPOSES BY THE
16 LAW ABIDING. IF THEY ARE NOT THEY ARE NOT PROTECTED. BUT HERE
17 WE ARE NOT TALKING ABOUT THAT, WE ARE TALKING ABOUT 10 ROUNDS.

18 AND THE RECORD SHOWS THAT THE STANDARD MAGAZINES WITH THE
19 MOST COMMON FIREARMS IN AMERICA TODAY HOLD OVER TEN ROUNDS MANY
20 BETWEEN 15 AND 17, INCLUDING THE GLOCK 17, WHICH WAS USED AN
21 EXPERT DEFENSE ROUNDS ANALYST AS DESCRIBED FOR HUGELY POPULAR
22 FOR HOME AND PERSONAL DEFENSE BY THE LAW ABIDING.

23 THE COURT: OKAY. DID YOU FINISH YOUR FOUR POINTS?

24 MS. BARVIR: I THINK I WOULD LIKE TO MAKE ONE MORE.

25 THE CITY ARGUES AND ALSO THE SAN FRANCISCO COURT

1 INCORRECTLY HELD THAT THE BAR IN HERE OF A BAN ON MAGAZINES
2 OVER TEN ROUNDS IS NOT SUFFICIENT TO WARRANT SCRUTINY.

3 SAN FRANCISCO COURT DIDN'T ACTUALLY REALLY SERIOUSLY
4 CONSIDER WHETHER STRICT SCRUTINY WOULD EVER APPLY. INSTEAD, IT
5 SEEMED TO ASSUME THAT CASES WOULD BE RESOLVED.

6 BASED ON TWO TESTS, EITHER CATEGORICAL EVALUATION TEST
7 WHICH WE TALKED ABOUT HERE, OR INTERMEDIATE SCRUTINY WHICH WE
8 ALSO TALKED ABOUT, WITHOUT RECOGNIZING THAT CATEGORICAL
9 EVALUATION OF A LAW ISN'T APPROPRIATION BECAUSE IT WASN'T A
10 TOTAL DESTRUCTION OF THE RIGHT AT ISSUE AND MORE OF A BURDEN,
11 CHOVAN, AGAIN NINTH CIRCUIT PRECEDENT, INSTRUCTS THAT WE LOOK
12 TO THE TWO FACTORS PROXIMITY TO THE CORE OF THE SECOND
13 AMENDMENT RIGHT AND THE SEVERITY OF THE LAWS ON BURDEN OF THAT
14 RIGHT IN SELECTING BETWEEN INTERMEDIATE SCRUTINY OR STRICT
15 SCRUTINY. THERE'S NO DISCUSSION OF THAT IN JUDGE ALSUP'S
16 OPINION.

17 HERE WE ARE DEALING WITH A FLAT BAN OF PROTECTED ARMS IN
18 THE HOME BY LAW ABIDING PURPOSES FOR CORE LAWFUL BURDEN OF
19 PROOF OF SELF DEFENSE. THERE'S NO HARM MORE SEVERE THAN THAT.

20 THE CITY TRIES TO TRIVIALIZE IT CLAIMING PLAINTIFFS CAN
21 NOT SHOW THAT SELF DEFENSE OFTEN REQUIRES MORE THAN TEN SHOTS
22 TO BE FIRED, BUT THAT MISSES THE POINT.

23 EVERY TIME A PERSON NEEDS TO USE MORE THAN TEN ROUNDS IN
24 SELF DEFENSE, A GOVERNMENT IMPOSED RESTRICTION BANNING THAT
25 CONDUCT CANNOT BE MORE HARMFUL, EVEN IF THOSE INSTANCES ARE

1 RARE.

2 A BURDEN ON THE FLAT BAN OF CONSTITUTIONALLY PROTECTED
3 ITEMS IS NO LESS SEVERE EVEN IF THE NEED TO USE THEM DOES NOT
4 ARISE WITH MUCH REGULARITY.

5 I WOULD LIKE TO TAKE A MOMENT TO COMPARE THAT TO A BAN ON
6 PROHIBITED MAGAZINES -- OR PRINTED NEWSPAPERS, I'M SORRY.

7 NO ONE WOULD SERIOUSLY ARGUE THAT IT'S NOT A SIGNIFICANT
8 BURDEN ON THE FIRST AMENDMENT RIGHT TO FREE SPEECH IF THE
9 GOVERNMENT DECIDED THAT IT NO LONGER THOUGHT WE NEEDED TO READ
10 NEWSPAPERS SO IT BANNED THEM. AND BECAUSE NOT THAT MEAN PEOPLE
11 READ THE NEWSPAPER ANYMORE, VERY FEW PICK IT UP ANYMORE, THEY
12 GET THEIR NEWS FROM THE TELEVISION, 24-HOUR CSPAN OR FROM THE
13 INTERNET, BUT IT'S STILL A SIGNIFICANT BURDEN ON THE FIRST
14 AMENDMENT RIGHT AND IT'S SIMILARLY THE SAME CASE HERE. EVEN
15 THOUGH IT MAY NOT BE THAT EVERYONE IS CONSTANTLY FIRING TEN
16 ROUNDS IN SELF DEFENSE, THEY STILL HAVE THEM TO BE PREPARED IN
17 CASE THEY NEED TO.

18 THAT'S ALL I HAVE FOR YOU.

19 THE COURT: THE LAW CURRENTLY BANS MANUFACTURE IN
20 CALIFORNIA OF TEN OR MORE -- A MAGAZINE HOLDING TEN OR MORE,
21 LARGER CAPACITY MAGAZINE OF TEN OR MORE.

22 MS. BARVIR: THAT'S CORRECT, YOUR HONOR.
23 CALIFORNIA STATE LAW DOES PROHIBIT THE MANUFACTURE AND TRANSFER
24 OF MAGAZINES OVER TEN ROUNDS.

25 THIS DOESN'T, HOWEVER, IMPACT THE ANALYSIS REALLY BECAUSE

1 IT -- BECAUSE THE LIMIT ON CALIFORNIA AND WHOEVER IS USING IT
2 IN CALIFORNIA, ASIDE FROM THE FACT THAT MILLIONS OF THEM WERE
3 GRANDFATHERED IN BEFORE THE BAN TOOK EFFECT IN 2000, SO THEY
4 ARE STILL IN THE HANDS OF THOSE PEOPLE THAT HAD THEM BEFORE,
5 THE HELLER ANALYSIS AND SECOND AMENDMENT PROTECTION IS NOT
6 LIMITED TO CALIFORNIA OR SAN FRANCISCO OR ANY SMALL
7 JURISDICTION, IT PROVIDES A NATIONAL STANDARD FOR PROTECTION.

8 THAT'S WHY IN HELLER, YOU KNOW, THE HANDGUNS WERE FOUND
9 TO BE PROTECTED EVEN THOUGH NO LAWFUL LAW ABIDING CITIZEN IN
10 D.C. WAS USING THEM OR OWNED THEM BECAUSE IT WAS AGAINST THE
11 LAW TO USE THEM.

12 BUT WHEN THE COURT LOOKS AT THE BIGGER PICTURE WHEN THEY
13 SEE IN THIS COUNTRY PEOPLE CHOSE HANDGUNS FOR SELF DEFENSE,
14 THEY SEE THAT IS PROTECTED CONDUCT. POSSESSION OF HANDGUNS IS
15 PROTECTED CONDUCT.

16 THE SAME IS TRUE HERE EVEN THOUGH YOU MAY HAVE FEWER
17 PEOPLE, LAW ABIDING PEOPLE IN CALIFORNIA, USING THEM. IT'S A
18 NATIONAL STANDARD.

19 THE COURT: ARE YOU SAYING THAT ALTHOUGH THE
20 MANUFACTURE AND DISTRIBUTION OF THESE MAGAZINES IS UNLAWFUL,
21 THAT THOSE LAWS ARE CONSTITUTIONAL, WHEREAS THE MAGAZINES ARE
22 NOT?

23 MS. BARVIR: IF I'M UNDERSTANDING YOUR HONOR'S
24 QUESTION CORRECTLY, THIS, YOU'RE NOTING THAT THIS CASE IS NOT
25 CHALLENGING THE STATE BAN ON THE MANUFACTURER DISTRIBUTION AS

1 UNCONSTITUTIONAL.

2 THAT IS VERY CLEAR. THE CITY RAISES THAT.

3 BUT I THINK THE REASON IS BECAUSE THAT MAY OR MAY NOT BE
4 CONSTITUTIONAL, WHETHER OR NOT A DISTRIBUTION, SALES BAN
5 ET CETERA IS CONSTITUTIONAL, BUT IT'S VERY CLEAR UNDER HELLER
6 THAT A POSSESSION BAN IS CERTAINLY UNCONSTITUTIONAL.

7 THE COURT: SO YOU THINK THERE COULD BE A
8 DISTINCTION.

9 MS. BARVIR: THERE COULD BE BUT WE ARE NOT THERE YET,
10 THAT'S NOT BEFORE US.

11 THE COURT: OKAY. LET ME HEAR FROM YOUR OPPOSITION.

12 MS. BARVIR: THANK YOU, YOUR HONOR.

13 MR. THOMPSON: THANK YOU, YOUR HONOR.

14 I THINK MAYBE A PLACE TO START IS TO GIVE A LITTLE
15 PERSPECTIVE.

16 COUNSEL SAID, AND I THINK I QUOTED IT CORRECTLY, THIS IS
17 A FLAT BAN ON PROJECTED ARMS. WITH RESPECT THAT'S SIMPLY NOT
18 TRUE.

19 THIS IS A SIZE LIMITATION ON MAGAZINES WHICH ARE AN
20 ACCESSORY THAT YOU CAN USE WITH WEAPONS. NO WEAPONS ARE
21 BANNED. NO GUNS ARE BANNED. NO FIREARMS ARE PROJECTED AT ALL
22 BY THIS ORDINANCE. AND IT'S IMPORTANT TO TAKE A STEP FURTHER,
23 YOUR HONOR, BECAUSE AS YOU NOTE IN CALIFORNIA, SINCE 2000,
24 LARGE CAPACITY MAGAZINES HAVE BEEN ILLEGAL TO SELL, TRANSPORT,
25 MANUFACTURE, ET CETERA. THERE'S A NARROW LITTLE LOOPHOLE FOR

1 POSSESSION OF THOSE TYPES OF MAGAZINES.

2 THE WAY THE INDUSTRY HAS RESPONDED, THIS IS FROM OUR
3 DECLARATION OF MR. YURGEALITIS, WHICH IS Y-U-R-G-E-A-L-I-T-I-S,
4 HE EXPLAINS THE INDUSTRY HAS RESPONDED BY MAKING CALIFORNIA
5 COMPLIANT WEAPONS. CALIFORNIA COMPLIANT MAGAZINES, TEN ROUNDS
6 OR LESS, ARE READILY AVAILABLE TO ANYONE IN SUNNYVALE, ANYONE
7 IN CALIFORNIA. THEY CAN DEFEND THEMSELVES IF THEY CHOOSE TO,
8 THEY CAN HAVE THOSE WEAPONS IN THEIR HOMES.

9 AND THERE'S AN IMPORTANT DISTINCTION HERE BECAUSE
10 MR. YURGEALITIS EXPLAINS, GENERALLY SPEAKING I THINK HE SAYS
11 THE VAST MAJORITY OF WEAPONS WHICH ACCEPT ANY SIZE MAGAZINES
12 WILL WORK JUST AS WELL WITH A SMALLER SIZE MAGAZINES A LESS
13 LETHAL MAGAZINES. TO THE EXTENT THERE ARE ANY WEAPONS OUT
14 THERE THAT ONLY WORK WITH THESE VERY LARGE MAGAZINES, THE
15 ORDINANCE SPECIFICALLY EXEMPTS THEM.

16 SO IF SOMEONE HAS AN UNUSUAL WEAPON THAT ONLY WORKS WITH
17 MORE THAN TEN ROUNDS AND HAD THAT WEAPON LEGALLY IN 2000 WHEN
18 THE STATE PASSED THEIR LAW, THE SUNNYVALE ORDINANCE
19 SPECIFICALLY ALLOWS THAT.

20 SO YOU TAKE THOSE TWO THINGS TOGETHER, THERE ARE NO
21 WEAPONS BANNED. THERE ARE NO GUNS BANNED. THIS ORDINANCE
22 DOESN'T AFFECT ANY OF THAT. A CITIZEN OF SUNNYVALE CAN USE AND
23 POSSESS ANY WEAPON OF THEIR CHOICE. THIS ORDINANCE DOES NOT
24 AFFECT ANYTHING ON THAT. THEREFORE, YOUR HONOR, UNDER CHOVAN
25 AND THE OTHER CASES, THERE ISN'T A BURDEN ON ANY CONDUCT

1 PROTECTED BY THE SECOND AMENDMENT HERE. AGAIN, WE ARE TALKING
2 ABOUT AN ACCESSORY, A LARGE CAPACITY MAGAZINE WITH WEAPONS THAT
3 CAN ACCEPT ANY OTHER LAWFUL COMPLIANT MAGAZINES.

4 SO THAT GIVES US SOME PERSPECTIVE.

5 THE COURT: BUT THE BAN DOES -- I HAVE TROUBLE
6 SEPARATING THE MAGAZINE THAT USES PART OF THE GUN, THE
7 COMPONENT OF THE GUN, AND IF THE BAN TAKES PLACE THEN AREN'T
8 YOU AT LEAST GETTING CLOSE TO A CORE PROTECTION.

9 MR. THOMPSON: I DON'T BELIEVE IT'S CLOSE AT ALL
10 YOUR HONOR, BECAUSE THE CORE PROTECTION, AND THIS IS THE CHOVAN
11 CASE, PARAPHRASING HELLER.

12 THE CORE SUGGESTED -- THE CORE OF THE SECOND RIGHT WAS TO
13 ALLOW LAW ABIDING RESPONSIBLE CITIZENS TO USE ARMS IN DEFENSE
14 OF HEARTH AND HOME.

15 THIS ORDINANCE DOES NOT LIMIT ANYONE'S USE OF ARMS IN
16 HEARTH AND HOME. ALL IT LIMITS IS THE LETHALITY OF THOSE ARMS.
17 YOU CAN USE THEM WITH UP TO TEN ROUNDS. THERE'S NO LIMIT OF
18 THE USE AT ALL IN SELF DEFENSE.

19 SO YOUR HONOR, I THINK WE WOULD ARGUE FIRST, THERE IS NO
20 BURDEN AND UNDER THE TWO PART TEST OF CHOVAN, WE END THERE.
21 THERE IS NO PROBLEM IN THE SECOND AMENDMENT. BUT EVEN IF THERE
22 IS, EVEN IF WE WERE TO SAY THERE'S A SMALL BURDEN HERE, FOR ONE
23 OF THE ARGUMENTS AS YOU OUTLINED, THERE'S MAYBE A VERY, VERY
24 SLIGHT BURDEN, CHOVAN ALSO TELLS US, AS COUNSEL NOTED, THAT
25 IT'S A BALANCING TEST. HOW CLOSE THE LAW COMES TO THE CORE OF

1 THE SECOND AMENDMENT RIGHT AND THE SEVERITY OF THE LAW'S BURDEN
2 ON THAT RIGHT INSTRUCT US ON HOW SEVERE THE SCRUTINY SHOULD BE.
3 SO IF THERE'S SCRUTINY, IT SHOULD BE VERY, VERY SLIGHT.

4 AND AS YOUR HONOR NOTED, I THINK IT'S IMPORTANT TO
5 REMEMBER, THERE HAVE BEEN NOW FIVE CASES THAT ARE CONFRONTING
6 THE SAME ISSUE PRESENTED TO THIS COURT. ALL FIVE HAVE UPHELD
7 THE LAW AGAINST SECOND AMENDMENT CHALLENGE. MOST RECENTLY, OF
8 COURSE, JUDGE ALSUP, BUT ONE CASE THAT COUNSEL DID NOT MENTION
9 WAS THE SECOND CIRCUIT CASE OF HELLER VERSUS DISTRICT OF
10 COLUMBIA THAT SPECIFICALLY UPHELD A LARGE CAPACITY MAGAZINES
11 BAN OF TEN ROUNDS.

12 ALL THESE CASES ARE THE SAME. YOU ASKED ABOUT WHETHER
13 IT'S 15 ROUNDS OR MORE. ALL THESE CASES DEAL WITH TEN ROUNDS
14 AS A MAXIMUM ALLOWED BY LAW.

15 THE COURT: WHY TEN?

16 MR. THOMPSON: TEN IS WHAT WAS ACTUALLY FOUND BY THE
17 ORIGINAL 1994 FEDERAL LAW AS PRESENTING TOO MUCH LETHALITY.

18 WE HAVE IN OUR PAPERS, THE ORIGINAL I THINK IT'S THE
19 BUREAU OF ALCOHOL, TOBACCO & FIREARMS STUDY FINDING THAT THERE
20 WAS NO HUNTING PURPOSE FOR SUCH WEAPONS. THAT WAS ASSAULT
21 WEAPONS USING LARGE CAPACITY MAGAZINES.

22 THAT WAS THE ORIGIN OF THE 1994 LAW WHICH AT A FEDERAL
23 LEVEL BANNED THE SALE AND TRANSFER OF THESE MAGAZINES. OF
24 COURSE, THAT ENDED IN 2004 BY ITS TERMS.

25 THE COURT: AND HOW MUCH DEFERENCE SHOULD I GIVE TO A

1 LEGISLATIVE FINDING?

2 MR. THOMPSON: I THINK DEFERENCE WOULD BE IN ORDER
3 BUT IT'S CERTAINLY NOT REQUIRED.

4 I THINK HERE WE HAVE A VERY CLEAR LEGISLATIVE FINDING THAT
5 AFTER SANDY HOOK, THE MAYOR OF SUNNYVALE AND THE CITY COUNSEL
6 TOOK ACTION. THEY WANTED TO MINIMIZE THE CHANCES OF SUCH A
7 TRAGEDY HAPPENING IN SUNNYVALE. THEY ALSO WANTED TO PROTECT
8 LAW ENFORCEMENT.

9 I THINK NO ONE CAN REALLY ARGUE IF THOSE ARE LAUDABLE
10 PUBLIC SAFETY PURPOSES ENTIRELY WITHIN THEIR JURISDICTION.

11 AND BY THE WAY YOUR HONOR, THAT SEGUES TO ONE IMPORTANT
12 DISTINCTION WE HAVE BETWEEN THIS CASE AND THE SAN FRANCISCO
13 CASE BEFORE JUDGE ALSUP.

14 IN THIS CASE, THIS IS A VOTER-APPROVED INITIATIVE.
15 67 PERCENT OF THE CITIZENS OF SUNNYVALE WANT THIS PROTECTION.
16 THEY HAVE DECIDED THIS IS THE WAY THEY WANT TO PROTECT THEIR
17 COMMUNITY. KEEP THESE LETHAL MAGAZINES OUT OF SUNNYVALE.

18 AND IF THERE IS NECESSARY TO GO TO INTERMEDIATE SCRUTINY
19 THEN THE QUESTION BECOMES, WHAT IS THE FIT? AND THE FIT HERE
20 IS SNUG.

21 AGAIN, AS YOU NOTED, CALIFORNIA LAW DOES DOESN'T ALLOW
22 THE SALE, MANUFACTURE, IMPORT, ET CETERA OF THESE LARGE
23 CAPACITY MAGAZINES IT'S JUST THE GRANDFATHERED IN POSSESSION.

24 SO WHAT DID THE CITY OF SUNNYVALE DO? THEY FIT THIS
25 ORDINANCE TO HIT EXACTLY THAT LOOPHOLE TO MAKE SURE THAT LARGE

1 CAPACITY MAGAZINES CAN'T BE USED IN THE SMALL COMMUNITY OF
2 SUNNYVALE, EITHER BY THE CITIZENS OR THOSE PASSING THROUGH WHO
3 MIGHT SEEK TO MISUSE THEM.

4 AND CHIEF GREGURINA'S DECLARATION MAKES CLEAR, THIS ISN'T
5 AN IDLE FANTASY. THERE HAVE BEEN LARGE CAPACITY MAGAZINES USED
6 BY CRIMINALS IN SUNNYVALE, AND IT'S A THREAT TO LAW ENFORCEMENT
7 AND IT'S A THREAT TO THE CITIZENS

8 THE COURT: THERE ARE MORE HANDGUNS USED THOUGH,
9 RIGHT?

10 MR. THOMPSON: THERE ARE HANDGUNS USED, YES,
11 YOUR HONOR.

12 AGAIN, WE ARE WANT QUARRELING WITH THE RIGHT TO CITIZENS
13 TO USE HANDGUNS IF THAT'S WHAT THEY CHOOSE TO DO. THIS IS A
14 VERY NARROW, VERY REASONABLE PROTECTION, JUST TO MAKE SURE THE
15 KIND OF MASS SHOOTING THAT'S IN THE PRESS SO MUCH AND SO
16 HORRENDOUS, IS NOT LIKELY TO HAPPEN IN SUNNYVALE.

17 YOU CAN'T ELIMINATE IT, YOU CAN'T MAKE IT PERFECTLY SAFE,
18 BUT THEY TOOK A SMALL STEP TO CLOSING A LOOPHOLE WITH THIS LAW.

19 YOUR HONOR, THE OTHER POINT THAT COUNSEL MADE WAS AND I
20 THINK IN RESPONSE TO YOUR QUESTION ABOUT THE HISTORIC TREATMENT
21 OF MAGAZINES.

22 FIRST, TO ANSWER YOUR QUESTION, I'M NOT AWARE OF ANY CASE
23 EXCEPT FOR THE FIVE WE TALKED ABOUT DEALING OR ADDRESSING
24 LEGALITY OF MAGAZINES. BUT COUNSEL MENTIONED THAT UNDER HELLER
25 YOU LOOK TO WHAT IS COMMONLY POSSESSED AT THE TIME.

1 WELL, THE TIME IS NOW. THE TIME WAS LAST NOVEMBER WHEN
2 THIS WAS PASSED. AND THAT TIME HAS IN CALIFORNIA, SHOWS THAT
3 LARGE CAPACITY MAGAZINES HAVE NOT BEEN LEGAL FOR 20 YEARS HERE.

4 THE POSSESSION OF LARGE CAPACITY MAGAZINES HAS BEEN
5 GRANDFATHERED BUT THERE'S NO SHOWING THAT CERTAINLY NOT
6 MILLIONS OF MAGAZINES ARE AVAILABLE IN CALIFORNIA OR SUCH
7 MAGAZINES LET ALONE IN SUNNYVALE.

8 AND I THINK IT'S FAIR TO SAY THAT LARGE CAPACITY
9 MAGAZINES QUALIFY AS AN EXCEPTION TO THE HELLER SUPREME COURT
10 DECISION FOR DANGEROUS AND UNUSUAL RELATIONSHIPS. ASSUMING
11 IT'S A WEAPON, THEY ARE CERTAINLY, UNUSUALLY DANGEROUS.

12 THE WHOLE REASON FOR HAVING THAT MANY BULLETS AVAILABLE
13 IS TO MAXIMIZE THE CHANCES OF HARM AND INJURY TO PEOPLE.
14 THAT'S WHY MASS SHOOTERS USE THEM.

15 AND AS JUDGE ALSUP NOTED TOWARD THE END OF HIS DECISION,
16 I THINK IT WAS VERY IMPORTANT, IT'S IMPORTANT A HOMEOWNER WHO
17 WANTS SELF DEFENSE DOESN'T NEED TO SHOOT AS MANY BULLETS AS
18 POSSIBLE. THEIR GOAL IS NOT TO KILL AS MANY PEOPLE AS
19 POSSIBLE. THAT'S WHAT MASS SHOOTERS WANT. THAT'S WHY MASS
20 SHOOTERS USE LARGE CAPACITY MAGAZINES AND THAT'S WHY THEY ARE
21 UNUSUALLY DANGEROUS.

22 THE COURT: ALL RIGHT. THANK YOU.

23 MR. THOMPSON: UNLESS YOUR HONOR HAS ANY QUESTIONS,
24 THAT'S ALL I HAVE.

25 THE COURT: OKAY. MATTER SUBMITTED?

1 MR. THOMPSON: SUBMITTED, YOUR HONOR.

2 MS. BARVIR: COULD PLAINTIFFS MAKE A REBUTTAL?

3 THE COURT: VERY SHORT. I LET YOU GO FIRST. AND
4 IT'S THE DEFENDANT'S MOTION -- I'M SORRY, IT IS YOUR MOTION.
5 SO YEAH, YOU GET TO GO LAST.

6 MS. BARVIR: I'M SORRY, YOUR HONOR.

7 JUST A FEW VERY QUICK POINTS.

8 COUNSEL BROUGHT UP A DANGEROUS, UNUSUALLY DANGEROUS
9 STANDARD THAT DOESN'T EXIST IN HELLER. HE'S REFERRING TO
10 DANGEROUS AND UNUSUAL. IF WE ARE TALKING ABOUT DANGEROUS AND
11 UNUSUAL, IT MUST BE BOTH.

12 FIREARMS, ARMS WEAPONS BY THEIR VERY PURPOSE ARE
13 DANGEROUS, SO THEY ALSO HAVE TO BE UNUSUAL.

14 IN THIS COUNTRY WE SHOW THAT AT LEAST THERE ARE 75
15 MILLION OF THESE MAGAZINES IN THE HOMES OF AMERICAN CITIZENS IN
16 THEIR PRIVATE HANDS SO THEY ARE CERTAINLY NOT DANGEROUS AND
17 UNUSUAL.

18 PLAINTIFFS ALSO MUST NOTE THAT IT IS TRUE THESE MAGAZINES
19 ARE NOT THEMSELVES ARMS, BUT THEY ARE NECESSARY COMPONENTS OF
20 FULLY FUNCTIONING FIREARMS. CLAIMS THAT THESE ARE LARGE
21 CAPACITY MAGAZINES ARE NOT OR THESE CLASSES OF MAGAZINES ARE
22 NOT ESSENTIAL MUST FAIL BECAUSE AMMO WOULDN'T BE ESSENTIAL --
23 ANY TYPE OF AMMUNITION WOULD NOT BE ESSENTIAL EITHER.

24 YOU HAVE LOTS OF CLASSES OF AMMUNITION. YOU COULD ALWAYS
25 USE SOMETHING ELSE, BUT AMMUNITION IS GOING TO BE PROTECTED.

1 THAT HELLER WASN'T ADDRESSING AMMUNITION OR AMMUNITION
2 MAGAZINES IS CLEAR IT HAD IT BEFORE IN A FIREARMS BANS. SO IT
3 TALKS IN TERMS OF FIREARMS, BUT IT'S ALSO GOING TO EQUALLY
4 PROTECT MAGAZINES AND OTHER COMPONENTS OF FULLY FUNCTIONING
5 FAIR ARMS.

6 THE CITY'S POINTS IGNORE NINTH CIRCUIT AUTHORITY APPLYING
7 THE SAME COMMON USE TEST TO EVEN SILENCERS WHICH ARE DEFINITELY
8 NONESSENTIAL POINTS, COMPONENTS OF A FIREARM, PROVIDES NO
9 AUTHORITY THAT SOME OTHER TEST SHOULD CONTROL HERE.

10 THE CITY ALSO BRINGS UP THE 1994 FEDERAL BAN ON ASSAULT
11 WEAPONS WHICH INCLUDED THE CHARACTERISTICS OF THESE MAGAZINES.

12 BUT THEN IT SAYS THERE'S THIS SNUG FIT THAT THIS IS GOING
13 TO DO SOMETHING TO STOP THE HARM THAT IT TALKS ABOUT THESE MASS
14 SHOOTINGS THAT PLAINTIFFS ARE ALSO HORRIFIED BY.

15 BUT THE EVIDENCE SHOWS IN THE KOPER REPORT FROM 2004 AND
16 OTHERS THAT IT DID NOTHING, EVEN AT A FEDERAL LEVEL WHEN THE
17 ENTIRE COUNTRY WAS UNDER A HOLD ON THESE MAGAZINES IT HAD NO
18 DISCERNABLE IMPACT.

19 SO ANY DEFERENCE TO THE CITY'S THEORY THAT TAKING THESE
20 MAGAZINES FROM LAW ABIDING CITIZENS WOULD PREVENT ANOTHER
21 HORRIFYING MASS SHOOTING IS COMPLETELY DUBIOUS.

22 ONE FINAL THING. THE PLAINTIFFS WOULD LIKE TO POINT OUT
23 THAT THIS DISTRICT COURT SHOULD NOT BE AFRAID TO MAKE A BRAVE
24 STAND ON THE SECOND AMENDMENT HERE.

25 PERUTA ALSO WAS FACING MULTIPLE DISTRICT COURT DECISIONS

1 UPHOLDING SIMILAR CARRY BANS, THE BANS ON CARRYING IN PUBLIC
2 UNLESS SOMEONE COULD PROVE A VERY SPECIAL REASON TO DO SO AND
3 ALSO CIRCUIT COURT OPINIONS THAT UPHELD THOSE LAWS TOO. AND IT
4 WENT OUT ON A LIMB AND THE NINTH CIRCUIT FOUND THAT THE LAWS AT
5 ISSUE IN PERUTA WERE VIOLATING THE LAW. SO IT'S NOT UNHEARD
6 OF.

7 THAT'S ALL THAT PLAINTIFFS HAVE.

8 THE COURT: MAY I ASK YOU, WHAT DO THESE COST?

9 MS. BARVIR: WHAT DO WHAT COST?

10 THE COURT: LARGE MAGAZINES.

11 MS. BARVIR: THAT'S A VERY GOOD QUESTION, YOUR HONOR.

12 IN MY KNOWLEDGE --

13 THE COURT: I'M JUST CURIOUS.

14 MS. BARVIR: IN MY UNDERSTANDING, I DON'T KNOW.

15 I THINK THAT FOR THE MOST PART THEY COME STANDARD WITH
16 THE FIREARMS AS YOU PURCHASE THEM BUT YOU CAN ALSO GET THEM,
17 YOU CAN ALSO PURCHASE THEM ON THEIR OWN BUT I DON'T KNOW THE
18 COST. I'M SORRY.

19 THE COURT: OKAY. ALL RIGHT. THANK YOU.

20 MATTER WILL BE SUBMITTED?

21 MR. THOMPSON: YES, YOUR HONOR.

22 JUST FOR THE RECORD, COUNSEL MENTIONED THE KOPER REPORT.
23 WE HAVE THE DECLARATION OF MR. KOPER AS PART OF THE RECORD AND
24 HE EXPLAINS HIS STUDY THAT I THINK WAS MISTAKEN, BUT THE KOPER
25 REPORT IS IN THE RECORD AND IT'S PART OF THE DECLARATION OF

1 CHRISTOPHER KOPER.

2 AND YOUR HONOR, THE LAST SIMILAR POINT IS THE SAME RECORD
3 REALLY DOES EXIST AS WAS BEFORE JUDGE ALSUP, SAME EXPERTS
4 ALMOST WITHOUT EXCEPTION.

5 THANK YOU, YOUR HONOR.

6 THE COURT: OKAY. MATTER SUBMITTED.

7 THANK YOU.

8 MS. BARVIR: THANK YOU, YOUR HONOR.

9 (WHEREUPON, THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.



SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 3/7/14

C. D. Michel - S.B.N. 144258
 Clinton B. Monfort - S.B.N. 255609
 Sean A. Brady - S.B.N. 262007
 Anna M. Barvir - S.B.N. 268728
 MICHEL & ASSOCIATES, P.C.
 180 E. Ocean Boulevard, Suite 200
 Long Beach, CA 90802
 Telephone: (562) 216-4444
 Facsimile: (562) 216-4445
 Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

LEONARD FYOCK, SCOTT
 HOCHSTETLER, WILLIAM DOUGLAS,
 DAVID PEARSON, BRAD SEIFERS, and
 ROD SWANSON,

Plaintiffs

vs.

THE CITY OF SUNNYVALE, THE
 MAYOR OF SUNNYVALE, ANTHONY
 SPITALERI in his official capacity, THE
 CHIEF OF THE SUNNYVALE
 DEPARTMENT OF PUBLIC SAFETY,
 FRANK GRGURINA, in his official
 capacity, and DOES 1-10,

Defendants.

CASE NO: CV13-05807 RMW

**SUPPLEMENTAL DECLARATION OF
 MASSAD AYOOB IN SUPPORT OF
 PLAINTIFFS' REPLY TO
 DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

Date: February 21, 2014
 Time: 9:00 A.M.
 Location: San Jose Courthouse
 Courtroom 6 - 4th Floor
 280 South 1st Street
 San Jose, CA 95113

DECLARATION OF MASSAD AYOOB

1. I, Massad Ayoob, am not a party in the above-titled action. I am over the age of 18, have personal knowledge of the facts and events referred to in this Declaration, and am competent to testify to the matters stated below.

2. Attached hereto as **Exhibit E** is a true and correct excerpt of my book, *The Complete Book of Handguns* 87, 89-90 (2013).

I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on February 10, 2014.



Massad Ayoob

EXHIBIT “E”

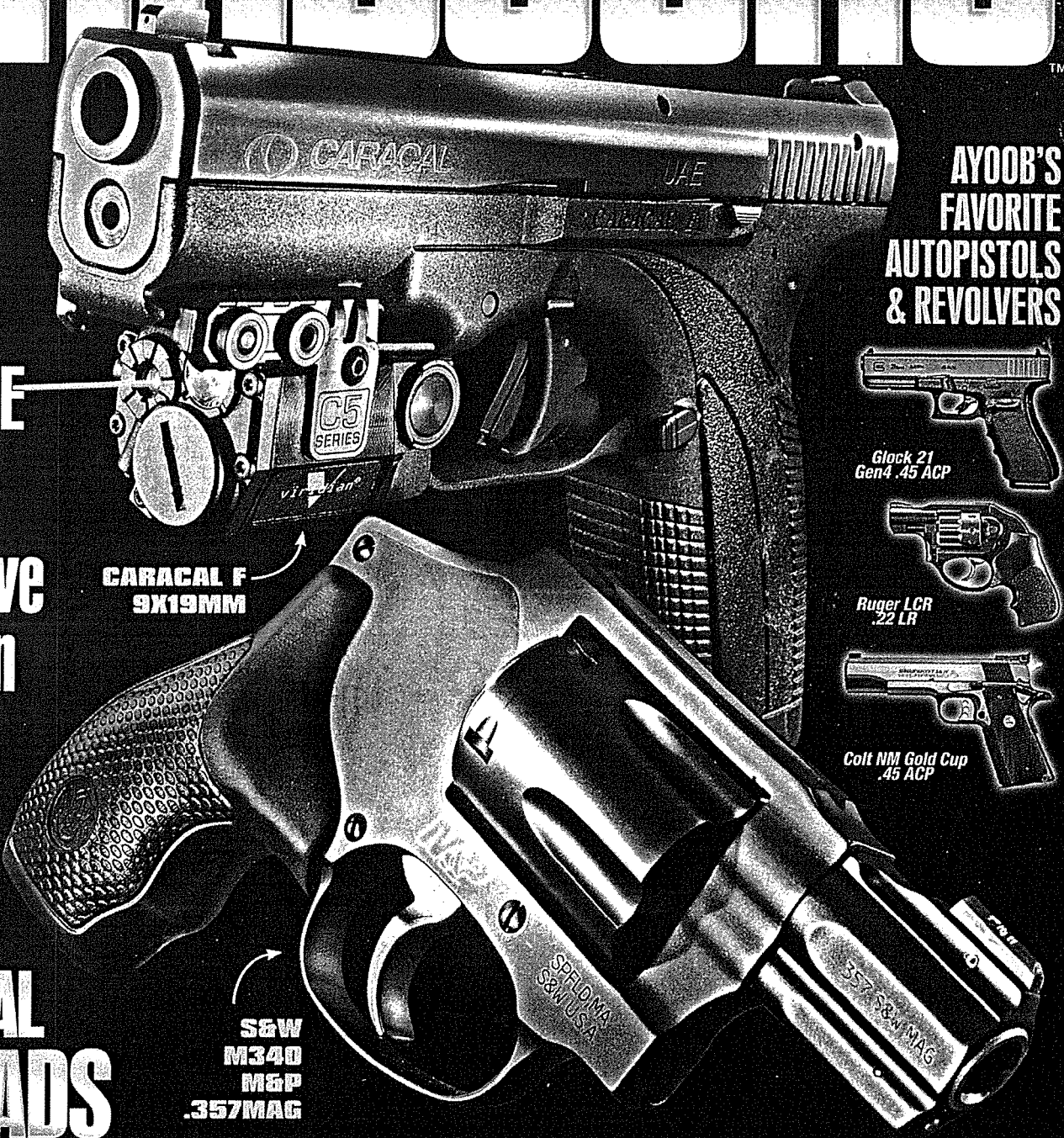
ER000074

HARRIS OUTDOOR GROUP PRESENTS #129

THE COMPLETE BOOK OF HANDGUNS 2013

BY
MASSAD
AYOOB
HOME
DEFENSE
Castle Doctrine
Law Clarified

Defensive
Handgun
Drills
Split
Second
TACTICAL
RELOADS



AYOOB'S
FAVORITE
AUTOPISTOLS
& REVOLVERS



Glock 21
Gen4 .45 ACP



Ruger LCR
.22 LR



Colt NM Gold Cup
.45 ACP

CARACAL F
9X19MM

S&W
M340
M&P
.357MAG

GUN TESTS

Ruger LCR .22 LR
Springfield XDS .45 ACP
Sig Sauer P229 .357 SIG
Colt NM Gold Cup .45 ACP
Kahr CM9 9x19mm MORE!



6 GUNFIGHTING
MYTHS
Life & Death
LESSONS

Concealed
Carry
Tactics

J-FRAME
SNUBBY
GUIDE

Versatility is one of the reasons
Glock has become so ubiquitous
in the American firearms market.
Three .45 ACPs shown here,
from the top, G30, G21 Gen4
and the single-stack G36.



Steve Woods photo.

FINDING THE RIGHT GLOCK

Finding the optimum autopistol that will satisfy your needs!

Available in the United States for more than a quarter of a century now, the Glock pistol dominates market here. There are many good reasons why, and one of them is its versatility. Let's look at the broad array of Glocks presently available. One or the other will probably serve your particular needs a bit better than the rest.

SIZE

The very first Glock, the G17, established itself as a "service pistol" par excellence. That length, in turn, became the "standard size" Glock: a 4.5-inch barrel with slide of commensurate length, and a full-length grip-frame housing a full-length magazine.

That Glock 17, now in its fourth generation of design advancement, is chambered for the 9x19 cartridge, also known as 9mm NATO, 9mm Luger, and 9mm Parabellum. Safe to carry fully loaded with a round in the chamber, it holds 17 more in its standard magazine.

In 1990, the same Glock format was introduced chambered for the then-new .40 S&W cartridge. Known as the Glock 22, this pistol is believed to be in use by more American police departments than any other. Its standard magazine capacity is 15 rounds.

Next, Glock chambered the same gun for the .357 SIG cartridge, and called it the Glock 31. That bottlenecked round shares overall length and case head dimensions with the .40, so by simply interchanging the barrels the shooter can change his Glock .357 to .40, or vice versa. G31 magazines will work with .40, and G22 magazines will work with .357 SIG cartridges.

With one caveat, the Glock 37 pistol in caliber .45 GAP is the same size as the pistols listed above. That one difference is slide thickness: on the G37, the slide is wider, sufficiently so that it comes standard with the oversize slide-stop lever that is merely optional on the other standard size service models. A G37 magazine is designed to hold ten rounds of .45 GAP.

STANDARD COMPACTS

"Standard compacts" sounds like a contradiction, but is used here intentionally to describe the frame size of the standard models made shorter at muzzle and butt. The first of these, going back to the late 1980s, was the Glock 19. Take the G17, shorten the barrel by half

The five configurations of standard size Glocks, shown here in 9mm. From top: longslide G17L, Tactical/Practical G34, standard size G17, compact G19, subcompact "baby Glock" G26.

the line. The differences are found in size and power level.

While I know many people who carry full size Glocks concealed year round, and my friend and ace instructor Tom Givens wears a 5.3-inch Glock 35 holstered inside his waistband daily, the compacts and subcompacts are the ones generally seen as the "concealment guns." Consider the Glock range of "compacts" described above.

The Glock 19 has won many a match for famed instructor "Super Dave" Harrington of Team Panteao, even though it's not perceived as a "match gun." On the NYPD, where officers have a choice of three different 16-shot 9mm pistols for uniform carry, an estimated 20,000 of the city's estimated 35,000 sworn personnel carry the Glock 19. The lightest of the city-approved duty guns, it is compact enough for plainclothes carry in an investigative assignment or off duty, yet substantial enough for uniform duty wear. Its .40 caliber twin, the Glock 23, is standard issue for FBI agents (who have the option of the service-size G22 if they prefer). The G23 is also standard issue for all divisions of the Boston Police Department, and its versatility in both uniformed and plainclothes roles is one reason why.

Glock's subcompact pistols are famous for being remarkably accurate for their size. It is not uncommon to see one outshoot its full-size counterpart in the same caliber. In addition to the mechanics, there is the matter of ergonomics and overall "shootability." Several times in recent years, at GSSF (Glock Sport Shooting Foundation) matches, the overall top shot has tallied that "Matchmeister" score with a subcompact 9mm Glock 26. Mike Ross and Bryan Dover come to mind.

"Well, heck," some might say. "Those guys are so good they could outshoot everybody else with anything." Um...it's not just that. I'm told that on those days, both men shot those winning scores in the Subcompact division. They were also shooting their bigger 9mm Glocks in the Master Stock division. They beat everyone, including themselves, who was using the bigger guns. That says something pretty impressive, not just about Dover and Ross, but about the little Glock 26 pistol.

That said, it was the longer barreled Glock 34 (his signature pistol) that Bob Vogel used to shoot his way to the World Championship of the International Defensive Pistol Association last year. As noted earlier, that's the single most popular handgun, not just the most



GUNSITE

QR code

Visit us at www.gunsite.com for more information on our products and services.

**TACTICAL NEWS
EVERYDAY...VISIT
TACTICAL-LIFE.com**



FMK
FIREARMS
Proudly American

**RETAIL
\$399**

FMK 9C1 Gen II

Pistol, 2 magazines, 7 interchangeable low profile sights, lockable hard plastic case and owner's manual
9mm | 10+Mag | 23.45oz | 6.58"L x 5.09"H 1.14"W | 4" Barrel
Made in USA | Polymer Frame | High Carbon Steel Slide

Available Options:
Dark Earth (above), Pink, or Matte Black.
Slide with or without Bill of Rights Engraving

AMERICAN TACTICAL
800-290-0065
www.AmericanTactical.us
AmericanTactical

Finding The Right Glock

an inch and the slide proportionally, and stub off the butt until you can only fit 15 9mm rounds in the magazine, and you have the original compact, the G19.

The same format in .40 is the Glock 23, and in .357, the Glock 32. Each of those will hold thirteen cartridges in their standard magazines. That size Glock in .45 GAP is the G38, which comes with an eight-round magazine.

STANDARD SUBCOMPACTS

In the mid-1990s, Glock hit the next level of miniaturization with the pistols that instantly became known as the "baby Glocks," the G26 and G27, soon to be followed by the G33 and eventually, the G39. A generation of cops has proven that these guns are small enough to carry in ankle holsters as hideout backups; in fact, at this writing, troopers of one state with Glock 27s and troopers of another with Glock 39s are required to carry these issue baby Glocks in issue ankle rigs to back up their full-size service Glocks whenever working in uniform. With sufficiently capacious trousers, they have been successfully carried in pocket holsters by some users.

The G26, probably the most popular of its size range today, carries ten 9mm rounds in its short little standard magazine. The G27 carries nine rounds of .40, and the G33, nine .357 cartridges. The fat .45 GAP carries top a G39 magazine at six rounds.

LONG SLIDES

The standard (i.e., G17) size is actually the middle ground of "original frame" Glocks in size, with two models longer. The first of those, going back to the 1980s, was the 6-inch barrel with proportional length slide. Dubbed the G17L in 9mm, it would be known as the Glock 24 in .40. In either caliber, these guns take the same full-length magazines as the standard models. These are now only produced sporadically to meet demand when warranted, having been largely supplanted by Glock's own Tactical/Practical series.

TACTICAL/PRACTICALS

By the turn of the 21st century, Glock had come out with guns in a length between standard and target length, their barrels 5.3 inches long and specifically engineered to fit the "footprint" of maximum sizes mandated for two of America's most popular action shooting sports. Called the "Tactical/Practical" Glocks, the Glock 34 in 9mm took G17



Glock offers different grip options. Among these G30 .45s (starting from the top) we have a standard G30, a G30 SF, and an early G30 with a grip trim from Rick Devoid.

The most widely adopted police pistol in the US today: the Glock 22 in .40, shown here with hugely popular Speer Gold Dot ammunition.



magazines and was destined to become the most popular Stock Service Pistol in the International Defensive Pistol Association, while the G35 in .40 used the same magazine as the Glock 22 and proved immensely popular in Limited class shooting under the auspices of the International Practical Shooting Confederation. Some departments that appreciated the accuracy potential afforded by the long sight radius of the Tactical/Practical have bought them as standard issue for police patrol. The G34 and G35 are roughly the same size as Government Model 1911s.

LARGER FRAMES

In 1990, Glock introduced the G20 pistol, essentially a scaled-up G17 whose larger frame contained 15+1 rounds of full-power 10mm. While the 10mm cartridge itself did not take off in popularity as expected, the

G20 proved to be the most rugged 10mm auto out there when fired constantly with full power ammunition, and quickly became a "cult favorite" among fans of the caliber. Its compact version, the Glock 29 with 10-round magazine packs an amazing amount of ballistic potential for a gun its size.

Almost immediately after the G20 came out, Glock introduced the same format in .45 ACP, the Glock 21. This 13+1 round pistol became the most popular standard-issue .45 ACP in American police circles. By the late 1990s, it had been joined by a chopped and channeled version, the 10+1 round Glock 30. Both pistols were remarkably accurate and soon established themselves as highly reliable. .45 fans particularly liked how "soft shooting" they were for their caliber, something 10mm Glock fans discovered also.

SLIMLINE GLOCK

After many years of public demand for a thin Glock with a single-stack magazine, the company introduced the Glock 36. Its magazine isn't all that thin, but with six rounds in the mag and a seventh safely in the firing chamber, its firepower is ample for many buyers' perceived needs. The caliber is .45 ACP.

HAND FIT

No one will do their best driving in a vehicle whose seat and steering wheel aren't properly adjusted to them, and no one will do their best shooting with a pistol that does not fit their hands. Glock has gone in multiple directions to allow for customer hand fit. Glock's SF (short frame) models have less distance front to back, allowing "more hand around the gun and more finger on the trigger." The current Gen4 Glocks achieve that as they come out of the box, and also come with backstrap spacers to tailor grip girth and trigger reach for larger hands and/or longer fingers. Folks with the smallest hands may be candidates for that slimline Glock 36, which has the thinnest grip configuration and the shortest reach to the trigger of any Glock.

TAILORING

The reason Glock makes so many pistols is that the market wants them, and it wants them because so many customers have such divergent needs. Glock doesn't have a cheap line and a deluxe line—none of the old Sears, Roebuck "good, better, best" approach to product. Their high quality is uniform throughout

the line size an

While carry fu round, Tom Gi holster compa ones g ment g "comp

The match Harring it's not On the choice pistols 20,000 sworn The lig duty g plaincl assign enoug calibre issue optio prefer for all Depai unifor one re

Glock famous for the one o in the the m ergor Sever (Gloc matc taller subc and f

"V guys every not j both the S also in th ever was som abo little T Gloc Vog Wor Defe As r pop

Finding The Right Glock

popular Glock, at the IDPA Nationals every year. The long sight radius is very forgiving in terms of accuracy, and because the front part of their slides are cut away to make them lighter, the Tactical/Practical Glocks are not clunky or muzzle-heavy in feel. In fact, swinging a Glock 35 is a little like waving a wand compared to some of the old-style all-steel pistols it has superseded.

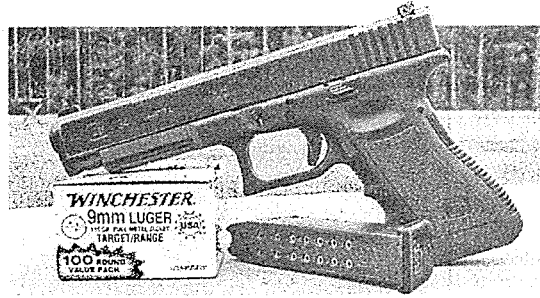
CALIBER QUESTION

Caliber will also be a huge part of the answer to the question, "Which Glock should I buy?" The new shooter in particular is well served with a 9mm, due to both its mild recoil and its relatively low cost compared to the other available calibers. With careful ammunition selection, the 9mm is a sound choice today for defensive purposes...and, of course it has room on board for a bit more ammunition, gun size for gun size. The lighter recoil also makes it the caliber of choice for some types of competition. The .45 caliber always inspires confidence in a police or defensive pistol, and its larger diameter tears bigger holes if the bullet's hollow nose plugs on heavy clothing in cold weather environments. Glocks chambered for the standard 45 Auto round give higher capacity than most of the competition in the big G21 or the compact G30, and for those with smaller hands the standard-frame Glocks in .45 GAP deliver essentially the same level of stopping power. .45 ACP won't exceed .45 GAP in power unless you go to a +P load.

If the debate between 9mm and .45 causes as much angst in the shooter as it has in many law enforcement agencies, the shooter can follow the police path and compromise on the .40, which Glock offers in all sizes.

An increasing number of police departments have gone with the powerful .357 SIG cartridge, such as the Tennessee Highway Patrol, which issues the Glock 31. With 125-grain hollow points, this high-velocity round has earned an excellent reputation for "stopping power," and for tactical barricade penetration. Its velocity also gives it a flat trajectory for long shots.

Glock has been known to produce other calibers for markets outside the United States. The Glock in caliber 9x21 is popular in Italy, where private citizens are forbidden to own military caliber guns. One South American nation reportedly permits its citizens to carry only .32 or smaller caliber handguns; a Glock in .30 Luger would be ideal there. Glock produces compact and subcompact



The Glock Tactical/Practical, here in a 9mm G34 configuration.

.380s as well, though they're not imported into the U.S.

There are .22 LR conversions units available, affording inexpensive practice with the Glock. The one from Advantage Arms gets uniformly good reviews. This writer would like to see Glock bring out their own rimfire for their next product, which in the logical line of company product numbering, would be the fortieth. If the Glock 22 is a .40, it seems only fair that the Glock 40 should be a .22.

TRIGGERS

Determined to be "double-action-only" by the Bureau of Alcohol, Tobacco, Firearms and Explosives, Glock's Safe Action trigger is available in multiple formats. The standard is the 5.5-pound with standard trigger return spring, designed to give an overall pull of that weight. The shooter will experience a two-stage pull, rather like an old Springfield or Mauser bolt-action rifle trigger. The first stage is a relatively long, light take-up, followed by a shorter completing movement with more resistance. Glock shooters find it easy to "ride the link," allowing the trigger to return forward from the last shot only until the sear engagement is felt, and then repeating the press.

Some police departments, such as Miami PD and the San Bernardino County Sheriff's Department, have over the years seen fit to install heavier connectors in their issue Glocks. This would be the 8-pound. Butch Barton, who won more Gunny Challenge Glock matches than anyone else, long favored this set-up in his Glocks because he felt it gave him a crisper release. The 8-pound connector has not become widely popular elsewhere, however.

On the other end of the scale is the 3.5/4.5-pound connector, which debuted with the G17L match pistol. Now known by the 4.5 pound designation, it registers that weight when the trigger is pulled from the center, where most of us place the index finger, and can go down to 3.5

pounds due to leverage when weighed at the bottom, or toe of the trigger. Very popular among competitive shooters, it is sternly warned against by Glock for "duty pistols" or self-defense guns, unless used in conjunction with a New York style trigger return spring unit.

Twenty-some years ago, at the behest of the New York Police Department, Glock created the New York Trigger, now known as NY-1. This device

replaces the standard trigger return spring and gives a firm resistance to the still-two-stage trigger from the very beginning of the pull. When mated with the 5.5-pound connector, the NY-1 brings pull weight up into the 7- to 8-pound range. A Mid-western state police agency pioneered the practice of mating the 3.5-pound connector with the NY-1, which gave a very smooth and uniform pull in the 6-pound weight range. This combination has been Glock approved for duty/defense guns across the board for several years now. For NYPD, Glock also developed a "New York Plus" module, now known as the NY-2, which with the standard 5.5-pound connector brings pull weight up into the 11- to 12-pound range. To my knowledge, it is used only by NYPD and the New York State Parole Board.

This writer recommends following Glock's guidelines and only going with the 3.5/4.5-pound total pull in a competition gun. Some wonder why that system is standard in the Tactical/Practical guns; they need to look at the Glock website (glock.com) and observe that those pistols are listed under the Sport Shooting and Enthusiast categories, and not under Police, Military, or Personal Defense. It is Glock's policy to ship G34s and G35s ordered by police departments with the standard 5.5-pound trigger system, and it is worth noting that when the Kentucky State Police adopted the Glock 35, they ordered them with NY-1 triggers.

FINAL NOTES

The most popular police handgun in America, the Glock is also hugely popular for action pistol competition and home and personal defense, and in 10mm or .357 SIG can be a very useful outdoorsman's sidearm, too. There's pretty much a Glock for everyone, but it's up to the shooter to identify his or her needs, and then determine which page to mark in the Glock catalog. To learn more, call 770-432-1202 or visit glock.com.

C. D. Michel - S.B.N. 144258
 Clinton B. Monfort - S.B.N. 255609
 Sean A. Brady - S.B.N. 262007
 Anna M. Barvir - S.B.N. 268728
 MICHEL & ASSOCIATES, P.C.
 180 E. Ocean Boulevard, Suite 200
 Long Beach, CA 90802
 Telephone: 562-216-4444
 Facsimile: 562-216-4445
 Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

LEONARD FYOCK, SCOTT
 HOCHSTETLER, WILLIAM DOUGLAS,
 DAVID PEARSON, BRAD SEIFERS, and
 ROD SWANSON,

Plaintiffs,

vs.

THE CITY OF SUNNYVALE, THE
 MAYOR OF SUNNYVALE, ANTHONY
 SPITALERI, in his official capacity, THE
 CHIEF OF THE SUNNYVALE
 DEPARTMENT OF PUBLIC SAFETY,
 FRANK GRGURINA, in his official
 capacity, and DOES 1-10,

Defendants.

CASE NO: CV 13-05807 RMW

**PLAINTIFFS' REPLY TO
 DEFENDANTS' OPPOSITION TO
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: February 21, 2014
 Time: 9:00 a.m.
 Location: San Jose Courthouse
 Courtroom 6 – 4th Floor
 280 South 1st Street
 San Jose, CA 95113

If there were any lingering doubt, the Supreme Court dispelled it when it instructed that Second Amendment cases will not “require judges to assess the costs and benefits of firearms restrictions and thus to make difficult empirical judgments in an area in which they lack expertise.” *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3050 (2010). As Judge Posner wrote for the Seventh Circuit, “the Supreme Court made clear in *Heller* that it wasn’t going to make the right to bear arms depend on casualty counts.” *Moore v. Madigan*, 702 F.3d 933, 939 (2012).

III. MAGAZINES OVER TEN ROUNDS ARE IN COMMON USE FOR LAWFUL PURPOSES AND ARE THUS PROTECTED UNDER THE SECOND AMENDMENT

The Second Amendment protects arms “in common use” for lawful purposes. Mot. 6. As millions of Americans possess firearms equipped with the prohibited magazines, their protection is not in doubt. Mot. 4-5, 8-9. Although *Heller* required no elaborate showing that handguns are commonly chosen for self-defense, 554 U.S. at 629, and it is the City’s burden to prove its law does not restrict protected conduct, *United States v. Chovan*, 735 F.3d 1127, 1136-37 (9th Cir. 2013) (citing with approval *Ezell v. City of Chicago*, 651 F.3d 684, 701-04 (7th Cir. 2011)), Plaintiffs offer substantial evidence that it does. The City does not counter most of it, but implausibly claims the magazines are not in common use or are otherwise unprotected Opp’n 8-17.¹

The City first argues that protections for magazines and other firearm components are not determined by common usage because they are not “arms.” Opp’n 9-10. Instead, it advances a novel test affording protection to components only if banning them would render firearms wholly inoperable. Opp’n 10. The argument is without merit, and this new approach finds no support in any court opinion to date. That *Heller* does not discuss magazines or ammunition is unsurprising, given that it had a firearms ban before it. But magazines and ammunition are as crucial to an operable firearm as the firearm itself. One would expect protections of these items to mirror those of firearms. This is no doubt why every circuit to consider the protection of various firearm components has employed a common use analysis. Mot. 6-7. The City ignores these cases, including authority from the Ninth Circuit. And it offers no authority for its new test.

¹ The City repeatedly references the State’s sales ban. Opp’n 1, 5, 13, 22. But even if it did not “grandfather” in millions of these magazines in California, *Heller* plainly sets a *national* standard for common use. 554 U.S. at 628 (handguns are preferred by “American society”).

1 The City next claims that magazines over ten rounds are unprotected because they are
 2 “dangerous and unusual.” Opp’n 10-11, 15-18. Alone, the fact that a firearm is “dangerous” does
 3 not distinguish it from any other. It is the very nature of firearms to be dangerous. The further
 4 requirement that an arm be “unusual” comports with *Heller*’s emphasis on protecting arms in
 5 common use. 554 U.S. at 624-25, 628-29. The City argues that the magazines are too dangerous
 6 for “responsible” self-defense, Opp’n 15-16, but provides no evidence that they are *also* unusual.
 7 Instead, it tries unsuccessfully to attack portions of Plaintiffs’ substantial evidence to the contrary.
 8 The City first complains that Plaintiffs’ evidence, including a declaration and report from the
 9 National Shooting Sports Foundation (NSSF), does not establish the number of firearms sold with
 10 magazines over ten rounds. Opp’n 12-13. But NSSF is the trade association for the firearms
 11 industry. Curcuruto Decl. ¶ 2. It is *uniquely* situated to gather and provide estimates of the
 12 number of magazines in circulation based on federal data and input from industry members
 13 familiar with magazine markets. Even if it weren’t, NSSF’s estimates are consistent with those of
 14 the City’s own expert. Curcuruto Decl. ¶¶ 8, 13; Koper Decl. ¶ 36 (73.3 to 98.3 million such
 15 magazines.)

16 Plaintiffs also provide advertisements depicting common firearms that are sold standard
 17 with magazines over ten rounds. Monfort Decl. ¶ 4 & Ex. C. Oddly the City questions the ability
 18 of this evidence to establish the number of those guns sold. Opp’n 13. But Plaintiffs never suggest
 19 it does. This evidence is probative because it shows a significant share of firearms on the market
 20 come *standard* with magazines over ten rounds. Mot. 4, 9. This is particularly compelling when
 21 coupled with evidence regarding the consumer shift toward such firearms and their popularity for
 22 self-defense. Helsley Decl. ¶ 10; Ayoob Suppl. Decl., Ex. E. The City cannot seriously contend
 23 that some of the most popular firearms on the market, purchased by millions after passing
 24 required background checks, are not commonly possessed for lawful purposes.

25 The City finally suggests that the millions of magazines in circulation are held by a “small
 26 number of enthusiasts.” Opp’n 12-13. It bases its claim on studies showing that 20% of gun
 27 owners own 65% of the firearms in America. Even if these studies were reliable and this pattern
 28 of gun ownership applies equally to magazine ownership, each person would own roughly three

magazines on average, placing them in the hands of some *twenty-five million* people.

This should end the inquiry. But even under the novel hurdles imposed by the *Heller II* panel to avoid strict scrutiny, the banned magazines are either “well-suited to or preferred for the purpose of self-defense or sport.” 670 F.3d 1244, 1262 (D.C. Cir. 2011). In fact, they are both.

Regarding their sporting use, the City never disputes that these magazines are suitable, and in fact essential, in the nation’s most popular competitive shooting sports. *But see* Mot. 12 n.9. The City’s reference to a federal restriction on importing certain firearms with magazines over ten rounds does not establish that magazines are not commonly selected for sport. Opp’n 4. Such magazines are widely manufactured, sold, and used in the U.S. for various sporting purposes even if the ATF has not exempted them from limited importation restrictions.

That magazines over ten rounds are also suitable for self-defense is clear. Having additional ammunition increases the chance of surviving an attack.² To support this rather obvious point, Plaintiffs provide real-life examples of attacks that required over ten rounds. Ayoob Decl. ¶¶ 4-16. They also show that magazines over ten rounds were developed for self-defense and that they are marketed for and purchased by millions for that purpose. Helsley Decl. ¶¶ 4-11; Monfort Decl., ¶¶ 4-5 & Ex. C. And they describe how the realities of criminal attacks make increased ammunition capacity preferable. For instance, it is extremely difficult to change magazines when facing attack and rarely does a victim have extra magazines. Additional rounds also aid in defense against the threat of multiple attackers, each taking multiple shots to neutralize. Mot. 11-12.

Instead of addressing these points, the City claims that rarely more than a few shots are fired in self-defense, criminals often retreat when being shot at, and 30% of the time an attacker will be stopped with a single shot. Opp’n 14 n.10. But the City’s claims are based on flawed analyses of a sampling of self-defense stories, not a comprehensive digest. Part II.A., *supra*; Pls.’ Objs. ¶¶ 16-17. Indeed, the City cites one study that includes only examples of *successful* self-

² The City warns that if magazines over ten rounds are suitable for self-defense, machine guns must also be protected. Opp’n 16. This is false. Courts must still find that the restricted arms are in common use for lawful purposes, not simply that they could be useful. Unlike firearms with magazines over ten rounds, machine guns are not preferred by millions for self-defense, and the Supreme Court has explicitly upheld restrictions on these arms. *Heller*, 554 U.S. at 624-25.

1 defense, skewing the statistics by omitting scenarios in which defense was ineffective. Thompson
 2 Decl., Ex. 13. Regardless, consider what its evidence *also* tells us. At times more than a few
 3 bullets are necessary. Criminals do not always retreat or expire when shot at. And multiple shots
 4 are required to incapacitate an aggressor 70% of the time. The benefit of additional ammunition
 5 for self-defense is clear—and the City’s evidence is in harmony with Plaintiffs’ on this point.³

6 This is why millions prefer and routinely select the prohibited magazines, and firearms
 7 equipped with them, for that purpose. Plaintiffs provide substantial evidence of this. They
 8 establish that firearms with standard magazines over ten rounds—specifically marketed for self-
 9 defense—are among the most popular-selling firearms in the country. Mot. 12-13. Indeed, Glock
 10 handguns holding 15-17 rounds are “hugely popular” for self-defense. Mot. 13. And the entire
 11 handgun market moved to pistols because they are able to hold more ammunition. Mot. 12.

12 The City ignores this evidence, and instead asks this Court to require Plaintiffs to prove a
 13 sufficient frequency with which the prohibited arms are used and actually needed in a self-defense
 14 emergency. Opp’n 13-15. In the City’s view, the government may flatly ban protected arms that
 15 are commonly possessed for self-defense (i.e., they aren’t protected after all), unless Americans
 16 often use and require those arms for that purpose. The City’s novel approach finds no support in
 17 *Heller*. Not even *Heller II* goes so far. And the City provides no authority that does.

18 The City’s approach would allow bans on virtually any firearms. Most people will never
 19 need to discharge a firearm in self-defense at all. Even fewer will require a particular firearm to
 20 effectively defend themselves. But if frequency and necessity of use controlled, handguns would
 21 not be protected from government bans because people seldom are attacked and, when they are, a
 22 shotgun will usually do just fine. Conversely, the City could remove shotguns from the homes of
 23 the law abiding because, while most owners might use them frequently for duck hunting or
 24 recreation, most will never use them to shoot at intruders, and a handgun or a rifle would suffice.

25 The banned magazines, like other types of arms, are commonly chosen and kept by law-
 26 abiding citizens for self-defense should they need them. *See Heller*, 554 U.S. at 584 (“bear arms”

27 ³ The City goes out of its way to appease law enforcement by implausibly reading the ban
 28 to exempt *off-duty officers* and their *personal magazines*, Grgurina Decl., Ex. A, acknowledging
 that magazines over ten rounds are suitable for law enforcement duties *and* in-home self-defense.

is to be “armed and ready . . . in a case of conflict”). Second Amendment protection has little to do with the frequency of actual or necessary uses of particular arms in self-defense. Plaintiffs will likely never need to discharge more than ten rounds (or any ammunition) in self-defense. But much like having fire insurance, millions of Americans choose to have these standard magazines and not need them, rather than risk needing them and not having them.

Short of taking testimony from the tens of millions of Americans who own magazines with capacities over ten rounds, Plaintiffs provide substantial evidence that these magazines are typically possessed for lawful purposes. The City largely ignores this evidence or dismisses it as indirect. Opp’n 14. It neither disputes its veracity nor offers conflicting evidence. In sum, the City has not proven the banned magazines are not in common use for lawful purposes.

IV. THE CITY’S BAN MAY BE STRICKEN WITHOUT RESORT TO MEANS-END SCRUTINY

The Ordinance is unconstitutional regardless of the level of scrutiny applied. Mot. 13-15. The government has a legitimate interest in regulating protected arms to prevent criminal access, but laws depriving virtuous citizens of lawful use are necessarily invalid. The City ignores the weight of authority invalidating laws that ban constitutionally protected conduct without resort to any level of scrutiny. Mot. 14-15. Instead, it argues that law-abiding citizens enjoy no right to possess arms “in common use”—arms protected by the Second Amendment. Opp’n 11-12.

Limiting *Heller*’s exhaustive analysis of Second Amendment rights by its application to the handgun ban before it, the City seems to suggest that only sweeping bans on arms as commonly chosen for self-defense as handguns necessarily conflict with constitutional guarantees. Opp’n 11-12. This reads *Heller* far too narrowly. When *Heller* turned to applying the Second Amendment to D.C.’s handgun ban, it had already laid out its common use test for determining which arms are protected. 554 U.S. at 629. Far from announcing some requirement that arms must be the most commonly used to be safe from prohibition, the Supreme Court simply needed not long detain itself over whether handguns were in common use. *Id.* Without elaboration, it concluded “[i]t is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon” and “handguns are the most popular weapon chosen by Americans for self-defense in the home.” *Id.* Common use of

1 handguns for the lawful purpose of self-defense was plain to see. Equally obvious was that their
2 “complete prohibition” would violate the constitution under any standard. *Id.*

3 The City describes as “perverse” a test authorizing law-abiding citizens to possess
4 protected arms because those protections are dependant upon use by the American public. Opp’n
5 12. The City finds fault with this standard, claiming it prevents regulation of even the most
6 dangerous arms. Not so. The City may not like *Heller*’s announcement of protection for common
7 arms, but it is bound by it. And the Supreme Court’s common use framework does not foreclose
8 restrictions on arms suitable strictly for military use. Federal laws prohibiting such arms will
9 surely continue to be enacted as new arms are developed, much like the nationwide restrictions
10 we see today. But as to arms that plainly have civilian applications, where it is unlikely support
11 could be gathered to enact a federal ban, such arms rightly attain constitutional protection as they
12 become commonly chosen for lawful purposes—as *Heller* instructed. 554 U.S. at 624.

13 Contrary to the City’s claim, a small group will not drive protections. Opp’n 12. Such
14 would hardly establish “common use.” Magazines over ten rounds are protected not because a
15 small number of “enthusiasts” are “stockpiling” them, but because they are lawfully used by tens
16 of millions of Americans. Mot. 9. More importantly, arms that are commonly owned will not
17 become “immune from regulation.” Opp’n 11. Constitutional protection doesn’t prevent
18 regulation—it prevents prohibition. And while the City often calls its law a “regulation,” it is not.
19 The Ordinance removes protected arms from the homes of the law abiding. It is an outright ban.

20 Again, the Second Amendment would mean little if the government could ban protected
21 arms, so long as it does so in small enough increments. Mot. 16, n.11. The City never addresses
22 this point, but it warrants consideration. The City asks this Court to hold that it may ban protected
23 arms so long as it leaves ample alternative arms available such that it doesn’t effectively disarm
24 residents. Opp’n 20; *Heller II*, 670 F.3d at 1261. Beyond *Heller*’s express instruction that it is “no
25 answer” to suggest that other arms are available, the problem with this approach is revealed in the
26 following application. Handguns (in common use for lawful purposes) are a “class” of protected
27 arms. Broken down into various “subclasses,” the City may permissibly ban a subclass of
28 protected handguns, as the ban plainly would not keep anyone from possessing and using all or

1 even most handguns. And if Los Angeles then banned a second subclass, there likewise would be
 2 no constitutional violation. Chicago could validly ban a third subclass, New York a fourth, and so
 3 on until each ban on a subclass of handguns is upheld. But as the City continues to ban subclasses
 4 of protected arms, at some point, residents would be deprived of “ample alternative” arms. Would
 5 the last ban the City enacted then become unconstitutional, despite being valid elsewhere? Would
 6 its previously enacted bans suddenly become unconstitutional? Plainly the government cannot
 7 ban the possession of protected arms just because it doesn’t ban all or most of them in one fell
 8 swoop.

9 In short, the Ordinance is inimical to Second Amendment protections for standard-
 10 capacity magazines. It is appropriately stricken without expedition into the “ ‘levels of scrutiny’
 11 quagmire.” *See United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) (en banc).

12 **V. IF THE COURT ADOPTS A MEANS-END APPROACH, STRICT SCRUTINY MUST APPLY**

13 Magazines over ten rounds are protected by the Second Amendment. A flat prohibition on
 14 their possession by all law-abiding citizens for in-home self-defense *commands* strict scrutiny.

15 In selecting a level of heightened scrutiny, *Chovan* considered the law’s proximity “to the
 16 core of the Second Amendment” and “the severity of the law’s burden.” 735 F.3d at 1138. The
 17 City incorrectly views these prongs as elements, suggesting that a law must both impact core
 18 conduct and impose a severe burden to trigger strict scrutiny. Opp’n 7 & n.6. But *Chovan* does
 19 not compel such a mechanical approach. *Chovan* and the cases it relies on settled on intermediate
 20 scrutiny after finding the laws at issue to be outside the core and to place varying degrees of
 21 burden on the right. 735 F.3d 1138; *Heller II*, 670 F.3d at 1266; *United States v. Chester*, 628
 22 F.3d 673, 682-83 (4th Cir. 2010); *Marzzarella*, 614 F.3d at 97. *Chovan* does not foreclose
 23 application of strict scrutiny to laws that, although not reaching the core of the right, nonetheless
 24 severely burden protected conduct. And in no way does it require intermediate scrutiny for any
 25 law striking the very center of the right’s core unless the burden is independently deemed severe.
 26 If we are guided by First Amendment principles—and *Chovan* holds that we are, 735 F.3d at
 27 1138—laws regulating core conduct command strict scrutiny no matter how severe the burden.
 28 *See, e.g., Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010). Indeed, the only

[It's] a bit like saying books can be banned because people can always read newspapers. That is not a persuasive or legitimate way to analyze a law that directly infringes an enumerated constitutional right. **Indeed, *Heller* itself specifically rejected this mode of reasoning:** "It is no answer to say . . . that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed."

Id. at 1289 (quoting 554 U.S. at 629) (Kavanaugh, J., dissenting) (emphasis added); *see also Cincinnati v. Discovery Network*, 507 U.S. 410, 418 (1993) (striking "categorical prohibition on the use of newsracks"). In any event, *Heller II* itself suggests that strict scrutiny is appropriate here because the magazines are well-suited to and preferred for self-defense. Mot. 10-13, 17-18.

The City also claims *Marzzarella* supports application of intermediate scrutiny to any law that leaves one "free to possess any otherwise lawful firearm." Opp'n 22. But *Marzzarella* does not stand for so much. In reviewing a ban on unmarked firearms, the court found it significant that Mr. Marzzarella could possess the exact same firearm with a serial number, a feature that "does not impair the use or functioning of a weapon *in any way*. . . ." *Marzzarella*, 614 F.3d at 94 (emphasis added). The same is not true of limits on capacity, which *do* impact functionality.

The City next claims the burden is "minor" because most self-defense scenarios require fewer than ten shots, dismissing Plaintiffs' safety concerns when more shots are necessary. Opp'n 23. But the severity of burden on one's rights does not rest on the number of people who see their rights violated, but on how severe that burden is for each person harmed. *Heller* required no showing that the need to use handguns in self-defense arose with any regularity, just that such arms are commonly owned for that purpose. 554 U.S. at 629. Likewise, it is not required that the number of times people fire more than ten shots in self-defense is sufficiently high before the burden is significant. *See* Part III, *supra*. Even if the need to expend more than ten rounds is rare, when the government dictates that one may not have more than ten rounds available for self-defense, the consequences cannot be any more severe for those facing that very situation.

VI. UNDER ANY LEVEL OF HEIGHTENED SCRUTINY, THE CITY'S BAN IS INVALID

If the *government* fails to prove the restricted conduct is not protected by the Second Amendment, it must prove that its law survives heightened scrutiny. *Chovan*, 735 F.3d at 1136-37. Under heightened scrutiny, the City "must present more than mere anecdote and supposition." *United States v. Playboy Entmt. Grp., Inc.*, 529 U.S. 803, 822 (2000). It must defend its law with

1 actual evidence. *Chester*, 628 F.3d at 683. The City has not met its burden.

2 The City provides little more than its theory that magazine bans promote public safety.
3 Opp’n 24-25. But its claim is rooted in flawed statistical arguments and supposition, “evidence”
4 that would be unacceptable in other rights contexts. *See City of Los Angeles v. Alameda Books,*
5 *Inc.*, 535 U.S. 425, 438 (2002). It points to nothing more than Dr. Koper’s belief that such laws, if
6 in effect long enough, may impact crime by depressing the supply of the banned items to
7 criminals. Opp’n at 24-25; Koper Decl. ¶¶ 57-58. But Dr. Koper’s present belief is not supported
8 by any empirical research on capacity-based magazine bans, including his own study regarding
9 the federal ban. *See* Part II.A., *supra*; Pls.’ Objs. ¶ 13. Really, the City provides only speculation
10 that such bans reduce use of the banned magazines in crime. And it offers *no* evidence that taking
11 handgun magazines from law-abiding citizens will reduce violent crime. These unsupported
12 conclusions, if even considered by the voters, are not “ ‘reasonable inferences from substantial
13 evidence’ ” Opp’n 24 (quoting *Cuomo*, 2013 WL 6909955, at **17-18).

14 On the other hand, the City ignores the magazine ban’s negative impact on public safety.
15 After explaining the disparate impact that magazine limits have on those acting in self-defense in
16 comparison to violent offenders who control the circumstances of their crimes, a self-defense
17 expert and a criminologist found the ban will disadvantage law-abiding citizens defending against
18 criminal attacks. Ayoob Decl. ¶¶ 4-34; Kleck Decl. ¶ 20-34. An impact that “is more likely, on
19 net, to harm the safety of [the City’s] citizens than to improve it.” Kleck Decl. ¶ 34. The City
20 provides *no expert in any relevant field* to rebut the weight of this evidence—only the memory of
21 one law enforcement official who claims not to recall an instance where Sunnyvale residents
22 could not defend themselves without a magazine over ten rounds. Opp’n 23; Grgurina Decl. ¶ 3;
23 *but see* Pls.’ Objs. ¶¶ 21-23. Of course, this “evidence” says nothing of how often they *have* been
24 available and used for self-defense (by Sunnyvale residents or anyone).⁵

25 But even if the law could increase public safety, banning possession of protected arms by
26 the law abiding is not a valid means of reducing criminal misuse of those arms. Mot. 21-22, 25.

27 ⁵ Interestingly, the City limits its universe to Sunnyvale when considering how often one
28 might need a magazine over ten rounds in self-defense, even though it must look to the entire
country to argue gun crimes involving such magazines are common. Opp’n 13, 16, 22-23.

The City never attempts to establish, as it must, that the Ordinance is not “substantially broader than necessary” to meet its objectives (“reasonable fit” requires that the law is “not more extensive than necessary”). Mot. 18, 21; *Morris*, No. 13-00336, slip op. at 7; *but see* Opp’n 23-25. Instead of targeting criminal acquisition and use of these magazines, the City removes them from the homes of the law abiding. Mot. 21. It seems the City believes its purposes cannot be met if any such magazines remain in law-abiding residents’ homes because they may be stolen. Opp’n 24. But prohibiting the exercise of Second Amendment rights based on the acts of the law breaking offends notions of constitutional liberty. Mot. 22 & n.17. If taking protected arms from law-abiding citizens is substantially related to reducing criminal misuse of those arms, the City could strip any protected arms from the law abiding (so long as it confiscates them in small enough increments to avoid strict scrutiny, apparently). *See* Parts IV-V, *supra*.

The City ignores that *Heller* itself would have been decided differently if this were so. Opp’n 20-21; *but see* Mot. 22. Even though handguns make up the majority of guns stolen and are involved in the vast majority of firearm-related homicides in the United States, *Heller*, 554 U.S. at 697-98 (Breyer, J., dissenting), a flat ban on the possession of these protected arms lacks the necessary fit under *any level* of scrutiny, *id.* at 628-29 (maj. opn.). The City never explains why a ban on handguns, which are overwhelmingly preferred by criminals, is not substantially related to public safety interests. Nor does it explain how removing magazines from the law abiding is any more related to that interest, even though such magazines are used far less often in crime.

VII. CONCLUSION

Plaintiffs are likely to succeed on the merits, and they satisfy the remaining factors for preliminary relief. Mot. 23-24. The Court should preserve the status quo as this case proceeds.

Dated: February 10, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel
C.D. Michel
Attorney for Plaintiffs

C. D. Michel - S.B.N. 144258
 Clinton B. Monfort - S.B.N. 255609
 Sean A. Brady - S.B.N. 262007
 Anna M. Barvir - S.B.N. 268728
 MICHEL & ASSOCIATES, P.C.
 180 E. Ocean Boulevard, Suite 200
 Long Beach, CA 90802
 Telephone: (562) 216-4444
 Facsimile: (562) 216-4445
 Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

LEONARD FYOCK, SCOTT
 HOCHSTETLER, WILLIAM DOUGLAS,
 DAVID PEARSON, BRAD SEIFERS, and
 ROD SWANSON,

Plaintiffs

vs.

THE CITY OF SUNNYVALE, THE
 MAYOR OF SUNNYVALE, ANTHONY
 SPITALERI in his official capacity, THE
 CHIEF OF THE SUNNYVALE
 DEPARTMENT OF PUBLIC SAFETY,
 FRANK GRGURINA, in his official
 capacity, and DOES 1-10,

Defendants.

CASE NO: CV13-05807 RMW

**SUPPLEMENTAL DECLARATION OF
 CLINTON B. MONFORT IN SUPPORT
 OF PLAINTIFFS' REPLY TO
 DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

Date: February 21, 2014
 Time: 9:00 A.M.
 Location: San Jose Courthouse
 Courtroom 6 - 4th Floor
 280 South 1st Street
 San Jose, CA 95113

DECLARATION OF CLINTON B. MONFORT

I, Clinton B. Monfort, am an attorney licensed to practice law before the Northern District of California. I am an associate attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. Attached hereto as Exhibit “G” is a true and correct copy of excerpts from the deposition of Dr. Christopher S. Koper from *Tardy v. O’Malley*, United States District Court, District of Maryland, Case No. CCB-13-2841.¹

2. Attached hereto as Exhibit “H” is a true and correct copy of Cal. Penal Code § 32310.

3. Attached hereto as Exhibit “I” is a true and correct copy of 2013 Conn. Acts P.A. 13-3 § 23.

4. Attached hereto as Exhibit “J” is a true and correct copy of Haw. Rev. Stat. § 134-8(c).

5. Attached hereto as Exhibit “K” is a true and correct copy of 2013 Md. Sess. Laws ch. 427, § 1.

6. Attached hereto as Exhibit “L” is a true and correct copy of Mass. Gen. Laws Ann. Ch. 140, §§ 121, 131M.

7. Attached hereto as Exhibit “M” is a true and correct copy of 2013 N.Y. Sess. Laws ch. 1, §§ 38, 41-b.

8. In or about January 2014 through February 2014, I researched and reviewed state capacity-based magazine statutes in the United States. I am aware and informed that six states restrict magazines with capacity over ten rounds. See Exhibits “H” through “M.”

9. Attached hereto as Exhibit “N” is a true and correct copy of 2013 Colo. Stats. H.B. 13-1224.

¹ If there are any objections whether these are true and correct copies of parts of the relevant deposition transcript, or upon request of the Court, Plaintiffs will immediately lodge a certified copy of the transcript to the Court and Defendants.

1 10. Attached hereto as Exhibit "O" is a true and correct copy of N.J. Stat. Ann. §§
2 2C:39-1(y), 2C:39-3(j).

3 11. In or about January 2014 through February 2014, I researched and reviewed state
4 capacity-based magazine statutes in the United States. I am aware and informed that two states
5 have capacity restrictions of 15 rounds. See Exhibits "N" through "O."

6 12. In or about January 2014 through February 2014, I researched and reviewed state
7 capacity-based magazine statutes in the United States. I am aware and informed that forty-two
8 states do not have capacity-based magazine restrictions.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed within
10 the United States on February 10, 2014.

11
12
13 
14 Clinton B. Monfort

EXHIBIT “G”

In The Matter Of:

*Shawn J. Tardy, et al. vs.
Martin J. O'Malley, et al.*

Christopher S. Koper, Ph.D.

Vol. 1

February 3, 2014

Gore Brothers Reporting & Videoconferencing

20 South Charles Street, Suite 901

Baltimore, MD 21201

410-837-3027

www.gorebrothers.com



Since 1961 - Serving MD, DC & VA - Worldwide

Min-U-Script® with Word Index

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

SHAWN J. TARDY, et al.

Plaintiffs

Case No.

vs.

1:13-cv-02841-CCB

MARTIN J. O'MALLEY, et al.

Defendants

_____ /

The deposition of CHRISTOPHER S. KOPER,
PH.D. was held on Monday, February 3, 2014, commencing
at 1:48 p.m., at George Mason University, Research
Hall, 4400 University Drive, Fairfax, Virginia 22030,
before Amanda J. Curtiss, CSR, Notary Public.

REPORTED BY: Amanda J. Curtiss, CSR

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

JOHN PARKER SWEENEY, ESQUIRE

JAMES W. PORTER, III, ESQUIRE

MARC A. NARDONE, ESQUIRE

Bradley, Arant, Boult, Cummings, LLP

1615 L Street, NW, Suite 1350

Washington, DC 20036

Telephone: 202-719-8216

Facsimile: 202-719-8316

Email: jsweeney@babco.com

ON BEHALF OF DEFENDANT, MARTIN J. O'MALLEY:

MATTHEW J. FADER, ESQUIRE

Maryland Office of the General Attorney

200 Saint Paul Place, 20th Floor

Baltimore, Maryland 21201

Telephone: 410-576-7906

Facsimile: 410-576-6955

Email: mfader@oag.state.md.us

1 and considering mass shootings by the number of people
2 shot as opposed to the number of people killed --

3 A Uh-huh.

4 Q -- and if you assume four or more, can you
5 state to a reasonable degree of scientific probability
6 based upon the evidence available to you that banning
7 assault rifles will reduce the number of incidents of
8 mass shootings?

9 A I can't say that based -- I mean, I can't
10 make a firm projection of that based on any particular
11 available data. There might be data to suggest that
12 there could be some reduction in that, but it's hard to
13 really clearly project what that would be or how
14 difficult it might be to detect statistically.

15 Q We have to work with a legal standard for
16 expert opinion in the reasonable probability range.

17 A Uh-huh.

18 Q I'm not sure in the legal context what, you
19 know, firm means as you mean it, but I'm trying to
20 understand whether you can state your opinion to a
21 reasonable degree of scientific probability that

1 banning assault rifles would reduce the incidents of
2 public shootings, mass shootings.

3 A Again, I mean, all I can say is attacks
4 with those sorts of weapons tend to result in more
5 victims being hit, so it stands to some reason that if
6 you reduced the use of these types of weapons, it could
7 reduce the tallies of victims hit in these incidents.
8 And it's not actually just a matter of the mass
9 shooting incidents. It's also a matter of incidents
10 with high numbers of shots fired, regardless of how
11 many people get hit. So that has to be taken into
12 account as well.

13 And I've tended to focus more on that issue
14 in my research, you know, going back to the Jersey City
15 data, for example, that suggested that about five
16 percent of gunshot victimization stemmed from incidents
17 with more than ten shots fired. And so based on that,
18 one might project a small percentage reduction in
19 shootings overall from this type of legislation.

20 Q Do you have your publication of your
21 New Jersey data? Did you publish that?

1 A Yes. Uh-huh.

2 Q And when we looked at your CV, I know we
3 talked about it briefly, and is this the Reedy and
4 Koper 2003 article?

5 A Yes.

6 Q How many incidents did you study that
7 involved more than ten shots being fired?

8 A In the sample that we had, I believe there
9 were something like maybe six incidents that involved
10 more than ten shots fired.

11 Q And do you recall what the base was of
12 total incidents?

13 A It's in the -- it's in the study.

14 Q Why don't we mark this since we're going to
15 be talking about it? Exhibit 9.

16 (Koper Exhibit 9 was marked for
17 identification.)

18 MR. FADER: And John, maybe in the next
19 five minutes if we can take a little water break.

20 MR. SWEENEY: Now. Let's break right now.

21 (Off the record.)

1 BY MR. SWEENEY:

2 Q Back on the record.

3 While we were on the break, I tried to
4 focus myself on the portions of your 2003 study which
5 we have marked as Exhibit 9. First of all, it appears
6 that there were some -- well, if I look at the data
7 tables that you have on page 153 of Exhibit 9, figure
8 one involves assault incidents with a semi-automatic
9 pistol; correct?

10 A Yes.

11 Q And you had 239 of those; right?

12 A Yes.

13 Q How many of those involved more than ten
14 shots being fired? Where would I find that number?

15 A That would be on page 154 on table one. We
16 had -- one column has minimum shots fired estimates,
17 the other has maximum shots fired estimates if there
18 happened to be a range in the data.

19 Q Am I correct in interpreting this that it's
20 six out of approximately 165 pistol incidents in which
21 more than ten shots were fired?

1 A Yes.

2 Q So that's roughly 3.6 percent? Does that
3 sound about right to you?

4 A Yes.

5 Q Okay. Let me see if I can understand this
6 study a little bit more. Going back to page 153 figure
7 one, outcomes of assault incidents involving
8 semi-automatic pistols, you state handgun type was not
9 associated with attack outcomes; correct?

10 A In this categorical tree, that's correct.

11 Q All right. So regardless of whether
12 someone was using a semi-automatic pistol or a
13 revolver, there was no difference in the outcome be it
14 injury or death?

15 A Overall for the incident, yes.

16 Q All right. And immediately below figure
17 two you state, "Although pistol cases involved higher
18 numbers of shots, they were not significantly more
19 likely to result in injuries either fatal or nonfatal
20 than were revolver cases," is that correct?

21 A Yes. I think what we're talking about

1 there is when you're looking at the likelihood that a
2 gunfire incident resulted in any victimization, you
3 know, any injury, I think there was no significant
4 difference there. We did find a difference in the
5 number of people who are wounded.

6 Q On the right-hand column, second full
7 paragraph you state, "Finally, figures one and two show
8 that gunshot injury incidents involving pistols were
9 less likely to produce a death than were those
10 involving revolvers," correct?

11 A Yes.

12 Q Had you differentiated between pistols with
13 large capacity magazines and those without large
14 capacity magazines here?

15 A There was only limited data on that, so we
16 couldn't examine that in a great deal of depth.

17 Q So is it fair to say that based upon the
18 data in this study, pistols involving larger capacity
19 magazines were less likely to produce a death than were
20 those involving revolvers?

21 A I wouldn't necessarily say that. It would

1 depend. You'd have to look specifically at the cases
2 where a large capacity magazine was involved.

3 Q All right. But we don't really have that
4 breakdown reliably, do we, or at least completely?

5 A Not completely.

6 Q Can you interpret the data here to support
7 the statement that gunshot injury incidents involving
8 pistols with large capacity magazines were more likely
9 to produce death than were those involving revolvers?
10 Does your data support that statement?

11 A More likely to produce death?

12 Q Yes.

13 A No. I can't say that based on what we have
14 here.

15 Q All right. Now, under your discussion
16 below beginning with the second sentence, you state,
17 "Gun attackers using pistols tend to fire more shots
18 than attackers using revolvers," correct?

19 A Yes.

20 Q And then you go on to say, "This shot
21 differential does not appear to influence the

1 probability that an incident will result in injury or
2 death, nor the number of wounds sustained by gunshot
3 victims." Am I reading that correctly?

4 A Yes.

5 Q And that's the conclusion of this study;
6 correct?

7 MR. FADER: Objection.

8 THE WITNESS: Well, that's -- yeah, that's
9 only one conclusion. As we go on to say, offenders
10 using pistols tend to fire -- tend to wound more
11 persons. Also, it should be noted that while this is
12 not reported in this particular article, for the 2004
13 report on assault weapons we did some additional
14 analyses of cases involving more than ten shots and
15 those cases actually had a 100 percent injury rate.
16 You know, at least one person was injured in all of
17 those cases.

18 BY MR. SWEENEY:

19 Q Now, there were only a handful of such
20 cases in this study; correct?

21 A Correct.

1 A Uh-huh.

2 Q Is that because you cannot say to a
3 reasonable degree of scientific probability?

4 A In some of these cases, you have very small
5 numbers of incidents. It may be hard to do say
6 statistical significance tests. In some cases, there
7 are statistical significance tests showing that there
8 is a significant difference between the two sets of
9 cases. So beyond that, it's harder to say. I mean, we
10 don't -- we don't have randomized trials testing the
11 impact of weapon type on attack outcomes, so there
12 is -- there's always going to be some debate over the
13 patterns and the correlations in the data.

14 Q To press my point but without trying to,
15 and please forgive me, I don't want to sound like I'm
16 badgering you in any respect. But the limitations of
17 the scientific data are such that you simply can't say
18 to a reasonable degree of scientific probability that
19 you would be able to reduce public shootings even if
20 you were to eliminate large capacity magazines;
21 correct?

1 MR. FADER: Objection. You can answer.

2 THE WITNESS: Again, you can't say that
3 you'll eliminate all public shootings. What these data
4 suggest is that you would reduce the number of victims.
5 I can't necessarily -- it's hard to put specific
6 probabilities on it, but that's what these data
7 suggest. When you see some -- some of these
8 comparisons that were done in Luke's Dillon's thesis
9 even showed statistically significant differences
10 between the LCM cases and the non-LCM cases, that would
11 seem to provide some better degree of scientific
12 certainty.

13 BY MR. SWEENEY:

14 Q But because of the availability of multiple
15 firearms and multiple magazines that aren't large
16 capacity, can you truly say to a reasonable degree of
17 scientific probability that reducing the number of or
18 even eliminating the number of large capacity magazines
19 will reduce either the incidents of mass public
20 shootings or the number of people injured in such
21 public shootings?

1 A I guess the best way to answer that would
2 be that we'd have to -- we'd have to test that. We'd
3 have to see a circumstance where use of large capacity
4 magazines was significantly reduced and see what impact
5 that has on -- on these sorts of shootings.

6 Q And that's because we simply don't have
7 that evidence today; correct?

8 A We do have some evidence relevant to that.
9 It's just how -- how far you can push it, I guess.

10 Q Not far enough to state with a reasonable
11 degree of scientific probability; correct?

12 MR. FADER: Objection.

13 THE WITNESS: Yeah, I struggle a little bit
14 with that particular phrase because I can't put any
15 specific probability or tell you with -- with, you
16 know, five percent, one percent probability that there
17 will be this change. I can simply point to the numbers
18 that exist in these studies, and some of these
19 differences are statistically significant differences
20 and so it suggests in principle that if you could
21 reduce the use of these magazines, you could get a

1 reduction.

2 BY MR. SWEENEY:

3 Q And when we're talking about the
4 probability, in order to say more probable than not
5 it's more than 50 percent likelihood.

6 A Uh-huh.

7 Q And I take it the evidence just doesn't
8 support that right now?

9 MR. FADER: Objection.

10 THE WITNESS: I would be cautious in making
11 the inferences about, you know, how certain it is that
12 it would happen.

13 BY MR. SWEENEY:

14 Q And so you cannot say that it would be more
15 likely than not to achieve that?

16 A Not -- I would have to see more
17 observation. Have to see what happens.

18 Q All right. On page 13, footnote 26, you
19 touch on this in -- this issue of a perpetrator
20 substituting other guns for banned assault weapons, and
21 of course that would also include substituting multiple

1 magazines for banned large capacity magazines. Isn't
2 it likely in Maryland that a criminal who wants to
3 commit a crime with a firearm will still do so even
4 with the new law?

5 A Who wants to commit a?

6 Q A crime.

7 MR. FADER: Objection.

8 THE WITNESS: Would commit a crime with
9 another weapon you're saying?

10 BY MR. SWEENEY:

11 Q Yes.

12 A Yes.

13 Q And isn't it likely that in Maryland, the
14 law will have little or no impact on the frequency of
15 firearm crime in general?

16 A I would say that's a reasonable inference.

17 Q Have you -- are you familiar with the Safe
18 Streets Program?

19 A In Maryland?

20 Q Yes.

21 A Not specifically. There's a lot of

C. D. Michel - S.B.N. 144258
Clinton B. Monfort - S.B.N. 255609
Sean A. Brady - S.B.N. 262007
Anna M. Barvir - S.B.N. 268728
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER,
WILLIAM DOUGLAS, DAVID PEARSON,
BRAD SEIFERS, and ROD SWANSON

Plaintiffs

vs.

THE CITY OF SUNNYVALE, THE MAYOR OF
SUNNYVALE, ANTHONY SPITALERI, in his
official capacity, THE CHIEF OF THE
SUNNYVALE DEPARTMENT OF PUBLIC
SAFETY, FRANK GRGURINA, in his official
capacity, and DOES 1-10,
Defendants.

CASE NO: CV 13-05807 RMW

**SUPPLEMENTAL DECLARATION
OF GARY KLECK IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF GARY KLECK

1
2 1. Sunnyvale suggests that large-capacity magazines (LCMs) are rarely used for self-defense. Since
3 there are probably at least 1 million defensive gun uses (DGUs) per year (Kleck and Kates 2001, Chapter
4 6), even if just one in a thousand DGUs involved LCM use, this would be 1,000 defensive uses with LCMs
5 per year. And if Sunnyvale is asserting that it is reasonable to describe this many defensive uses of LCMs
6 as rare, the exact same characterization would apply at least as strongly to the number of times LCMs were
7 used in mass shootings and were likely to have affected the number of casualties simply because the latter
8 quantity may well be as low as three in the past 30 years.
9

10 2. The truth is no one knows how many times LCMs are used defensively. I suspect that only a tiny
11 fraction of DGUs involve over 10 rounds being fired. However, assuming that one is trying to assess the
12 relative costs and benefits of an LCM ban, it matters a great deal just how tiny this fraction is. It is clear
13 that the benefits are likely to be extremely limited, so DGUs in which large numbers of rounds had to be
14 fired to prevent deaths or injuries would not have to be very numerous in order to outnumber the shooting
15 incidents in which LCM use affected the number of casualties
16

17 3. Sunnyvale relies on the Expert Report of Lucy Allen to support their claim that few DGUs involve
18 many rounds being fired. This report establishes no such thing. Allen analyzed a non-randomly selected
19 set of DGUs reported in the National Rifle Association magazine, The American Rifleman in its “Armed
20 Citizen” column, and drew conclusions about the entire population of DGUs based solely on this analysis;
21 specifically that it is “rare” (without specifying how rare) for a person to fire more than ten rounds when
22 using a gun in self-defense incidents. Leaving aside the validity of this conclusion, neither the NRA nor
23 Allen claims these incidents were chosen according to any acknowledged scientific random sampling
24 procedure. There was no formal basis for believing that this sample was representative of all U.S. DGUs,
25 with respect to number of rounds fired or any other attribute of the events. Therefore, it was impossible to
26 legitimately infer from an analysis of this sample the fraction of all U.S. DGUs that involve more than 10
27 rounds fired by the defender. Anyone who was a genuine expert on the conditions under which one can
28

1 infer conclusions about a population from a sample would never draw the conclusions that Ms. Allen drew,
2 based on the sample she analyzed. This by itself is a strong indication that she is not an expert on these
3 matters.

4 4. Further, even if NRA staff had somehow selected a simple random sample of all DGUs, there were
5 far too few cases in the NRA sample analyzed by Allen. (n=279) to reliably estimate the share of DGU
6 incidents that involved more than 10 rounds being fired, if such incidents are relatively rare, though not as
7 rare as Allen claims. Consider the implications, for example, if just 1% of all DGUs involved over 10
8 rounds being fired. Since national surveys that have specifically asked about DGUs have consistently
9 indicated 0.5-3.5 million DGUs per year, it would be reasonable to assume an annual average of at least 1
10 million DGUs. *If this were the total frequency of DGUs, 1% would imply a number of DGU incidents with*
11 *over 10 rounds fired that was huge in absolute terms – about 10,000 per year.* Thus, this percentage does
12 not have to be very large in order for it to imply a huge absolute number of incidents.

14 5. Even if the NRA sample were a representative simple random sample of all DGUs, Allen's results
15 would not be statistically sufficient to reject the idea that 1% of DGUs involved over 10 rounds fired. Ms.
16 Allen's finding of 0% of DGUs with over 10 rounds fired *in her small sample of DGUs* is actually not
17 statistically inconsistent with the hypothesis that 1% of the *entire population* of DGUs involve over 10
18 rounds fired, since her 0% result is well within the bounds of what one could reasonably expect as a sample
19 result in a randomly selected sample of just 279 cases. Samples selected from larger populations of events
20 do not all perfectly resemble the population, since they are always subject to random sampling error. That
21 is, due to the random character of the sampling process, an analyst may, by pure chance, obtain a sample
22 that contains either more or fewer of the events of interest than would be the case if the sample resembled
23 the population perfectly.

25 6. The 95% confidence interval (CI) estimate of the percent of DGUs with over 10 rounds fired
26 (symbolized as p) is a range in which one would expect to find 95% of all the estimates one would obtain
27 if one selected an infinite number of samples of a given size. If one assumes that the true population
28

percentage is 1% ($p=.01$), the 95% CI is -0.17 to 2.17%. This is the result of the following computations:

7. The formula for the 95% CI is: p plus or minus 1.96 (square root of $(p \times q)/n$), where $q=1-p$

8. If $p=.01$, then the 95% CI = 0.01 ± 1.96 (square root of $((.01 \times .99)/279)) = 0.01 \pm 0.01168 = -0.00168$ to $.02168$, or -0.168% to 2.168%

9. This means that if the true population percentage of DGUs with over 10 rounds fired were 1%, and one took an infinite number of random samples, each with 279 DGUs, one would expect 95% of sample estimates of this percentage to be between -0.168% and 2.168%. Of course, percentages can't really go below 0, but this is what statistical theory predicts.

10. In plain English, what this means is that even if 1% of all DGUs involved over 10 rounds, one could nevertheless realistically expect to get a percentage of 0 in a sample of 279 DGUs, due solely to random sampling error. Thus, getting a sample result of 0%, as Allen did, is not a statistically significant result allowing one to reliably reject the idea that the percentage in the population of all DGUs with over 10 rounds fired is 1%.

11. Sunnyvale contends the evidence provided by Plaintiffs does not show there are "reasonable grounds" to believe a crime victim would ever face multiple attackers requiring over 10 rounds to be fired in defense; calling such scenarios "fantastical." The policy-relevant issue is whether DGUs in which victims face multiple offenders in their homes occur *often enough* for the number of lives saved or injuries avoided by defensive LCM use to exceed the number of such harms caused by LCM use by offenders. Since the latter number is close to zero, even if crimes with multiple offenders were quite rare, they could still result in far more harm averted by victim defensive use of LCMs than harm caused by offender use.

12. Suppose that only a tenth of 1% of DGUs involved victims facing multiple attackers in the home. Since there are at least a million DGUs per year, this would imply 1,000 such DGUs a year, compared to less than one mass shooting per year in which LCM use caused more casualties (or even the few mass shooting generally per annum).

1 13. It is worth noting that the only reason I offered no evidence about the frequency of people facing
2 multiple offenders is simply because published NCVS data do not provide sufficiently detailed breakdowns
3 of number of offenders. Sunnyvale offers no evidence that such crimes do not occur frequently.

4 14. NCVS respondents, however, were asked for the exact number of offenders, so I therefore
5 examined an NCVS dataset I happened to have on my hard drive, covering the period 1992-1994. My
6 analysis of that dataset indicated that the NCVS estimated, for 1992-1994, that there were 30,497,554
7 violent crimes in which victims directly confronted offenders and could state the number of offenders. Of
8 these, 6,368,235 involved multiple offenders. Of these, 1,997,481 involved four or more offenders. Since
9 this total pertained to a three-year period, the annual average was 665,827. Thus, during that period
10 American crime victims faced four or more offenders in 665,827 violent crime incidents per year. This was
11 a peak crime period, but even if there were half as many in recent years, the annual total would be about
12 333,000. In short, by any reasonable standard, it is an eminently realistic prospect that an American crime
13 victim would face four or more offenders in a violent crime.
14

15 15. Sunnyvale characterizes my descriptions of typical mass shootings as “flawed and misleading.”
16 As purported evidence (aside from referring to a brief filed in a different case, which is addressed in
17 Paragraphs 31-46 below), Sunnyvale provides only one example of the way I addressed missing data. I
18 would say that my phrasing of some of my findings was not sufficiently precise, but not “flawed” or
19 “misleading.” Instead of saying that “no LCM was used in ... 35 incidents,” I should have stated that “no
20 LCM was *known to have been* used in 35 incidents.” My underlying assumption was that if an LCM had in
21 fact been used in a mass shooting, that at least one available news account would have reported this fact,
22 especially in light of the editorial policies of so many news outlets favoring bans on LCMs. It seems
23 unlikely that not a single such news outlet would take advantage of a mass shooting in which an LCM had
24 actually been used to report this fact to its audience. Further, I also made use of the compilations of LCM-
25 involved mass shootings by advocates of LCM bans like the Violence Policy Center, Mayors Against
26 Illegal Guns, and Mother Jones magazine, for reports of LCM use in mass shootings, on the assumption
27
28

1 that these organizations were well-motivated to search for any evidence of such LCM use. If LCM use had
2 been reported in any news story, even one that my assistants and I missed, it was likely that the staff of
3 these organizations would have located at least one of these news stories. Thus, I stand by the position that
4 most mass shootings did not involve LCMs, and that, to phrase it very precisely, *there is no affirmative*
5 *evidence* that LCMs were used in 35 of the 57 mass shootings that I studied. In any event, as I have
6 maintained, whether a LCM is used in a mass shooting is rarely relevant.

7
8 16. Sunnyvale cites *three* cases occurring within the past thirty years, in which bystanders tackled
9 shooters two of which I had already acknowledged in my initial declaration (the 1993 Long Island railroad
10 incident and 1998 Oregon incident). The Gabrielle Giffords shooting in Tucson, however, is questionable
11 in this regard because it is unclear from media accounts whether bystanders were able to subdue the shooter
12 because (1) he was reloading (Sunnyvale's position), or because (2) his magazine had failed due to a
13 broken spring and he was unable to fire. Since such magazine defects would disrupt a mass shooter's firing
14 regardless of whether the magazine's capacity was large or small, interpretation (2) would not support the
15 position that use of non-LCMs would have made a difference.

16
17 17. Sunnyvale then pads out the list of cases supposedly supporting the proposition that magazine
18 changes affected casualty count in mass shooting by citing the Sandy Hook shooting, even though
19 bystanders did not tackle the shooter or otherwise intervene. Sunnyvale switches in mid-paragraph to an
20 entirely different argument as to why LCM use might affect casualty counts – that potential victims could
21 escape “while the shooter was switching magazines.” This is an especially deceptive passage, because
22 Sunnyvale switches from discussing facts to discussing evidence-free speculations, without informing the
23 reader of this critical shift. Their full statement reads: “And law enforcement sources have stated that a
24 half-dozen children *may* have been able to escape from Sandy Hook Elementary School while the shooter
25 was switching magazines” (8/8-10, emphasis added). The text of the supporting *Hartford Courant* article
26 cited by Sunnyvale makes it clear that this was just a speculation by one or more unnamed law enforcement
27 persons. Some children did indeed escape, and there was indeed a pause in the shooting, but *investigators*
28

1 could not establish either (1) that the children escaped during the pause, or (2) that the shooter was
2 reloading during the pause (see States Attorney Report).

3 18. Investigators also found multiple magazines that had cartridges still left in them, indicating that
4 even when the shooter did change magazines, he did not do so because he *had to*, because he had exhausted
5 the magazines, but rather that he had *chosen* to change magazines even though he could have continued
6 firing with the same magazine. The significance of this is that at the time the children were escaping, the
7 shooter could have chosen to fire at them by simply continuing to fire the remaining rounds in the “old”
8 magazine, rather than changing magazines “prematurely,” as he repeatedly did. This means even *if* the
9 children escaped during the pause (which is not known), and even *if* the pause was due to a magazine
10 change (which is also not known), one could still not reliably conclude that the children escaped because
11 the shooter had to change a magazine. In sum, there was no factual foundation whatsoever for the
12 speculation that a need to reload saved any lives in the Sandy Hook incident.

14 19. John Donahue makes, or hints at, a plainly false claim in his paragraph 11. He vaguely alludes to
15 “a review of the resolution (sic) of mass shootings in the U.S.” on which he based his conclusions, but does
16 not say if this is a review he performed or if he was instead citing a review conducted by others. If it is the
17 former, he failed to describe or even briefly outline the methods by which he conducted the review, making
18 it impossible to judge whether it was competently done. If it is the latter, he failed to cite a source where a
19 reader could find a detailed description of the “review.” Expert scholars describe their methods and cite
20 sources. As things stand, there is no reliable basis for believing Donahue was doing anything in paragraph
21 11 other than stating his own unsupported personal opinions.

23 20. His specific claim is that “citizens have frequently taken advantage of a perpetrator stopping to
24 reload his weapon to tackle him or otherwise subdue him *in at least 20 separate shootings in the United*
25 *States since 1991*” (Donahue Declaration, p. 4). Donahue does not claim that these “shootings” were mass
26 shootings or that they involved semiautomatic weapons, multiple firearms, or multiple magazines, which
27 are normally used by mass shooters. There may well be shootings in which bystanders subdued shooters
28

1 while they reloaded, in shootings bearing little resemblance to mass shootings, such as shootings in which
2 the perpetrators used types of firearms that take far longer to reload than the semi-automatic firearms used
3 in most mass shootings. These sorts of cases, however, would tell us nothing about whether banning LCMs
4 would do any good, because they have no relevance to the willingness of bystanders to intervene when
5 shooters have semi-automatic guns capable of accepting detachable, possibly large-capacity, magazines. It
6 is the latter sorts of shootings that are relevant to the question of whether LCMs should be banned. In
7 short, if Donahue's undocumented 20 shooting incidents were radically different from the mass shootings
8 in which LCMs might contribute to the casualty count, they are irrelevant to the merits of an LCM ban. In
9 any case, Donahue does not cite 20 specific cases, or cite any external sources that document these 20
10 cases. Further, I am not aware of more than two or three such cases over the past thirty years.

12 21. Instead, Donahue cites only three cases that he claims fit his description, and then tosses in a
13 fourth case that, even based on his own inaccurate description, did not involve victims subduing a shooter,
14 while he was reloading or at any other time. The first case, occurring near the White House, was not a
15 mass shooting; indeed, the gunman did not shoot a single person. Further, there was no indication he was
16 going to shoot any of the people who tackled him, making it far safer to do so than would be the case in a
17 mass shooting. The incident was indeed a shooting in the sense that a person was criminally firing a gun,
18 but was not a shooting in the sense that the gunman was shooting people. It therefore has no clear
19 relevance to the merits of banning LCMs.

20 22. The 1993 Long Island shooting cited by Donahue does genuinely fit Donahue's description, but
21 the 2011 shooting involving Gabby Giffords is not so clear, as explained above in Paragraph 17, because it
22 cannot be determined from eyewitness accounts whether bystanders were able to subdue the shooter
23 because he was reloading (as Donahue claims) or because he was struggling with a malfunctioning
24 magazine (a spring broke in one of the magazines he was using, or trying to use). If the latter is correct, it
25 does not help support an LCM ban, since any magazine, of any size, might fail, thereby giving bystanders a
26 chance to intervene. Finally, Donahue makes the same speculative and unfounded claim about 11 children
27
28

1 at Sandy Hook Elementary School being able to escape because the shooter was reloading refuted above in
2 Paragraphs 18-19.

3 23. In sum, Donahue could cite only one genuinely supportive incident (the 1993 Long Island
4 shooting), and one possibly supportive case (the Gabby Giffords shooting), over a period of 30 years, to
5 support his claim that citizens have “frequently” subdued shooters while they stopped to reload. One or
6 two cases in 30 years probably would not fit most people’s notions of what “frequently” means. As to his
7 claim that there have been “at least 20 separate shootings” where this happened, Donahue provides no
8 documentation at all. Twenty cases in thirty years, in a nation with over 300 million people, is not very
9 frequent either, but Donahue did not supply supporting evidence of this many or even half this many.
10

11 24. Thus, Sunnyvale actually offered nothing to support the claim that victims in mass shootings have
12 escaped while the shooter was changing magazines.

13 25. Sunnyvale asserts that where LCMs are used there are more casualties. But, correlation is not
14 causation, i.e., this simple statistical association does not establish that LCM use *causes* a higher casualty
15 count. Instead, all evidence known to me, including all evidence presented by Sunnyvale, is completely
16 consistent with the proposition that LCM has no causal effect of its own on body count, but rather is merely
17 the result of some mass shooters’ more lethal intentions, which are what actually cause higher casualty
18 counts. Neither Dr. Koper nor Ms. Allen has offered *any* evidence, of any quality, that this association
19 reflects a causal effect of LCM use on the number of people killed or injured in mass shootings, as distinct
20 from it being a spurious association due to the fact that the lethality of mass shooters affects both the
21 casualty count and the choice of weapons and magazines.
22

23 26. Sunnyvale points out that LCMs are used more often in certain crimes, but mere use of an LCM in
24 a crime is irrelevant unless more than 10 rounds were actually fired, because, as I explained in my original
25 declaration in this matter, LCMs merely provide surplus rounds that are not fired. Since criminals rarely
26 fire large numbers of rounds in a given crime incident -- only 2.5-3.0% of all violent crime in which a
27 handgun was fired involved over 10 rounds fired (under 1% of all handgun crimes) – the fact that they use
28

1 LCMs more often further supports that magazine capacity usually does not matter in a crime.

2 27. Unless LCM use actually *causes*, to some degree, the number of victims harmed in crime
3 incidents, or specifically in mass shootings, there is no valid evidence supporting restrictions on LCMs, let
4 alone banning possession by law-abiding individuals. The City offers no evidence, and I am not aware of
5 any, that removing LCMs from the homes of the law-abiding will reduce crime or increase safety in any
6 way. A mere statistical association between LCM use and casualty count is not sufficient to establish that
7 one causes the other. Sunnyvale correctly notes that the number of rounds fired and victims shot in mass
8 shooting with LCMs is larger than the number in those without LCMs, but fails to note that this would be
9 true *even if LCM use had no causal effect whatsoever on the harm done in these shootings*. This is so
10 because the lethality of the shooter's intentions, i.e. the degree to which he intends to shoot many people,
11 almost certainly affects both (1) the number of people he in fact ends up shooting, and (2) the choice to
12 bring LCMs (along with more guns and more total rounds of ammunition) into the incident. Mass
13 shootings are typically planned, and thought about by the shooter for a long time, offering plenty of time
14 for offenders to make preparations such as acquiring guns, ammunition, and magazines.

15 28. If these premises are correct, the result would be a spurious (noncausal) association between
16 LCM use and number of casualties. Sunnyvale's experts do nothing to rule out or even mildly undercut
17 this interpretation of the associations they cite. The desire to increase the death toll would cause an
18 increased likelihood that an aggressor would acquire and bring LCMs to a shooting.

19 29. The claim that LCM use has an actual causal effect of its own on victim count in mass shootings
20 would be more plausible if close analysis of the details of actual incidents indicated the LCM use was
21 actually necessary to inflict as many injuries as were inflicted in LCM-involved mass shootings. This sort
22 of analysis, however, indicates precisely the opposite. There are no mass shootings in which the details
23 indicate that the shooter needed an LCM to inflict the amount of harm he inflicted. Instead, in all incidents
24 where the relevant information was available, mass shooters had either multiple guns or multiple
25 magazines, and thus could easily fire many rounds either without reloading or by quickly reloading a
26

1 detachable magazine. The details likewise show that even if shooters had lower capacity magazines and
2 had to reload slightly more often, this would not slow their rate of fire, since the killers in actual mass
3 shooting average so low a rate of fire that the 2-4 seconds it takes to reload would be no longer a time
4 period than the average interval between shots fired in mass shootings (Kleck Declaration).

5 30. Attached hereto as Exhibit F is a true and correct excerpt of my book, *Targeting Guns: Firearms*
6 *and Their Control* 125 (Aldine De Gruyter 1997).

7 **Rebuttal of San Francisco's Critiques**

8
9 31. Sunnyvale references a brief filed by the City of San Francisco in a separate lawsuit against that
10 city challenging its similar ordinance, as purportedly showing that the effectively identical declaration I
11 submitted on behalf of the plaintiffs in that case as to the one I submitted in this case contains claims that
12 are "flawed and misleading." The following paragraphs are my responses to each of the City of San
13 Francisco's attacks on my work. Citations to "SF" refer to the page and line(s) from San Francisco's brief,
14 according to internal pagination, where the relevant text occurs. E.g., the first line of SF's section titled
15 Statement of Facts would be cited as 1/18, denoting p. 1, line 18.

16
17 32. 5/25-27. It's probably a minor point, but SF subtly mischaracterizes my DGU estimates,
18 claiming that we estimated that there were 2.5 million DGUs "each year." This is misleading. The survey
19 that generated that estimate was conducted in early 1993, and the strongest estimates generated by the
20 survey pertained to the previous 12 months. Thus, the 2.5 million estimate pertained to a specific single
21 year, 1992, which was a peak crime year, and also likely to be a peak year for defensive uses of firearms by
22 crime victims. In more recent years, with lower crime rates, the annual number of DGUs would likely be
23 smaller.

24 33. 5/23 to 6/11. Every single one of the criticisms of the Kleck-Gertz estimates of DGU frequency
25 cited by SF, as well as all other published criticisms, have been thoroughly rebutted for years – a handy
26 source compiling all of the rebuttals into one place is Chapter 6 of the 2001 book Armed (Kleck and Kates
27 2001). *None of the experts or sources cited by SF have refuted a single one of these rebuttals.*
28

34. More specifically, every single claim made by David Hemenway and cited by SF was false. For example, our survey did not “show 132,000 perpetrators killed or wounded by defenders each year,” and thus there could not be any conflict between our survey results and hospital data on numbers killed or injured. We had too few DGU sample incidents (n=213, unweighted) to reliably estimate the share that resulted in wounded offenders, so our survey did not imply any particular number of “perpetrators killed or wounded by defenders each year,” and it was therefore impossible to show any contradiction between our estimates and hospital data.

35. Likewise, our survey did not show that “more guns are wielded to defend against rapes each year than there are actual rapes or attempted rapes each year,” for the simple and indisputable reason that we do not know the actual number of such crimes that occur each year (among many other problems with Hemenway’s claim). It is universally understood among criminologists that neither the National Crime Victims Survey (“NCVS”) nor any other source can tell us the total number of sexual assaults or any other crime, because the true number of crimes is almost certainly larger than the NCVS indicates. Hemenway also compared data on the wrong universe of sexual assaults, citing figures that pertained to a smaller, noncomparable, subset of these crimes (Kleck and Kates 2001, Chapter 6).

36. In sum, there is no scholarly foundation for the claim that the Kleck-Gertz or other survey-based estimates of DGU frequency are too high. Quite the contrary, the overwhelming weight of scholarly evidence favors the proposition that surveys are more likely to *underestimate* the frequency of this sort of crime-related experience than to overestimate it. To report a DGU in a survey requires that the respondent who has had such an experience be willing to report (1) a victimization experience (otherwise there can be no defensive reaction to a crime), (2) their possession of a gun (otherwise the defensive action could not be classified as a defensive use of a gun), and (3) (usually) the crime of unlawful possession of a firearm in a public place (since most DGUs occur in public places where, in 1993, it was unlawful for all but a tiny percent of the population to possess a gun). The scientific literature on survey response errors *uniformly* indicates that survey respondents in the general adult population on net underreport (1) crime

1 victimizations, (2) gun possession, and (3) unlawful behaviors by the respondent. Consequently, estimates
2 of DGU frequency are far more likely to be too low than too high (see Kleck and Kates 2001, Chapter 6 for
3 supporting citations).

4 37. Most outrageously of all, SF quotes a claim from David Hemenway that “all attempts at external
5 validation [have] reveal[ed] it to be a huge overestimate,” when in fact every attempt at external validation
6 has *confirmed* our estimates of DGU frequency. Our survey figures were not only completely consistent
7 with hospital data on numbers of persons medically treated for gunshot wounds, and estimates of the
8 frequency of sexual assaults and other crimes, but have also been consistently confirmed by the results of
9 other professionally conducted national surveys of representative samples of the U.S. adult population. By
10 2001 there were at least 20 such surveys that *all* indicated huge numbers of DGUs each year, exceeding the
11 number of crimes in which offenders used guns (Kleck and Kates 2001, Chapter 6).

12 38. 6/22-28. SF criticizes me for concluding that LCM use does not affect rates of fire in mass
13 shootings because some shooters were not shooting continuously. My conclusion did not rely in any way
14 on an assumption that any shooters fired continuously, or that a constant rate of fire was maintained. My
15 data pertained to *average* rates of fire throughout the period of firing, and I assume as a matter of course
16 that rates of fire during any given brief segment of time within those periods were sometimes higher than
17 average and at other times lower than average – including periods when there was no firing at all. This,
18 however, has no bearing on whether any mass shooters have ever needed to fire any more rapidly than
19 these average rates in order to harm as many victims as they did, which is the relevant question. The
20 policy-relevant fact is that all mass shooters for whom we had the relevant information regarding rates of
21 fire had ample time to fire as many rounds as they did, even if they had needed to take a few more seconds
22 to change magazines. Whether the shooters fired faster during some subperiods than they averaged over
23 the whole shooting period is irrelevant.

24 39. SF brings up a red herring in this connection – stating that the rates of fire that I reported do not
25 approximate how fast a mass shooter with an LCM “*can* fire” (7/4, emphasis added). The theoretical upper
26

1 limit rate of fire that such a shooter might hypothetically attain is completely irrelevant to the issue of how
2 fast real-world mass shooters *actually* had to shoot in order to inflict all the injuries and deaths they
3 inflicted, for the simple reason that no real mass shooter has ever come even remotely close to this
4 maximum possible rate of fire. Eyewitnesses have repeatedly described mass shooters as firing deliberately
5 and taking careful aim at specific individual victims, rather than firing as fast as they could. The high
6 percentage of wounded victims who die (reaching 100% in some incidents) also supports the view that
7 mass shooters shoot carefully, aiming for vital areas of the victim's body, rather than firing rapidly and
8 inaccurately. In short, the rates of fire that mass shooters *could* sustain is irrelevant to the rate they actually
9 *do* sustain, and it is only the latter that can affect the number of casualties actually inflicted.

10
11 40. SF mischaracterizes my positions on when LCMs are likely to affect the number of casualties,
12 claiming that I asserted that this is true “*only* where the shooter possesses only one gun and only one LCM”
13 (7/11-12). This is false, since I explicitly stated that LCM use also could affect the casualty count if there
14 were bystanders willing to tackle the shooter when he was reloading. Under that circumstance, use of an
15 LCM prior to the bystander intervention could affect the number of rounds fired, and thus the number of
16 victims hurt before the magazine change (Kleck Declaration, 6/6-10). It is dubious that SF could have
17 honestly misunderstood this point, since I made it quite clearly: “One circumstance in which use of an
18 LCM could affect the number of casualties even if the shooter possessed multiple guns or multiple
19 magazines is if there were bystanders willing to tackle the shooter during his attempt to change magazines
20 or firearms, the use of an LCM prior to that time could affect the number of victims shot, since the killer
21 could have fired more rounds before needing to reload or switch guns.”

22
23 41. Consequently, it is especially outrageous for SF to claim that “[Kleck’s] narrow criteria for when
24 an LCM matters *exclude the single incident where he admits that a shooter was tackled while reloading—*
25 *that is, where actual events proved that magazine capacity mattered—because that shooter had three guns*
26 *and three LCMs,”* (SF 7/23-25), a reference to the 1998 Springfield, Oregon shooting by Kip Kinkel. My
27 criteria obviously did not exclude this incident, since I had carefully explained why LCM use might matter
28

1 in certain rare circumstances even if the shooter possessed multiple guns or multiple magazines. Thus, SF
2 misstated my position, creating a false impression of some contradiction or inconsistency in my work. I
3 also noted, however, just how extremely rare this circumstance is in mass shooting incidents. It is known
4 to have occurred just two or three times in the past 30 years.

5 42. SF also made a blatantly false claim about shootings I had supposedly missed, presumably for the
6 sake of suggesting that my work was sloppy. SF cites two cases of single-gun shootings that SF alleged
7 were mass shootings that I “missed” (7/16-20). These cases, occurring in 2013 in Hialeah, FL and
8 Herkimer, NY were *not* mass shootings according to the definition I was using, and therefore did not
9 belong in my dataset. The Mother Jones dataset on which SF relied, and the news stories the magazine
10 cited as sources, indicated that both incidents involved six victims shot. I had clearly stated that my dataset
11 encompassed shooting incidents in which *more* than six victims were shot, not including the shooter
12 himself (Kleck Declaration 4/17). Their claims that these single-gun incidents belonged in my dataset were
13 plainly wrong.

14 43. SF also suggests that I believed, or somehow relied on the belief, that “it is just as fast to switch
15 guns or magazines as it is to keep shooting with the same magazine” (SF 7/21-22). This too is false, as I
16 never stated, hinted at, or assumed any such thing. Instead, I made a more subtle and far more relevant
17 observation about mass shootings: that the 2-4 seconds it takes to change detachable magazines on semi-
18 automatic firearms does not slow the *actual* rates of fire maintained by actual mass shooters. It is true that
19 a hypothetical shooter attempting to fire as fast as possible would take 2-4 seconds longer to switch
20 magazines and resume firing than it would to keep shooting with the same magazine, but this is completely
21 irrelevant to actual mass shootings that have occurred in the past or are likely to occur in the future, since
22 actual mass shooters do *not* fire anywhere near as fast as they possibly can, and if they did, they would not
23 fire nearly as accurately as they unfortunately do.

24 44. SF claims to have identified an inconsistency between my Declaration in a New York case, and
25 my Declaration in the SF case (8/17). There is no inconsistency. I wrote the New York Declaration in
26


1 April of 2013 before I had conducted my study of mass shootings in the period 1994-July 2013. I stated at
2 that time that I *knew of* just one mass shooting in which bystanders had intervened while the shooter was
3 reloading – a Long Island incident that I had studied for a brief analysis of mass shootings published in my
4 1997 book, Targeting Guns, which covered only cases that occurred between 1984 and 1993. My
5 statement in the NY Declaration was exactly correct – it was indeed the only such case that I knew of as of
6 April 2013. I began my analysis of the 1994-2013 cases three months later, in July of 2013, at which point
7 I discovered one, and possibly two, more such cases – the 1998 Springfield Oregon case and possibly the
8 Tucson shooting in which Gabrielle Giffords was shot. Rather than this being an inconsistency, it is simply
9 a reflection of the growth of my knowledge – I knew of one relevant case in April 2013, and learned of one
10 or two more by July 2013. The addition of one or two more such cases, however, does not alter the
11 conclusion that incidents in which bystanders subdue a mass shooter while he is trying to reload are
12 extremely rare, as only two or three cases are known to have occurred in the past 30 years.

14 45. SF quibbles with my assertions about civilian marksmanship in DGU incidents, but seem unaware
15 of the implications of their own arguments (10/21-22). They note that the 37% hit rate I cited in my
16 Declaration was a per-incident rate, not a per bullet hit rate (just as I accurately noted in the Declaration).
17 The per bullet hit rate, however, will necessarily be even lower since at least some incidents involve
18 multiple bullets being fired, meaning that the denominator in the hit rate (number of bullets fired) would be
19 even larger, and the per bullet hit rate even lower, than the per-incident rate. This in turn implies that
20 lawful defenders would need even more rounds to achieve a given number of hits, i.e. be in even greater
21 need of larger capacity magazines. SF's comment, then, supports the Plaintiffs' case rather than
22 undercutting it.

24 46. SF states that “even if ... a civilian is likely to miss with 63% of his bullets, he is still likely to hit
25 a target with a legal 10-round magazine” (10/25-27). This is misleading because, as noted in the previous
26 paragraph, the per bullet hit rate is lower than 37%, so civilian defenders would miss with *more than* 63%
27 of their rounds, by SF's own reasoning.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed within the United
2 States on February 9, 2014.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Garv Kleck

EXHIBIT “F”

wounded. There is usually much less information available from press accounts about incidents involving fewer victims, and it would be harder to argue for the significance of large magazine capacity in connection with cases with fewer victims, and thus presumably fewer shots fired.

Of the fifteen mass shootings, no more than four involved weapons banned under any existing federal or state AW bans: the Gian Luigi Ferri case, which involved two Intratec DC9 pistols; the Joseph Wesbecker case, involving a gun loosely described as an "AK-47," which might fall within the banned category; the Patrick Purdy case, which involved a Model 56S variant of an AKM-47; and the James Huberty incident, which involved a semiautomatic Uzi carbine. In all four of these cases the killer was also armed with other, non-AW guns, and it is therefore not clear how many of the wounds were inflicted with AWs. For example, it is not known if any of Huberty's victims were killed with the Uzi because he also used an ordinary Browning pistol, which used the same caliber ammunition (9 mm) as the Uzi and at least half of the dead victims were killed with a shotgun. In eleven of the seventeen mass shootings, the killer was armed with multiple guns, and in at least five cases it was known that the killers reloaded their guns at least once (Ferguson, Henard, Purdy, Sherril, and Huberty). Both of these facts support the assertion that in these cases the killer did not require a single gun with a large magazine to kill or wound so many people.

For those incidents where the number of rounds fired and the duration of the shooting were both reported, the rate of fire never was faster than about one round every two seconds, and was usually much slower than that. Witnesses commonly reported that the killers went about their deadly work in a "calm," "matter-of-fact," or "almost methodical" fashion, taking careful aim at victims and seemingly taking their time (e.g., *Los Angeles Times*, 19 July 1984, p. 1, 18 January 1989, p. 3; *Washington Post*, 15 September 1989, p. A1; *Houston Post*, 17 October 1991, p. A-1). For example, Joseph Wesbecker, who killed seven people and wounded seventeen over a period of thirty minutes, "showed extreme "shooting discipline," . . . firing directly at his human targets and taking few random shots" (*Louisville Courier Journal*, 15 September 1989). None of the mass killers maintained a sustained rate of fire that could not also have been maintained—even taking reloading time into account—with either multiple guns or with an ordinary six-shot revolver and the common loading devices known as "speedloaders." Further, there is no evidence that these killers could not have taken more time than they actually did.

Inflicting the number of casualties in even these extreme and rare cases did not require the large-capacity magazines and/or high rate of fire provided by either AWs or by semiautomatic guns in general. It therefore is highly unlikely that shootings with fewer rounds fired and fewer vic-

Roderick M. Thompson (State Bar No. 96192)
rthompson@fbm.com
Anthony P. Schoenberg (State Bar No. 203714)
aschoenberg@fbm.com
Rochelle L. Woods (State Bar No. 282415)
rwoods@fbm.com
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480

Attorneys for Defendants
THE CITY OF SUNNYVALE, THE MAYOR OF
SUNNYVALE, ANTHONY SPITALERI in his
official capacity, THE CHIEF OF THE
SUNNYVALE DEPARTMENT OF PUBLIC
SAFETY, FRANK GRGURINA, in his official
capacity

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEONARD FYOCK,
SCOTT HOCHSTETLER,
WILLIAM DOUGLAS,
DAVID PEARSON, BRAD SEIFERS, and
ROD SWANSON,

Plaintiffs,

v.

THE CITY OF SUNNYVALE, THE
MAYOR OF SUNNYVALE,
ANTHONY SPITALERI in his official
capacity, THE CHIEF OF THE
SUNNYVALE DEPARTMENT OF
PUBLIC SAFETY, FRANK GRGURINA,
in his official capacity, and DOES 1-10

Defendants.

Case No. 13-cv-05807 RMW

**DECLARATION OF RODERICK M.
THOMPSON IN SUPPORT OF
SUNNYVALE'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: February 21, 2014
Time: 9:00 a.m.
Location: San Jose Courthouse
Courtroom 6 – 4th Floor
280 South 1st Street
San Jose, CA 95113

I, Roderick M. Thompson, declare as follows:

1. I am licensed to practice law in the state of California and am a partner at the law firm of Farella Braun + Martel LLP, counsel for the City of Sunnyvale; the former Mayor of

1 Sunnyvale, Anthony Spitaleri, in his official capacity; and the Chief of the Sunnyvale Department
2 of Public Safety, Frank Grgurina, in his official capacity (“Defendants” or the “City”). I have
3 personal knowledge of the matters stated herein and if called and sworn as a witness, I could and
4 would competently testify to the facts set forth herein.

5 2. Attached as Exhibit 1 is a true and correct copy of California Statutes, 1999, Ch.
6 129.

7 3. Attached as Exhibit 2 is a true and correct copy of *Mass Shootings in the United*
8 *States involving High-Capacity Ammunition Magazines* from the Violence Policy Center.

9 4. Attached as Exhibit 3 is a true and correct copy of an article, Blair, *et al.*, “Active
10 Shooter Events from 2000 to 2012” from the FBI Law Enforcement Bulletin, dated January 2014,
11 available at <http://leb.fbi.gov/2014/january/active-shooter-events-from-2000-to-2012>.

12 5. Attached as Exhibit 4 is a true and correct copy of a presentation from the Mayors
13 Against Illegal Guns, *Analysis of Recent Mass Shootings*, September 2013.

14 6. Attached as Exhibit 5 are true and correct copies of various news articles
15 downloaded from Westlaw New Room regarding media accounts where a shooter was subdued or
16 tackled while reloading.

17 7. Attached as Exhibit 6 is a true and correct copy of a memorandum from the
18 Department of The Treasury, *Report and Recommendation of the Importability of Certain*
19 *Semiautomatic Rifles*, dated July 6, 1989.

20 8. Attached as Exhibit 7 is a true and correct copy of a study by the Department of
21 The Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, April
22 1998.

23 9. Attached as Exhibit 8 is a true and correct copy of House of Representatives
24 Report No. 103-489 (1994).

25 10. Attached as Exhibit 9 is a true and correct copy of a website printout of Santa
26 Clara County Election Results from November 5, 2013, available at
27 http://results.enr.clarityelections.com/CA/Santa_Clara/49877/123386/Web01/en/summary.html.

28 11. Attached as Exhibit 10 is a true and correct copy of a report, *The Militarization of*

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed January 29, 2014, at San Francisco, California.

3
4 /s/ Roderick M. Thompson

Roderick M. Thompson
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3
To
Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction



FBI Law Enforcement Bulletin

Home • 2014 • January • Active Shooter Events from 2000 to 2012

Active Shooter Events from 2000 to 2012

By J. Pete Blair, Ph.D., M. Hunter Martindale, M.S., and Terry Nichols, M.S.



1/7/2014

On April 20, 1999, two Columbine High School students killed twelve classmates and a teacher in Littleton, Colorado. The shooters committed suicide before officers entered the school to intervene. Outrage on the part of the public and deep introspection by the police produced massive changes in law enforcement response to ongoing acts of violence.[1] Unfortunately, active shooter events (ASEs) have continued to occur. Recent tragedies have happened at the Century 21 Movie Theater in Aurora, Colorado, and Sandy Hook Elementary School in Newtown, Connecticut. Out of 70 people shot in Aurora, Colorado, 12 eventually died. Twenty first graders, six staff members, and the shooter's mother were murdered in Newtown. Even more recently, employees at the Washington Navy Yard in the District of Columbia were attacked. Twelve people were killed in this attack. All four of these events drew national attention.

Such high-profile events put a substantial amount of pressure on law enforcement officials to respond effectively; however, solid empirical information is needed if law enforcement administrators are to develop effective policies and procedures regarding these events. The goal of this article is to provide such information along with the authors' insights into what these data tell us about an effective active shooter response.

Although not an exhaustive review of each incident, this evaluation identified a steady rise in incidents, as well as a consistent increase in the number of those shot and killed. The data establish that officers must have the equipment with them to engage the shooter to end the threat and must be prepared to administer medical assistance to the wounded before emergency medical services (EMS) arrive.

In addition, though officers responded quickly (i.e., median time 3 minutes), shooters inflicted devastating damage beforehand. This adds to the growing evidence that citizens must have insight on how to respond. The FBI's support for strong citizen awareness, detailed in the "Run, Hide, Fight" protocol, is endorsed by all other federal agencies. [2] The data establish that when prepared, the potential victims themselves can stop the shooter.

METHODOLOGY

Dr. Blair is the director of research for the Advanced Law Enforcement Rapid Response Training Center and an associate professor of criminal justice at Texas State University, San Marcos.



Mr. Martindale is a research assistant for the Advanced Law Enforcement Rapid Response Training Center and a graduate student at the Texas State University School of Criminal Justice in San Marcos.



In Depth

Featured Articles

Active Shooter Events from 2000 to 2012

Legal Digest

Supreme Court Cases: 2012 to 2013 Term

Notable Speech

Fidelity, Bravery, and Integrity

Officer Survival Spotlight

National Law Enforcement Officers Memorial

Leadership Spotlight

Valuable Moments

Cyber Crime Update

Revamped Cyber's Most Wanted List

Archive

Web and Print

Departments



Bulletin Notes

VICAP Alerts

Bulletin Reports

Bulletin Honors

Unusual Weapons

Topics in the News

See previous LEB content on:

Human Trafficking

School Violence

Crisis Management

Psychopathy

About LEB

History

Editorial Staff

Author Guidelines (pdf)

Editorial Release Form (pdf)

Patch Call



The patch of the Easton, Connecticut, Police Department depicts a vista featuring the Easton Reservoir and Easton Dam. [More](#)

Dorchester County, Maryland, was founded in 1669 on the Eastern Shore of the Chesapeake Bay. [More](#)

LEB Updates

Subscribe to receive monthly updates listing articles featured on this website. [Details](#)

Search Strategy

The federal government defines an active shooter as “an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through the use of firearms.”¹³ For this study ASEs were located via a systematic search strategy.¹⁴ Public records were searched using a variety of search terms to locate news stories from 2000 to 2012 involving potential ASEs in the United States. Incidents identified from these searches then were evaluated to see if they met the following criteria: The event had to involve one or more persons engaged in killing or attempting to kill multiple people in an area occupied by multiple unrelated individuals—at least one of the victims must be unrelated to the shooter. The primary motive in these incidents appears to be mass murder; that is, the shooting is not a by-product of an attempt to commit another crime. While many gang-related shootings could fall within this category, they were excluded from this study because gang-related shootings are not considered ASEs by law enforcement. A total of 110 active shooter events were identified through this process.

To check the completeness of the list, the authors checked the events identified during the search process against other lists/collections of ASEs. In no case did the authors find an event (that met their definition) in another list that they had not found via the public records search. While the authors believe that the search strategy produced an accurate list of ASEs, it, of course, is possible that they missed an event.

Data

Sources used to collect information about the events included reports from the investigating agencies, the supplemental homicide reports (SHRs) produced by the FBI, and news stories. Not all sources of data were available for all events. The most current data from SHRs only cover up to 2010. For this reason it was not possible to use SHRs for events that occurred in 2011 and 2012. Recent events generally are under ongoing investigations, and the investigating agencies do not release these reports. Therefore, events that occurred during 2011 and 2012 were coded from the most recent news reports.

For the events that occurred between 2000 and 2010, agency reports were obtained through Freedom of Information Act (FOIA) requests. Out of these 84 events identified between 2000 and 2010, 42 agencies (50 percent) supplied the requested information. Forty-six of the 84 events (55 percent) were located in the SHRs. News reports were available for all 110 events. When data were available from multiple sources, the agreement between the sources was high. Two coders also coded the events to ensure reliability. Their agreement with each other was high.

FINDINGS

A discussion will cover the increasing frequency of ASEs and the number of people killed. Next, information about the shooters will be presented. Finally, how the events concluded will be described.

Figure 1. Active Shooter Events by Year

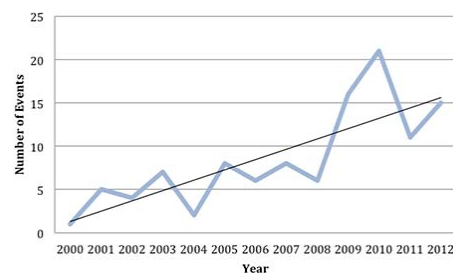
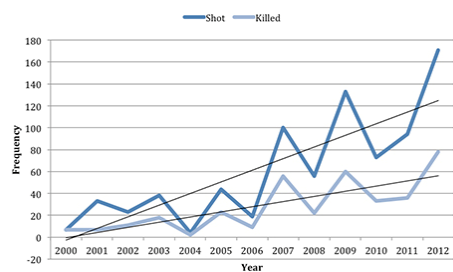
**Characteristics of Events****Frequency**

Figure 1 presents the frequency of ASEs by year. The dotted trendline shows a definite increase over the past 12 years. In fact, the number of events drastically increased following 2008. The rate at which these events occurred went from approximately 1 every other month between 2000 and 2008 (5 per year) to more than 1 per month between 2009 and 2012 (almost 16 per year). The authors' tracking also indicates that this increased rate has continued into 2013—more specifically, there were 15 events. While it is possible that this increase is an artifact of the search strategy (perhaps, archiving of the news reports has improved in recent years), the authors believe that the observed rise represents a real increase in the number of events in recent years. Figure 2 shows the number of people shot and the number of people killed for each year. Here again the trend line shows a definite increase. The authors' tracking indicated that there were 72 people shot and 39 killed in 2013.

Figure 2. Number of People Shot and Killed Per Year

Mr. Nichols retired
as a commander
from the San
Marcos, Texas,
Police Department
and is the assistant
director of the
Advanced Law
Enforcement Rapid
Response Training
Center.

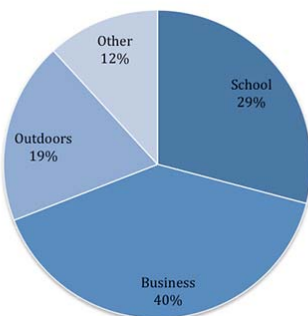




Location

Figure 3 illustrates the primary location of ASEs. Business locales (e.g., retail stores, office buildings, and factories/warehouses) were the most frequently attacked locations. Schools, both K-12 and institutions of higher education, were the second-most attacked locations at 29 percent. Approximately 1 out of 5 ASEs occurred in outdoor environments. The other category includes places, like military bases and churches, that did not fit into one of the other categories. It also is worthwhile to note that 18 percent of the attackers went mobile during their attacks; that is, the perpetrator started at one location and then moved to another while still actively attacking. Most frequently, attackers simply walked to another nearby location, but in some cases they used an automobile to move between more distant attack sites.

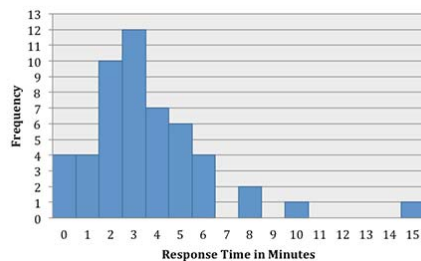
Figure 3. Location of Attacks



Police Response Time

Figure 4 shows police response time for these events. This information was not available for more than half of the cases identified. For the 51 cases that included the data, the median response time was 3 minutes—fast by law enforcement standards.

Figure 4. Police Response Time

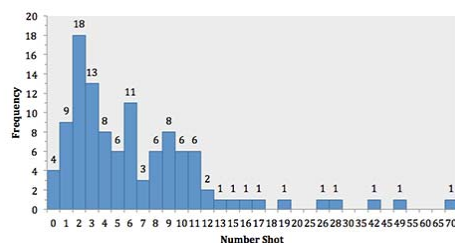


Number Shot

Figure 5 depicts the number of people shot per event—the median is five. It should be noted that if the shooter is shot, the authors do not include the shooter in their counts of the number of people shot or killed. As can be seen in the figure, most of the events are clustered on the left side and do not

right-hand side of the figure. It also is worth noting that in the five largest-casualty events (Northern Illinois University in DeKalb; Sandy Hook Elementary School; Fort Hood Army Base, Killeen, Texas; Virginia Polytechnic and State University in Blacksburg; and the Century 21 Theater) the police were on scene in about 3 minutes; yet, a substantial number of people still were shot and injured or killed.

Figure 5. Number Shot Per Event



Characteristics of the Shooter

Shooter Profile

Single shooters conducted all attacks between 2000 to 2012 that the authors identified. Shooters did not fit a specific profile. While most (94 percent) of the shooters were male, some were female. They also came from different racial and ethnic categories. The youngest shooter in the data set was 13, and the oldest was 88. Again, no clear profile based upon the demographics of the shooter was observed.

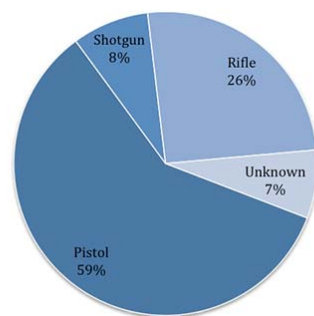
Relationship Between Shooter and Victims

The shooter did not have any apparent connection (such as being a current or former student/employee) with the attack location in 45 percent of events. In 55 percent of the incidents, the shooter did have a connection with the attack location.

Shooter Equipment

Figure 6 shows the most powerful weapon that shooters brought to the attack site. In about 60 percent of the attacks the most powerful weapon used was a pistol. In 8 percent it was a shotgun, and the most powerful weapon used was a rifle in about 26 percent of the cases. Shooters brought multiple weapons in about one-third of the attacks. Perpetrators brought improvised explosive devices (IEDs) to the attack site in 3 percent of the cases and wore body armor in 5 percent.

Figure 6. Most Powerful Weapon Used



Resolution of the Event

Conclusion of All Incidents

Figure 7 depicts how the attacks ended. Six media accounts for events ending in 2011 and 2012 did not explicitly state how the incidents concluded; therefore, these events were excluded from the flowchart. If the incident ended before law enforcement officers arrived on scene, it is depicted to the left of the centerline. Events that ended after the police arrived are depicted to the right of the centerline. Approximately half of the events (49 percent) ended before law enforcement arrived on scene. This points to the phenomenal speed with which these incidents occur.

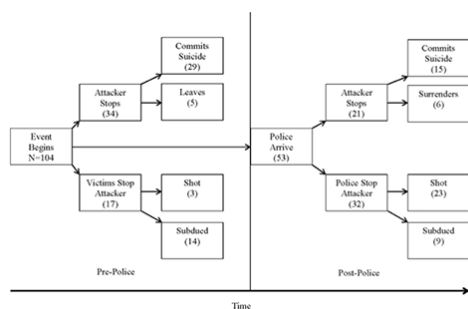
Of the cases that ended before the police arrived, 67 percent (34) ended with attackers stopping themselves via suicide (29 cases) or by leaving the scene (5 cases). In the other 33 percent (17) of the cases that ended before the police arrived, the potential victims at the scene stopped the shooter themselves. Most commonly they physically subdued the attacker (14 cases), but 3 cases involved people at the scene shooting the perpetrator to end the attack.

ASEs still were ongoing when law enforcement arrived in 51 percent (53) of the cases. Of these, attackers stopped themselves when law enforcement arrived in 21 cases (40 percent). Most commonly the attacker committed suicide (15 cases), but there were 6 cases in which the perpetrator surrendered to the arriving police.

Law enforcement officers used force to stop perpetrators 60 percent of the time (32 cases) when the attack still was ongoing at the time of their arrival. Most commonly they shot the attacker (23 cases). In 9 cases responding officers subdued the attacker with means other than a firearm.

In 8 (7 percent) of the cases the authors examined, the attacker shot the responding officers. If only the shootings that were active at the time that the police arrived are considered (53—those to the right of the centerline), then officers were shot in 15 percent of events ongoing at the time of their arrival. That makes an active shooter call among the most dangerous in law enforcement.

Figure 7. Event Resolution



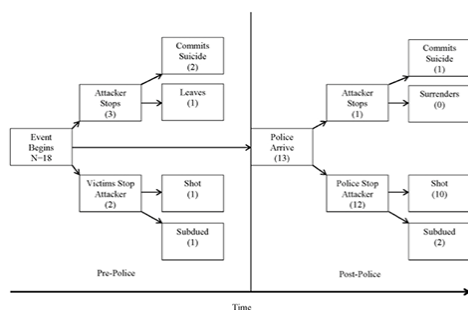
Solo Officer Response

Initially, training programs and departments instructed their officers to form teams before entering a structure to seek out an attacker. Teams offer the responding officers a variety of advantages, but they also take time to assemble. As time went by, agencies began to weigh the advantages and disadvantages of smaller teams and even solo officer entry into the attack location. Many departments now authorize officers to make solo entry into locations where an ASE is occurring.

The authors also sought to assess how events that included solo officer entry unfolded. In many cases, solo officer entry was a difficult item to code. Police and media reports often did not contain enough information to determine whether a solo officer entry was conducted; nonetheless, the authors identified 18 cases that they confidently believe involved solo officer entry. The resolution of the cases is presented in figure 8. During solo officer entries, the event likely would be ongoing, and the officers probably would use force to stop the attacker. This most likely was a product of these officers arriving on scene and entering the attack site quickly—the median response time was 3 minutes for all events and 2 minutes for those involving solo officers.

In total, 13 of the 18 events (72 percent) still were ongoing when solo officers arrived on scene. Of these 13 incidents, law enforcement personnel either shot or physically subdued the shooter 12 times. Solo officers were also more likely to be injured during the event. Three of the 18 solo officers (17 percent) were shot. If only cases ongoing at the time of solo officer entry (13) were considered, officers were shot 23 percent of the time. Solo officer entries provide faster response, but also increase the danger to the officer.

Figure 8. Event Resolution for Solo Officer Entries



TRAINING AND EQUIPMENT IMPLICATIONS

Prepared to Use Force

The authors have seen discussions on message boards—even in training classes—where officers suggest the only training needed to respond to ASEs is to get to the scene quickly. The belief is that most events will be over, or suspects will kill themselves. While it is true that 1) 49 percent of the events end before officers arrive and 2) suspects kill themselves after the police arrive 14 percent of the time, responding officers used force to stop the attack in 31 percent of the ASEs assessed. This 1 in 3 chance of having to use force makes it clear that simply training officers to show up is not enough. Officers must learn the tactical skills needed to successfully resolve these events. Because not all events occur indoors (18 percent happen outdoors), officers must be trained to operate in both environments. Indoor (i.e., close-quarters) battle tactics are not suitable in outdoor environments, and using them outdoors can be fatal.

Being prepared to use force also means having the equipment needed to act effectively. The data clearly support equipping officers with patrol rifles. Many ASE sites involve open spaces or long hallways that create engagement distances beyond the ability of most officers to effectively engage a suspect with a pistol. Add this to the possibility that the officers may have to place precision fire on a suspect while avoiding hitting fleeing or injured victims, and the need for patrol rifles is clear.

equivalent to what they will face if they go in harm's way.

Because shooters often carry rifles and frequently shoot at officers in these events, law enforcement personnel should wear body armor that can protect them from rifle fire. This means that officers should be equipped with ballistic plates. Most of the rifle rounds used by active shooters can be stopped with type III plates, but some shooters have fired rounds that would be stopped only by type IV plates. Many of the commercially available plate carriers also have attachment points that can be used to carry other equipment, which proves useful during ASEs. This allows the plate carrier to serve as a "go bag" in addition to providing enhanced protection.

Some agencies recommend the use of ballistic shields in ASEs. The danger inherent in these events argues for increased protection, but that generally comes with a tradeoff. For instance, most shields are designed to be used with pistols, which would require the officer to give up the ballistic advantage of a rifle. Also, man-portable shields currently are not rated to stop rifle fire. In the roughly 1 of 4 events where the shooter is armed with a rifle, a shield would not provide additional protection.

Ready to Provide Medical Assistance

During the confusion of an ASE, it is common for different descriptions of the shooter to be phoned into 911 or communicated to responding officers. This often creates a situation where, even though the police have found the body of or dealt with a shooter directly, they cannot be certain that this was the only shooter. Additionally, it is common for people to continue to call in reports of people with guns after the shooter has been dealt with. In some cases, this is caused by a lag between observation and reporting. The person calling saw the actual shooter, fled, and then reported what he or she saw several minutes later. In others, the caller has seen police officers responding in plain clothes or nontraditional uniforms and mistaken the officers for attackers. In yet other cases, the callers are simply wrong. Regardless of the cause of the confusion, the officers on scene often must engage in a systematic search of the attack location to confirm that there is not another shooter. In a large attack site, this search can take hours.

This creates a problem for those wounded and in need of medical care because most EMS providers will not enter a scene until it is declared "secure" or "cold." Securing the scene can take hours. During this time, victims may bleed to death or go into shock and die. To combat this problem, national organizations have endorsed the Rescue Task Force (RTF) concept.[5] This involves having EMS personnel enter attack sites to stabilize and rapidly remove the injured, while a ballistic or explosive threat still may exist. EMS personnel operating in RTFs wear body armor and are provided security by law enforcement personnel. This concept represents a significant improvement in EMS response to ASEs, but it undoubtedly will take substantial time to implement nationwide.

Even with faster EMS response, responding officers will face situations where they can save the lives of victims by quickly applying proper hemorrhage control techniques after the immediate threat has been dealt with. Additionally, in a mass-casualty event, the number of wounded may overwhelm the capabilities of responding EMS personnel. Recognizing that the primary objective of a responding officer is to neutralize the threat, if officers have some medical training, they may be in a position to aid the injured and possibly save lives.[6] This training currently is available, and the authors strongly recommend that all law enforcement officers receive it to maximize their ability to help those injured during these horrible events.[7]

Obviously, if officers are going to be trained to provide medical aid, they need equipment to provide this aid. Numerous wound care kits are commercially available and easily can be attached to a plate carrier. Also, the authors suggest that all officers carry tourniquets. Tourniquets are useful for stopping extremity bleeding, whether it is caused by a gunshot wound or other trauma. In numerous cases across the country, officers have saved not only the lives of other officers but also civilians by applying a tourniquet.

Civilians Trained to React

Police have, generally, done an excellent job responding to active shooter events quickly. Despite the dramatic improvement in police response since the Columbine High School shooting incident, attacks that result in high numbers of casualties continue. The five highest casualty events since 2000 happened despite police arriving on scene in about 3 minutes. Clearly, fast and effective police response comprises only part of the answer to limiting the damage done during these attacks.

Also important are the actions that civilians take to protect themselves during the 3 or more minutes that it takes the police to arrive. Civilians need to be trained about what to do if one of these attacks occurs. A variety of resources are available at no cost. Federal agencies, including both the FBI and the Department of Homeland Security, Federal Emergency Management Agency, endorse the use of the teaching technique of Run, Hide, Fight to explain to civilians how they can protect themselves and others around them.[8] Police departments and the communities they serve should work together to implement this training.

CONCLUSION

The frequency of active shooter events has increased in recent years. These incidents also have generated a substantial amount of public concern. The authors hope that the data provided in this article will provide police administrators with the information they need to form sound, evidence-based best practices in responding to these events and that these best practices will help save lives.

Endnotes

[1] J.P. Blair, T. Nichols, D. Burns, and J.R. Curnutt, *Active Shooter Events and Response* (Boca Raton, FL: CRC Press, 2013).

[2] Federal Bureau of Investigation, Critical Incident Response Group, "Active Shooter/Mass Casualty Events," <http://www.fbi.gov/about-us/cirg/active-shooter-and-mass-casualty-incidents> (accessed November 22, 2013).

[3] Federal Bureau of Investigation, Critical Incident Response Group, "Active Shooter Event: Quick Reference Guide," <http://www.fbi.gov/about-us/cirg/active-shooter-and-mass-casualty-incidents/active-shooter-tent-card-090513.pdf> (accessed November 22, 2013).

[4] Ibid.

[5] Department of Homeland Security, Federal Emergency Management Agency, U.S. Fire Administration, "Fire/Emergency Medical Services Department Operational Considerations and Guide for Active Shooter and Mass Casualty Incidents," http://www.usfa.fema.gov/downloads/pdf/publications/active_shooter_guide.pdf (accessed November 26, 2013); International Association of Fire Fighters, "IAFF Position Statement: Active Shooter Events," http://www.iaff.org/Comm/PDFs/IAFF_Active_Shooter_Position_Statement.pdf (accessed November 26, 2013); Joint Committee to Create a National Policy to Enhance Survivability From Mass Casualty Shooting Events, "Improving Survival from Active Shooter Events: The Hartford Consensus," <http://www.naemt.org/Libraries/Trauma%20Resources/Hartford%20Consensus%20Document%20Final%204-8-13.sflb> (accessed November 26, 2013); Joint Committee to Create a National Policy to Enhance Survivability From Mass Casualty Shooting Events, "Active Shooter and Intentional Mass-Casualty Events: The Hartford Consensus II," <http://bulletin.facs.org/2013/02/hartford-consensus-ii/> (accessed November 26, 2013); and Joint Committee to Create a National Policy to Enhance Survivability From Mass Casualty Shooting Events, "Improving Survival from Active Shooter Events: The Hartford Consensus,"

[8] Federal Bureau of Investigation, Critical Incident Response Group, "Active Shooter/Mass Casualty Events"; and Ready Houston, <http://www.readyhouston.tx.gov/videos.html#rhf> (accessed November 26, 2013).

Close

EXHIBIT 8

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction

H.R. REP. 103-489, H.R. Rep. No. 489, 103RD Cong., 2ND Sess.
1994, 1994 WL 168883, 1994 U.S.C.A.N. 1820 (Leg.Hist.)
, VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

PUBLIC SAFETY AND RECREATIONAL FIREARMS USE PROTECTION ACT

DATES OF CONSIDERATION AND PASSAGE

House: November 3, 1993; March 23, April 14, 19, 20, 21, May 5, August 19, 21, 1994
Senate: November 3, 4, 5, 8, 9, 10, 11, 16, 17, 18, 19, 1993; May 19, August 22, 23, 24, 25, 1994
Cong. Record Vol. 139 (1993)
Cong. Record Vol. 140 (1994)
House Report (Judiciary Committee) No. 103-324,
Nov. 3, 1993 (To accompany H.R. 3355)
House Report (Judiciary Committee) No. 103-489,
May 2, 1994 (To accompany H.R. 4296)
[House Conference Report No. 103-694](#),
Aug. 10, 1994 (To accompany H.R. 3355)
[House Conference Report No. 103-711](#),
Aug. 21, 1994 (To accompany H.R. 3355)

RELATED REPORTS

House Report (Judiciary Committee) No. 103-45,
Mar. 29, 1993 (To accompany H.R. 829)
House Report (Judiciary Committee) No. 103-245,
Sept. 21, 1993 (To accompany H.R. 1385)
House Report (Judiciary Committee) No. 103-320,
Nov. 3, 1993 (To accompany H.R. 3350)
House Report (Judiciary Committee) No. 103-321,
Nov. 3, 1993 (To accompany H.R. 3351)
House Report (Judiciary Committee) No. 103-322,
Nov. 3, 1993 (To accompany H.R. 3353)
House Report (Judiciary Committee) No. 103-323,
Nov. 3, 1993 (To accompany H.R. 3354)
House Report (Judiciary Committee) No. 103-389,
Nov. 20, 1993 (To accompany H.R. 3098)
House Report (Judiciary Committee) No. 103-392,
Nov. 20, 1993 (To accompany H.R. 324)
House Report (Judiciary Committee) No. 103-395,
Nov. 20, 1993 (To accompany H.R. 1130)
House Report (Natural Resources Committee) No. 103-444,
Mar. 21, 1994 (To accompany H.R. 4034)
House Report (Judiciary Committee) No. 103-459,
Mar. 24, 1994 (To accompany H.R. 4033)
House Report (Judiciary Committee) No. 103-460,
Mar. 24, 1994 (To accompany H.R. 3979)
House Report (Judiciary Committee) No. 103-461,

Mar. 25, 1994 (To accompany H.R. 1120)
House Report (Judiciary Committee) No. 103-462,
Mar. 25, 1994 (To accompany H.R. 3968)
House Report (Judiciary Committee) No. 103-463,
Mar. 25, 1994 (To accompany H.R. 3981)
House Report (Judiciary Committee) No. 103-464,
Mar. 25, 1994 (To accompany H.R. 4030)
House Report (Judiciary Committee) No. 103-465,
Mar. 25, 1994 (To accompany H.R. 4031)
House Report (Judiciary Committee) No. 103-466,
Mar. 25, 1994 (To accompany H.R. 4032)
House Report (Judiciary Committee) No. 103-468,
Mar. 25, 1994 (To accompany H.R. 665)
House Report (Judiciary Committee) No. 103-469,
Mar. 25, 1994 (To accompany H.R. 3993)
House Report (Judiciary Committee) No. 103-489,
May 2, 1994 (To accompany H.R. 4296)
House Report (Judiciary Committee) No. 103-138,
Sept. 10, 1994 (To accompany S. 11)

HOUSE REPORT NO. 103-489

May 2, 1994
[To accompany H.R. 4296]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4296) to make unlawful the transfer or possession of assault weapons, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Public Safety and Recreational Firearms Use Protection Act”.

SEC. 2. RESTRICTION ON MANUFACTURE, TRANSFER, AND POSSESSION OF CERTAIN SEMIAUTOMATIC ASSAULT WEAPONS.

(a) Restriction.—[Section 922 of title 18, United States Code](#), is amended by adding at the end the following:

“(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

“(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed on the date of the enactment of this subsection.

“(3) Paragraph (1) shall not apply to—

“(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

“(B) any firearm that—

“(i) is manually operated by bolt, pump, lever, or slide action;

“(ii) has been rendered permanently inoperable; or

“(iii) is an antique firearm;

“(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

“(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this Act is in effect.

“(4) Paragraph (1) shall not apply to—

“(A) the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State;

“(B) the transfer of a semiautomatic assault weapon by a licensed manufacturer, licensed importer, or licensed dealer to an entity referred to in subparagraph (A) or to a law enforcement officer authorized by such an entity to purchase firearms for official use;

“(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

“(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.”.

(b) Definition of Semiautomatic Assault Weapon.—Section 921(a) of such title is amended by adding at the end the following:

“(30) The term ‘semiautomatic assault weapon’ means—

“(A) any of the firearms, or copies or duplicates of the firearms, known as—

“(i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);

“(ii) Action Arms Israeli Military Industries UZI and Galil;

“(iii) Beretta Ar70 (SC-70);

“(iv) Colt AR-15;

“(v) Fabrique National FN/FAL, FN/LAR, and FNC;

“(vi) SWD M-10, M-11, M-11/9, and M-12;

“(vii) Steyr AUG;

“(viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and

“(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

“(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of–

“(i) a folding or telescoping stock;

“(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

“(iii) a bayonet mount;

“(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and

“(v) a grenade launcher;

“(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of–

“(i) an ammunition magazine that attaches to the pistol outside of the pistol grip;

“(ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;

“(iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;

“(iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and

“(v) a semiautomatic version of an automatic firearm; and

“(D) a semiautomatic shotgun that has at least 2 of–

“(i) a folding or telescoping stock;

“(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

“(iii) a fixed magazine capacity in excess of 5 rounds; and

“(iv) an ability to accept a detachable magazine.”.

(c) Penalties.–

(1) Violation of [section 922\(v\)](#).–[Section 924\(a\)\(1\)\(B\)](#) of such title is amended by striking “or (q) of [section 922](#)” and inserting “(r), or (v) of [section 922](#)”.

(2) Use or possession during crime of violence or drug trafficking crime.—Section 924(c)(1) of such title is amended in the first sentence by inserting “, or semiautomatic assault weapon,” after “short-barreled shotgun.”.

(d) Identification Markings for Semiautomatic Assault Weapons.—Section 923(i) of such title is amended by adding at the end the following: “The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured.”.

SEC. 3. RECORDKEEPING REQUIREMENTS FOR TRANSFERS OF GRANDFATHERED FIREARMS.

(a) Offense.—Section 922 of title 18, United States Code, as amended by section 2(a) of this Act, is amended by adding at the end the following:

“(w)(1) It shall be unlawful for a person to sell, ship, or deliver a semiautomatic assault weapon to a person who has not completed a form 4473 in connection with the transfer of the semiautomatic assault weapon.

“(2) It shall be unlawful for a person to receive a semiautomatic assault weapon unless the person has completed a form 4473 in connection with the transfer of the semiautomatic assault weapon.

“(3) If a person receives a semiautomatic assault weapon from anyone other than a licensed dealer, both the person and the transferor shall retain a copy of the form 4473 completed in connection with the transfer.

“(4) Within 90 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations ensuring the availability of form 4473 to owners of semiautomatic assault weapons.

“(5) As used in this subsection, the term ‘form 4473’ means—

“(A) the form which, as of the date of the enactment of this subsection, is designated by the Secretary as form 4473; or

“(B) any other form which—

“(i) is required by the Secretary, in lieu of the form described in subparagraph (A), to be completed in connection with the transfer of a semiautomatic assault weapon; and

“(ii) when completed, contains, at a minimum, the information that, as of the date of the enactment of this subsection, is required to be provided on the form described in subparagraph (A).”.

(b) Penalty.—Section 924(a) of such title is amended by adding at the end the following:

“(6) A person who knowingly violates section 922(w) shall be fined not more than \$1,000, imprisoned not more than 6 months, or both. Section 3571 shall not apply to any offense under this paragraph.”.

SEC. 4. BAN OF LARGE CAPACITY AMMUNITION FEEDING DEVICES.

(a) Prohibition.—Section 922 of title 18, United States Code, as amended by sections 2 and 3 of this Act, is amended by adding at the end the following:

“(x)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

“(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on the date of the enactment of this subsection.

“(3) This subsection shall not apply to—

“(A) the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State;

“(B) the transfer of a large capacity ammunition feeding device by a licensed manufacturer, licensed importer, or licensed dealer to an entity referred to in subparagraph (A) or to a law enforcement officer authorized by such an entity to purchase large capacity ammunition feeding devices for official use;

“(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

“(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.”.

(b) Definition of Large Capacity Ammunition Feeding Device.—Section 921(a) of such title, as amended by section 2(b) of this Act, is amended by adding at the end the following:

“(31) The term ‘large capacity ammunition feeding device’—

“(A) means—

“(i) a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; and

“(ii) any combination of parts from which a device described in clause (i) can be assembled; but

“(B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.”.

(c) Large Capacity Ammunition Feeding Devices Treated as Firearms.—Section 921(a)(3) of such title is amended in the first sentence by striking “or (D) any destructive device.” and inserting “(D) any destructive device; or (E) any large capacity ammunition feeding device.”.

(d) Penalty.—Section 924(a)(1)(B) of such title, as amended by section 2(c) of this Act, is amended by striking “or (v)” and inserting “(v), or (x)”.

(e) Identification Markings for Large Capacity Ammunition Feeding Devices.—Section 923(i) of such title, as amended by section 2(d) of this Act, is amended by adding at the end the following: “A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe.”.

SEC. 5. STUDY BY ATTORNEY GENERAL.

(a) Study.—The Attorney General shall investigate and study the effect of this Act and the amendments made by this Act, and in particular shall determine their impact, if any, on violent and drug trafficking crime. The study shall be conducted over a period of 18 months, commencing 12 months after the date of enactment of this Act.

(b) Report.—Not later than 30 months after the date of enactment of this Act, the Attorney General shall prepare and submit to the Congress a report setting forth in detail the findings and determinations made in the study under subsection (a).

SEC. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act—

- (1) shall take effect on the date of the enactment of this Act; and
- (2) are repealed effective as of the date that is 10 years after that date.

SEC. 7. APPENDIX A TO SECTION 922 OF TITLE 18.

Section 922 of title 18, United States Code, is amended by adding at the end the following appendix:

“APPENDIX A

Centerfire Rifles—Autoloaders

Browning BAR Mark II Safari Semi-Auto Rifle
Browning BAR Mark II Safari Magnum Rifle
Browning High-Power Rifle
Heckler & Koch Model 300 Rifle
Iver Johnson M-1 Carbine
Iver Johnson 50th Anniversary M-1 Carbine
Marlin Model 9 Camp Carbine
Marlin Model 45 Carbine
Remington Nylon 66 Auto-Loading Rifle
Remington Model 7400 Auto Rifle
Remington Model 7400 Rifle

Remington Model 7400 Special Purpose Auto Rifle

Ruger Mini-14 Autoloading Rifle (w/o folding stock)

Ruger Mini Thirty Rifle

Centerfire Rifles—Lever & Slide

Browning Model 81 BLR Lever-Action Rifle

Browning Model 81 Long Action BLR

Browning Model 1886 Lever-Action Carbine

Browning Model 1886 High Grade Carbine

Cimarron 1860 Henry Replica

Cimarron 1866 Winchester Replicas

Cimarron 1873 Short Rifle

Cimarron 1873 Sporting Rifle

Cimarron 1873 30" Express Rifle

Dixie Engraved 1873 Rifle

E.M.F. 1866 Yellowboy Lever Actions

E.M.F. 1860 Henry Rifle

E.M.F. Model 73 Lever-Actions Rifle

Marlin Model 336CS Lever-Action Carbine

Marlin Model 30AS Lever-Action Carbine

Marlin Model 444SS Lever-Action Sporter

Marlin Model 1894S Lever-Action Carbine

Marlin Model 1894CS Carbine

Marlin Model 1894CL Classic

Marlin Model 1895SS Lever-Action Rifle

Mitchell 1858 Henry Replica

Mitchell 1866 Winchester Replica

Mitchell 1873 Winchester Replica

Navy Arms Military Henry Rifle

Navy Arms Henry Trapper

Navy Arms Iron Frame Henry

Navy Arms Henry Carbine

Navy Arms 1866 Yellowboy Rifle

Navy Arms 1873 Winchester-Style Rifle

Navy Arms 1873 Sporting Rifle

Remington 7600 Slide Action

Remington Model 7600 Special-Purpose Slide Action

Rossi M92 SRC Saddle-Ring Carbine

Rossi M92 SRS Short Carbine

Savage 99C Leber-Action Rifle

Uberti Henry Rifle

Uberti 1866 Sporting Rifle

Uberti 1873 Sporting Rifle

Winchester Model 94 Side Eject Lever-Action Rifle

Winchester Model 94 Trapper Side Eject

Winchester Model 94 Big Bore Side Eject

Winchester Model 94 Ranger Side Eject Lever-Action Rifle

Winchester Model 94 Wrangler Side Eject

Centerfire Rifles—Bolt Action

Alpine Bolt-Action Rifle

A-Square Caesar Bolt-Action Rifle

A-Square Hannibal Bolt-Action Rifle

Anschutz 1700D Classic Rifles

Anschutz 1700D Custom Rifles

Anschutz 1700D Bavarian Bolt-Action Rifle

Anschutz 1733D Mannlicher Rifle

Barret Model 90 Bolt-Action Rifle

Beeman/HW 60J Bolt-Action Rifle

Blaser R84 Bolt-Action Rifle

BRNO 537 Sporter Bolt-Action Rifle

BRNO ZKB 527 Fox Bolt-Action Rifle

BRNO ZKK 600, 601, 602 Bolt-Action Rifles

Browning A-Bolt Rifle

Browning A-Bolt Stainless Stalker

Browning A-Bolt Left Hand

Browning A-Bolt Short Action

Browning Euro-Bolt Rifle

Browning A-Bolt Gold Medallion

Browning A-Bolt Micro Medallion

Century Centurion 14 Sporter

Century Enfield Sporter #4

Century Swedish Sporter #38

Century Mauser 98 Sporter

Cooper Model 38 Centerfire Sporter

Dakota 22 Sporter Bolt-Action Rifle

Dakota 76 Classic Bolt-Action Rifle

Dakota 76 Short Action Rifles

Dakota 76 Safari Bolt-Action Rifle

Dakota 416 Rigby African

E.A.A./Sabatti Rover 870 Bolt-Action Rifle

Auguste Francotte Bolt-Action Rifles

Carl Gustaf 2000 Bolt-Action Rifle

Heym Magnum Express Series Rifle

Howa Lightning Bolt-Action Rifle

Howa Realtree Camo Rifle

Interarms Mark X Viscount Bolt-Action Rifle

Interarms Mini-Mark X Rifle

Interarms Mark X Whitworth Bolt-Action Rifle

Interarms Whitworth Express Rifle

Iver Johnson Model 5100A1 Long-Range Rifle

KDF K15 American Bolt-Action Rifle

Krico Model 600 Bolt-Action Rifle

Krico Model 700 Bolt-Action Rifle

Mauser Model 66 Bolt-Action Rifle

Mauser Model 99 Bolt-Action Rifle

McMillan Signature Classic Sporter

McMillan Signature Super Varminter

McMillan Signature Alaskan

McMillan Signature Titanium Mountain Rifle

McMillan Classic Stainless Sporter

McMillan Talon Safari Rifle

McMillan Talon Sporter Rifle

Midland 1500S Survivor Rifle

Navy Arms TU-33/40 Carbine

Parker-Hale Model 81 Classic Rifle

Parker-Hale Model 81 Classic African Rifle

Parker-Hale Model 1000 Rifle

Parker-Hale Model 1000M African Rifle

Parker-Hale Model 1100 Lightweight Rifle

Parker-Hale Model 1200 Super Rifle

Parker-Hale Model 1200 Super Clip Rifle

Parker-Hale Model 1300C Scout Rifle

Parker-Hale Model 2100 Midland Rifle

Parker-Hale Model 2700 Lightweight Rifle

Parker-Hale Model 2800 Midland Rifle

Remington Model Seven Bolt-Action Rifle

Remington Model Seven Youth Rifle

Remington Model Seven Custom KS

Remington Model Seven Custom MS Rifle

Remington 700 ADL Bolt-Action Rifle

Remington 700 BDL Bolt-Action Rifle

Remington 700 BDL Varmint Special

Remington 700 BDL European Bolt-Action Rifle

Remington 700 Varmint Synthetic Rifle

Remington 700 BDL SS Rifle

Remington 700 Stainless Synthetic Rifle

Remington 700 MTRSS Rifle

Remington 700 BDL Left Hand

Remington 700 Camo Synthetic Rifle

Remington 700 Safari

Remington 700 Mountain Rifle

Remington 700 Custom KS Mountain Rifle

Remington 700 Classic Rifle

Ruger M77 Mark II Rifle

Ruger M77 Mark II Magnum Rifle

Ruger M77RL Ultra Light

Ruger M77 Mark II All-Weather Stainless Rifle

Ruger M77 RSI International Carbine

Ruger M77 Mark II Express Rifle

Ruger M77VT Target Rifle

Sako Hunter Rifle

Sako Fiberclass Sporter

Sako Hunter Left-Hand Rifle

Sako Classic Bolt Action

Sako Hunter LS Rifle

Sako Deluxe Lightweight

Sako Super Deluxe Sporter

Sako Mannlicher-Style Carbine

Sako Varmint Heavy Barrel

Sako TRG-S Bolt-Action Rifle

Sauer 90 Bolt-Action Rifle

Savage 110G Bolt-Action Rifle

Savage 110CY Youth/Ladies Rifle

Savage 110WLE One of One Thousand Limited Edition Rifle

Savage 110GXP3 Bolt-Action Rifle

Savage 110F Bolt-Action Rifle

Savage 110FXP3 Bolt-Action Rifle

Savage 110GV Varmint Rifle

Savage 110FV Varmint Rifle

Savage Model 110FVS Varmint Rifle

Savage Model 112BV Heavy Barrel Varmint Rifle

Savage 116FSS Bolt-Action Rifle

Savage Model 116SK Kodiak Rifle

Savage 110FP Polic Rifle

Steyr-Mannlicher Sporter Models SL, L, M, S, S/T

Steyr-Mannlicher Luxus Model L, M, S

Steyr-Mannlicher Model M Professional Rifle

Tikka Bolt-Action Rifle

Tikka Premium Grade Rifle

Tikka Varmint/Continental Rifle

Tikka Whitetail/Battue Rifle

Ultra Light Arms Model 20 Rifle

Ultra Light Arms Model 28, Model 40 Rifles

Voere VEC 91 Lightning Bolt-Action Rifle

Voere Model 2166 Bolt-Action Rifle

Voere Model 2155, 2150 Bolt-Action Rifles

Weatherby Mark V Deluxe Bolt-Action Rifle

Weatherby Lasermark V Rifle

Weatherby Mark V Crown Custom Rifles

Weatherby Mark V Safari Grade Custom Rifle

Weatherby Mark V Sporter Rifle

Weatherby Mark V Safari Grade Custom Rifles

Weatherby Weathermark Rifle

Weatherby Weathermark Alaskan Rifle

Weatherby Classicmark No. 1 Rifle

Weatherby Weatherguard Alaskan Rifle

Weatherby Vanguard VGX Deluxe Rifle

Weatherby Vanguard Classic Rifle

Weatherby Vanguard Classic No. 1 Rifle

Weatherby Vanguard Weathermark Rifle

Wichita Classis Rifle

Wichita Varmint Rifle

Winchester Model 70 Sporter

Winchester Model 70 Sporter WinTuff

Winchester Model 70 SM Sporter

Winchester Model 70 Stainless Rifle

Winchester Model 70 Varmint

Winchester Model 70 Synthetic Heavy Varmint Rifle

Winchester Model 70 DBM Rifle

Winchester Model 70 DBM-S Rifle

Winchester Model 70 Featherweight

Winchester Model 70 Featherweight WinTuff

Winchester Model 70 Featherweight Classic

Winchester Model 70 Lightweight Rifle

Winchester Ranger Rifle

Winchester Model 70 Super Express Magnum

Winchester Model 70 Super Grade

Winchester Model 70 Custom Sharpshooter

Winchester Model 70 Custom Sporting Sharpshooter Rifle

Centerfire Rifles—Single Shot

Armsport 1866 Sharps Rifle, Carbine

Brown Model One Single Shot Rifle

Browning Model 1885 Single Shot Rifle

Dakota Single Shot Rifle

Desert Industries G-90 Single Shot Rifle

Harrington & Richardson Ultra Varmint Rifle

Model 1885 High Wall Rifle

Navy Arms Rolling Block Buffalo Rifle

Navy Arms #2 Creedmoor Rifle

Navy Arms Sharps Cavalry Carbine

Navy Arms Sharps Plains Rifle

New England Firearms Handi-Rifle

Red Willow Armory Ballard No. 5 Pacific

Red Willow Armory Ballard No. 1.5 Hunting Rifle

Red Willow Armory Ballard No. 8 Union Hill Rifle

Red Willow Armory Ballard No. 4.5 Target Rifle

Remington-Style Rolling Block Carbine

Ruger No. 1B Single Shot

Ruger No. 1A Light Sporter

Ruger No. 1H Tropical Rifle

Ruger No. 1S Medium Sporter

Ruger No. 1 RSI International

Ruger No. 1V Special Varminter

C. Sharps Arms New Model 1874 Old Reliable

C. Sharps Arms New Model 1875 Rifle

C. Sharps Arms 1875 Classic Sharps

C. Sharps Arms New Model 1875 Target & Long Range

Shiloh Sharps 1874 Long Range Express

Shiloh Sharps 1874 Montana Roughrider

Shiloh Sharps 1874 Military Carbine

Shiloh Sharps 1874 Business Rifle

Shiloh Sharps 1874 Military Rifle

Sharps 1874 Old Reliable

Thompson/Center Contender Carbine

Thompson/Center Stainless Contender Carbine

Thompson/Center Contender Carbine Survival System

Thompson/Center Contender Carbine Youth Model

Thompson/Center TCR '87 Single Shot Rifle

Uberti Rolling Block Baby Carbine

Drillings, Combination Guns, Double Rifles

Baretta Express SSO O/U Double Rifles

Baretta 455 SxS Express Rifle

Chapuis RGExpress Double Rifle

Auguste Francotte Sidelock Double Rifles

Auguste Francotte Boxlock Double Rifle

Heym Model 55B O/U Double Rifle

Heym Model 55FW O/U Combo Gun

Heym Model 88b Side-by-Side Double Rifle

Kodiak Mk. IV Double Rifle

Kreighoff Teck O/U Combination Gun

Kreighoff Trumpf Drilling

Merkel Over/Under Combination Guns

Merkel Drillings

Merkel Model 160 Side-by-Side Double Rifles

Merkel Over/Under Double Rifles

Savage 24F O/U Combination Gun

Savage 24F-12T Turkey Gun

Springfield Inc. M6 Scout Rifle/Shotgun

Tikka Model 412s Combination Gun

Tikka Model 412S Double Fire

A. Zoli Rifle-Shotgun O/U Combo

Rimfire Rifles—Autoloaders

AMT Lightning 25/22 Rifle

AMT Lightning Small-Game Hunting Rifle II

AMT Mannum Hunter Auto Rifle

Anschutz 525 Deluxe Auto

Armcor Model 20P Auto Rifle

Browning Auto-22 Rifle

Browning Auto-22 Grade VI

Krico Model 260 Auto Rifle

Lakefield Arms Model 64B Auto Rifle

Marlin Model 60 Self-Loading Rifle

Marlin Model 60ss Self-Loading Rifle

Marlin Model 70 HC Auto

Marlin Model 990I Self-Loading Rifle

Marlin Model 70P Papoose

Marlin Model 922 Magnum Self-Loading Rifle

Marlin Model 995 Self-Loading Rifle

Norinco Model 22 ATD Rifle

Remington Model 522 Viper Autoloading Rifle

Remington 522BDL Speedmaster Rifle

Ruger 10/22 Autoloading Carbine (w/o folding stock)

Survival Arms AR-7 Explorer Rifle

Texas Remington Revolving Carbine

Voere Model 2115 Auto Rifle

Rimfire Rifles—Lever & Slide Action

Browning BL-22 Lever-Action Rifle

Marlin 39TDS Carbine

Marlin Model 39AS Golden Lever-Action Rifle

Remington 572BDL Fieldmaster Pump Rifle

Norinco EM-321 Pump Rifle

Rossi Model 62 SA Pump Rifle

Rossi Model 62 SAC Carbine

Winchester Model 9422 Lever-Action Rifle

Winchester Model 9422 Magnum Lever-Action Rifle

Rimfire Rifles—Bolt Actions & Single Shots

Anschutz Achiever Bolt-Action Rifle

Anschutz 1416D/1516D Classic Rifles

Anschutz 1418D/1518D Mannlicher Rifles

Anschutz 1700D Classic Rifles

Anschutz 1700D Custom Rifles

Anschutz 1700 FWT Bolt-Action Rifle

Anschutz 1700D Graphite Custom Rifle

Anschutz 1700D Bavarian Bolt-Action Rifle

Armstrong Model 14P Bolt-Action Rifle

Armstrong Model 1500 Rifle

BRNO ZKM-452 Deluxe Bolt-Action Rifle

BRNO ZKM 452 Deluxe

Beeman/HW 60-J-ST Bolt-Action Rifle

Browning A-Bolt 22 Bolt-Action Rifle

Browning A-Bolt Gold Medallion

Cabanas Phaser Rifle

Cabanas Master Bolt-Action Rifle

Cabanas Espronceda IV Bolt-Action Rifle

Cabanas Leyre Bolt-Action Rifle

Chipmunk Single Shot Rifle

Cooper Arms Model 36S Sporter Rifle

Dakota 22 Sporter Bolt-Action Rifle

Krico Model 300 Bolt-Action Rifles

Lakefield Arms Mark II Bolt-Action Rifle

Lakefield Arms Mark I Bolt-Action Rifle

Magtech Model MT-22C Bolt-Action Rifle

Marlin Model 880 Bolt-Action Rifle

Marlin Model 881 Bolt-Action Rifle

Marlin Model 882 Bolt-Action Rifle

Marlin Model 883 Bolt-Action Rifle

Marlin Model 883SS Bolt-Action Rifle

Marlin Model 25MN Bolt-Action Rifle

Marlin Model 25N Bolt-Action Repeater

Marlin Model 15YN “Little Buckaroo”

Mauser Model 107 Bolt-Action Rifle

Mauser Model 201 Bolt-Action Rifle

Navy Arms TU-KKW Training Rifle

Navy Arms TU-30/40 Carbine

Navy Arms TU-KKW Sniper Trainer

Norinco JW-27 Bolt-Action Rifle

Norinco JW-15 Bolt-Action Rifle

Remington 541-T

Remington 40-XR Rimfire Custom Sporter

Remington 541-T HB Bolt-Action Rifle

Remington 581-S Sportsman Rifle

Ruger 77/22 Rimfire Bolt-Action Rifle

Ruger K77/22 Varmint Rifle

Ultra Light Arms Model 20 RF Bolt-Action Rifle

Winchester Model 52B Sporting Rifle

Competition Rifles—Centerfire & Rimfire

Anschutz 64-MS Left Silhouette

Anschutz 1808D RT Super Match 54 Target

Anschutz 1827B Biathlon Rifle

Anschutz 1903D Match Rifle

Anschutz 1803D Intermediate Match

Anschutz 1911 Match Rifle

Anschutz 54.18MS REP Deluxe Silhouette Rifle

Anschutz 1913 Super Match Rifle

Anschutz 1907 Match Rifle

Anschutz 1910 Super Match II

Anschutz 54.18MS Silhouette Rifle

Anschutz Super Match 54 Targe Model 2013

Anschutz Super Match 54 Targe Model 2007

Beeman/Feinwerkbau 2600 Target Rifle

Cooper Arms Model TRP-1 ISU Standard Rifle

E.A.A./Weihrauch HW 60 Target Rifle

E.A.A./HW 60 Match Rifle

Finnish Lion Standard Target Rifle

Krico Model 360 S2 Biathlon Rifle

Krico Model 400 Match Rifle

Krico Model 360S Biathlon Rifle

Krico Model 500 Kricotronic Match Rifle

Krico Model 600 Sniper Rifle

Krico Model 600 Match Rifle

Lakefield Arms Model 90B Target Rifle

Lakefield Arms Model 91T Target Rifle

Lakefield Arms Model 92S Silhouette Rifle

Marlin Model 2000 Target Rifle

Mauser Model 86-SR Specialty Rifle

McMillan M-86 Sniper Rifle

McMillan Combo M-87/M-88 50-Caliber Rifle

McMillan 300 Phoenix Long-Range Rifle

McMillan M-89 Sniper Rifle

McMillan National Match Rifle

McMillan Long-Range Rifle

Parker-Hale M-87 Target Rifle
Parker-Hale M-85 Sniper Rifle
Remington 40-XB Rangemaster Target Centerfire
Remington 40-XR KS Rimfire Position Rifle
Remington 40-XBBR KS
Remington 40-XC KS National Match Course Rifle
Sako TRG-21 Bolt-Action Rifle
Steyr-Mannlicher Match SPG-UIT Rifle
Steyr-Mannlicher SSG P-I Rifle
Steyr-Mannlicher SSG P-III Rifle
Steyr-Mannlicher SSG P-IV Rifle
Tanner Standard UIT Rifle
Tanner 50 Meter Free Rifle
Tanner 300 Meter Free Rifle
Wichita Silhouette Rifle

Shotguns--Autoloaders

American Arms/Franchi Black Magic 48/AL
Benelli Super Black Eagle Shotgun
Benelli Super Black Eagle Slug Gun
Benelli M1 Super 90 Field Auto Shotgun
Benelli Montefeltro Super 90 20-Gauge Shotgun
Benelli Montefeltro Super 90 Shotgun
Benelli M1 Sporting Special Auto Shotgun
Benelli Black Eagle Competition Auto Shotgun
Beretta A-303 Auto Shotgun
Beretta 390 Field Auto Shotgun
Beretta 390 Super Trap, Super Skeet Shotguns

Beretta Vittoria Auto Shotgun

Beretta Model 1201F Auto Shotgun

Browning BSA 10 Auto Shotgun

Browning Bsa 10 Stalker Auto Shotgun

Browning A-500R Auto Shotgun

Browning A-500G Auto Shotgun

Browning A-500G Sporting Clays

Browning Auto-5 Light 12 and 20

Browning Auto-5 Stalker

Browning Auto-5 Magnum 20

Browning Auto-5 Magnum 12

Churchill Turkey Automatic Shotgun

Cosmi Automatic Shotgun

Maverick Model 60 Auto Shotgun

Mossberg Model 5500 Shotgun

Mossberg Model 9200 Regal Semi-Auto Shotgun

Mossberg Model 9200 USST Auto Shotgun

Mossberg Model 9200 Camo Shotgun

Mossberg Model 6000 Auto Shotgun

Remington Model 1100 Shotgun

Remington 11-87 Premier shotgun

Remington 11-87 Sporting Clays

Remington 11-87 Premier Skeet

Remington 11-87 Premier Trap

Remington 11-87 Special Purpose Magnum

Remington 11-87 SPS-T Camo Auto Shotgun

Remington 11-87 Special Purpose Deer Gun

Remington 11-87 SPS-BG-Camo Deer/Turkey Shotgun

Remington 11-87 SPS-Deer Shotgun

Remington 11-87 Special Purpose Synthetic Camo

Remington SP-10 Magnum-Camo Auto Shotgun

Remington SP-10 Magnum Auto Shotgun

Remington SP-10 Magnum Turkey Combo

Remington 1100 LT-20 Auto

Remington 1100 Special Field

Remington 1100 20-Gauge Deer Gun

Remington 1100 LT-20 Tournament Skeet

Winchester Model 1400 Semi-Auto Shotgun

Shotguns—Slide Actions

Browning Model 42 Pump Shotgun

Browning BPS Pump Shotgun

Browning BPS Stalker Pump Shotgun

Browning BPS Pigeon Grade Pump Shotgun

Browning BPS Pump Shotgun (Ladies and Youth Model)

Browning BPS Game Gun Turkey Special

Browning BPS Game Gun Deer Special

Ithaca Model 87 Supreme Pump Shotgun

Ithaca Model 87 Deerslayer Shotgun

Ithaca Deerslayer II Rifled Shotgun

Ithaca Model 87 Turkey Gun

Ithaca Model 87 Deluxe Pump Shotgun

Magtech Model 586-VR Pump Shotgun

Maverick Models 88, 91 Pump Shotguns

Mossberg Model 500 Sporting Pump

Mossberg Model 500 Camo Pump

Mossberg Model 500 Muzzleloader Combo

Mossberg Turkey Model 500 Pump

Mossberg Field Grade Model 835 Pump Shotgun

Remington 870 Wingmaster

Remington 870 SPS-BG-Camo Deer/Turkey Shotgun

Remington 870 Marine Magnum

Remington 870 Special Purpose Synthetic Camo

Remington 870 Express Rifle Sighted Deer Gun

Remington 870 SPS-T Camo Pump Shotgun

Remington 870 Express Turkey

Remington 870 Express

Winchester Model 12 Pump Shotgun

Winchester Model 1300 Walnut Pump

Winchester Model 1300 Ranger Pump Gun Combo & Deer Gun

Winchester Model 1300 Ranger Pump Gun

Shotguns—Over/Unders

.....

American Arms/Franchi Falconet 2000 O/U

American Arms Silver I O/U

American Arms Silver II Shotgun

American Arms Silver Skeet O/U

American Arms/Franchi Sporting 2000 O/U

American Arms Silver Sporting O/U

American Arms Silver Trap O/U

American Arms WS/OU 12, TS/OU 12 Shotguns

American Arms WT/OU 10 Shotgun

Armsport 2700 O/U Goose Gun

Armsport 2700 Series O/U

Armsport 2900 Tri-Barrel Shotgun

Baby Bretton Over/Under Shotgun

Beretta Model 686 Ultralight O/U

Beretta ASE 90 Competition O/U Shotgun

Beretta Over/Under Field Shotguns

Beretta Onyx Hunder Sport O/U Shotgun

Beretta Model SO5, SO6, SO9 Shotguns

Beretta Sporting Clay Shotguns

Beretta 687EL Sporting O/U

Beretta 682 Super Sporting O/U

Beretta Series 682 Competition Over/Unders

Browning Citori O/U Shotgun

Browning Superlight Citori Over/Under

Browning Lightning Sporting Clays

Browning Micro Citori Lightning

Browning Citori Plus Trap Combo

Browning Citori Plus Trap Gun

Browning Citori O/U Skeet Models

Browning Citori O/U Trap Models

Browning Special Sporting Clays

Browning Citori GTI Sporting Clays

Browning 325 Sporting Clays

Centurion Over/Under Shotgun

Chapuis Over/Under Shotgun

Connecticut Valley Classics Classic Sporter O/U

Connecticut Valley Classics Classic Field Waterfowler

Charles Daly Field Grade O/U

Charles Daly Lux O/U

E.A.A./Sabatti Sporting Clays Pro-Gold O/U

E.A.A./Sabatti Falcon-Mon Over/Under

Kassnar Grade I O/U Shotgun

Krieghoff K-80 Sporting Clays O/U

Krieghoff K-80 Skeet Shotgun

Krieghoff K-80 International Skeet

Krieghoff K-80 Four-Barrel Skeet Set

Krieghoff K-80/RT Shotguns

Krieghoff K-80 O/U Trap Shotgun

Laurona Silhouette 300 Sporting Clays

Laurona Silhouette 300 Trap

Laurona Super Model Over/Unders

Ljutic LM-6 Deluxe O/U Shotgun

Marocchi Conquista Over/Under Shotgun

Marocchi Avanza O/U Shotgun

Merkel Model 200E O/U Shotgun

Merkel Model 200E Skeet, Trap Over/Unders

Merkel Model 203E, 303E Over/Under Shotguns

Perazzi Mirage Special Sporting O/U

Perazzi Mirage Special Four-Gauge Skeet

Perazzi Sporting Classic O/U

Perazzi MX7 Over/Under Shotguns

Perazzi Mirage Special Skeet Over/Under

Perazzi MX8/MX8 Special Trap, Skeet

Perazzi MX8/20 Over/Under Shotgun

Perazzi MX9 Single Over/Under Shotguns

Perazzi MX12 Hunting Over/Under

Perazzi MX28, MX410 Game O/U Shotguns

Perazzi MX20 Hunting Over/Under

Piotti Boss Over/Under Shotgun

Remington Peerless Over/Under Shotgun

Ruger Red Label O/U Shotgun

Ruger Sporting Clays O/U Shotgun

San Marco 12-Ga. Wildflower Shotgun

San Marco Field Special O/U Shotgun

San Marco 10-Ga. O/U Shotgun

SKB Model 505 Deluxe Over/Under Shotgun

SKB Model 685 Over/Under Shotgun

SKB Model 885 Over/Under Trap, Skeet, Sporting Clays

Stoeger/IGA Condor I O/U Shotgun

Stoeger/IGA ERA 2000 Over/Under Shotgun

Techni-Mec Model 610 Over/Under

Tikka Model 412S Field Grade Over/Under

Weatherby Athena Grade IV O/U Shotguns

Weatherby Athena Grade V Classic Field O/U

Weatherby Orion O/U Shotguns

Weatherby II, III Classic Field O/Us

Weatherby Orion II Classic Sporting Clays O/U

Weatherby Orion II Sporting Clays O/U

Winchester Model 1001 O/U Shotgun

Winchester Model 1001 Sporting Clays O/U

Pietro Zanoletti Model 2000 Field O/U

Shotguns—Side by Sides

American Arms Brittany Shotgun

American Arms Gentry Double Shotgun

American Arms Derby Side-by-Side

American Arms Grulla #2 Double Shotgun

American Arms WS/SS 10

American Arms TS/SS 10 Double Shotgun

American Arms TS/SS 12 Side-by-Side

Arrieta Sidelock Double Shotguns

Armsport 1050 Series Double Shotguns

Arizaga Model 31 Double Shotgun

AYA Boxlock Shotguns

AYA Sidelock Double Shotguns

Beretta Model 452 Sidelock Shotgun

Beretta Side-by-Side Field Shotguns

Crucelegui Hermanos Model 150 Double

Chapuis Side-by-Side Shotgun

E.A.A./Sabatti Sabe-Mon Double Shotgun

Charles Daly Model Dss Double

Ferlib Model F VII Double Shotgun

Auguste Francotte Boxlock Shotgun

Auguste Francotte Sidelock Shotgun

Garbi Model 100 Double

Garbi Model 100 Side-by-Side

Garbi Model 103A, B Side-by-Side

Garbi Model 200 Side-by-Side

Bill Hanus Birdgun Doubles

Hatfield Uplander Shotgun

Merkell Model 8, 47E Side-by-Side Shotguns

Merkel Model 47LSC Sporting Clays Double

Merkel Model 47S, 147S Side-by-Sides

Parker Reproductions Side-by-Side

Piotti King No. 1 Side-by-Side

Piotti Lunik Side-by-Side

Piotti King Extra Side-by-Side

Piotti Piuma Side-by-Side

Precision Sports Model 600 Series Doubles

Rizzini Boxlock Side-by-Side

Rizzini Sidelock Side-by-Side

Stoeger/IGA Side-by-Side Shotgun

Ugartechea 10-Ga. Magnum Shotgun

Shotguns—Bolt Actions & Single Shots

Armsport Single Barrel Shotgun

Browning BT-99 Competition Trap Special

Browning BT-99 Plus Trap Gun

Browning BT-99 Plus Micro

Browning Recoilless Trap Shotgun

Browning Micro Recoilless Trap Shotgun

Desert Industries Big Twenty Shotgun
Harrington & Richardson Topper Model 098
Harrington & Richardson Topper Classic Youth Shotgun
Harrington & Richardson N.W.T.F. Turkey Mag
Harrington & Richardson Topper Deluxe Model 098
Krieghoff KS-5 Trap Gun
Krieghoff KS-5 Special
Krieghoff KS-80 Single Barrel Trap Gun
Ljutic Mono Gun Single Barrel
Ljutic LTX Super Deluxe Mono Gun
Ljutic Recoilless Space Gun Shotgun
Marlin Model 55 Goose Gun Bolt Action
New England Firearms Turkey and Goose Gun
New England Firearms N.W.T.F. Shotgun
New England Firearms Tracker Slug Gun
New England Firearms Standard Pardner
New England Firearms Survival Gun
Perazzi TM1 Special Single Trap
Remington 90-T Super Single Shotgun
Snake Charmer II Shotgun
Stoeger/IGA Reuna Single Barrel Shotgun
Thompson/Center TCR '87 Hunter Shotgun.”.

SUMMARY AND PURPOSE

The purpose of this bill is to create criminal penalties for the manufacture, transfer, or possession of certain firearms within the category of firearms known as “semiautomatic assault weapons.” It also creates such penalties for certain ammunition feeding devices, as well as any combination of parts from which such a device can be assembled.

In reporting legislation banning certain assault weapons last Congress, the Committee on the Judiciary said:

The threat posed by criminals and mentally deranged individuals armed with semi-automatic assault weapons has been tragically widespread.¹

Since then, the use of semiautomatic assault weapons by criminal gangs, drug-traffickers, and mentally deranged persons continues to grow.²

H.R. 4296 will restrict the availability of such weapons in the future. The bill protects the rights of persons who lawfully own such weapons on its date of enactment by a universal “grandfathering” clause and specifically exempts certain firearms traditionally used for hunting and other legitimate support. It contains no confiscation or registration provisions; however, it does establish record-keeping requirements for transfers involving grandfathered semiautomatic assault weapons. Such record-keeping is not required for transfers of grandfathered ammunition feeding devices (or their component parts.) H.R. 4296 expires (“sunsets”) on its own terms after 10 years.

BACKGROUND

A series of hearings over the last five years on the subject of semiautomatic assault weapons has demonstrated that they are a growing menace to our society of proportion to their numbers:³ As this Committee said in its report to the last Congress:

The carnage inflicted on the American people by criminals and mentally deranged people armed with Rambo-style, semi-automatic assault weapons has been overwhelming and continuing. Police and law enforcement groups all over the nation have joined together to support legislation that would help keep these weapons out of the hands of criminals.⁴

Since then, evidence continues to mount that these semiautomatic assault weapons are the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder.

Use in Crimes. On April 25, 1994, the Director of the Federal Bureau of Alcohol, Tobacco and Firearms testified that the percentage of semiautomatic assault weapons among guns traced because of their use in crime is increasing:

In 1990, 5.9 percent of firearms traced were assault weapons. In 1993, that percentage rose to 8.1 percent. Since Justice Department studies have shown that assault weapons make up only about 1 percent of the firearms in circulation, these percentages strongly suggest that they are proportionately more often used in crimes.⁵

Law enforcement officials confirm this statistical evidence in accounts of the rising level of lethality they face from assault weapons on the street. For example, the representative of a national police officers' organization testified:

In the past, we used to face criminals armed with a cheap Saturday Night Special that could fire off six rounds before loading. Now it is not at all unusual for a cop to look down the barrel of a TEC-9 with a 32 round clip. The ready availability of and easy access to assault weapons by criminals has increased so dramatically that police forces across the country are being required to upgrade their service weapons merely as a matter of self-defense and preservation. The six-shot .38 caliber service revolver, standard law enforcement issue for years, it just no match against a criminal armed with a semi-automatic assault weapon.⁶

A representative of federal law enforcement officers testified that semiautomatic assault weapons “dramatically escalate the firepower of the user” and “have become the weapon of choice for drug runners, hate groups and the mentally unstable.”⁷

The TEC-9 assault pistol is the undisputed favorite of drug traffickers, gang members and violent criminals. Cities across the country confiscate more TEC-9s than any other assault pistol. The prototype for the TEC-9 was originally designed as a submachine gun for the South African government. Now it comes standard with an ammunition magazine holding 36 rounds

of 9 mm cartridges. It also has a threaded barrel to accept a silencer, and a barrel shroud to cool the barrel during rapid fire. To any real sportsman or collector, this firearm is a piece of junk, yet is very popular among criminals.⁸

The Secretary of Housing and Urban Development testified that criminal gangs in Chicago routinely use semiautomatic assault weapons to intimidate not only residents but also security guards, forcing the latter to remove metal detectors installed to detect weapons.⁹

Use in Mass Killings and Killings of Law Enforcement Officers. Public concern about semiautomatic assault weapons has grown because of shootings in which large numbers of innocent people have been killed and wounded, and in which law enforcement officers have been murdered.

On April 25, 1994, the Subcommittee on Crime and Criminal Justice heard testimony about several incidents representative of such killings.

On February 22, 1994, Los Angeles (CA) Police Department rookie officer Christy Lynn Hamilton was ambushed and killed by a drug-abusing teenager using a Colt AR-15. The round that killed Officer Hamilton penetrated a car door, skirted the armhole of her protective vest, and lodged in her chest. The teenager also killed his father, who had given him the gun, and took his own life as well. Officer Hamilton had been voted the most inspirational officer in her graduating class only weeks before her murder. Officer Hamilton's surviving brother testified about the impact of this murder.¹⁰

On December 7, 1993, a deranged gunman walked through a Long Island Railroad commuter train, shooting commuters. Six died and 19 were wounded. The gunman used a Ruger semiautomatic pistol. Although the pistol itself would not be classified as an assault weapon under this bill, its 15 round ammunition magazine ("clip") would be banned. The gunman had several of these high capacity 15 round magazines and reloaded several times, firing between 30 to 50 rounds before he was overpowered while trying to reload yet again. The parents of one of the murdered victims, Amy Locicero Federici, testified about the impact of this murder.¹¹

On February 28, 1993, 4 special agents of the Bureau of Alcohol, Tobacco and Firearms were killed and 15 were wounded while trying to serve federal search and arrest warrants at the Branch Davidian compound in Waco, Texas. The Branch Davidian arsenal included hundreds of assault weapons, including AR-15s, AK-47s, Street Sweepers, MAC10s and MAC-11s, along with extremely high capacity magazines (up to 260 rounds).¹²

Finally, on July 1, 1993, gunman Gian Luigi Ferri Killed 8 people and wounded 6 others in a San Francisco high rise office building. Ferri—who took his own life—used two TEC DC9 assault pistols with 50 round magazines, purchased from a gun dealer in Las Vegas, Nevada. Two witnesses, both of whom lost spouses in the slaughter, and one of whom was herself seriously injured, testified about this incident.¹³

Numerous other notorious incidents involving semiautomatic assault weapons have occurred. They include the January 25, 1993, slaying of 2 CIA employees and wounding of 3 others at McLean, VA, (AK-47), and the January 17, 1989 murder in a Stockton, CA, schoolyard of 5 small children, and wounding of 29 others (AK-47 and 75 round magazine, firing 106 rounds in less than 2 minutes).

Several witnesses who were victims themselves during such incidents testified in opposition to H.R. 4296/H.R. 3527, and in opposition to the banning of any semiautomatic assault weapons or ammunition feeding devices.

Dr. Suzanna Gratia witnessed the brutal murder, in Luby's cafeteria located in Killeen, Texas, of both of her parents who had just celebrated their 47 wedding anniversary. Just a few days before, she had removed her gun from her purse and left it in her car to comply with a Texas law which does not allow concealed carrying of a firearm. Dr. Gratia testified:

I am mad at my legislators for legislating me out of a right to protect myself and my family. I would much rather be sitting in jail with a felony offense on my head and have my parents alive. As far as these so-called assault weapons, you say that they don't have any defense use. You tell that to the guy that I saw on a videotape of the Los Angeles riots standing on his rooftop protecting his property and his life from an entire mob with one of these so-called assault weapons. Tell me that he didn't have a legitimate self-defense use.¹⁴

Ms. Jacquie Miller was shot several times with a semiautomatic assault weapon and left for dead at her place of employment with the Standard Gravure Printing Company in Louisville, Kentucky, when a fellow employee went on a killing spree. Now permanently disabled, Ms. Miller testified:

It completely enrages me that my tragedy is being used against me to deny me and all the law abiding citizens of this country to the right of the firearm of our choosing. I refuse in return to use my tragedy for retribution against innocent people just to make myself feel better for having this misfortune. Enforce the laws against criminals already on the books. After all, there are already over 20,000 of them.¹⁵ More won't do a thing for crime control *** You cannot ban everything in the world that could be used as a weapon because you fear it, don't understand it, or don't agree with it.

This is America, not Lithuania or China. Our most cherished possession is our Constitution and Bill of Rights. Let's not sell those down the river or we could one day find ourselves in a boat without a paddle against the criminals who think we are easy pickings.¹⁶

Mr. Phillip Murphy used his lawfully-possessed Colt AR-15 H-BAR Sporter semiautomatic rifle—a gun which would be specifically banned by H.R. 4296—to capture one of Tucson, Arizona's most wanted criminals who was attempting to burglarize the home of Mr. Murphy's parents. The 19-year old criminal he captured was a three-time loser with 34 prior convictions who was violating his third adult State parole for a knife assault. Mr. Murphy testified:

I respectfully urge this Committee and the Congress of the United States to restrain themselves from forcing tens of millions of law-abiding Americans like me to choose between the law and their lives.¹⁷

The Characteristics of Military-Style Semiautomatic Assault Weapons. The question of what constitutes an assault weapon has been studied by the Congress and the executive branch as the role of these guns in criminal violence has grown.

A Bureau of Alcohol, Tobacco and Firearms working group formed under the Bush administration to consider banning foreign imports of such semiautomatic assault weapons conducted the most recent comprehensive study of military assault weapons and the civilian firearms that are modelled after them.¹⁸ The working group formulated a definition of the civilian version, and a list of the assault weapon characteristics that distinguish them from sporting guns. That technical work has to a large extent been incorporated into H.R. 4296.¹⁹

The working group settled on the term “semiautomatic assault” for the civilian firearms at issue. That term distinguishes the civilian firearms from the fully automatic military weapons (machineguns)²⁰ after which they are modelled and often simply adapted by eliminating the automatic fire feature. The group determined that “semiautomatic assault rifles *** represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle.”²¹

The group elaborated on the nature of those characteristics as follows:

The modern military assault rifle, such as the U.S. M16, German G3, Belgian FN/FAL, and Soviet AK-47, is a weapon designed for killing or disabling the enemy and *** has characteristics designed to accomplish this purpose.

We found that the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles. These military features and characteristics (other than selective fire) are carried over to the semiautomatic versions of the original military rifle.²²

The “selective fire” feature to which the working group referred is the ability of the military versions to switch from fully automatic to semiautomatic fire at the option of the user. Since Congress has already banned certain civilian transfer or possession of machineguns,²³ the civilian models of these guns are produced with semiautomatic fire capability only. However, testimony was received by the Subcommittee on Crime and Criminal Justice that it is a relatively simple task to convert²⁴ a semiautomatic weapon to automatic fire²⁵ and that semiautomatic weapons can be fired at rates of 300 to 500 rounds per minute, making them virtually indistinguishable in practical effect from machineguns.²⁶

The 1989 Report's analysis of assault characteristics which distinguish such firearms from sporting guns was further explained by an AFT representative at a 1991 hearing before the Subcommittee on Crime and Criminal Justice:

We found that the banned rifles represented a distinctive type of rifle characterized by certain military features which differentiated them from the traditional sporting rifles. These include the ability to accept large capacity detachable magazines, bayonets, folding or telescoping stocks, pistol grips, flash suppressors, bipods, grenade launchers and night sights, and the fact that they are semiautomatic versions of military machineguns.²⁷

Proponents of these military style semiautomatic assault weapons often dismiss these combat-designed features as merely “cosmetic.” The Subcommittee received testimony that, even if these characteristics were merely “cosmetic” in effect, it is precisely those cosmetics that contribute to their usefulness as tools of intimidation by criminals.²⁸

However, the expert evidence is that the features that characterize a semiautomatic weapon as an assault weapon are not merely cosmetic, but do serve specific, combat-functional ends. By facilitating the deadly “spray fire” of the weapon or enhancing its portability—a useful attribute in combat but one which serves to enhance the ability to conceal the gun in civilian life.²⁹

High-capability magazine, for example, make it possible to fire a large number of rounds without re-loading, then to reload quickly when those rounds are spent.³⁰ Most of the weapons covered by the proposed legislation come equipped with magazines that hold 30 rounds. Even these magazines, however, can be replaced with magazines that hold 50 or even 100 rounds. Furthermore, expended magazines can be quickly replaced, so that a single person with a single assault weapon can easily fire literally hundreds of rounds within minutes. As noted above, tests demonstrate that semiautomatic guns can be fired at very high rates of fire. In contrast, hunting rifles and shotguns typically have much smaller magazine capabilities—from 3 to 5.

Because of the greater enhanced lethality—numbers of rounds that can be fired quickly without reloading—H.R. 4296 also contains a ban on ammunition magazines which hold more than 10 rounds, as well as any combination of parts from which such a magazine can be assembled.

Barrel shrouds also serve a combat-functional purpose.³¹ Gun barrels become very hot when multiple rounds are fired through them quickly. The barrel shroud cools the barrel so that it will not overheat, and provides the shooter with a convenient grip especially suitable for spray-firing.

Similar military combat purposes are served by flash suppressors (designed to help conceal the point of fire in night combat), bayonet mounts, grenade launchers, and pistol grips engrafted on long guns.³²

The net effect of these military combat features is a capability for lethality—more wounds, more serious, in more victims—far beyond that of other firearms in general, including other semiautomatic guns.³³

BRIEF EXPLANATION OF H.R. 4296

H.R. 4296 combines two approaches which have been followed in the past in legislation proposed to control semiautomatic assault weapons—the so-called “list” approach and the “characteristics” approach.

The bill does not ban any semiautomatic assault weapons nor large capacity ammunition feeding device (or component parts) otherwise lawfully possessed on the date of enactment. However, records must be kept by both the transferor and the transferee involved in any transfer of these weapons, but not of the feeding devices (or combination of parts).

The bill explicitly exempts all guns with other than semiautomatic actions—i.e., bolt, slide, pump, and lever actions. In addition, it specifically exempts by make and model 661 long guns most commonly used in hunting and recreational sports,³⁴ making clear that these semiautomatic assault weapons are not and cannot be subject to any ban.

Section 2(z) of the bill lists 19 specific semiautomatic assault weapons—such as the AK-47, M-10, TEC-9, Uzi, etc.—that are banned.³⁵ It also defines other assault weapons by specifically enumerating combat style characteristics and bans those semiautomatic assault weapons that have 2 or more of those characteristics.³⁶

The bill makes clear that the list of exempted guns is not exclusive. The fact that a gun is not on the exempted list may not be construed to mean that it is banned. Thus, a gun that is not on the list of guns specifically banned by name would only be banned if it met the specific characteristics set out in the characteristics test. No gun may be removed from the exempted list.

H.R. 4296 also bans large capacity ammunition feeding devices—clips that accept more than 10 rounds of ammunition—as well as any combination of parts from which such a device can be assembled.

The bill exempts all semiautomatic assault weapons and large capacity ammunition feeding devices (as well as any combination of parts) that are lawfully possessed on date of enactment. Owners of such semiautomatic assault weapons need do nothing under the bill unless they wish to transfer the semiautomatic assault weapon.

H.R. 4296 differs significantly from previously-proposed legislation—it is designed to be more tightly focused and more carefully crafted to clearly exempt legitimate sporting guns. Most significantly, the ban in the 1991 proposed bill gave the Bureau of Alcohol, Tobacco, and Firearms authority to ban any weapon which “embodies the same configuration” as the named list of guns. The current bill, H.R. 4296 does not contain any such general authority. Instead, it contains a set of specific characteristics that must be present in order to ban any additional semiautomatic assault weapons.

102d Congress

The Subcommittee on Crime and Criminal Justice held hearings on semiautomatic assault weapons on June 12 and July 25, 1991. A ban on certain semiautomatic assault weapons was included as Subtitle A of Title XX in H.R. 3371, the Omnibus Crime Control Act of 1991. A ban on large capacity ammunition feeding devices was included in the same bill. The bill was reported out of the Judiciary Committee on October 7, 1991. The provisions dealing with semiautomatic assault weapons and large capacity ammunition feeding devices were struck by the House of Representatives by a vote of 247–177 on October 17, 1991.

103d Congress

The Subcommittee on Crime and Criminal Justice held hearings on H.R. 4296 and its predecessor, H.R. 3527, which ban semiautomatic assault weapons, on April 25, 1994. The Subcommittee reported favorably on an amendment in the nature of a substitute to H.R. 4296 on April 26, 1994, by a recorded vote of 8–5.

COMMITTEE ACTION

The Committee on the Judiciary met on April 28, 1994 to consider H.R. 4296, as amended. Two amendments were adopted during the Committee's consideration.

An amendment was offered to provide that the absence of a firearm from the list of guns specifically exempted from the ban may not be construed as evidence that the semiautomatic assault weapon is banned, and that no gun may be removed from the exempt list so long as the Act is in effect. This amendment was adopted by voice vote.

An amendment was offered to delete a provision that barred from owning any firearms those persons convicted of violating the recordkeeping requirements relating to grandfathered weapons. This amendment was adopted by voice vote.

A reporting quorum being present, the Committee on the Judiciary, by a roll call vote of 20 to 15, ordered H.R. 4296, as amended, favorably reported to the House.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

This section provides that the Act may be cited as the “Public Safety and Recreational Firearms Use Protection Act”.

SECTION 2—RESTRICTION ON MANUFACTURE, TRANSFER, AND POSSESSION OF CERTAIN SEMIAUTOMATIC ASSAULT WEAPONS

Subsection 2(a) makes it unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon (including any “copies or duplicates.”)

The ban on transfer and possession does not apply to (1) weapons otherwise lawfully possessed on the date of enactment; (2) any of the firearms (or their replicas or duplicates) listed in Appendix A; (3) any manually operated (bolt, pump, slide, lever action), permanently inoperable, or antique firearms; (4) semiautomatic rifles that cannot accept a detachable magazine that holds more than 5 rounds; or, a semiautomatic shotgun that cannot hold more than 5 rounds in a fixed or detachable magazine.

The fact that a gun is not listed in Appendix A may not be construed to mean that it is banned. No gun listed in Appendix A may be removed from that exempted list so long as the Act is in effect.

Federal departments and agencies and those of States and their subdivisions are exempted. Law enforcement officers authorized to purchase firearms for official use are exempted, as are such officers presented with covered weapons upon retirement who are not otherwise prohibited from receiving such a weapon. Finally, weapons made, transferred, possessed, or imported for the purposes of testing or experiments authorized by the Secretary of the Treasury are exempted.

Subsection 2(b) defines semiautomatic assault weapons, both by name and by characteristics. It lists by name specific firearms, including “copies or duplicates” of such firearms.³⁷ Characteristics of covered semiautomatic rifles, pistols, and shotguns are defined by separate subsections applicable to each. In the case of rifles and pistols, in addition to being semiautomatic, a gun must be able to accept a detachable magazine and have at least 2 listed characteristics.

In the case of rifles, those characteristics are: (1) folding or telescoping stock; (2) a pistol grip that protrudes conspicuously beneath the action of the weapon; (3) a bayonet mount; (4) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and (5) a grenade launcher.

In the case of pistols, the characteristics are: (1) a magazine that attaches to the pistol outside of the pistol grip; (2) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer; (3) a barrel shroud that permits the shooter to hold the firearm without being burned; (4) an unloaded manufactured weight of 50 ounces or more; and (5) a semiautomatic version of an automatic firearm.

In the case of shotguns, covered weapons must have at least 2 of the following four features: (1) a folding or telescoping stock; (2) a pistol grip that protrudes conspicuously beneath the action of the weapon; (3) a fixed magazine capacity in excess of 5 rounds; and (4) an ability to accept a detachable magazine.

The section provides a fine of not more than \$5,000, imprisonment for not more than 5 years, or both, for knowingly violating the ban on manufacture, transfer and possession. It also adds use of a semiautomatic assault weapon to the crimes covered by the mandatory minimum of 5 years under 18 USC Section 924(c)(1) for use in a federal crime of violence or drug trafficking crime.

Finally, the section requires that semiautomatic assault weapons manufactured after the date of enactment must clearly show the date on which the weapon was manufactured.

SECTION 3—RECORDKEEPING REQUIREMENTS FOR TRANSFERS OF GRANDFATHERED FIREARMS

This section makes it unlawful to transfer a grandfathered semiautomatic assault weapon unless both the transferor and the transferee complete and retain a copy of federal form 4473 (or its successor). Within 90 days of enactment, the Secretary of the Treasury must issue regulations ensuring the availability of the form to owners of semiautomatic assault weapons. The Committee expects the Secretary to make such forms easily and readily available to such gun owners. The Committee further expects the Secretary to maintain the confidentiality of the requester and to ensure the destruction of any and all information pertaining to any request for such forms immediately upon complying with the request. The Committee does not expect the Secretary to release any such information to any other Department of the Federal, State or local Governments or to use the information in any way other than to comply with the requests for the form. The Committee would consider failure to comply with these expectations a very serious breach.

A person who knowingly violates the recordkeeping requirement shall be fined not more than \$1,000, imprisoned for not more than 6 months or both.

SECTION 4—BAN OF LARGE CAPACITY AMMUNITION FEEDING DEVICES

Subsection 4(a) makes it unlawful for a person to transfer or possess a large capacity ammunition feeding device (which is defined to include any combination of parts from which such a device can be assembled.)

The ban on transfer and possession does not apply to (1) devices (or component parts) otherwise lawfully possessed on the date of enactment; (2) Federal departments and agencies and those of States and their subdivisions; (3) law enforcement officers authorized to purchase ammunition feeding devices for official use; devices transferred to such officers upon retirement who

are not otherwise prohibited from receiving them; and (3) devices (or combination of parts) made, transferred, possessed, or imported for the purpose of testing or experiments authorized by the Secretary of the Treasury are exempted.

Subsection 4(b) defines large capacity ammunition feeding device to mean a magazine, belt, drum, feed strip, or similar device that has a capacity of more than 10 rounds, or can be readily restored or converted to accept more than 10 rounds. It includes any combination of parts from which such a device can be assembled. It exempts an attached tubular device designed to accept and capable of operating only with .22 caliber rimfire ammunition.

Subsection 4(c) adds large capacity ammunition feeding devices to the definition of “firearm” under 18 US Code section 921(a)(3).

Subsection 4(d) provides a fine of not more than \$5,000, imprisonment for not more than 5 years, or both, for knowingly violating the ban.

Subsection 4(e) requires that large capacity ammunition feeding devices manufactured after the date of enactment be identified by a serial number that clearly shows the device was manufactured after the date or imported after the date of enactment, and such other identification as the Secretary of the Treasury may by regulation prescribe.

SECTION 5—STUDY BY ATTORNEY GENERAL

This section requires the Attorney General to study and report to the Congress no later than 30 months after its enactment the effects of the Act, particularly with regard to its impact—if any—on violent and drug-trafficking crime.

The study shall be conducted over a period of 18 months, commencing 12 months after the date of enactment.

SECTION 6—EFFECTIVE DATE

The Act and the amendment made by the Act take effect on the date of enactment and are repealed effective as of the date that is 10 years after that date.

SECTION 7—APPENDIX A TO SECTION 922 OF TITLE 18

This section adds, as Appendix A, a list of firearms that are specifically exempted from the ban on semiautomatic assault weapons.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 4296 will have no significant inflationary impact on prices and costs in the national economy.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 4296, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office.
Washington, DC, May 2, 1994.

Hon. Jack Brooks,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 4296, the Public Safety and Recreational Firearms Use Protection Act, as ordered reported by the House Committee on the Judiciary on April 28, 1994. We estimate that enactment of the bill would result in costs to the federal government over the 1995–1999 period of less than \$500,000 from appropriated amounts. In addition, we estimate that enactment of H.R. 4296 would lead to increases in receipts of less than \$10 million a year from new criminal fines. Such receipts would be deposited in the Crime Victims Fund and spent in the following year. Because the bill could affect direct spending and receipts, pay-as-you-go procedures would apply. The bill would not affect the budgets of state or local governments.

H.R. 4296 would ban the manufacture, transfer, and possession of certain semiautomatic assault weapons not lawfully possessed as of the date of the bill's enactment. The bill also would ban the transfer and possession of certain large-capacity ammunition feeding devices not lawfully possessed as of the date of enactment. In addition, H.R. 4296 would establish recordkeeping requirements for transfers of grandfathered weapons and would direct the Attorney General to conduct a study of the bill's impact. Finally, the bill would create new federal crimes and associated penalties—prison sentences and criminal fines—for violation of its provisions.

The new recordkeeping requirements and the impact study would increase costs to the Department of the Treasury and the Department of Justice, respectively, but we estimate that these costs would be less than \$500,000 over the next several years from appropriated amounts. The imposition of new criminal fines in H.R. 4296 could cause governmental receipts to increase through greater penalty collections. We estimate that any such increase would be less than \$10 million annually. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, Director.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 44 OF TITLE 18, UNITED STATES CODE

* * * * *

CHAPTER 44—FIREARMS

S 921. Definitions

(a) As used in this chapter—

(1)***

* * * * *

(3) The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; [or (D) any destructive device.] (D) any destructive device; or (E) any large capacity ammunition feeding device. Such term does not include an antique firearm.

* * * * *

(30) The term “semiautomatic assault weapon” means—

(A) any of the firearms, or copies or duplicates of the firearms, known as—

(i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);

(ii) Action Arms Israeli Military Industries UZI and Galil;

(iii) Beretta Ar70 (SC–70);

(iv) Colt AR–15;

(v) Fabrique National FN/FAL, FN/LAR, and FNC;

(vi) SWD M–10, M–11, M–11/9, and M–12;

(vii) Steyr AUG;

(viii) INTRATEC TEC–9, TEC–DC9 and TEC–22; and

(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a bayonet mount;

(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and

(v) a grenade launcher;

(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—

(i) an ammunition magazine that attaches to the pistol outside of the pistol grip;

(ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;

(iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;

(iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and

(v) a semiautomatic version of an automatic firearm; and

(D) a semiautomatic shotgun that has at least 2 of—

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a fixed magazine capacity in excess of 5 rounds; and

(iv) an ability to accept a detachable magazine.

(31) The term “large capacity ammunition feeding device”—

(A) means—

(i) a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; and

(ii) any combination of parts from which a device described in clause (i) can be assembled; but

(B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

S 922. Unlawful acts

(a) It shall be unlawful—

* * * * *

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed on the date of the enactment of this subsection.

(3) Paragraph (1) shall not apply to—

(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

(B) any firearm that—

(i) is manually operated by bolt, pump, lever, or slide action;

(ii) has been rendered permanently inoperable; or

(iii) is an antique firearm;

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this Act is in effect.

(4) Paragraph (1) shall not apply to—

(A) the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State;

(B) the transfer of a semiautomatic assault weapon by a licensed manufacturer, licensed importer, or licensed dealer to an entity referred to in subparagraph (A) or to a law enforcement officer authorized by such an entity to purchase firearms for official use;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.

(w)(1) It shall be unlawful for a person to sell, ship, or deliver a semiautomatic assault weapon to a person who has not completed a form 4473 in connection with the transfer of the semiautomatic assault weapon.

(2) It shall be unlawful for a person to receive a semiautomatic assault weapon unless the person has completed a form 4473 in connection with the transfer of the semiautomatic assault weapon.

(3) If a person receives a semiautomatic assault weapon from anyone other than a licensed dealer, both the person and the transferor shall retain a copy of the form 4473 completed in connection with the transfer.

(4) Within 90 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations ensuring the availability of form 4473 to owners of semiautomatic assault weapons.

(5) As used in this subsection, the term “form 4473” means—

(A) the form which, as of the date of the enactment of this subsection, is designated by the Secretary as form 4473; or

(B) any other form which—

(i) is required by the Secretary, in lieu of the form described in subparagraph (A), to be completed in connection with the transfer of a semiautomatic assault weapon; and

(ii) when completed, contains, at a minimum, the information that, as of the date of the enactment of this subsection, is required to be provided on the form described in subparagraph (A).

(x)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on the date of the enactment of this subsection.

(3) This subsection shall not apply to—

(A) the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State;

(B) the transfer of a large capacity ammunition feeding device by a licensed manufacturer, licensed importer, or licensed dealer to an entity referred to in subparagraph (A) or to a law enforcement officer authorized by such an entity to purchase large capacity ammunition feeding devices for official use;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.

APPENDIX A

Centerfire Rifles—Autoloaders

Browning BAR Mark II Safari Semi-Auto Rifle

Browning BAR Mark II Safari Magnum Rifle
Browning High-Power Rifle
Heckler & Koch Model 300 Rifle
Iver Johnson M-1 Carbine
Iver Johnson 50th Anniversary M-1 Carbine
Marlin Model 9 Camp Carbine
Marlin Model 45 Carbine
Remington Nylon 66 Auto-Loading Rifle
Remington Model 7400 Auto Rifle
Remington Model 7400 Rifle
Remington Model 7400 Special Purpose Auto Rifle
Ruger Mini-14 Autoloading Rifle (w/o folding stock)
Ruger Mini Thirty Rifle

Centerfire Rifles—Lever & Slide

Browning Model 81 BLR Lever-Action Rifle
Browning Model 81 Long Action BLR
Browning Model 1886 Lever-Action Carbine
Browning Model 1886 High Grade Carbine
Cimarron 1860 Henry Replica
Cimarron 1866 Winchester Replicas
Cimarron 1873 Short Rifle
Cimarron 1873 Sporting Rifle
Cimarron 1873 30" Express Rifle
Dixie Engraved 1873 Rifle
E.M.F. 1866 Yellowboy Lever Actions
E.M.F. 1860 Henry Rifle
E.M.F. Model 73 Lever-Actions Rifle

Marlin Model 336CS Lever-Action Carbine

Marlin Model 30AS Lever-Action Carbine

Marlin Model 444SS Lever-Action Sporter

Marlin Model 1894S Lever-Action Carbine

Marlin Model 1894CS Carbine

Marlin Model 1894CL Classic

Marlin Model 1895SS Lever-Action Rifle

Mitchell 1858 Henry Replica

Mitchell 1866 Winchester Replica

Mitchell 1873 Winchester Replica

Navy Arms Military Henry Rifle

Navy Arms Henry Trapper

Navy Arms Iron Frame Henry

Navy Arms Henry Carbine

Navy Arms 1866 Yellowboy Rifle

Navy Arms 1873 Winchester-Style Rifle

Navy Arms 1873 Sporting Rifle

Remington 7600 Slide Action

Remington Model 7600 Special-Purpose Slide Action

Rossi M92 SRC Saddle-Ring Carbine

Rossi M92 SRS Short Carbine

Savage 99C Leber-Action Rifle

Uberti Henry Rifle

Uberti 1866 Sporting Rifle

Uberti 1873 Sporting Rifle

Winchester Model 94 Side Eject Lever-Action Rifle

Winchester Model 94 Trapper Side Eject

Winchester Model 94 Big Bore Side Eject

Winchester Model 94 Ranger Side Eject Lever-Action Rifle

Winchester Model 94 Wrangler Side Eject

.....

Centerfire Rifles—Bolt Action

.....

Alpine Bolt-Action Rifle

A-Square Caesar Bolt-Action Rifle

A-Square Hannibal Bolt-Action Rifle

Anschutz 1700D Classic Rifles

Anschutz 1700D Custom Rifles

Anschutz 1700D Bavarian Bolt-Action Rifle

Anschutz 1733D Mannlicher Rifle

Barret Model 90 Bolt-Action Rifle

Beeman/HW 60J Bolt-Action Rifle

Blaser R84 Bolt-Action Rifle

BRNO 537 Sporter Bolt-Action Rifle

BRNO ZKB 527 Fox Bolt-Action Rifle

BRNO ZKK 600, 601, 602 Bolt-Action Rifles

Browning A-Bolt Rifle

Browning A-Bolt Stainless Stalker

Browning A-Bolt Left Hand

Browning A-Bolt Short Action

Browning Euro-Bolt Rifle

Browning A-Bolt Gold Medallion

Browning A-Bolt Micro Medallion

Century Centurion 14 Sporter

Century Enfield Sporter #4

Century Swedish Sporter #38

Century Mauser 98 Sporter

Cooper Model 38 Centerfire Sporter

Dakota 22 Sporter Bolt-Action Rifle

Dakota 76 Classic Bolt-Action Rifle

Dakota 76 Short Action Rifles

Dakota 76 Safari Bolt-Action Rifle

Dakota 416 Rigby African

E.A.A./Sabatti Rover 870 Bolt-Action Rifle

Auguste Francotte Bolt-Action Rifles

Carl Gustaf 2000 Bolt-Action Rifle

Heym Magnum Express Series Rifle

Howa Lightning Bolt-Action Rifle

Howa Realtree Camo Rifle

Interarms Mark X Viscount Bolt-Action Rifle

Interarms Mini-Mark X Rifle

Interarms Mark X Whitworth Bolt-Action Rifle

Interarms Whitworth Express Rifle

Iver Johnson Model 5100A1 Long-Range Rifle

KDF K15 American Bolt-Action Rifle

Krico Model 600 Bolt-Action Rifle

Krico Model 700 Bolt-Action Rifle

Mausser Model 66 Bolt-Action Rifle

Mausser Model 99 Bolt-Action Rifle

McMillan Signature Classic Sporter

McMillan Signature Super Varminter

McMillan Signature Alaskan

McMillan Signature Titanium Mountain Rifle

McMillan Classic Stainless Sporter

McMillan Talon Safari Rifle

McMillan Talon Sporter Rifle

Midland 1500S Survivor Rifle

Navy Arms TU-33/40 Carbine

Parker-Hale Model 81 Classic Rifle

Parker-Hale Model 81 Classic African Rifle

Parker-Hale Model 1000 Rifle

Parker-Hale Model 1000M African Rifle

Parker-Hale Model 1100 Lightweight Rifle

Parker-Hale Model 1200 Super Rifle

Parker-Hale Model 1200 Super Clip Rifle

Parker-Hale Model 1300C Scout Rifle

Parker-Hale Model 2100 Midland Rifle

Parker-Hale Model 2700 Lightweight Rifle

Parker-Hale Model 2800 Midland Rifle

Remington Model Seven Bolt-Action Rifle

Remington Model Seven Youth Rifle

Remington Model Seven Custom KS

Remington Model Seven Custom MS Rifle

Remington 700 ADL Bolt-Action Rifle

Remington 700 BDL Bolt-Action Rifle

Remington 700 BDL Varmint Special

Remington 700 BDL European Bolt-Action Rifle

Remington 700 Varmint Synthetic Rifle

Remington 700 BDL SS Rifle

Remington 700 Stainless Synthetic Rifle

Remington 700 MTRSS Rifle

Remington 700 BDL Left Hand

Remington 700 Camo Synthetic Rifle

Remington 700 Safari

Remington 700 Mountain Rifle

Remington 700 Custom KS Mountain Rifle

Remington 700 Classic Rifle

Ruger M77 Mark II Rifle

Ruger M77 Mark II Magnum Rifle

Ruger M77RL Ultra Light

Ruger M77 Mark II All-Weather Stainless Rifle

Ruger M77 RSI International Carbine

Ruger M77 Mark II Express Rifle

Ruger M77VT Target Rifle

Sako Hunter Rifle

Sako Fiberclass Sporter

Sako Hunter Left-Hand Rifle

Sako Classic Bolt Action

Sako Hunter LS Rifle

Sako Deluxe Lightweight

Sako Super Deluxe Sporter

Sako Mannlicher-Style Carbine

Sako Varmint Heavy Barrel

Sako TRG-S Bolt-Action Rifle

Sauer 90 Bolt-Action Rifle

Savage 110G Bolt-Action Rifle

Savage 110CY Youth/Ladies Rifle

Savage 110WLE One of One Thousand Limited Edition Rifle

Savage 110GXP3 Bolt-Action Rifle

Savage 110F Bolt-Action Rifle

Savage 110FXP3 Bolt-Action Rifle

Savage 110GV Varmint Rifle

Savage 110FV Varmint Rifle

Savage Model 110FVS Varmint Rifle

Savage Model 112BV Heavy Barrel Varmint Rifle

Savage 116FSS Bolt-Action Rifle

Savage Model 116SK Kodiak Rifle

Savage 110FP Polic Rifle

Steyr-Mannlicher Sporter Models SL, L, M, S, S/T

Steyr-Mannlicher Luxus Model L, M, S

Steyr-Mannlicher Model M Professional Rifle

Tikka Bolt-Action Rifle

Tikka Premium Grade Rifle

Tikka Varmint/Continental Rifle

Tikka Whitetail/Battue Rifle

Ultra Light Arms Model 20 Rifle

Ultra Light Arms Model 28, Model 40 Rifles

Voere VEC 91 Lightning Bolt-Action Rifle

Voere Model 2166 Bolt-Action Rifle

Voere Model 2155, 2150 Bolt-Action Rifles

Weatherby Mark V Deluxe Bolt-Action Rifle

Weatherby Lasermark V Rifle

Weatherby Mark V Crown Custom Rifles

Weatherby Mark V Safari Grade Custom Rifle

Weatherby Mark V Sporter Rifle

Weatherby Mark V Safari Grade Custom Rifles

Weatherby Weathermark Rifle

Weatherby Weathermark Alaskan Rifle

Weatherby Classicmark No. 1 Rifle

Weatherby Weatherguard Alaskan Rifle

Weatherby Vanguard VGX Deluxe Rifle

Weatherby Vanguard Classic Rifle

Weatherby Vanguard Classic No. 1 Rifle

Weatherby Vanguard Weathermark Rifle

Wichita Classis Rifle

Wichita Varmint Rifle

Winchester Model 70 Sporter

Winchester Model 70 Sporter WinTuff

Winchester Model 70 SM Sporter

Winchester Model 70 Stainless Rifle

Winchester Model 70 Varmint

Winchester Model 70 Synthetic Heavy Varmint Rifle

Winchester Model 70 DBM Rifle

Winchester Model 70 DBM-S Rifle

Winchester Model 70 Featherweight

Winchester Model 70 Featherweight WinTuff

Winchester Model 70 Featherweight Classic

Winchester Model 70 Lightweight Rifle

Winchester Ranger Rifle

Winchester Model 70 Super Express Magnum

Winchester Model 70 Super Grade

Winchester Model 70 Custom Sharpshooter

Winchester Model 70 Custom Sporting Sharpshooter Rifle

Centerfire Rifles—Single Shot

Armsport 1866 Sharps Rifle, Carbine

Brown Model One Single Shot Rifle

Browning Model 1885 Single Shot Rifle

Dakota Single Shot Rifle

Desert Industries G-90 Single Shot Rifle

Harrington & Richardson Ultra Varmint Rifle

Model 1885 High Wall Rifle

Navy Arms Rolling Block Buffalo Rifle

Navy Arms #2 Creedmoor Rifle

Navy Arms Sharps Cavalry Carbine

Navy Arms Sharps Plains Rifle

New England Firearms Handi-Rifle

Red Willow Armory Ballard No. 5 Pacific

Red Willow Armory Ballard No. 1.5 Hunting Rifle

Red Willow Armory Ballard No. 8 Union Hill Rifle

Red Willow Armory Ballard No. 4.5 Target Rifle

Remington-Style Rolling Block Carbine

Ruger No. 1B Single Shot

Ruger No. 1A Light Sporter

Ruger No. 1H Tropical Rifle

Ruger No. 1S Medium Sporter

Ruger No. 1 RSI International

Ruger No. 1V Special Varminter

C. Sharps Arms New Model 1874 Old Reliable

C. Sharps Arms New Model 1875 Rifle

C. Sharps Arms 1875 Classic Sharps

C. Sharps Arms New Model 1875 Target & Long Range

Shiloh Sharps 1874 Long Range Express

Shiloh Sharps 1874 Montana Roughrider

Shiloh Sharps 1874 Military Carbine

Shiloh Sharps 1874 Business Rifle

Shiloh Sharps 1874 Military Rifle

Sharps 1874 Old Reliable

Thompson/Center Contender Carbine

Thompson/Center Stainless Contender Carbine

Thompson/Center Contender Carbine Survival System

Thompson/Center Contender Carbine Youth Model

Thompson/Center TCR '87 Single Shot Rifle

Uberti Rolling Block Baby Carbine

Drillings, Combination Guns, Double Rifles

Baretta Express SSO O/U Double Rifles

Baretta 455 SxS Express Rifle

Chapuis RGExpress Double Rifle

Auguste Francotte Sidelock Double Rifles

Auguste Francotte Boxlock Double Rifle

Heym Model 55B O/U Double Rifle

Heym Model 55FW O/U Combo Gun

Heym Model 88b Side-by-Side Double Rifle

Kodiak Mk. IV Double Rifle

Kreighoff Teck O/U Combination Gun

Kreighoff Trumpf Drilling

Merkel Over/Under Combination Guns

Merkel Drillings

Merkel Model 160 Side-by-Side Double Rifles

Merkel Over/Under Double Rifles

Savage 24F O/U Combination Gun

Savage 24F-12T Turkey Gun

Springfield Inc. M6 Scout Rifle/Shotgun

Tikka Model 412s Combination Gun

Tikka Model 412S Double Fire

A. Zoli Rifle-Shotgun O/U Combo

Rimfire Rifles—Autoloaders

AMT Lightning 25/22 Rifle

AMT Lightning Small-Game Hunting Rifle II

AMT Mannum Hunter Auto Rifle

Anschutz 525 Deluxe Auto

Armscor Model 20P Auto Rifle

Browning Auto-22 Rifle

Browning Auto-22 Grade VI

Krico Model 260 Auto Rifle

Lakefield Arms Model 64B Auto Rifle

Marlin Model 60 Self-Loading Rifle

Marlin Model 60ss Self-Loading Rifle

Marlin Model 70 HC Auto

Marlin Model 990I Self-Loading Rifle

Marlin Model 70P Papoose

Marlin Model 922 Magnum Self-Loading Rifle

Marlin Model 995 Self-Loading Rifle

Norinco Model 22 ATD Rifle

Remington Model 522 Viper Autoloading Rifle

Remington 522BDL Speedmaster Rifle

Ruger 10/22 Autoloading Carbine (w/o folding stock)

Survival Arms AR-7 Explorer Rifle

Texas Remington Revolving Carbine

Voere Model 2115 Auto Rifle

Rimfire Rifles—Lever & Slide Action

Browning BL-22 Lever-Action Rifle

Marlin 39TDS Carbine

Marlin Model 39AS Golden Lever-Action Rifle

Remington 572BDL Fieldmaster Pump Rifle

Norinco EM-321 Pump Rifle

Rossi Model 62 SA Pump Rifle

Rossi Model 62 SAC Carbine

Winchester Model 9422 Lever-Action Rifle

Winchester Model 9422 Magnum Lever-Action Rifle

Rimfire Rifles—Bolt Actions & Single Shots

Anschutz Achiever Bolt-Action Rifle

Anschutz 1416D/1516D Classic Rifles

Anschutz 1418D/1518D Mannlicher Rifles

Anschutz 1700D Classic Rifles

Anschutz 1700D Custom Rifles

Anschutz 1700 FWT Bolt-Action Rifle

Anschutz 1700D Graphite Custom Rifle

Anschutz 1700D Bavarian Bolt-Action Rifle

Armstrong Model 14P Bolt-Action Rifle

Armstrong Model 1500 Rifle

BRNO ZKM-452 Deluxe Bolt-Action Rifle

BRNO ZKM 452 Deluxe

Beeman/HW 60-J-ST Bolt-Action Rifle

Browning A-Bolt 22 Bolt-Action Rifle

Browning A-Bolt Gold Medallion

Cabanas Phaser Rifle

Cabanas Master Bolt-Action Rifle

Cabanas Espronceda IV Bolt-Action Rifle

Cabanas Leyre Bolt-Action Rifle

Chipmunk Single Shot Rifle

Cooper Arms Model 36S Sporter Rifle

Dakota 22 Sporter Bolt-Action Rifle

Krico Model 300 Bolt-Action Rifles

Lakefield Arms Mark II Bolt-Action Rifle

Lakefield Arms Mark I Bolt-Action Rifle

Magtech Model MT-22C Bolt-Action Rifle

Marlin Model 880 Bolt-Action Rifle

Marlin Model 881 Bolt-Action Rifle

Marlin Model 882 Bolt-Action Rifle

Marlin Model 883 Bolt-Action Rifle

Marlin Model 883SS Bolt-Action Rifle

Marlin Model 25MN Bolt-Action Rifle

Marlin Model 25N Bolt-Action Repeater

Marlin Model 15YN “Little Buckaroo”

Mauser Model 107 Bolt-Action Rifle

Mauser Model 201 Bolt-Action Rifle

Navy Arms TU-KKW Training Rifle

Navy Arms TU-30/40 Carbine

Navy Arms TU-KKW Sniper Trainer

Norinco JW-27 Bolt-Action Rifle

Norinco JW-15 Bolt-Action Rifle

Remington 541-T

Remington 40-XR Rimfire Custom Sporter

Remington 541-T HB Bolt-Action Rifle

Remington 581-S Sportsman Rifle

Ruger 77/22 Rimfire Bolt-Action Rifle

Ruger K77/22 Varmint Rifle

Ultra Light Arms Model 20 RF Bolt-Action Rifle

Winchester Model 52B Sporting Rifle

Competition Rifles—Centerfire & Rimfire

Anschutz 64-MS Left Silhouette

Anschutz 1808D RT Super Match 54 Target

Anschutz 1827B Biathlon Rifle

Anschutz 1903D Match Rifle

Anschutz 1803D Intermediate Match

Anschutz 1911 Match Rifle

Anschutz 54.18MS REP Deluxe Silhouette Rifle

Anschutz 1913 Super Match Rifle

Anschutz 1907 Match Rifle

Anschutz 1910 Super Match II

Anschutz 54.18MS Silhouette Rifle

Anschutz Super Match 54 Targe Model 2013

Anschutz Super Match 54 Targe Model 2007

Beeman/Feinwerkbau 2600 Target Rifle

Cooper Arms Model TRP-1 ISU Standard Rifle

E.A.A./Weihrauch HW 60 Target Rifle

E.A.A./HW 60 Match Rifle

Finnish Lion Standard Target Rifle

Krico Model 360 S2 Biathlon Rifle

Krico Model 400 Match Rifle

Krico Model 360S Biathlon Rifle

Krico Model 500 Kricotronic Match Rifle

Krico Model 600 Sniper Rifle

Krico Model 600 Match Rifle

Lakefield Arms Model 90B Target Rifle

Lakefield Arms Model 91T Target Rifle

Lakefield Arms Model 92S Silhouette Rifle

Marlin Model 2000 Target Rifle

Mauser Model 86-SR Specialty Rifle

McMillan M-86 Sniper Rifle

McMillan Combo M-87/M-88 50-Caliber Rifle

McMillan 300 Phoenix Long-Range Rifle

McMillan M-89 Sniper Rifle

McMillan National Match Rifle

McMillan Long-Range Rifle

Parker-Hale M-87 Target Rifle

Parker-Hale M-85 Sniper Rifle

Remington 40-XB Rangemaster Target Centerfire

Remington 40-XR KS Rimfire Position Rifle

Remington 40-XBBR KS

Remington 40-XC KS National Match Course Rifle

Sako TRG-21 Bolt-Action Rifle

Steyr-Mannlicher Match SPG-UIT Rifle

Steyr-Mannlicher SSG P-I Rifle

Steyr-Mannlicher SSG P-III Rifle

Steyr-Mannlicher SSG P-IV Rifle

Tanner Standard UIT Rifle

Tanner 50 Meter Free Rifle

Tanner 300 Meter Free Rifle

Wichita Silhouette Rifle

Shotguns—Autoloaders

American Arms/Franchi Black Magic 48/AL

Benelli Super Black Eagle Shotgun
Benelli Super Black Eagle Slug Gun
Benelli M1 Super 90 Field Auto Shotgun
Benelli Montefeltro Super 90 20-Gauge Shotgun
Benelli Montefeltro Super 90 Shotgun
Benelli M1 Sporting Special Auto Shotgun
Benelli Black Eagle Competition Auto Shotgun
Beretta A-303 Auto Shotgun
Beretta 390 Field Auto Shotgun
Beretta 390 Super Trap, Super Skeet Shotguns
Beretta Vittoria Auto Shotgun
Beretta Model 1201F Auto Shotgun
Browning BSA 10 Auto Shotgun
Browning Bsa 10 Stalker Auto Shotgun
Browning A-500R Auto Shotgun
Browning A-500G Auto Shotgun
Browning A-500G Sporting Clays
Browning Auto-5 Light 12 and 20
Browning Auto-5 Stalker
Browning Auto-5 Magnum 20
Browning Auto-5 Magnum 12
Churchill Turkey Automatic Shotgun
Cosmi Automatic Shotgun
Maverick Model 60 Auto Shotgun
Mossberg Model 5500 Shotgun
Mossberg Model 9200 Regal Semi-Auto Shotgun
Mossberg Model 9200 USST Auto Shotgun
Mossberg Model 9200 Camo Shotgun
Mossberg Model 6000 Auto Shotgun

Remington Model 1100 Shotgun

Remington 11-87 Premier shotgun

Remington 11-87 Sporting Clays

Remington 11-87 Premier Skeet

Remington 11-87 Premier Trap

Remington 11-87 Special Purpose Magnum

Remington 11-87 SPS-T Camo Auto Shotgun

Remington 11-87 Special Purpose Deer Gun

Remington 11-87 SPS-BG-Camo Deer/Turkey Shotgun

Remington 11-87 SPS-Deer Shotgun

Remington 11-87 Special Purpose Synthetic Camo

Remington SP-10 Magnum-Camo Auto Shotgun

Remington SP-10 Magnum Auto Shotgun

Remington SP-10 Magnum Turkey Combo

Remington 1100 LT-20 Auto

Remington 1100 Special Field

Remington 1100 20-Gauge Deer Gun

Remington 1100 LT-20 Tournament Skeet

Winchester Model 1400 Semi-Auto Shotgun

Shotguns—Slide Actions

Browning Model 42 Pump Shotgun

Browning BPS Pump Shotgun

Browning BPS Stalker Pump Shotgun

Browning BPS Pigeon Grade Pump Shotgun

Browning BPS Pump Shotgun (Ladies and Youth Model)

Browning BPS Game Gun Turkey Special

Browning BPS Game Gun Deer Special

Ithaca Model 87 Supreme Pump Shotgun
Ithaca Model 87 Deerslayer Shotgun
Ithaca Deerslayer II Rifled Shotgun
Ithaca Model 87 Turkey Gun
Ithaca Model 87 Deluxe Pump Shotgun
Magtech Model 586-VR Pump Shotgun
Maverick Models 88, 91 Pump Shotguns
Mossberg Model 500 Sporting Pump
Mossberg Model 500 Camo Pump
Mossberg Model 500 Muzzleloader Combo
Mossberg Model 500 Trophy Slugger
Mossberg Turkey Model 500 Pump
Mossberg Model 500 Bantam Pump
Mossberg Field Grade Model 835 Pump Shotgun
Mossberg Model 835 Regal Ulti-Mag Pump
Remington 870 Wingmaster
Remington 870 Special Purpose Deer Gun
Remington 870 SPS-BG-Camo Deer/Turkey Shotgun
Remington 870 SPS-Deer Shotgun
Remington 870 Marine Magnum
Remington 870 TC Trap
Remington 870 Special Purpose Synthetic Camo
Remington 870 Wingmaster Small Gauges
Remington 870 Express Rifle Sighted Deer Gun
Remington 879 SPS Special Purpose Magnum
Remington 870 SPS-T Camo Pump Shotgun
Remington 870 Special Field
Remington 870 Express Turkey
Remington 870 High Grades

Remington 870 Express

Remington Model 870 Express Youth Gun

Winchester Model 12 Pump Shotgun

Winchester Model 42 High Grade Shotgun

Winchester Model 1300 Walnut Pump

Winchester Model 1300 Slug Hunter Deer Gun

Winchester Model 1300 Ranger Pump Gun Combo & Deer Gun

Winchester Model 1300 Turkey Gun

Winchester Model 1300 Ranger Pump Gun

Shotguns—Over/Unders

American Arms/Franchi Falconet 2000 O/U

American Arms Silver I O/U

American Arms Silver II Shotgun

American Arms Silver Skeet O/U

American Arms/Franchi Sporting 2000 O/U

American Arms Silver Sporting O/U

American Arms Silver Trap O/U

American Arms WS/OU 12, TS/OU 12 Shotguns

American Arms WT/OU 10 Shotgun

Armsport 2700 O/U Goose Gun

Armsport 2700 Series O/U

Armsport 2900 Tri-Barrel Shotgun

Baby Bretton Over/Under Shotgun

Beretta Model 686 Ultralight O/U

Beretta ASE 90 Competition O/U Shotgun

Beretta Over/Under Field Shotguns

Beretta Onyx Hunder Sport O/U Shotgun

Beretta Model SO5, SO6, SO9 Shotguns

Beretta Sporting Clay Shotguns

Beretta 687EL Sporting O/U

Beretta 682 Super Sporting O/U

Beretta Series 682 Competition Over/Unders

Browning Citori O/U Shotgun

Browning Superlight Citori Over/Under

Browning Lightning Sporting Clays

Browning Micro Citori Lightning

Browning Citori Plus Trap Combo

Browning Citori Plus Trap Gun

Browning Citori O/U Skeet Models

Browning Citori O/U Trap Models

Browning Special Sporting Clays

Browning Citori GTI Sporting Clays

Browning 325 Sporting Clays

Centurion Over/Under Shotgun

Chapuis Over/Under Shotgun

Connecticut Valley Classics Classic Sporter O/U

Connecticut Valley Classics Classic Field Waterfowler

Charles Daly Field Grade O/U

Charles Daly Lux O/U

E.A.A./Sabatti Sporting Clays Pro-Gold O/U

E.A.A./Sabatti Falcon-Mon Over/Under

Kassnar Grade I O/U Shotgun

Krieghoff K-80 Sporting Clays O/U

Krieghoff K-80 Skeet Shotgun

Krieghoff K-80 International Skeet

Krieghoff K-80 Four-Barrel Skeet Set

Krieghoff K-80/RT Shotguns
Krieghoff K-80 O/U Trap Shotgun
Laurona Silhouette 300 Sporting Clays
Laurona Silhouette 300 Trap
Laurona Super Model Over/Unders
Ljutic LM-6 Deluxe O/U Shotgun
Marocchi Conquista Over/Under Shotgun
Marocchi Avanza O/U Shotgun
Merkel Model 200E O/U Shotgun
Merkel Model 200E Skeet, Trap Over/Unders
Merkel Model 203E, 303E Over/Under Shotguns
Perazzi Mirage Special Sporting O/U
Perazzi Mirage Special Four-Gauge Skeet
Perazzi Sporting Classic O/U
Perazzi MX7 Over/Under Shotguns
Perazzi Mirage Special Skeet Over/Under
Perazzi MX8/MX8 Special Trap, Skeet
Perazzi MX8/20 Over/Under Shotgun
Perazzi MX9 Single Over/Under Shotguns
Perazzi MX12 Hunting Over/Under
Perazzi MX28, MX410 Game O/U Shotguns
Perazzi MX20 Hunting Over/Under
Piotti Boss Over/Under Shotgun
Remington Peerless Over/Under Shotgun
Ruger Red Label O/U Shotgun
Ruger Sporting Clays O/U Shotgun
San Marco 12-Ga. Wildflower Shotgun
San Marco Field Special O/U Shotgun
San Marco 10-Ga. O/U Shotgun

SKB Model 505 Deluxe Over/Under Shotgun
SKB Model 685 Over/Under Shotgun
SKB Model 885 Over/Under Trap, Skeet, Sporting Clays
Stoeger/IGA Condor I O/U Shotgun
Stoeger/IGA ERA 2000 Over/Under Shotgun
Techni-Mec Model 610 Over/Under
Tikka Model 412S Field Grade Over/Under
Weatherby Athena Grade IV O/U Shotguns
Weatherby Athena Grade V Classic Field O/U
Weatherby Orion O/U Shotguns
Weatherby II, III Classic Field O/Us
Weatherby Orion II Classic Sporting Clays O/U
Weatherby Orion II Sporting Clays O/U
Winchester Model 1001 O/U Shotgun
Winchester Model 1001 Sporting Clays O/U
Pietro Zanoletti Model 2000 Field O/U

Shotguns—Side by Sides

American Arms Brittany Shotgun
American Arms Gentry Double Shotgun
American Arms Derby Side-by-Side
American Arms Grulla #2 Double Shotgun
American Arms WS/SS 10
American Arms TS/SS 10 Double Shotgun
American Arms TS/SS 12 Side-by-Side
Arrieta Sidelock Double Shotguns
Armsport 1050 Series Double Shotguns
Arizaga Model 31 Double Shotgun

AYA Boxlock Shotguns

AYA Sidelock Double Shotguns

Beretta Model 452 Sidelock Shotgun

Beretta Side-by-Side Field Shotguns

Crucelegui Hermanos Model 150 Double

Chapuis Side-by-Side Shotgun

E.A.A./Sabatti Sabe-Mon Double Shotgun

Charles Daly Model Dss Double

Ferlib Model F VII Double Shotgun

Auguste Francotte Boxlock Shotgun

Auguste Francotte Sidelock Shotgun

Garbi Model 100 Double

Garbi Model 100 Side-by-Side

Garbi Model 103A, B Side-by-Side

Garbi Model 200 Side-by-Side

Bill Hanus Birdgun Doubles

Hatfield Uplander Shotgun

Merkell Model 8, 47E Side-by-Side Shotguns

Merkel Model 47LSC Sporting Clays Double

Merkel Model 47S, 147S Side-by-Sides

Parker Reproductions Side-by-Side

Piotti King No. 1 Side-by-Side

Piotti Lunik Side-by-Side

Piotti King Extra Side-by-Side

Piotti Piuma Side-by-Side

Precision Sports Model 600 Series Doubles

Rizzini Boxlock Side-by-Side

Rizzini Sidelock Side-by-Side

Stoeger/IGA Side-by-Side Shotgun

Ugartechea 10-Ga. Magnum Shotgun

Shotguns—Bolt Actions & Single Shots

Armsport Single Barrel Shotgun

Browning BT-99 Competition Trap Special

Browning BT-99 Plus Trap Gun

Browning BT-99 Plus Micro

Browning Recoilless Trap Shotgun

Browning Micro Recoilless Trap Shotgun

Desert Industries Big Twenty Shotgun

Harrington & Richardson Topper Model 098

Harrington & Richardson Topper Classic Youth Shotgun

Harrington & Richardson N.W.T.F. Turkey Mag

Harrington & Richardson Topper Deluxe Model 098

Krieghoff KS-5 Trap Gun

Krieghoff KS-5 Special

Krieghoff KS-80 Single Barrel Trap Gun

Ljutic Mono Gun Single Barrel

Ljutic LTX Super Deluxe Mono Gun

Ljutic Recoilless Space Gun Shotgun

Marlin Model 55 Goose Gun Bolt Action

New England Firearms Turkey and Goose Gun

New England Firearms N.W.T.F. Shotgun

New England Firearms Tracker Slug Gun

New England Firearms Standard Pardner

New England Firearms Survival Gun

Perazzi TM1 Special Single Trap

Remington 90-T Super Single Shotgun

Snake Charmer II Shotgun

Stoeger/IGA Reuna Single Barrel Shotgun

Thompson/Center TCR '87 Hunter Shotgun.

S 923. Licensing

(a)***

* * * * *

(i) Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Secretary shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer. The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured. A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe.

S 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (a)(6), (f), (k), [or (q) of [section 922](#)] (r), (v), or (x) of [section 922](#);

* * * * *

(6) A person who knowingly violates [section 922\(w\)](#) shall be fined not more than \$1,000, imprisoned not more than 6 months, or both. Section 3571 shall not apply to any offense under this paragraph.

* * * * *

(c)(1) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

* * * * *

SUPPLEMENTAL VIEWS OF HON. DAN GLICKMAN

I supported this bill because it is a narrowly crafted bill focused on specific weapons that have no business being on our streets. It is aimed at rapid fire weapons that have the sole purpose of killing people, and it is aimed at weapons that are more suited for the battlefield than the target range.

I believe that violence in our nation is getting out of hand. It is devastating to read that a student killed a student with a semi-automatic weapon. But it is equally devastating to hear of students killing students with anyone. What we really need to focus on is why students are engaging in violence in the first place. For this reason, I think this legislation must be viewed as part of the effort to reduce crime—in conjunction with the comprehensive crime bill that increases penalties, calls for tougher sentencing, provides for more jails and police officers, and provides for prevention programs.

But we must not abrogate the Second Amendment rights that are provided for in the Constitution. We must be extremely careful that in this legislation and in any legislation in the future, that we are not taking away guns that truly are used for sports, hunting, or self-defense.

I don't believe that this bill is the first step in a long road to banning guns. However, some of my constituents have expressed their fear that the Congress is moving slowly toward banning all guns for all people. We must be absolutely clear that this narrowly crafted legislation is not that first step and is not just a precursor to further, broader federal gun control and federal gun bans. Sport shooters and hunters tell me that they don't want assault weapons on the streets and in the hands of gang members any more than anyone else. But what they don't want is for Congress to take the short step to saying that the hunting rifles are being used on the streets, and should be taken away. And then the handguns are being used on the streets and should be taken away.

I want to make sure that what we are doing has a purpose—that it gets at the weapons that are being used by gang members and others in killing sprees or other random violence. I want to be able to assure the hunters, sport shooters and folks who want to be prepared for self-defense that we're not going to turn around and tell these gun owners that their sporting guns are illegal. This is a good bill, but let's tread very carefully before going any further.

Finally, because I want to make sure that there is no mistake about which guns are banned and which are exempt, especially guns that will be developed in the future, I offered an amendment during Committee markup that was accepted by the Committee. This amendment clarifies that simply because a gun is not on the list of specifically exempted guns, does not mean that that firearm is banned. A firearm must meet the specific criteria set out in the bill, or be specifically named as a banned gun before it can be banned. In other words, the exempted gun list is not exhaustive.

Furthermore, my amendment makes clear that no gun may be taken off the list of specifically exempted guns as long as the act is in effect. In this way, it is absolutely clear that the intent of Congress is that exempted guns remain exempted.

DISSENTING VIEWS OF HON. F. JAMES SENSENBRENNER, JR., HON. GEORGE GEKAS, HON. LAMAR S. SMITH, HON. BILL McCOLLUM, HON. HOWARD COBLE, HON. STEVE SCHIFF, AND HON. BOB GOODLATTE

We strongly oppose H.R. 4296 which would ban a variety of guns. The primary problem with this bill is that it targets law abiding citizens. If this bill passes, simply possessing a shotgun or rifle could land you in jail. You don't have to shoot anybody. You don't have to threaten anyone, just leaving it in the hall closet is enough to land you in jail. Even if you use the gun for self-defense, you can go to jail.

It is already a federal crime for convicted criminals to possess these weapons, or any other gun for that matter. The laws aimed at these criminals should be fully enforced before we start going into the homes of law-abiding citizens and arresting them.

Another problem with this legislation is that simple, cosmetic changes to certain guns would turn those guns from being illegal to, all of a sudden being legal. For example, simply by removing a pistol grip, or a bayonet mount from a rifle saves the owner from going to jail, but leaves the gun's performance unaffected.

Finally, the problem of these guns has been greatly exaggerated. Although semiautomatic weapons are used in the most high profile killings that make it on the nightly news, in fact, more than 99 percent of killers eschew assault rifles and use more prosaic devices. According to statistics from the Justice Department and reports from local law enforcement, five times as many people are kicked or beaten to death than are killed with assault rifles.

Passing this legislation is an excuse to avoid the real issues of violent crime, and threatens the rights of law-abiding citizens. Therefore, we oppose H.R. 4296.

F. James Sensenbrenner, Jr.
George W. Gekas.
Lamar Smith.
Bill McCollum.
Howard Coble.
Steve Schiff.
Bob Goodlatte.

DISSENTING VIEWS OF HON. JACK BROOKS

I am strongly opposed to H.R. 4296, the Public Safety and Recreational Firearms Use Protection Act, because it misidentifies the causes of violent crime in the United States; diverts national priorities away from meaningful solutions to the problem of violent crime; punishes honest American gun owners who buy and use firearms for legitimate, lawful purposes such as, but not necessarily limited to, self-defense, target shooting, hunting, and firearms collection; fails to focus the punitive powers of government upon criminals. Most fundamentally, a prohibition on firearms violates the right of individual Americans to keep and bear arms, protected by the Second Amendment to the Constitution of the United States—a stark fact of constitutional life that the proponents of H.R. 4296 conveniently overlook in their zeal to abridge the rights of law-abiding citizens.

Reasons claimed to justify a prohibition on the firearms that would be affected by H.R. 4296 include the assertion that those particular firearms are used often in the commission of violent crimes. Data on the use of the firearms H.R. 4296 labels as “assault weapons” is not comprehensive, but such data as do exist consistently show that “assault weapons” are involved in a small percentage of violent crimes.

Most of the firearms labelled as “assault weapons” in H.R. 4296 are rifles—yet rifles are the general category of firearms used least often in the commission of violent crimes. The FBI Uniform Crime Reports, 1992, the most recent comprehensive data available, shows that rifles of any description are used in 3.1 percent of homicides, for example, while knives are used in 14.5 percent, fists and feet are used in 5 percent, and blunt objects are used in another 5 percent.

Professor Gary Kleck, of Florida State University, the 1993 recipient of the American Society of Criminology's Hindelang Award, estimates that one-half of 1 percent of violent crimes are committed with “assault weapons.” University of Texas criminologist Sheldon Ekland-Olson estimates that one-quarter of rifle-related homicides may involve rifles chambered for military cartridges, which would include not only so-called “assault” type semi-automatic rifles, but non-semiautomatic rifles as well.

Since 1980, rifle-related homicides have declined by more than a third. According to the Metropolitan Police of Washington, D.C., the city which has the highest per capita rate of homicides of any major city in the United States, between 1980–1993 there occurred only 4 rifle-related homicides out of a total of more than 4,200 homicides in the period. The last rifle homicide

during the period was recorded in 1984. Other data from D.C. police show that rifles are used in about one-tenth of 1 percent of robberies and assaults.

The California Department of Justice surveyed law enforcement agencies in the state in 1990, as the state's legislature addressed "assault weapon" ban legislation there. The California Department of Justice found that only 3.7 percent of the firearms that are used in homicides and assaults were "assault weapons," defined there to include even more firearms than are defined as "assault weapons" in H.R. 4296.

Connecticut State Police report that less than 2 percent of firearms seized by police in the state are "assault weapons"; the Massachusetts State Police report that "assault" type rifles were used in one-half of 1 percent of homicides between 1985-1991.

I believe the proponents of H.R. 4296 are in error in claiming that the Bureau of Alcohol, Tobacco and Firearms (BATF) has traced a large number of "assault weapons" to crime. This claim has been effectively contradicted by both the BATF itself and the Congressional Research Service's (CRS) report on the BATF firearms tracing system. The BATF has stated that it "does not always know if a firearm being traced has been used in a crime." For instance, sometimes a firearm is traced simply to determine the rightful owner after it is found by a law enforcement officer.

Each year, the BATF traces about 50,000 firearms, yet only about 1 percent of these traces relate to "assault weapons" that have been seized by police in the course of investigations of violent crimes. Most "assault weapons" traced relate not to violent crime but to property violations, such as stolen guns being traced so that they may be returned to their lawful owners, violations of the Gun Control Act, and other non-violent circumstances.

As noted by BATF and by CRS in its report to Congress entitled "Assault Weapons: Military-Style Semiautomatic Firearms Facts and Issues" (1992) that firearms traces are not intended to "trace guns to crime," that few "assault weapons" traced relative to violent crime investigations, and that available state and local law enforcement agency data shows relatively little use of "assault weapons" are used frequently in violent crimes.

"Assault weapons" function in the same manner as any other semi-automatic firearm. They fire once with each pull of the trigger, like most firearms. They use the same ammunition as other firearms, both semi-automatic and not. Therefore, "assault weapons" are useful for target shooting, self-defense, hunting, and other legitimate purposes, just as other firearms are.

H.R. 4296 would prohibit rifles that are commonly used for competitive shooting, such as the Springfield A and the Colt "AR-15."

Accessories found on some models of "assault weapons," such as folding stocks, flash suppressors, pistol grips, bayonet lugs, and detachable magazines may look menacing to persons unfamiliar with firearms, but there is absolutely no evidence that any of these accessories provide any advantage to a criminal. As has been demonstrated on many occasions, firearms which H.R. 4296 specifically exempts from its prohibition, firearms not equipped with those accessories, can be fired at the same rate, with the same accuracy, and with the same power as "assault weapons."

Time and again, supporters of H.R. 4296 have claimed that "assault weapons" can be "spray-fired from the hip"; but this is simply not true. The firearms targeted in H.R. 4296 are not machineguns. Machineguns are restricted under the National Firearms Act of 1934. H.R. 4296's guns are semi-automatic, and fire only one shot at a time.

H.R. 4296's limitation on the capacity of ammunition feeding devices would do nothing to reduce the number of rounds available to a criminal. It has been demonstrated frequently that such devices can be switched in less than a second, so a criminal determined to have available a number of rounds greater than H.R. 4296 would permit in a single magazine would need only to possess additional smaller magazines. However, police have reportedly consistently that when criminals fire shots, they rarely discharge more than 2-5 rounds, well below the number of rounds H.R. 4296 would permit in a single magazine.

Most fundamentally, to impinge upon the constitutionally-protected rights of honest, law-abiding Americans on the basis of myth, misinformation, and newspaper headlines is a crime in and of itself. To protect against such a mockery of our Constitution and the infliction of such harm upon our citizens, I intend to oppose H.R. 4296 vigorously on the House floor in the hope that careful reflection will permit cooler heads and the light of reason to prevail.

1 “Omnibus Crime Control Act of 1991,” Report of the Committee on the Judiciary, House of Representatives, on H.R. 3371, 102d Cong, 1st Sess., Rept. 102–242, October 7, 1991, at 202.

2 See, e.g., Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 Firearms; Chief Sylvester Daughtry, President, International Association of Chiefs of Police; Mr. John Pitta, National Executive Director, Federal Law Enforcement Officers Association).

3 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994; Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991; Hearing on Semiautomatic Assault Weapons, Part II, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, July 25, 1991; Hearing on H.R. 1190, Semiautomatic Assault Weapons Act of 1989, and related bills, House of Representatives, Committee on the Judiciary, Subcommittee on Crime, April 5 and 6, 1989.

4 “Omnibus Crime Control Act of 1991,” Report of the Committee on the Judiciary, House of Representatives, on H.R. 3371, 102d Cong, 1st Sess., Rept. 102–242, October 7, 1991, at 203.

5 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Hon. John Magaw, Director, Bureau of Alcohol, Tobacco and Firearms).

6 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Tony Loizzo, executive vice president, National Association of Police Organizations). See also, Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Dewey R. Stokes, National President, Fraternal Order of Police) (assault weapons “pose a grave and immediate threat to the lives of those sworn to uphold our laws”); Hearing on H.R. 1190, Semiautomatic Assault Weapons Act of 1989, and related bills, House of Representatives, Committee on the Judiciary, Subcommittee on Crime, April 5, 1989 (Testimony of Daniel M. Hartnett, associate director, law enforcement, Bureau of Alcohol, Tobacco and Firearms) (“Fifteen years ago, police rarely encountered armed drug dealers. Today, firearms, especially certain types of semiautomatic weapons, are status symbols and tools of the trade for this country’s most vicious criminals.”)

7 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of John Pitta, executive vice president, Federal Law Enforcement Officers Association).

8 Hearing on H.R. 4296 and H.R. 3527, Public Safety and recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of John Pitta, executive vice president, Federal Law Enforcement Officers Association).

9 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Hon. Henry Cisneros, Secretary, Department of Housing and Urban Development).

10 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Ken Brondell, Jr.).

11 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements of Jacob Locicero and Arlene Locicero).

12 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of John Pitta, executive vice president, Federal Law Enforcement Officers Association).

13 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements of Michelle Scully and Steve Sposato).

14 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on crime and Criminal Justice, April 25, 1994 (State of Dr. Suzanna Gratia, Copperas Cove, Texas)

15 The Committee notes that, under the Gun Control Act of 1968 as amended in 1986, it is a Federal felony for a convicted felon to be in possession of any firearm, including an assault weapon, under [18 U.S.C. 922\(g\)\(1\)](#). Violations carry up to five years imprisonment and a \$250,000 fine. If a criminal—whether previously convicted or not—is carrying an assault weapon and is involved in a drug trafficking crime, that criminal is subject to a mandatory minimum of 5 years imprisonment and a \$250,000 fine under [18 U.S.C. 924\(c\)\(1\)](#). Any criminal who has three prior violent felony and/or serious drug offenses convictions and is in possession of a firearm is subject to a mandatory minimum of 15 years imprisonment and a \$250,000 fine under [18 U.S.C. 924\(e\)\(1\)](#).

16 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Ms. Jacquie Miller, Louisville, Kentucky).

17 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Mr. Phillip Murphy, Tucson, Arizona).

18 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, “Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles,” July, 1989.

19 The ultimate question of law upon which the working group was advising the Secretary of the Treasury was whether these import firearms met a “sporting purpose” test under 18 U.S.C. Code section 925(d). He held that they did not. Although that legal question is not directly posed by this bill, the working group's research and analysis on assault weapons is relevant on the questions of the purposes underlying the design of assault weapons, the characteristics that distinguish them from sporting guns, and the reasons underlying each of the distinguishing features.

20 An automatic gun fires a continuous stream as long as the trigger is held down, until it has fired all of the cartridges (“rounds” or “bullets”) in its magazine (or “clip”). Automatic firearms are also known as machineguns. A semi-automatic gun fires one round, then loads a new round, each time the trigger is pulled until its magazine is exhausted. Manually operated guns require the shooter to manually operate a bolt, slide, pump, or lever action to extract the fired round and load a new round before pulling the trigger.

21 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

22 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

23 18 U.S. Code, section 922(o).

24 The Committee notes that such conversion is a Federal felony that carries penalties of up to 10 years imprisonment and a \$250,000 fine under 26 U.S.C. 5861.

25 Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Dewey R. Stokes, National President, Fraternal order of Police).

26 Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Dewey R. Stokes, National President, Fraternal order of police).

27 Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Richard Cook, Chief, Firearms Divisions, Bureau of Alcohol, Tobacco and Firearms) at 268.

28 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms, Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements of Hon. Henry Cisneros, Secretary, Department of Housing and Urban Development and John Pitta, National Executive Vice President, Federal Law Enforcement Officers Association); Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Paul J. McNulty, Principal Deputy Director, Office of Policy development, Department of Justice) at 288.

29 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements and testimony of John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms, and John Pitta, National Executive Vice President, Federal Law Enforcement Officers Association); Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Richard Cook, Chief, Firearms Division, Bureau of Alcohol, Tobacco and Firearms); U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

30 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

31 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements and testimony of John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms, and John Pitta, National Executive Vice President, Federal Law Enforcement Officers Association); U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

32 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements and testimony of John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms, and John Pitta, National Executive Vice President, Federal Law Enforcement Officers Association); U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and

Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

33 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement and testimony of Dr. David Milzman, Associate Director, Trauma Services, Georgetown University Medical Center, Washington, DC); U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

34 See H.R. 4296, Appendix A, for the list.

35 H.R. 4296 bans the following semiautomatic assault weapons by name (as well as any copies or duplicates, in any caliber): All AK-47 type; Beretta AR-70; Colt AR-15; DC9, 22; FNC; FN-FAL/LAR; Galil; MAC 10, MAC 11-type; Steyr AUG; Street Sweeper; Striker 12; TEC-9; Uzi.

36 While noting that its list is not all-inclusive, the Bureau of Alcohol, Tobacco, and Firearms has listed the following semi-automatic firearms that would be banned based on their general characteristics:

1. Semi-automatic Rifles: AA Arms AR9 semi-automatic rifle; AMT Lightning 25 rifle; Auto Ordnance Thompson Model 1927 carbines (finned barrel versions); Calico M100 carbine; Colt Sporter Rifle (all variations); Federal XC900 carbine; Federal XC450 carbine; Grendel R31 carbine; Iver Johnson M1 carbine (version w/collapsible stock and bayonet mount); Springfield M1A rifle.

2. Pistols: AA Arms AP9 pistol; Australian Automatic Arms pistol; Auto Ordnance Model 1927A5 pistol; American Arms Spectra pistol; Calico Model M950 pistol; Calico Model 110 pistol; All Claridge Hi-Tec pistol; D Max auto pistol; Grendel P-31 pistol; Heckler & Koch SP89 pistol; Wilkinson Linda pistol.

3. Shotguns: Benelli M1 Super 90 Defense shotgun; Benelli M3 Super 90 shotgun; Franchi LAW 12 shotgun; Franchi SPAS 12 shotgun; USAS 12 shotgun.

37 H.R. 4296 bans the following semiautomatic assault weapons by name (as well as any copies or duplicates, in any caliber): All AK-47 type; Beretta AR-70; Colt AR-15; DC9, 22; FNC; FN-FAL/LAR; Galil; MAC 10, MAC 11-type; Steyr AUG; Street Sweeper; Striker 12; TEC-9; Uzi

H.R. REP. 103-489, H.R. Rep. No. 489, 103RD Cong., 2ND Sess. 1994, 1994 WL 168883, 1994 U.S.C.C.A.N. 1820 (Leg.Hist.)