

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PULLMAN ARMS INC.; GUNS and GEAR, LLC;
PAPER CITY FIREARMS, LLC; GRRR! GEAR,
INC.; and NATIONAL SHOOTING SPORTS
FOUNDATION, INC.,

Plaintiffs,

v.

MAURA HEALEY, ATTORNEY GENERAL FOR
THE COMMONWEALTH OF
MASSACHUSETTS,

Defendant.

CIVIL ACTION NO.
4:16-cv-40136-TJH

**NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF MOTION TO DISMISS**

The defendant Maura Healey, as Attorney General of Massachusetts, hereby provides notice of a recent decision of the United States Court of Appeals for the Fourth Circuit that is pertinent to her pending Motion to Dismiss Amended Complaint (Dkt. 22).

In *Kolbe v. Hogan*, 2017 WL 679687 (4th Cir. Feb. 21, 2017) (*en banc*), the Court upheld the Maryland Firearm Safety Act of 2013 (FSA), “which bans the AR-15 and other military-style rifles and shotguns (referred to as ‘assault weapons’) and detachable large-capacity magazines.” *Id.* at *1. The Court held these weapons and magazines are not protected by the Second Amendment because they are among those arms “that are most useful in military service” that *Heller* “singled out as being beyond the Second Amendment’s reach.” *Id.* at *2, citing *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008). The Court further held that “even if the banned assault weapons and large-capacity magazines are somehow entitled to Second Amendment

protection — the district court properly subjected the FSA to intermediate scrutiny and correctly upheld it as constitutional under that standard of review.” *Id.* Accordingly, the *en banc* Court vacated the prior contrary decision of a panel of the Fourth Circuit, *Kolbe v. Hogan*, 813 F.3d 160 (4th Cir. 2016), and affirmed the original decision of the district court, *Kolbe v. O’Malley*, 42 F. Supp. 3d 768 (D. Md. 2014), which had upheld the FSA in all respects. *Id.* at *2, 26. In this case, the now-vacated panel decision was cited at pages 16 and 25 of the Memorandum of Attorney General in Support of Motion to Dismiss Amended Complaint (Dkt. 23) (“AG Mem.”), with a notation that rehearing had been granted.

Kolbe also rejected a claim that the “FSA’s ban on ‘copies’ of the assault weapons identified in [the Maryland law] is unconstitutionally vague on its face, in contravention of the Due Process Clause.” *Kolbe*, 2017 WL 679687, *25. The Court relied in part on an opinion by the Maryland Attorney General explaining the term “copies” as used in FSA. *Id.* As Attorney General Healey has explained, the Massachusetts Enforcement Notice is consistent with the Maryland guidance discussed approvingly in *Kolbe*. *See* AG Mem. at 16, 25.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL

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Date: February 27, 2017

CERTIFICATE OF SERVICE

I certify that this document filed through the CM/ECF system will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 27, 2017.

/s/ William W. Porter
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