

No. 19-55376

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

VIRGINIA DUNCAN, RICHARD LEWIS, PATRICK LOVETTE, DAVID  
MARGUGLIO, CHRISTOPHER WADDELL, AND CALIFORNIA RIFLE &  
PISTOL ASSOCIATION, INC., A CALIFORNIA CORPORATION,  
*Plaintiffs and Respondents,*

V.

XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF  
THE STATE OF CALIFORNIA,  
*Defendant and Appellant.*

---

**On Appeal from the United States District Court  
for the Southern District of California**  
No. 17-cv-1017-BEN-JLB  
The Honorable Roger T. Benitez, Judge

---

**APPELLANT'S EXCERPTS OF RECORD  
VOLUME EIGHT**

---

XAVIER BECERRA  
Attorney General of California  
THOMAS S. PATTERSON  
Senior Assistant Attorney General  
MARK R. BECKINGTON  
Supervising Deputy Attorney General

JOHN D. ECHEVERRIA  
Deputy Attorney General  
State Bar No. 268843  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 269-6249  
Fax: (213) 897-5775  
Email: John.Echeverria@doj.ca.gov  
*Attorneys for Defendant-Appellant  
Xavier Becerra*

July 15, 2019

---

**TABLE OF CONTENTS**

<b><u>Filing Date</u></b>	<b><u>Document Description</u></b>	<b><u>Pages</u></b>
<b><u>VOLUME I</u></b>		
4/4/19	Notice of Appeal (Docket No. 96)	1-6
3/29/19	Judgment in a Civil Case (Docket No. 88)	7
3/29/19	Order Granting Plaintiffs' Motion for Summary Judgment, Declaring California Penal Code § 32310 Unconstitutional and Enjoining Enforcement (Docket No. 87)	8-93
5/22/18	Transcript of Hearing on Motion for Summary Judgment (Docket No. 61)	94-218
<b><u>VOLUME II</u></b>		
4/4/19	Order Staying in Part Judgment Pending Appeal (Docket No. 97)	219-224
4/3/19	Declaration of Anna M. Barvir (Docket No. 94-1)	225-236
4/3/19	Declaration of Charles David Wylie, Jr. (Docket No. 94-2)	237-239
4/1/19	Defendant's Ex Parte Application to Stay Judgement Pending Appeal (Docket No. 89)	240-242
4/1/19	Declaration of John D. Echeverria in Support of Defendant's Ex Parte Application to Stay Judgment Pending Appeal (Docket No. 89-2)	243-249
4/9/18	Declaration of Blake Graham in Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment (Docket No. 53-2)	250-258

**TABLE OF CONTENTS**

<b><u>Filing Date</u></b>	<b><u>Document Description</u></b>	<b><u>Pages</u></b>
4/9/18	Declaration of Ken James in Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment (Docket No. 53-3)	259-266
4/9/18	Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment (Docket No. 53-4)	267-279
	Exhibit 1 to the Declaration of John D. Echeverria: Expert Report of Lucy P. Allen (Docket No. 53-4)	280-311
	Exhibit 2 to the Declaration of John D. Echeverria: Expert Rebuttal Report of John J. Donohue (Docket No. 53-4)	312-349
	Exhibit 3 to the Declaration of John D. Echeverria: Revised Expert Report of Dr. Louis Klarevas (Docket No. 53-4)	250-396
	Exhibit 4 to the Declaration of John D. Echeverria: Expert Report of Dr. Christopher S. Koper (Docket No. 53-5)	397-504

**VOLUME III**

4/9/18	Continued Exhibit 4 to the Declaration of John D. Echeverria: Expert Report of Dr. Christopher S. Koper (Docket No. 53-5)	505-708
	Exhibit 5 to the Declaration of John D. Echeverria: Excerpts of Transcript of Deposition of Stephen Helsley (Docket No. 53-5)	709-717
	Exhibit 6 to the Declaration of John D. Echeverria: Excerpts of Transcript of Deposition of Blake Graham (Docket No. 53-5)	718-723

## **TABLE OF CONTENTS**

<b><u>Filing Date</u></b>	<b><u>Document Description</u></b>	<b><u>Pages</u></b>
	Exhibit 7 to the Declaration of John D. Echeverria: Excerpts of Transcript of Deposition of Carlisle Moody (Docket No. 53-6)	724-732
	Exhibit 8 to the Declaration of John D. Echeverria: Excerpts of Transcript of Deposition of Gary Kleck (Docket No. 53-6)	733-739
	Exhibit 9 to the Declaration of John D. Echeverria: Excerpts of Transcript of Deposition of Christopher S. Koper, Ph.D. (Docket No. 53-6)	740-745
	Exhibit 10 to the Declaration of John D. Echeverria: Excerpts of Transcript of Deposition of Lucy P. Allen (Docket No. 53-6)	746-760
	Exhibit 11 to the Declaration of John D. Echeverria: Excerpts of Transcript of Deposition of Louis Klarevas (Docket No. 53-6)	761-771
	Exhibit 12 to the Declaration of John D. Echeverria: Dep't of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, <i>Report and Recommendation on the Importability of Certain Semiautomatic Rifles</i> (1989) (Docket No. 53-7)	772-790

## **VOLUME IV**

4/9/18	Exhibit 13 to the Declaration of John D. Echeverria: Dep't of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, <i>Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles</i> (1998) (Docket No. 53-7)	791-916
	Exhibit 14 to the Declaration of John D. Echeverria: Assemb. Floor Analysis of S.B. 1446 (2015-2016 Reg. Sess.) (Docket No. 53-7)	917-919



## TABLE OF CONTENTS

<u>Filing Date</u>	<u>Document Description</u>	<u>Pages</u>
	Exhibit 15 to the Declaration of John D. Echeverria: Prepared Testimony by Laurence H. Tribe, <i>Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights, S. Comm. on the Judiciary</i> (Feb. 12, 2013) (Docket No. 53-7)	920-955
	Exhibit 16 to the Declaration of John D. Echeverria: Mark Follman, et al., <i>U.S. Mass Shootings, 1982- 2018: Data from Mother Jones' Investigation</i> , Mother Jones (2018) (Docket No. 53-8)	956-969
	Exhibit 17 to the Declaration of John D. Echeverria: Mayors Against Illegal Guns, <i>Analysis of Recent Mass Shootings</i> (2013) (Docket No. 53-8)	970-1004
	Exhibit 18 to the Declaration of John D. Echeverria: Declaration of Professor Daniel W. Webster in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction (Originally Filed as Docket No. 15) (Docket No. 53-8)	1005-1023
	Exhibit 19 to the Declaration of John D. Echeverria: Larry Buchanan, et al., <i>Nine Rounds a Second: How the Las Vegas Gunman Outfitted a Rifle to Fire Faster</i> , N.Y. Times, Oct. 5, 2017 (Docket No. 53-8)	1024-1027
	Exhibit 20 to the Declaration of John D. Echeverria: Violence Policy Center, <i>High-Capacity Ammunition Magazines are the Common Thread Running Through Most Mass Shootings in the United States</i> (2018) (Docket No. 53-9)	1028-1036

## TABLE OF CONTENTS

<u>Filing Date</u>	<u>Document Description</u>	<u>Pages</u>
	Exhibit 21 to the Declaration of John D. Echeverria: Alex Yablon, <i>Bans on High-Capacity Magazines, Not Assault Rifles, Most Likely to Limit Shooting Carnage</i> , The Trace, June 13, 2016 (Docket No. 53-9)	1037-1039

## VOLUME V

4/9/18	Exhibit 22 to the Declaration of John D. Echeverria: Stephen J. Sedensky III, State of Conn., Div. of Crim. Just., Report of the State's Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 14, 2012 (2013) (Docket No. 53-9)	1040-1087
	Exhibit 24 to the Declaration of John D. Echeverria: Excerpts from Louis Klarevas, <i>Rampage Nation: Securing America from Mass Shootings</i> (2016) (Docket No. 53-10)	1088-1117
	Exhibit 25 to the Declaration of John D. Echeverria: Excerpts from Robert J. Spitzer, <i>Gun Law History in the United States and Second Amendment Rights</i> , 80 Law & Contemporary Problems 55 (2017) (Docket No. 53-10)	1118-1122
	Exhibit 26 to the Declaration of John D. Echeverria: H.R. Rep. No. 103-489 (1994) (Docket No. 53-10)	1123-1198
	Exhibit 27 to the Declaration of John D. Echeverria: The Safety for All Act of 2016, 2016 Cal. Legis. Serv. Proposition 63 (West) (Docket No. 53-10)	1199-1227

## TABLE OF CONTENTS

<u>Filing Date</u>	<u>Document Description</u>	<u>Pages</u>
<b><u>VOLUME VI</u></b>		
4/9/18	Exhibit 28 to the Declaration of John D. Echeverria: Sandy Hook Advisory Comm’n, Final Report of the Sandy Hook Advisory Commission (2015) (Docket No. 53-10)	1228-1504
	Exhibit 29 to the Declaration of John D. Echeverria: <i>LAPD Chief Backs Ban on Some Ammo Magazines</i> , NBC So. Cal. (Docket No. 53-11)	1505-1508
<b><u>VOLUME VII</u></b>		
4/9/18	Exhibit 30 to the Declaration of John D. Echeverria: C. S. Koper & D. C. Reedy, <i>Impact of Handgun Types on Gun Assault Outcomes: A Comparison of Gun Assaults Involving Semiautomatic Pistols and Revolvers</i> , 9 Injury Prevention 151 (2003) (Docket No. 53-11)	1509-1513
	Exhibit 31 to the Declaration of John D. Echeverria: Brady Center to Prevent Gun Violence, <i>Assault Weapons: ‘Mass Produced Mayhem’</i> (2008) (Docket No. 53-11)	1514-1576
	Exhibit 32 to the Declaration of John D. Echeverria: Testimony of Brian J. Siebel, Senior Attorney, Brady Ctr. to Prevent Gun Violence, Before the Council of the District of Columbia (Oct. 1, 2008) (Docket No. 53-11)	1577-1583
	Exhibit 33 to the Declaration of John D. Echeverria: Christopher S. Koper et al., <i>Gunshot Victimisations Resulting from High-Volume Gunfire Incidents in Minneapolis: Findings and Policy Implications</i> , Injury Prevention (Feb. 24, 2018) (Docket No. 53-11)	1584-1587

## TABLE OF CONTENTS

<u>Filing Date</u>	<u>Document Description</u>	<u>Pages</u>
	Exhibit 34 to the Declaration of John D. Echeverria: Nat. Law Enforcement P'ship to Prevent Gun Violence, Protecting Communities from Assault Weapons and High-capacity Ammunition Magazines (2017) (Docket No. 53-12)	1588-1591
	Exhibit 35 to the Declaration of John D. Echeverria: Declaration of San Francisco Police Department Officer Joseph Emanuel in Support of Plaintiff's Ex Parte Application for Order to Show Cause Re: Preliminary Injunction, <i>People v. Badger Mountain Supply</i> , No. CGC-17-557010 (S.F. Super. Feb. 21, 2017) (Docket No. 53-12)	1592-1610
	Exhibit 36 to the Declaration of John D. Echeverria: Declaration of Detective Michael Mersereau of the Los Angeles Police Department in Support of Amici Curiae the City and County of San Francisco, the City of Los Angeles, and the City of Sunnyvale, <i>Duncan v. Becerra</i> , No. 17- 56081 (9th Cir. Oct. 19, 2017) (Docket No. 53-12)	1611-1619
	Exhibit 37 to the Declaration of John D. Echeverria: Mark Follman, et al., <i>A Guide to Mass Shootings in America</i> , Mother Jones (last updated Mar. 10, 2018, 9:00 a.m.) (Docket No. 53-12)	1620-1623
	Exhibit 38 to the Declaration of John D. Echeverria: David S. Fallis & James V. Grimaldi, <i>Va. Data Show Drop in Criminal Firepower During Assault Gun Ban</i> , Wash. Post (Jan. 23, 2011) (Docket No. 53-12)	1624-1627
	Exhibit 39 to the Declaration of John D. Echeverria: David S. Fallis, <i>Data Indicate Drop in High-Capacity Magazines During Federal Gun Ban</i> , Wash. Post (Jan. 10, 2013) (Docket No. 53-12)	1628-1631

## TABLE OF CONTENTS

<u>Filing Date</u>	<u>Document Description</u>	<u>Pages</u>
	Exhibit 40 to the Declaration of John D. Echeverria: Excerpts of Gary Kleck, Point Blank: Guns and Violence in America (1991) (Docket No. 53-12)	1632-1640
	Exhibit 41 to the Declaration of John D. Echeverria: Claude Werner, The Armed Citizen - Analysis of Five Years of Armed Encounters, GunsSaveLives.com (Mar. 12, 2012) (Docket No. 53- 12)	1641-1647
	Exhibit 42 to the Declaration of John D. Echeverria: California Voter Information Guide, Firearms. Ammunition Sales. Initiative Statute. California Proposition 63 (2016) (Docket No. 53-12)	1648-1670
	Exhibit 43 to the Declaration of John D. Echeverria: Larry Buchanan, et al., <i>How They Got Their Guns</i> , N.Y. Times, Nov. 5, 2017 (Docket No. 53-12)	1671-1678
3/5/18	Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment (Docket No. 50-8)	1679-1696
	Exhibit 1 to the Declaration of Anna M Barvir: Expert Report of James Curcuruto (Docket No. 50-8)	1697-1703
	Exhibit 2 to the Declaration of Anna M Barvir: Expert Report of Stephen Helsley (Docket No. 50-8)	1704-1713
	Exhibit 3 to the Declaration of Anna M Barvir: Expert Report of Gary Kleck (Docket No. 50-8)	1714-1776

**TABLE OF CONTENTS**

<b><u>Filing Date</u></b>	<b><u>Document Description</u></b>	<b><u>Pages</u></b>
<b><u>VOLUME VIII</u></b>		
3/5/18	Exhibit 4 to the Declaration of Anna M Barvir: Expert Rebuttal Report of Carlisle Moody (Docket No. 50-8)	1777-1800
	Exhibit 12 to the Declaration of Anna M Barvir: David B. Kopel, <i>The History of Firearm Magazines and Magazine Prohibitions</i> , 78 Albany L. Rev. 849 (2015) (Docket No. 50-10)	1801-1840
3/5/18	Exhibit 69 to Plaintiffs' Request for Judicial Notice: Act of June 2, 1927, No. 372, § 3, 1927 Mich. Pub. Acts 888 (Docket No. 50-2)	1841-1847
	Exhibit 70 to Plaintiffs' Request for Judicial Notice: Act of Apr. 22, 1927, ch. 1052, §§ 1, 4, 1927 R.I. Acts & Resolves 256, 256-57 (Docket No. 50-2)	1848-1849
	Exhibit 71 to Plaintiffs' Request for Judicial Notice: Act of Apr. 6, 1933, No. 166, sec. 1, §§ 12819-3, -4, 1933 Ohio Laws 189, 189 (Docket No. 50-2)	1850
	Exhibit 78 to Plaintiffs' Request for Judicial Notice: Act of July 8, 1932, Pub. L. No. 72-275, §§ 1, 8, 47 Stat. 650 (Docket No. 50-2)	1851-1855
	Exhibit 79 to Plaintiffs' Request for Judicial Notice: Colo. Rev. Stat. §§ 18-12-301–302 (Docket No. 50-2)	1856-1857
	Exhibit 80 to Plaintiffs' Request for Judicial Notice: Conn. Gen. Stat. § 53-202w (Docket No. 50-2)	1858-1860
	Exhibit 81 to Plaintiffs' Request for Judicial Notice: D.C. Code § 7-2506.01(b) (Docket No. 50-2)	1861-1862

**TABLE OF CONTENTS**

<b><u>Filing Date</u></b>	<b><u>Document Description</u></b>	<b><u>Pages</u></b>
	Exhibit 82 to Plaintiffs' Request for Judicial Notice: Haw. Rev. Stat. § 134-8(c) (Docket No. 50-2)	1863-1864
	Exhibit 83 to Plaintiffs' Request for Judicial Notice: Md. Code, Crim. Law § 4-305(b) (Docket No. 50-2)	1865-1866
	Exhibit 84 to Plaintiffs' Request for Judicial Notice: Mass. Gen. Laws ch. 140, §§ 121, 131(a) (Docket No. 50-2)	1867-1878
	Exhibit 85 to Plaintiffs' Request for Judicial Notice: N.J. Stat. § 2C:39-1y, -3j, -9h (Docket No. 50-2)	1879-1886
	Exhibit 86 to Plaintiffs' Request for Judicial Notice: N.Y. Penal Law §§ 265.00, 265.36 (Docket No. 50-2)	1887-1908
6/5/17	Exhibit 18 to the Declaration of Alexandra Robert Gordon in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction: Department of Justice Finding of Emergency (Docket No. 18)	1909-1914
	Exhibit 22 to the Declaration of Alexandra Robert Gordon in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction: Amended Notice of Withdrawal (Docket No. 18)	1915
	Exhibit 24 to the Declaration of Alexandra Robert Gordon in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction: Letter in Opposition to Proposed Emergency Regulations (Docket No. 18)	1916-1928
6/12/17	Answer (Docket No. 25)	1929-1942

## TABLE OF CONTENTS

<b><u>Filing Date</u></b>	<b><u>Document Description</u></b>	<b><u>Pages</u></b>
5/17/17	Complaint (Docket No. 1)	1943-1965
5/22/19	Docket Report, Case No. 3:17-cv-01017-BEN-JLB	1966-1977



**Expert Witness Rebuttal of Dr. Carlisle E. Moody**

*Duncan, et al. v. Becerra, et al.*

United States District Court (S.D. Cal.)

Case No: 3:17-cv-01017-BEN-JLB

November 3, 2017

**I. INTRODUCTION**

I am Dr. Carlisle E. Moody, Professor of Economics at the College of William & Mary. Counsel for plaintiffs in *Duncan v. Becerra* (S.D. Cal. Case No. 3:17-cv-01017-BEN-JLB) have asked me to offer a rebuttal opinion regarding this case. This report sets forth my qualifications, opinions, and scholarly foundation for those opinions.

**II. BACKGROUND & QUALIFICATIONS**

I am a Professor of Economics at the College of William and Mary in Virginia. I graduated from Colby College in 1965 with a major in Economics. I received my graduate training from the University of Connecticut, earning a Master of Economics degree in 1966 and a Ph.D. in Economics in 1970, with fields in mathematical economics and econometrics.

I began my academic career in 1968 as Lecturer in Econometrics at the University of Leeds, Leeds, England. In 1970 I joined the Economics Department at William and Mary as an Assistant Professor, I was promoted to Associate Professor in 1975 and to full Professor in 1989. I was Chair of the Economics Department from 1997-2003. I am still teaching full time at William and Mary. I teach undergraduate and graduate courses in Econometrics, Mathematical Economics, and Time Series Analysis.

I have published over 40 refereed journal articles and several articles in law journals and elsewhere. Nearly all these articles analyze government policies of various sorts. I have been doing research in guns, crime, and gun policy since 2000. I have published 11 articles directly related to guns and gun policy.

I have also consulted for a variety of private and public entities, including the United States Department of Energy, U.S. General Accountability Office, Washington Consulting Group, Decision Analysis Corporation of Virginia, SAIC Corporation, and the Independence Institute.

A full list of my qualifications, as well as a list of my publications, is attached hereto as **Exhibit 1**.

In the past four years, I have written expert reports, been deposed, or testified at trial in the following matters:

1

Exhibit 4  
00104

**ER001777**

- *Cooke v. Hickenlooper*, U.S. Dist. Ct., Dist. of Colo., Oct. 25, 2013 (submitted expert report, not deposited, did not testify);
- *Rocky Mountain Gun Owners v. Hickenlooper*, Dist. Ct., City and County of Denver, Case No. 2013-CV-33897, May 1, 2017 (testified).
- *William Wiese, et al v. Becerra*, U.S. Dist. Ct., E. Dist. of Cal., Case No. 2:17-cv-00903-WBS-KJN, April 28, 2017 (submitted expert report, not deposited, did not testify)

### III. COMPENSATION

I am being compensated for my time in this case at an hourly rate of \$250 per hour. My compensation is not contingent on the results of my analysis or the substance of my testimony.

### IV. ASSIGNMENT

Plaintiffs' counsel has asked me to provide an opinion in response to the opinions presented in the expert reports submitted by Attorney General Xavier Becerra—specifically those of Dr. Louis Klarevas and Dr. Christopher S. Koper.

### V. SUMMARY OF OPINIONS

The defense's experts posit that magazines over ten rounds increase the number of shots fired in mass shooting incidents and other violent crimes leading to more deaths and injuries. The conclusion they come to is that a ban on such magazines has the potential to reduce deaths and injuries sustained in such events. The defense's experts, however, provide no relevant evidence showing that California's ban would reduce deaths or injuries.

Koper presents evidence concerning the federal weapons ban in effect from 1994-2004, a nationwide ban on (among other things) magazines over ten rounds. His opinion regarding the effectiveness of that ban is largely irrelevant here because the challenged law is limited to California. Koper presents no evidence at all concerning the effectiveness of California's magazine ban, specifically, or statewide bans, more generally.

Klarevas presents some weak evidence that states with magazine bans have had fewer incidents of mass shootings and fewer people killed in mass shootings than states without such bans. He does not present any evidence that the California ban has had any effect, thereby rendering his report irrelevant.

It is my professional opinion, based on my training in economics, econometrics, and policy analysis, my expertise relevant to gun policy, including



bans on “large capacity magazines,”<sup>1</sup> as well as my review and analysis of the relevant data that: (1) California’s current ban on acquiring magazines over ten rounds<sup>2</sup> has not had any statistically significant impact on violent crime, including mass shootings, in California; (2) legally possessed magazines over ten rounds (i.e., those that were “grandfathered in” after the state banned acquisition) are not commonly used in mass shootings in California; and (3) bans on such magazines have no effect on violent crime, as illustrated by the results of the Washington Post study of firearms recovered by Virginia law enforcement.

In short, it is my expert opinion that California’s acquisition ban has not and will not, even when paired with a possession ban, result in any statistically significant reduction in the number or lethality of mass shooting incidents in California or violent crime rates in general.

## **VI. OPINIONS & ANALYSIS**

### **A. California’s LCM Acquisition Ban Has Had No Statistically Significant Impact on Violent Crime in California**

#### **1. A Primer on Policy Analysis Using Regression Models<sup>3</sup>**

A regression model estimates the possible linear relationship between the dependent (outcome) variable, say the California murder rate, and a set of explanatory variables such as the 1994 assault weapon ban and the California LCM ban. The law variables are so-called “dummy” variables which equal one in those years the law was in effect, zero otherwise. I also include a trend consisting of the numbers 1,2,3, etc. for the years in the sample. The coefficient on the trend shows by how much the murder rate changes each year due to all other factors that affect the murder rate aside from the variables included in the regression model. These

---

<sup>1</sup> California law defines a “large capacity magazine” as, with limited exceptions, “any ammunition feeding device with the capacity to accept more than 10 rounds.” Cal. Penal Code § 16740. I understand that this is not a universally accepted definition. But, for ease of reference, I refer to magazines over ten rounds as “large capacity magazines” or “LCMs” throughout this report.

<sup>2</sup> It is my understanding, and I have assumed for purposes of this study, that California has prohibited the manufacture, importation, sale, giving, lending, buying, and receiving of magazines over ten rounds since the enactment of Senate Bill 23 (“SB 23”), which is codified at California Penal Code section 32310(a) and took effect on January 1, 2000. I refer to this prohibition as California’s “acquisition ban” throughout this report.

<sup>3</sup> Readers who are familiar with statistical methodology applied to policy analysis can skip this section.

factors include changes in trauma treatment that turn potential murders into assaults, the advent of 911 calls, cell phones, DNA, the national fingerprint directory, ubiquitous security cameras, smartphones with cameras, body cameras on police officers, etc. etc. If the trend is omitted, these influences on crime which are separate and distinct from the effect of any law, will be incorrectly attributed to the LCM ban. I also include a dummy variable for the years 1994-2004 to estimate the effect of the national LCM ban due to the Federal assault weapon ban. If that variable is omitted, the effect of the national ban is incorrectly attributed to the state ban. I also include some variables that are routinely included in almost any crime model: the proportion of the population between 15 and 29, the unemployment rate, income per capita, and a dummy variable for the years of the crack epidemic, 1984-1991.

The coefficient on the California LCM acquisition ban variable estimates the change in the dependent variable, e.g., the murder rate, due to the implementation of the acquisition ban, holding constant the effects of the national ban, the effects of the factors captured by the trend, and the effects of the crack epidemic, income, and unemployment. If the California acquisition ban has been effective in reducing murder, we would expect a negative and significant coefficient on the LCM ban dummy variable indicating a reduction in murder as a result of the ban.

Even if an estimated coefficient is negative, it does not mean the law necessarily had a beneficial effect. If the law had no effect, the coefficient on the law dummy variable could be negative just by chance. In fact, we would expect it to be negative 50 percent of the time. How do we know when an estimated coefficient is significantly different from zero? Answer: when it is so far from zero that we can conclude beyond a reasonable doubt that it is not zero.

A significance test is used for this. Tests for significance are made up of two hypotheses: the null hypothesis (that the law had no effect or equivalently the coefficient is actually zero) and the alternative hypothesis that the law did have an effect (that the coefficient is truly nonzero). We construct a t-statistic consisting of the estimated coefficient divided by its standard deviation (standard deviations are called "standard errors" in the context of a regression coefficient). The larger the value of the estimated coefficient, the more likely that it is not zero. However, given the standard deviation, we would expect some variation around zero even if the true value is zero (i.e., the null hypothesis is true). If the estimated coefficient is distributed according to the normal distribution (the famous bell curve), which is the usual assumption, then it would be quite unusual for an estimated coefficient to be twice as large as its standard error. How unusual? It would only happen 5% of the time if the true value of the coefficient was zero. Therefore, we reject the null hypothesis that the California acquisition ban had no effect if the t-statistic is greater than two.

The usual standard for significance is the 5 percent level, where there is only a five percent chance of a t-statistic that large if in fact the law had no effect on the



murder rate. This is the statistical equivalent of a “reasonable doubt.” Sometimes researchers use the 10 percent level, which is considered “marginally significant.” I do not use this criterion. Whether the coefficient is significant can be seen by examining the “p-value”, which indicates the probability of rejecting the null hypothesis, given the t-statistic. If the p-value is less than .05 there is a smaller than 5% probability that we could have estimated a coefficient this large if it is truly zero (implying significance). If the t-statistic has a p-value greater than .05, then we cannot reject the null hypothesis that there is no relationship between the explanatory variable and the dependent variable.

Since the data for California from 1977 to 2017 is a time series, we have to consider the possibility that the continuous variables (violent crime rate, murder rate, firearm homicide rate) are so-called “random walks.” If they are random walks, then the regression must be done in first differences:  $Dx(t) = x(t) - x(t-1)$ . There are tests for random walks, called “unit root” tests, the most powerful of which is the DFGLS test, which I used to test whether to use first differences.<sup>4</sup> It turns out that all three of the California crime series are random walks, so I report the results of the regressions in first differences. However, in the Appendix below, I report all the results, including the results of estimating the regressions in levels instead of first differences.<sup>5</sup> Note that the effect of the trend is captured by the constant (intercept) in the first difference regression.

In the following tables, the outcome variable is listed first, then names of the independent variables, the corresponding estimated coefficients, t-statistics, and p-values. For convenience, p-values less than .05 are indicated with an asterisk. For the California acquisition ban to have been successful in saving lives, the coefficient on the variable called “LCM ban” must be negative with a p-value less than .05 (or with an asterisk).<sup>6</sup>

---

<sup>4</sup> Graham Elliot, Thomas J. Rothenberg & James H. Stock, *Efficient Tests for an Autoregressive Unit Root*, 64 *Econometrica* 813-836 (July 1996), available at <https://ideas.repec.org/a/ecm/emetrp/v64y1996i4p813-36.html>.

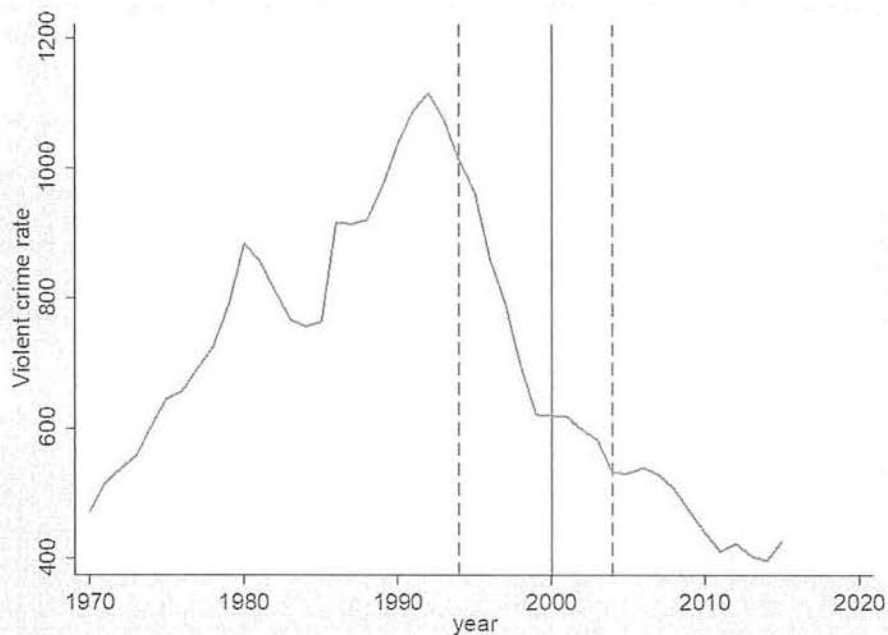
<sup>5</sup> I also test for serial correlation. There is no significant serial correlation in any of my regressions.

<sup>6</sup> For count data like the number of people killed in mass shootings, the number of incidents of mass shootings, and the number of police officers killed in the line of duty, the data is not distributed normally. For these data, I use the negative binomial model, a generalization of the Poisson model. The negative binomial is the standard model for count data.

## 2. California's Violent Crime Rate

The California violent crime rate is shown in Figure 1. The dotted vertical lines correspond to the years of the federal assault weapons ban and corresponding national LCM ban. The single solid vertical line corresponds to the California LCM acquisition ban. If the California acquisition ban successfully reduces violent crime, we should see a discontinuity (also called a “break”) at or after the solid vertical line.

Figure 1: Violent crime rate, California, 1970-2015



Crime was generally rising until 1991, the last year of the crack epidemic, then generally declining. The downturn came before the federal LCM ban, so it is unlikely to have been caused by the national ban. There is no break at or after 2000, the downward trend just continues. We test these observations in Table 1 below. The violent crime rate includes murders and assaults, including gun assaults. If the California acquisition ban has been successful in reducing violent crime, it will have a negative and significant coefficient in Table 1 below.

Table 1: Violent crime rate, California, 1970-2015

Outcome	Variable	Coefficient	T-ratio	P-value
Violent crime rate	LCM ban	44.844	0.95	0.35

Federal assault weapons ban	-31.547	-1.00	0.32
Percent population 15-29	8.984	0.43	0.67
Crack epidemic 1984-1991	2.645	0.08	0.94
Income per capita	-1.000	-0.04	0.97
Unemployment rate	-2.653	-0.33	0.75
Violent crime rate, lagged	0.605	4.12*	0.00
Constant	-0.345	-0.04	0.97

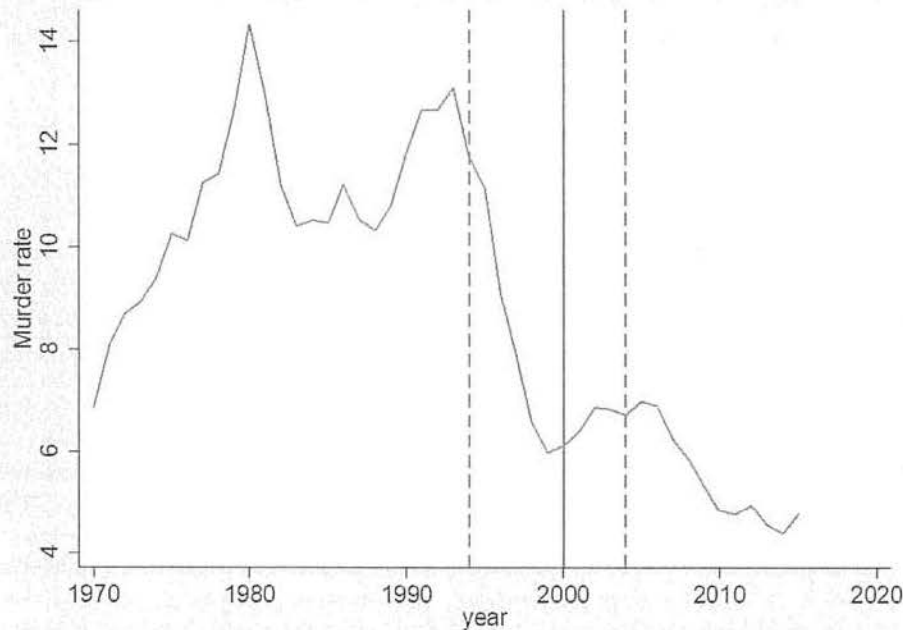
Notes: first differences, trend coefficient estimated by constant; \*  $p < 0.05$

Unfortunately, the coefficient on the California LCM ban dummy is neither negative nor significant. The federal ban dummy is also not significant. Neither the state nor the federal LCM ban had any significant effect on the violent crime rate.

### 3. California's Murder Rate

The murder rate in California for 1970-2015 is shown in Figure 2.

Figure 2: Murder rate, California, 1970-2015



The murder rate also begins to decline in 1991, before the federal LCM ban, it increases from 1999-2005, then generally declines for the next 10 years. The regression model is shown in Table 2 below.



Table 2: Murder rate, California, 1970-2015

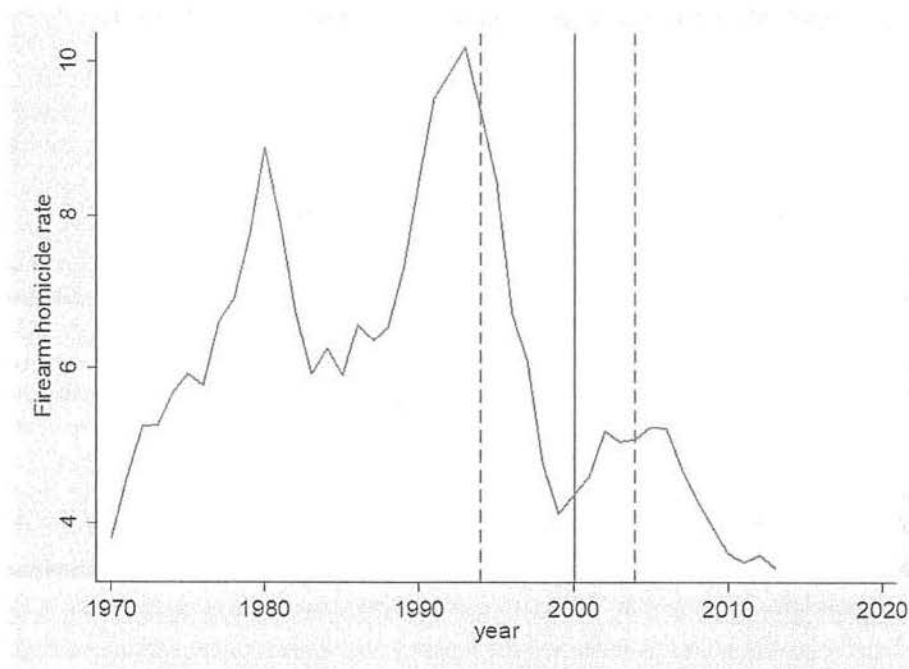
Outcome	Variable	Coefficient	T-ratio	P-value
Murder rate	LCM ban	0.586	0.73	0.47
	Federal assault weapons ban	-0.884	-1.61	0.12
	Percent population 15-29	0.225	0.60	0.55
	Crack epidemic 1984-1991	0.360	0.61	0.54
	Income per capita	-0.288	-0.64	0.52
	Unemployment rate	-0.056	-0.39	0.70
	Murder rate, lagged	0.452	2.97*	0.01
	Constant	0.047	0.31	0.76

Notes: first differences, trend coefficient estimated by constant; \*  $p < 0.05$ .

Again, the coefficient on the LCM ban is neither negative nor significant. The federal ban also had no significant effect.

#### 4. California Firearm Homicide Rate

The firearm homicide rate is more likely to be affected by a LCM ban than the violent crime rate or the overall murder rate. The firearm homicide rate in California for 1970-2015 is shown in Figure 3.

Figure 3: Firearm homicide rate, California, 1970-2015



The firearm homicide series follows the general murder rate very closely. As we see below, the results are the same.

Table 3: Firearm homicide rate, California, 1970-2015

Outcome	Variable	Coefficient	T-ratio	P-value
Firearm homicide rate	LCM ban	0.844	1.29	0.21
	Federal assault weapons ban	-0.606	-1.39	0.17
	Percent population 15-29	0.104	0.35	0.73
	Crack epidemic 1984-1991	0.472	0.99	0.33
	Income per capita	-0.355	-0.92	0.37
	Unemployment rate	-0.064	-0.56	0.58
	Firearm homicide rate, lagged	0.545	3.64*	0.00
	Constant	0.056	0.46	0.65

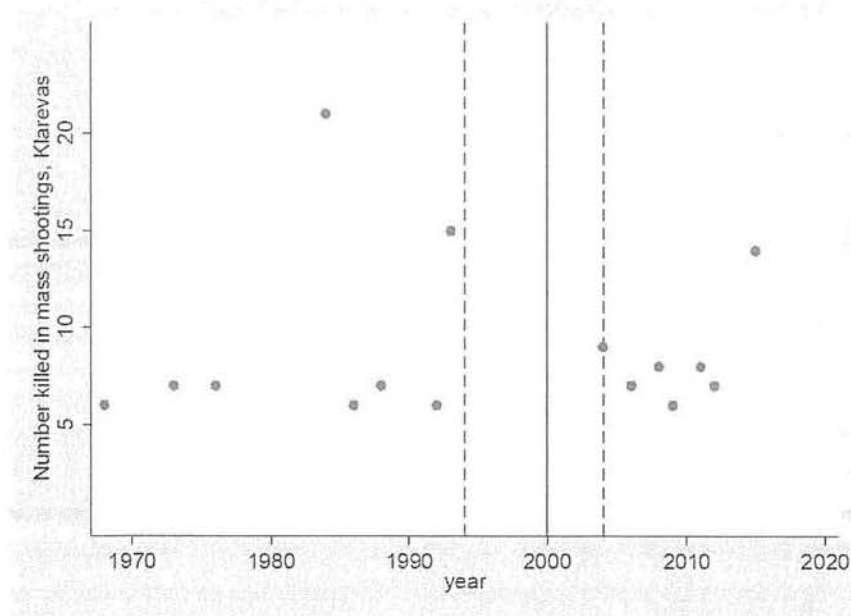
Notes: first differences, trend coefficient estimated by constant; \*  $p < 0.05$ .

There is no significant effect of either the state or the federal LCM ban on the gun homicide rate.

### 5. Number of People Killed in California Mass Shootings

The number of deaths due to mass shootings in California from 1968-2015, as pulled from the data presented by Klarevas, is shown in Figure 4.

Figure 4: Deaths due to mass shootings, California, 1968-2015 (Klarevas data)



The regression analysis is reported in Table 4 below.

Table 4: Mass shooting deaths, California, 1970-2015

Outcome	Variable	Coefficient	T-ratio	P-value
Mass shooting deaths	LCM ban	-2.025	-0.53	0.59
	Federal LCM ban	-0.914	-0.62	0.53
	Trend	-0.701	-1.60	0.11
	Percent population 15-29	-1.046	-1.41	0.16
	Crack epidemic 1984-1991	3.037	1.62	0.10
	Income per capita	3.232	1.52	0.13
	Unemployment rate	1.219	1.60	0.11
	Constant	-19.890	-0.78	0.43

Notes: negative binomial model, income and unemployment data start in 1970, data from Klarevas, \*  $p < 0.05$

There is no significant effect of either the federal or the state LCM ban on the number of mass shooting deaths in California.

## 6. Number of Mass Shootings in California

According to Klarevas, between 1968 and 1999 there were 9 incidents of mass shootings in California. Between 2000 and 2015, there were 7 incidents. The regression analysis is presented in Table 5 below.

Table 5: Incidents of mass shootings, California, 1970-2015

Outcome	Variable	Coefficient	T-ratio	P-value
Mass shooting incidents	LCM ban	-2.386	-1.16	0.25
	Federal LCM ban	-1.439	-1.07	0.29
	Trend	-0.235	-1.18	0.24
	Percent population 15-29	-0.380	-1.16	0.25
	Crack epidemic 1984-1991	0.491	0.50	0.61
	Income per capita	1.343	1.33	0.18
	Unemployment rate	0.409	1.42	0.15
	Constant	-11.043	-0.82	0.41

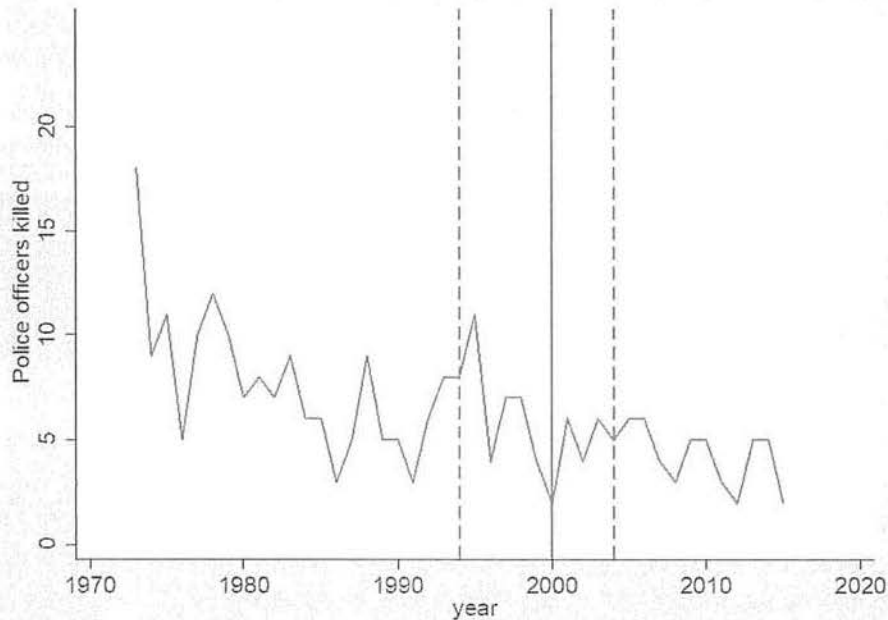
Notes: negative binomial model, income and unemployment data start in 1970, data from Klarevas, \*  $p < 0.05$

There is no significant effect of either the federal or the state LCM ban on the number of incidents of mass shootings in California.

## 7. Number of Police Officers Killed in the Line of Duty in California

Koper notes that assault weapons and LCMs are overrepresented in killings of police officers. The implication is that a ban would reduce the number of police officers killed. The data are shown in Figure 5.

Figure 5: Police officers killed in line of duty, California, 1973-2015



The number of officers killed has been declining since 1973. However, the mean before the California LCM ban is 7.5 while the mean after the ban is 4.3. The question is whether this difference is significant. The test is presented in Table 6 below.

Table 6: Police officers killed in the line of duty, California, 1973-2015

Outcome	Variable	Coefficient	T-ratio	P-value
Police officers killed	LCM ban	0.056	0.14	0.89
	Federal LCM ban	-0.232	-0.89	0.37
	Trend	-0.029	-0.69	0.49
	Percent population 15-29	-0.089	-1.23	0.22
	Crack epidemic 1984-1991	-0.405	-1.93	0.05
	Income per capita	-0.078	-0.35	0.72
	Unemployment rate	-0.033	-0.48	0.63



Constant	6.453	1.83	0.07
----------	-------	------	------

---

Notes: negative binomial model, \*  $p < 0.05$

Neither the state ban nor the national ban had any significant effect on the number of police officers killed in the line of duty in California.

## 8. Summary and Conclusions

From the statistical analysis of the effects of the state and federal LCM bans presented above, I conclude that the California LCM acquisition ban had no significant effect on violent crime, murder, firearm homicide, the number of people killed in mass shootings, the number of incidents of mass shootings, or the number of police officers killed in the line of duty.

Similarly, I find that the federal assault weapons law and its national LCM ban had no effect on the California violent crime rate, murder rate, gun murder rate, the number of people killed in mass shootings, the number of incidents of mass shootings, or the number of police officers killed in the line of duty.

### **B. Lawfully Possessed (or Grandfathered) Magazines Over Ten Rounds Are Not Commonly Used in Mass Shootings in California, So Banning Possession of Such Magazines Will Not Reduce the Number or Lethality of Such Incidents**

Until the enactment of California Penal Code section 32310(c), the law did not prohibit the possession of LCMs lawfully acquired before January 1, 2000. Therefore, an indeterminate but substantial number of gun owners in California have owned, and continued to own, what I refer to herein as “pre-acquisition-ban” or “grandfathered” LCMs.

Adding a possession ban to California’s current acquisition ban might be expected to save lives if it could be shown that grandfathered, pre-acquisition-ban LCMs are regularly used in mass shootings and can be shown to be responsible for death and injury of Californians. Since magazines over ten rounds in California cannot be legally manufactured, sold, transferred, or imported, the only harm they represent is their use by their lawful owner in criminal shootings.<sup>7</sup>

As an expert witness in another case (*Wiese v. Becerra*, E.D. Cal. No. 2:17-cv-00903-WBS-KJN), I conducted a comprehensive study of California mass

---

<sup>7</sup> This argument also requires the assumption that any possession ban would have an appreciable effect on the number of pre-acquisition-ban LCMs used in criminal shootings.

shooting incidents.<sup>8</sup> In doing so, I reviewed the [www.massshootingtracker.com](http://www.massshootingtracker.com) data set, which represents an exhaustive list of mass shooting incidents, as the site defines it.<sup>9</sup> From that data set, I found 185 incidents reported for California between January 1, 2013 and June 5, 2017.<sup>10</sup> Of these 185 cases, only three could be shown to involve the use of LCMs.<sup>11</sup> Between June 5 and October 30, 2017, there were 22 more mass shooting incidents in California as reported by [www.massshootingtracker.com](http://www.massshootingtracker.com).<sup>12</sup>

I also reviewed the mass shooting cases reported in Klarevas's *Rampage Nation*, covering the years 1966-2016,<sup>13</sup> as well as his declaration in this case which includes, in his Appendix B, mass shooting cases for the years 1968-2017.<sup>14</sup> Klarevas conveniently lists the presence of LCMs in those cases. In addition, I have reviewed the cases listed in the *Mother Jones* data set, which spans the years 1982-2017, and the Violence Policy Center mass shooting list.<sup>15</sup>

---

<sup>8</sup> Declaration of Carlisle E. Moody in Support of Plaintiffs' Motion for Issuance of a Temporary Restraining Order and Preliminary Injunction at 4, *Weise v. Becerra*, No. 2:17-cv-00903-WBS-KJN (June 10, 2017) ("Moody Declaration").

<sup>9</sup> Massshootingtracker.org defines mass shootings within its database as "a single outburst of violence in which four or more people are shot," including the perpetrator. Mass Shooting Tracker, [www.massshootingtracker.org](http://www.massshootingtracker.org) (last visited Oct. 25, 2017).

<sup>10</sup> Moody Declaration, *supra* note 8, at 5.

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

<sup>12</sup> Mass Shooting Tracker, <https://massshootingtracker.org/data> (last visited Oct. 30, 2017) ("MST Data").

<sup>13</sup> Louis Klarevas, *Rampage Nation: Securing America from Mass Shootings* 71-86 (2016).

<sup>14</sup> Expert Report of Dr. Louis Klarevas, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017) ("Klarevas Report").

<sup>15</sup> Mother Jones, *US Mass Shootings, 1982-2017: Data from Mother Jones' Investigation*, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/> (last updated Oct. 18, 2017); Violence Policy Center, *High-Capacity Ammunition Magazines Are the Common Thread Running Through Most Mass Shootings in the United States* (July 1, 2017), available at <http://gunviolence.issuelab.com/resource/high-capacity-ammunition-magazines->



From all these data, I have been presented with an accurate picture of the California mass shooting incidents since the acquisition ban took effect in 2000. I have determined that pre-acquisition-ban LCMs are simply not used in such incidents.

All the California mass shooting incidents involving LCMs since 2000 are discussed below.

**1. Analysis of [www.massshootingtracker.com](http://www.massshootingtracker.com) Data, 1/1/2013-6/5/2017**

**6/7/13 Santa Monica, CA:** 6 killed including shooter, 4 injured. The perpetrator used a .223 rifle which he assembled from parts. The parts were legally acquired, but the finished rifle was illegal. He was reported to have 40 LCMs with him during the incident. The recent construction of the gun and the age of the shooter (23) indicates that he did not use pre-acquisition-ban LCMs.<sup>16</sup> It is also unlikely that he stored 40 legal LCMs for over 13 years for a rifle that did not exist.

**11/3/13 LAX:** 1 killed, 4 injured including shooter. The perpetrator, armed with what police say was an assault rifle and carrying materials expressing anti-government sentiment, opened fire at Los Angeles International Airport. He killed one person before being chased down himself. He was reported to have used LCMs. However, at 23 he was too young to legally own pre-acquisition-ban LCMs. He was also living out of state before SB 23 was passed.<sup>17</sup>

**12/2/15 San Bernardino, CA:** 16 killed including both shooters, 22 injured. The perpetrators reportedly used LCMs. However, the shooters were children or living outside the country when SB 23 was passed. Also, an accomplice served as a

---

[are-the-common-thread-running-through-most-mass-shootings-in-the-united-states.html](#).

<sup>16</sup> Samantha Tata, *Santa Monica shooter Built Illegal Weapon After Govt Denied Him Firearm*, NBC Los Angeles (June 14, 2013), <http://www.nbclosangeles.com/news/local/Santa-Monica-Shooting-Police-News-Conference-Watch-Live-211492801.html>

<sup>17</sup> Greg Botelho & Michael Martinez, *FBI: 23-Year-Old L.A. Man Is Suspect in Airport Shooting that Kills TSA Officer*, CNN.com (Nov. 1, 2013), [http://www.cnn.com/2013/11/01/us/lax-gunfire/index.html?hpt=hp\\_t1](http://www.cnn.com/2013/11/01/us/lax-gunfire/index.html?hpt=hp_t1).

straw purchaser. The weapons were acquired in 2011 and 2012, long after the passage of SB 23.<sup>18</sup>

Of these three incidents, it is a reasonable inference that these incidents did not involve pre-acquisition-ban magazines given media reports involving: (1) the age of the shooter; (2) the illegal assembly of weapons; and/or (3) the illegal acquisition of weapons generally from out of state. And in these three incidents, the shooter would have ignored or flouted existing California law that already prohibits the manufacture or import of LCMs. It is therefore reasonable to infer that an additional ban on the possession of such firearm parts would not have further deterred or prevented the perpetrator from carrying out the shootings.

## 2. Analysis of [www.massshootingtracker.com](http://www.massshootingtracker.com) Data, 6/6/2017-10/30/2017

As of October 30, 2017, there have been 22 mass shootings in California since June 5, 2017, according to [www.massshootingtracker.com](http://www.massshootingtracker.com).<sup>19</sup> News reports mention LCMs in only one of these incidents:

**6/14/17 San Francisco, CA:** 4 killed including shooter, 2 injured. A United Parcel Service worker who killed three of his fellow delivery drivers and then himself in San Francisco used a MAC-10-style “assault pistol” with a 30-round magazine that had been stolen in Utah. He also carried a second handgun that had been stolen in Napa, but did not fire it. The shooter also had a black backpack with a box of bullets inside, which was recovered along with the guns.<sup>20</sup> The LCM used in this incident was illegally imported into California. It was not a pre-acquisition-ban LCM.

Of note is an incident from June 6, 2017, that left three dead and one injured in Fresno. There, the 30-year-old victim of a home invasion involving multiple attackers used an AR-15 rifle to defend himself.<sup>21</sup> Although such a weapon can

<sup>18</sup> Mike McIntire, *Weapons in San Bernardino Shootings Were Legally Obtained*, NY Times (Dec. 3, 2015), <https://www.nytimes.com/2015/12/04/us/weapons-in-san-bernardino-shootings-were-legally-obtained.html>

<sup>19</sup> MST Data, *supra* note 12.

<sup>20</sup> Vivian Ho, *UPS Shooter in San Francisco Used Stolen Gun with 30-round Magazine*, S.F. Gate (June 23, 2017), <http://www.sfgate.com/crime/article/UPS-shooter-in-San-Francisco-used-stolen-gun-with-11243414.php>.

<sup>21</sup> Jim Guy, *Gunfight at East-central Fresno Home Leaves Three Dead, One Wounded*, Fresno Bee (June 6, 2017), <http://www.fresnobee.com/news/local/article/154583549.html>.



accept an LCM, there is no mention of an LCM in the news reports and the owner would have been too young (13) to have purchased a legal LCM before January 1, 2000.

### 3. Analysis of Remaining Mass Shooting Incidents in California Since 2000

**1/30/2006 Goleta Postal Shooting, Goleta, CA:** 6 killed. Jennifer San Marco purchased the firearm, a 9 mm Smith & Wesson model 915 handgun equipped with a 15-round magazine, from a pawn shop in Grants, NM in 2005.<sup>22</sup> The magazine was then illegally imported into California. It was not a pre-acquisition-ban magazine.

**12/24/2008 Christmas Party Killings, Covina, CA:** 9 killed. Bruce Jeffrey Pardo, dressed as Santa Clause invaded a Christmas party at his former in-laws' house. He used four, 13-round capacity handguns and a homemade flamethrower. Police found five empty boxes for semiautomatic handguns at his house.<sup>23</sup> The empty boxes indicate that the pistols were probably newly acquired and were therefore not likely to be fitted with pre-acquisition-ban LCMs.

**1/27/2009 Los Angeles, CA:** 6 killed. Ervin Lupoe killed his wife and five children in their home and then killed himself. No LCMs were used.<sup>24</sup>

**3/21/2009 Oakland, CA:** 4 killed. Lovelle Mixon, 26, killed two motorcycle police officers with a semiautomatic handgun after a traffic stop, then fled to his sister's apartment where he had stored a SKS carbine. He killed two police officers with the carbine. Mixon was on parole after serving prison time for armed robbery, thereby in possession of firearms illegally. Although the SKS carbine can accept box magazines of any size, the standard configuration is a 10-round magazine.<sup>25</sup> In any case, Mixon was 16 years old in 1999, making it unlikely that he owned pre-acquisition-ban LCMs.

<sup>22</sup> Associated Press, *Postal Killer Believed She Was Target of a Plot*, NBCNews.com (Feb. 3, 2006), <http://www.nbcnews.com/id/11167920/#.WfE1fGhSyUk>.

<sup>23</sup> Wikipedia.com, *Covina Massacre* (last updated Oct. 29, 2017), [https://en.wikipedia.org/wiki/Covina\\_massacre](https://en.wikipedia.org/wiki/Covina_massacre).

<sup>24</sup> Klarevas Report, *supra* note 14, App. B at 3.

<sup>25</sup> Wikipedia.com, *SKS* (last updated Oct. 28, 2017), <https://en.wikipedia.org/wiki/SKS>.



**10/12/2011 Seal Beach Shootings, Seal Beach, CA:** 8 killed. Scott Dekraai invaded the Salon Meritage hair salon carrying two semiautomatic pistols and a revolver. No LCMs were used.<sup>26</sup>

**4/2/2012 Oikos University Killings, Oakland, CA:** 7 killed. One L. Goh opened fire on the campus of Oikos University using a semiautomatic handgun and four 10-round magazines. No LCMs were used.<sup>27</sup>

**2/20/2012 Alturas Tribal Shootings, Alturas, CA:** 4 killed. Cherie Rhodes opened fire during an eviction hearing at the Cederville Rancheria tribal headquarters. She was armed with a 9-mm handgun and a knife.<sup>28</sup> No LCMs were used.

**5/23/2014 Isla Vista Mass Murder, Isla Vista/Santa Barbara, CA:** 6 killed. Elliot Rodger, 22, used three handguns, all legally purchased in California, all with 10-round magazines. Another 41 loaded 10-round magazines were found with his body in his car. No LCMs were used.<sup>29</sup>

**4/18/2017 Fresno Downtown Shooting, Fresno, CA:** 3 killed. Kori Ali Muhammad, 39, opened fire walking along a street in downtown Fresno, killing three people randomly in an alleged hate crime prior to being apprehended by police. Over the span of about a minute, Muhammad fired 16 bullets from a .357-caliber revolver over several blocks, killing three white men at random, police said. When he was finally stopped by officers, he acknowledged he was a wanted man.<sup>30</sup> No LCMs were used.

---

<sup>26</sup> Klarevas Report, *supra* note 14, App. B at 3.

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

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

<sup>29</sup> Sossy Dombourian, Elisha Fieldstadt & Zoya Taylor, *California Gunman Still Had Hundreds of Rounds: Sheriff*, NBC News (May 24, 2014), <https://www.nbcnews.com/storyline/isla-vista-rampage/california-gunman-still-had-hundreds-rounds-sheriff-n113961>

<sup>30</sup> Matthew Haag, *Gunman, Thought to Be Targeting Whites, Kills 3 in Fresno, Police Say*, N.Y. Times (April 18, 2017), [https://www.nytimes.com/2017/04/18/us/fresno-shooting-rampage-kori-ali-muhammad.html?\\_r=0](https://www.nytimes.com/2017/04/18/us/fresno-shooting-rampage-kori-ali-muhammad.html?_r=0).

#### 4. Summary and Conclusions

Thus, after reviewing over 200 mass shooting incidents in California since January 1, 2000, I find that: (1) large capacity magazines were known to be used in only six cases and might have been used in two more; and (2) of the eight cases in which LCMs were, or could have been used, the characteristics of the shooter (age, residence, time of acquisition, etc.) make it extremely unlikely that pre-acquisition-ban LCMs were used in any of these incidents.

In summary, there is no evidence that legally possessed, pre-acquisition-ban LCMs were involved in any in mass shooting incident in California since 2000. It is thus my professional opinion that pre-acquisition-ban LCMs present no significant danger to the citizens of California and a possession ban would have no effect other than turning a large number of law-abiding citizens into criminals.

#### C. The Washington Post Report on LCMs Recovered by Law Enforcement in Virginia Does Not Show that the Federal Ban Had Any Effect on Murders or Gun Homicides

As Koper's expert report notes, in 2011 the Washington Post published the results of its study of a little-known database on weapons recovered by local law enforcement officers in Virginia.<sup>31</sup> The Criminal Firearms Clearinghouse, maintained by the Virginia State Police, contains detailed information regarding "all firearms seized, forfeited, found or otherwise coming into the possession of any state or local law-enforcement agency of the Commonwealth [of Virginia] which are believed to have been used in the commission of a crime."<sup>32</sup> It includes information on the circumstances of each firearm's recovery and each firearm's physical characteristics, including magazine capacity.

The Washington Post study found that, "[t]he number of guns with high-capacity magazines seized by Virginia police dropped during a decade-long federal prohibition on assault weapons, but the rate has rebounded sharply since the ban

<sup>31</sup> Expert Report of Dr. S. Christopher Koper at 18-19 & n.22, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017) ("Koper Report"); David S. Fallis & James V. Grimaldi, *Va. Data Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post (Jan. 23, 2011), available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html>.

<sup>32</sup> Virginia State Police, *Firearms Transaction Center (FTC)*, Crim. Jus. Info. Servs. (CJIS) Div. Newsletter 1, July 2013, available at [http://www.vsp.state.va.us/downloads/CJIS\\_Newsletters/CJIS-Newsletter-July-2013.pdf](http://www.vsp.state.va.us/downloads/CJIS_Newsletters/CJIS-Newsletter-July-2013.pdf).

was lifted in late 2004 . . . .”<sup>33</sup> This, according to Koper, implies that the federal ban was effective in reducing the number of LCMs used by criminals. “Maybe the federal ban was finally starting to make a dent in the market by the time it ended,” the Washington Post reported Koper as claiming.<sup>34</sup>

Garen Wintemute, head of the Violence Prevention Research Program at the University of California at Davis, was also quoted as saying “[t]he pattern in Virginia ‘may be a pivotal piece of evidence’ that the assault weapons ban eventually had an impact on the proliferation of high-capacity magazines on the streets.” He continued:

“Many people, me included, were skeptical about the chances that the magazine ban would make a difference back in 1994” . . . . “But what I am seeing here is that after a few years’ lag time the prevalence of high-capacity magazines was declining. The increase since the ban’s repeal is quite striking.”<sup>35</sup>

Wintemute’s comment about the “striking” increase of LCMs recovered in Virginia since the lapse of the federal ban is somewhat alarming. Did this “striking” increase in LCM use by criminals increase homicide in Virginia? The proportion of recovered firearms in the Criminal Firearms Clearinghouse with magazine capacity greater than 10 is shown in Figure 6 along with the corresponding murder and gun murder rate for Virginia from 1993 to 2013.<sup>36</sup>

---

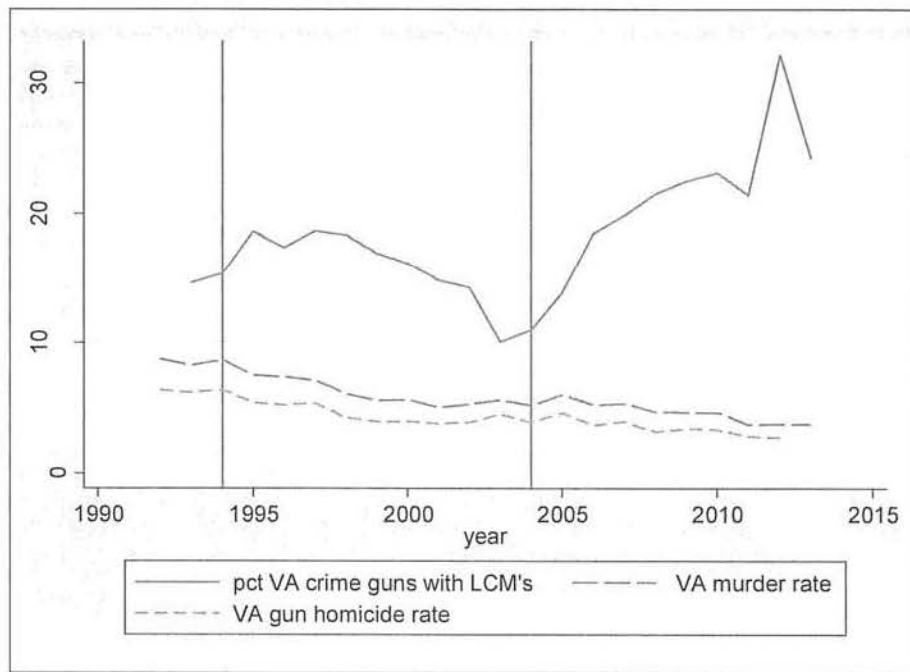
<sup>33</sup> Fallis, *supra* note 30, at 1.

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

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

<sup>36</sup> Murder data is taken from the Uniform Crime Reports. Gun homicide is taken from the CDC Wonder data base.



Figure 6: Proportion of crime guns with LCMs and homicide in Virginia

The proportion of crime guns with LCMs initially rose from 1994-1997, the first three years of the federal ban, then declined steadily to 2004, only to rise again after the ban was lifted. On the other hand, the murder rate and the gun homicide rate in Virginia have both declined steadily, revealing no apparent connection between gun homicides and the use of LCM's by criminals.

This observation can be tested by regressing the Virginia gun homicide rate and overall murder rate on the proportion of crime guns with LCMs and a trend term for 1993-2013. Because the time series could be a random walk, which could lead to a spurious regression, I also used first differences. The results are reported below.

Table 7: Proportion of crime guns with LCMs and homicide in Virginia

Variable	Percent LCM		Trend		Autocorrelation	
	Coeff	T-ratio	Coeff	T-ratio	Rho	T-ratio
Gun homicide rate	-0.109	-2.54**			0.713	5.15***
with trend	-0.008	-0.03	-0.151	-6.53***	0.417	1.78*

First differences	-0.027	-0.07	-0.158	-1.23	-0.552	-2.56**
Log gun homicide rate	-0.028	-3.03***			0.694	4.52***
with trend	-0.006	-1.03	-0.033	-6.86***	0.299	1.21
First differences	-0.006	-0.67	-0.037	-1.26	-0.593	-2.58**
Murder rate	-0.140	-2.48**			0.774	6.03***
with trend	-0.021	-0.67	-0.217	-8.49***	0.583	2.79**
First differences	-0.004	-0.12	-0.221	-1.83*	-0.411	-1.87*
Log murder rate	-0.027	-2.91***			0.744	4.96***
with trend	0.000	-0.06	-0.036	-8.86***	0.480	2.16**
First differences	0.006	0.10	-0.039	-1.84*	-0.459	-2.03*
Gun murders	-0.021	-3.03***				
with trend	-0.007	-1.20	-0.021	-4.73***		
Murders	-0.019	-2.78***				
with trend	-0.001	-0.16	-0.024	-6.33***		

Notes: \*\*\* significant at .01, \*\* significant at .05, \* significant at .10, two-tailed. Percent LCM is the proportion of Virginia crime guns with LCMs. In the first difference model, the trend is estimated by the intercept. Gun murders and murders are estimated using a negative binomial model. See Appendix 2 for details.

If I omit the trend, the estimated coefficient on the proportion of LCMs is negative and highly significant, reflecting the fact that crime in Virginia continued its decline while the proportion of crime guns with LCMs increased substantially.<sup>37</sup>

<sup>37</sup> Table 7 also reports the Breusch-Godfrey test for autocorrelation. The regressions in levels show significant positive serial correlation, except for the log of the gun homicide rate, indicating that the t-ratios are likely to be overstated in those cases. In first differences, the serial correlation is negative, indicating that the t-ratios are underestimated. We estimated the regression in both levels and first differences because unit root tests were inconclusive.

However, when I include the trend, which is negative and highly significant, the proportion of LCMs is never significant.

Using a negative binomial model, appropriate for count data, I also regressed the number of gun homicides and murders in Virginia on the LCM proportion and a trend. The results are the same. There is no relationship between the proportion of crime guns with LCMs and either the number of murders or the number of gun homicides. (See Appendix 2 for complete results.)

There is no relationship between the number of public shooting victims and the proportion of LCMs because Virginia had only one such event, the Virginia Tech shooting in 2007, in which the shooter used both standard- and large-capacity magazines holding 10 and 15 rounds.

I conclude that, using data from the Virginia Firearms Clearinghouse, which counts the number of confiscated crime guns with LCMs, I am unable to find any effect of LCMs or the LCM ban on murders or gun homicides. More criminals using more guns with LCMs apparently do not cause more homicides. LCMs appear to have nothing to do with homicide.

## VII. REFERENCES

Associated Press, *Postal Killer Believed She Was Target of a Plot*, NBCNews.com (Feb. 3, 2006), [http://www.nbcnews.com/id/11167920/#.WfE1\\_GhSyUk](http://www.nbcnews.com/id/11167920/#.WfE1_GhSyUk).

David S. Fallis & James V. Grimaldi, *Va. Date Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post (Jan. 23, 2011), available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html>.

Declaration of Carlisle E. Moody in Support of Plaintiffs' Motion for Issuance of a Temporary Restraining Order and Preliminary Injunction at 4, *Weise v. Becerra*, No. 2:17-cv-00903-WBS-KJN (June 10, 2017).

Expert Report of Dr. Christopher S. Koper, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017).

Expert Report of Dr. Louis Klarevas, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017).

Graham Elliot, Thomas J. Rothenberg & James H. Stock, *Efficient Tests for an Autoregressive Unit Root*, 64 *Econometrica* 813-836 (July 1996), available at <https://ideas.repec.org/a/ectm/emetrp/v64y1996i4p813-36.html>.



Greg Botelho & Michael Martinez, *FBI: 23-Year-Old L.A. Man Is Suspect in Airport Shooting that Kills TSA Officer*, CNN.com (Nov. 1, 2013), [http://www.cnn.com/2013/11/01/us/lax-gunfire/index.html?hpt=hp\\_t1](http://www.cnn.com/2013/11/01/us/lax-gunfire/index.html?hpt=hp_t1).

Jim Guy, *Gunfight at East-central Fresno Home Leaves Three Dead, One Wounded*, Fresno Bee (June 6, 2017), [http://www.fresnobee.com/news/local/article\\_154583549.html](http://www.fresnobee.com/news/local/article_154583549.html).

Louis Klarevas, *Rampage Nation: Securing America from Mass Shootings* (2016).

Mass Shooting Tracker, [www.massshootingtracker.org](http://www.massshootingtracker.org) (last visited Oct. 30, 2017).

Mass Shooting Tracker, <https://massshootingtracker.org/data> (last visited Oct. 30, 2017).

Matthew Haag, *Gunman, Thought to Be Targeting Whites, Kills 3 in Fresno*, Police Say, N.Y. Times (April 18, 2017), [https://www.nytimes.com/2017/04/18/us/fresno-shooting-rampage-kori-ali-muhammad.html?\\_r=0](https://www.nytimes.com/2017/04/18/us/fresno-shooting-rampage-kori-ali-muhammad.html?_r=0).

Mother Jones, *US Mass Shootings, 1982-2017: Data from Mother Jones' Investigation*, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/> (last updated Oct. 18, 2017).

Violence Policy Center, *High-Capacity Ammunition Magazines Are the Common Thread Running Through Most Mass Shootings in the United States* (July 1, 2017), available at <http://gunviolence.issuelab.com/resource/high-capacity-ammunition-magazines-are-the-common-thread-running-through-most-mass-shootings-in-the-united-states.html>.

Virginia State Police, *Firearms Transaction Center (FTC)*, Crim. Jus. Info. Servs. (CJIS) Div. Newsletter 1, July 2013, available at [http://www.vsp.state.va.us/downloads/CJIS\\_Newsletters/CJIS-Newsletter-July-2013.pdf](http://www.vsp.state.va.us/downloads/CJIS_Newsletters/CJIS-Newsletter-July-2013.pdf).

Vivian Ho, *UPS Shooter in San Francisco Used Stolen Gun with 30-round Magazine*, S.F. Gate (June 23, 2017), <http://www.sfgate.com/crime/article/UPS-shooter-in-San-Francisco-used-stolen-gun-with-11243414.php>.

Wikipedia.com, *Covina Massacre* (last updated Oct. 29, 2017), [https://en.wikipedia.org/wiki/Covina\\_massacre](https://en.wikipedia.org/wiki/Covina_massacre).

Wikipedia.com, *SKS* (last updated Oct. 28, 2017), <https://en.wikipedia.org/wiki/SKS>.

## VIII. APPENDIX AND ATTACHMENT

Attached as **Appendix 1** is a true and correct copy of the complete output of the Stata program used to generate the results reported in Section VI.A. above.

Attached as **Appendix 2** is a true and correct copy of the complete output of the Stata program used to generate the results reported in Section VI.C above.

Attached at **Exhibit 1** and made a part of this report is a copy of my curriculum vitae, including a list of all my published works from the last ten years.

## IX. CONCLUSION

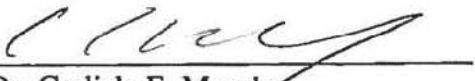
Based on the findings listed above, it is my opinion that the California acquisition ban on LCMs has had no significant effect on the California murder rate, gun homicide rate, the number of people killed in mass shootings, the number of incidents of mass shootings, or the number of police officers killed in the line of duty.

Similarly, I find that the federal assault weapons law and its national LCM ban had no effect on the California violent crime rate, murder rate, gun murder rate, the number of people killed in mass shootings, the number of incidents of mass shootings, or the number of police officers killed in the line of duty.

The ineffectiveness of the acquisition ban is not due to the fact that possession of LCMs was not prohibited. A comprehensive examination of the incidents of mass shootings indicates that no grandfathered, pre-acquisition-ban LCMs have been used in any mass shootings in California.

It is thus my professional opinion that California's acquisition ban has not and will not, even when paired with a possession ban, result in any statistically significant reduction in the number or lethality of mass shooting incidents in California or violent crime rates in general.

Dated: November 2, 2017

  
Dr. Carlisle E. Moody  
William & Mary  
Tyler Hall, Room 336  
300 James Blair Dr.  
Williamsburg, VA  
(757) 221-2373  
[cemood@wm.edu](mailto:cemood@wm.edu)



**78 Alb. L. Rev. 849**

Albany Law Review  
2014-2015

Symposium: A Loaded Debate: The Right to Keep and Bear Arms in the Twenty-First Century  
Article

David B. Kopel<sup>a1</sup>

Copyright (c) 2015 Albany Law School; David B. Kopel

## **\*849 THE HISTORY OF FIREARM MAGAZINES AND MAGAZINE PROHIBITIONS**

### **I. INTRODUCTION**

In recent years, the prohibition of firearms magazines has become an important topic of law and policy debate. This article details the history of magazines and of magazine prohibition. The article then applies the historical facts to the methodologies of leading cases that have looked to history to analyze the constitutionality of gun control laws.

Because ten rounds is an oft-proposed figure for magazine bans, Part II of the article provides the story of such magazines from the sixteenth century onward. Although some people think that multi-shot guns did not appear until Samuel Colt invented the revolver in the 1830s, multi-shot guns predate Colonel Colt by over two centuries.<sup>1</sup>

Especially because the Supreme Court's decision in *District of Columbia v. Heller*<sup>2</sup> considers whether arms are "in common use" and are "typically possessed by law-abiding citizens for lawful purposes,"<sup>3</sup> the article also pays attention to whether and when particular guns and their magazines achieved mass-market success in the United States. The first time a rifle with more than ten rounds of ammunition did so was in 1866,<sup>4</sup> and the first time a \*850 handgun did so was in 1935.<sup>5</sup>

The detailed history of various firearms and their magazines stops in 1979--a year which is somewhat ancient in terms of the current gun control debate. Back in 1979,

revolvers still far outsold semiautomatic handguns.<sup>6</sup> No one was trying to ban so-called assault weapons,<sup>7</sup> although such guns were already well established in the market.<sup>8</sup>

For the post-1979 period, Part II briefly explains how technological improvements in recent decades have fostered the continuing popularity of magazines holding more than ten rounds

Part III of the article describes the history of magazine prohibition in the United States. Such prohibitions are of recent vintage, with an important exception: during prohibition, Michigan, Rhode Island, and the District of Columbia banned some arms that could hold more than a certain number of rounds; Ohio required a special license for such guns.<sup>9</sup> The Michigan and Rhode Island bans were repealed decades ago; the Ohio licensing law was repealed in 2014, having previously been modified and interpreted so that it banned no magazines.<sup>10</sup> The District of Columbia ban, however, remains in force today, with some revisions.<sup>11</sup>

The Supreme Court's Second Amendment decisions in *District of Columbia v. Heller* and *McDonald v. Chicago*<sup>12</sup> paid careful \*851 attention to history. Several post-*Heller* lower court opinions in Second Amendment cases have also examined history as part of their consideration of the constitutionality of gun control statutes. Part IV of this article examines the legality of magazine bans according to the various historical standards that courts have employed.

## II. THE HISTORY OF MAGAZINES HOLDING MORE THAN TEN ROUNDS

In *District of Columbia v. Heller*, the Supreme Court ruled that the District of Columbia's handgun ban was unconstitutional partly because handguns are in "common use."<sup>13</sup> The Second Amendment protects arms that are "typically possessed by law-abiding citizens for lawful purposes."<sup>14</sup>

Magazines of more than ten rounds are older than the United States.<sup>15</sup> Box magazines date from 1862.<sup>16</sup> In terms of large-scale commercial success, rifle magazines of more than ten rounds had become popular by the time the Fourteenth Amendment was being ratified.<sup>17</sup> Handgun magazines of more than ten rounds would become popular in the 1930s.<sup>18</sup>

***A. Why Consumers Have Always Sought to Avoid Having to Reload During Defensive Gun Use***

When a firearm being used for defense is out of ammunition, the defender no longer has a functional firearm. The Second Amendment, of course, guarantees the right to an *operable* firearm.<sup>19</sup> As the *Heller* Court explained, the Council of the District of Columbia could not require that lawfully-possessed guns be kept in an inoperable status (locked or disassembled) in the home, because doing so negates their utility with respect to “the core lawful purpose of self-defense.”<sup>20</sup>

When the defender is reloading, the defender is especially vulnerable to attack. When ammunition is low but not exhausted (e.g., two or three rounds remaining), that may be insufficient to \*852 deter or control the threat, especially if the threat is posed by more than one criminal. If the victim is attacked by a gang of four large people, and a few shots cause the attackers to pause, the victim needs enough reserve ammunition in the firearm to make the attackers worry that even if they rush the victim all at once, the victim will have enough ammunition to knock each attacker down. When guns are fired defensively, it is unusual for a single hit to immediately disable an attacker.

Accordingly, from the outset of firearms manufacturing, one constant goal has been to design firearms able to fire more rounds without reloading.

To this end, manufacturers have experimented with various designs of firearms and magazines for centuries. While not all of these experiments were successful in terms of mass sales, they indicated the directions where firearms development was proceeding. The first experiments to gain widespread commercial success in the United States came around the middle of the nineteenth century.

***B. Magazines of Greater than Ten Rounds are More than Four Hundred Years Old***

The first known firearm that was able to fire more than ten rounds without reloading was a sixteen-shooter created around 1580, using “superposed” loads (each round stacked on top of the other).<sup>21</sup> Multi-shot guns continued to develop in the next two centuries, with such guns first issued to the British army in 1658.<sup>22</sup> One early design was the eleven-round “Defence Gun,” patented in 1718 by lawyer



and inventor James Puckle.<sup>23</sup> It used eleven preloaded cylinders; each pull of the trigger fired one cylinder.<sup>24</sup>

As with First Amendment technology (such as televisions or websites), the Second Amendment is not limited to the technology that existed in 1791.<sup>25</sup> The *Heller* Court properly described such an asserted limit as “bordering on the frivolous.”<sup>26</sup> But even if *Heller* \*853 had created such a rule, magazines of more than ten rounds are older than the Second Amendment.

At the time that the Second Amendment was being ratified, the state of the art for multi-shot guns was the Girandoni air rifle, with a twenty-two-shot magazine capacity.<sup>27</sup> Meriwether Lewis carried a Girandoni on the Lewis and Clark expedition.<sup>28</sup> At the time, air guns were ballistically equal to powder guns in terms of bullet size and velocity.<sup>29</sup> The .46 and .49 caliber Girandoni rifles were invented around 1779 for use in European armies and were employed by elite units.<sup>30</sup> One shot could penetrate a one-inch thick wood plank or take down an elk.<sup>31</sup>

### *C. The Nineteenth Century Saw Broad Commercial Success for Magazines Holding More than Ten Rounds*

Firearm technology progressed rapidly in the 1800s. Manufacturers were constantly attempting to produce reliable firearms with greater ammunition capacities for consumers. One notable step came in 1821 with the introduction of the Jennings multi-shot flintlock rifle, which, borrowing the superposed projectile design from centuries before, could fire twelve shots before reloading.<sup>32</sup>

Around the same time, pistol technology also advanced to permit more than ten shots being fired without reloading. “Pepperbox” \*854 pistols began to be produced in America in the 1830s.<sup>33</sup> These pistols had multiple barrels that would fire sequentially.<sup>34</sup> While the most common configurations were five or six shots,<sup>35</sup> some models had twelve independently-firing barrels,<sup>36</sup> and there were even models with eighteen or twenty-four independently-firing barrels.<sup>37</sup> Pepperboxes were commercially successful and it took a number of years for Samuel Colt’s revolvers (also invented in the 1830s) to surpass them in the marketplace.<sup>38</sup>



The 1830s through the 1850s saw a number of different firearm designs intended to increase ammunition capacity. In 1838, the Bennett and Haviland Rifle was invented; it was a rifle version of the pepperbox, with twelve individual chambers that were manually rotated after each shot.<sup>39</sup> This would bring a new chamber, preloaded with powder and shot, into the breach, ready to be fired.<sup>40</sup> Alexander Hall and Colonel Parry W. Porter each created rifles with capacities greater than ten in the 1850s.<sup>41</sup> Hall's design had a fifteen-shot rotating cylinder (similar to a revolver), while Porter's design used a thirty-eight-shot canister magazine.<sup>42</sup>

The great breakthrough, however, began with a collaboration of Daniel Wesson (of Smith and Wesson) and Oliver Winchester. They produced the first metallic cartridge--containing the gunpowder, primer, and ammunition in a metallic case similar to modern ammunition.<sup>43</sup> Furthermore, they invented a firearms mechanism that was well suited to the new metallic cartridge: the lever \*855 action.<sup>44</sup> Their company, the Volcanic Repeating Arms Company, introduced the lever action rifle in 1855.<sup>45</sup> This rifle had up to a thirty-round tubular magazine under the barrel that was operated by manipulating a lever on the bottom of the stock.<sup>46</sup> The lever-action allowed a shooter to quickly expel spent cartridges and ready the firearm for additional shots.<sup>47</sup> An 1859 advertisement bragged that the guns could be loaded and fire thirty shots in less than a minute.<sup>48</sup> In 1862, the Volcanic evolved into the sixteen-round Henry lever action rifle, lauded for its defensive utility.<sup>49</sup>

The Henry rifle further evolved into the Winchester repeating rifle, and the market for these firearms greatly expanded with the first gun produced under the Winchester name.<sup>50</sup> Winchester touted the Model 1866 for defense against "sudden attack either from robbers or Indians."<sup>51</sup> According to advertising, the M1866 "can . . . be fired thirty times a minute,"<sup>52</sup> or with seventeen in the magazine and one in the chamber, "eighteen charges, which can be fired in nine seconds."<sup>53</sup> The gun was a particularly big seller in the American West.<sup>54</sup> There were over 170,000 Model 1866s produced.<sup>55</sup>

Next came the Winchester M1873, "[t]he gun that won the West."<sup>56</sup> The Winchester M1873 and then the M1892 were lever actions holding ten to eleven rounds in tubular magazines.<sup>57</sup> There were over 720,000 copies of the Winchester 1873 made from 1873 to \*856 1919.<sup>58</sup> Over a million of the M1892 were

manufactured from 1892 to 1941.<sup>59</sup> The Italian company Uberti, which specializes in high-quality reproductions of western firearms, produces reproductions of all of the above Winchesters today.<sup>60</sup> Another iconic rifle of the latter nineteenth century was the pump action Colt Lightning rifle, with a fifteen-round capacity.<sup>61</sup>

Manufactured in Maine, the Evans Repeating Rifle came on the market in 1873.<sup>62</sup> The innovative rotary helical magazine in the buttstock held thirty-four rounds.<sup>63</sup> It was commercially successful for a while, although not at Winchester's or Colt's levels. Over 12,000 copies were produced.<sup>64</sup>

Meanwhile, the first handgun to use a detachable box magazine was the ten-round Jarre harmonica pistol, patented in 1862.<sup>65</sup> In the 1890s, the box magazine would become common for handguns.<sup>66</sup>

Pin-fire revolvers with capacities of up to twenty or twenty-one entered the market in the 1850s;<sup>67</sup> they were produced for the next half-century, but were significantly more popular in Europe than in America.<sup>68</sup> For revolvers with other firing mechanisms, there were some models with more than seventeen rounds.<sup>69</sup> The twenty-round Josselyn belt-fed chain pistol was introduced in 1866, and various other chain pistols had even greater capacity.<sup>70</sup> Chain pistols did not win much market share, perhaps in part because the large \*857 dangling chain was such an impediment to carrying the gun.<sup>71</sup>

The semiautomatic firearm and its detachable box magazine were invented before the turn of the century. It was the latest success in the centuries-old effort to improve the reliability and capacity of multi-shot guns.

In 1896, Germany's Mauser introduced the C96 "broomhandle" pistol, which remained in production until the late 1930s, selling nearly a million to civilians worldwide.<sup>72</sup> The most common configuration was in ten-round capacity, but there were a variety of models with capacities as low as six or as high as twenty.<sup>73</sup> The latter was the Cone Hammer pistol, with twenty-round box magazine.<sup>74</sup>

The Luger semiautomatic pistol was brought to the market in 1899 (although it is commonly known as the "1900").<sup>75</sup> Through many variants, it was very popular for both civilians and the military markets, and remained in production for nearly



a century.<sup>76</sup> The most common magazines were seven or eight rounds, but there was also a thirty-two-round drum magazine.<sup>77</sup>

*D. Manufacturers in the Twentieth Century Continued the Trend of Increasing Ammunition Capacity and Reliability for Civilian Firearms.*

The twentieth century saw improvements on the designs pioneered in the 1800s and expanding popularity for firearms with more than ten rounds.

**\*858** Since the late 1890s, the Savage Arms Company has been one of the classic American firearms manufacturers.<sup>78</sup> In 1911, the company introduced their bolt-action Model 1911, a twenty-shot repeater with a tubular magazine in .22 short caliber.<sup>79</sup> The rifle was popular for boys and for shooting galleries.<sup>80</sup>

By the 1930s, American manufacturers such as Remington, Marlin, and Winchester were producing many tubular magazine rifles in .22 caliber.<sup>81</sup> These firearms are classic rifles for “plinking” (casual target shooting), especially popular for young people. Based on firearms catalogues from 1936 to 1971, there are over twenty such firearms models from major American manufacturers with magazines of sixteen to thirty rounds in one or more of the calibers.<sup>82</sup>

In 1927, the Auto Ordinance Company introduced their **\*859** semiautomatic rifle that used thirty-round magazines.<sup>83</sup> These rifles are still in production today.<sup>84</sup>

The M-1 carbine was invented for the citizen soldier of World War II.<sup>85</sup> Thereafter, the M-1 carbine became and has remained a popular rifle for civilians in America.<sup>86</sup> The U.S. government's Civilian Marksmanship Program, created by Congress, put nearly a quarter million of these guns into the hands of law-abiding American citizens starting in 1963, at steeply-discounted prices.<sup>87</sup> Partly using surplus government parts, the Plainfield Machine Company, Iver Johnson, and more than a dozen other companies cumulatively manufactured over 200,000 for the civilian market, starting in the late 1950s.<sup>88</sup> The standard magazines are fifteen and thirty rounds.<sup>89</sup>

The most popular rifle in American history is the AR-15 platform, a semiautomatic rifle with standard magazines of twenty or thirty rounds.<sup>90</sup> The AR-15 was brought to the market in 1963, with a **\*860** then-standard magazine of twenty;

the thirty-round standard magazine was developed a few years later.<sup>91</sup> The 1994 Supreme Court case *Staples v. United States*<sup>92</sup> described the AR-15 as “the civilian version of the military’s M-16 rifle,” and noted that many parts are interchangeable between the two guns.<sup>93</sup> The crucial distinction, explained the Court, is that the AR-15 is like all other semiautomatic firearms in that it can fire “only one shot with each pull of the trigger.”<sup>94</sup> The Court pointed out that semiautomatic firearms “traditionally have been widely accepted as lawful possessions.”<sup>95</sup> So legally speaking, the semiautomatic AR-15 is the opposite of the M-16 machine gun: “[C]ertain categories of guns--no doubt including the machineguns, sawed-off shotguns, and artillery pieces that Congress has subjected to regulation-- . . . have the same quasi-suspect character we attributed to owning hand grenades . . . . But . . . guns falling outside those categories traditionally have been widely accepted as lawful possessions . . . .”<sup>96</sup>

By 1969, the AR-15 faced competition from the Armalite-180 (twenty-round optional magazine), the J&R 68 carbine (thirty rounds), and the Eagle Apache carbine (thirty rounds).<sup>97</sup>

Springfield Armory brought out the M1A semiautomatic rifle in 1974, with a twenty-round detachable box magazine.<sup>98</sup> The next year, the Ruger Mini-14 rifle was introduced, with manufacturer-supplied standard five, ten, or twenty-round detachable magazines.<sup>99</sup> Both the M1A and the Mini-14 are very popular to this day.<sup>100</sup>

**\*861** By 1979, all of the above guns were challenged in the American market by high-quality European imports such as the Belgian FN-FAL Competition rifle (optional twenty-round magazine), the German Heckler & Koch HK-91 and HK-93 rifles (twenty rounds), the Swiss SIG AMT rifle (twenty rounds), and the Finnish Valmet M-71S rifle (thirty rounds).<sup>101</sup>

Citizen firearms with detachable magazines holding more than ten rounds were not limited to rifles, however. In 1935, Browning introduced the Hi-Power pistol.<sup>102</sup> This handgun was sold with a thirteen-round detachable magazine and is still in production.<sup>103</sup>

In Europe, more so than in America, Browning had to compete against the Spanish Gabilondo twenty-round Plus Ultra, introduced in 1925.<sup>104</sup> Spain’s Arostegui,



Eulogio brought out the Azul--a semiautomatic with standard magazines of ten, twenty and thirty-- in 1935.<sup>105</sup>

Browning's first notable American competition came with the 1964 introduction of the Plainfield Machine Company's "Enforcer," a pistol version of the M1 carbine with a thirty-round magazine.<sup>106</sup>

A tremendous commercial success was the Beretta model 92, a nine millimeter pistol with a sixteen-round magazine, which entered the market in 1976.<sup>107</sup> In various configurations (currently the Beretta 92F) the Beretta is one of the most popular of all modern handguns.<sup>108</sup> Browning introduced another popular handgun in 1977, the fourteen-round BDA (Browning Double Action).<sup>109</sup> Also coming on the market at this time were European handguns such as Austria's L.E.S. P-18 (eighteen rounds) and \*862 Germany's Heckler & Koch VP 70Z (also eighteen rounds).<sup>110</sup>

#### *E. Magazines After 1979*

We end this story in 1979, when Jimmy Carter was President,<sup>111</sup> the Bee Gees bestrode the AM radio Top 40,<sup>112</sup> Gaston Glock was manufacturing curtain rods in his garage,<sup>113</sup> Americans were watching *Love Boat* on broadcast television,<sup>114</sup> and people on the cutting edge of technology were adopting VisiCalc, the first spreadsheet program, run from huge floppy discs.<sup>115</sup>

Long before 1979, magazines of more than ten rounds had been well established in the mainstream of American gun ownership. Indeed, they had been so established before almost everyone alive in 1979 was born.

After 1979, technological improvements continued to foster the popularity of magazines holding more than ten rounds. First of all, there were improvements across the board in manufacturing, so that magazine springs became more reliable, particularly for magazines holding up to thirty rounds. This greatly reduced the risk of a misfeed. Reliability was also enhanced by improvements in shaping the magazines' "lips"--the angled wings at the top of the magazine which guide the next round of ammunition into the firing chamber.<sup>116</sup>

Magazines of all sizes benefited from increasing use of plastic polymers in manufacturing.<sup>117</sup> Today, many magazine walls are \*863 made from plastic, rather than metal. Closer tolerances in manufacturing, lower costs, and increased durability have all improved magazine quality and reliability.

Likewise, the vast majority of magazines today have a removable baseplate (also known as a “foot plate”).<sup>118</sup> Removal of the baseplate allows the magazine to be disassembled for cleaning (e.g., removal of gunpowder residue) or repair (e.g., replacing a worn-out spring).<sup>119</sup> The existence of a removable baseplate also makes it possible for consumers to add after-market extenders to a magazine.<sup>120</sup> These extenders may simply increase the grip length (to better fit a particular consumer's hands), and they may also increase capacity by one, two, or three rounds.<sup>121</sup> Thus, a consumer with a ten-round factory magazine can add a two-rounder extender to create a twelve-round magazine.

Most importantly, the double-stack magazine was perfected. In some box magazines, the ammunition is contained in a single column.<sup>122</sup> In the double-stack magazine, there are two columns of ammunition, side-by-side and touching.<sup>123</sup> When the gun is used, the magazine will first reload a round from column A, then a round from column B, then from column A, and so on.<sup>124</sup>

The practical effect is this: for a handgun, a single stack magazine of seventeen rounds would stick out far below the bottom of the grip, making the gun unwieldy for carrying and holstering. With a double-stack configuration, a seventeen-round magazine can fit inside a standard full-sized handgun grip. The practical limitation of grip size (the size of the human hand) means that relatively larger capacity magazines are possible for relatively smaller cartridges. Thus, a double-stack magazine for the midsize nine millimeter round might hold up to twenty or twenty-one rounds, whereas a double-stack for the thicker .45 ACP cartridge would hold \*864 no more than fifteen.

### III. THE HISTORY OF AMMUNITION CAPACITY BANS

An important factor in the consideration of the constitutionality of firearms laws is whether they are traditional and longstanding. For example, the *Heller* Court pointed out that “[f]ew laws in the history of our Nation have come close to the severe restriction of the District's handgun ban.”<sup>125</sup> The handgun ban was contrasted with “longstanding” guns controls, such as those prohibiting gun



possession by felons or the mentally ill.<sup>126</sup> Following *Heller*, the Tenth Circuit has explained that Second Amendment cases must consider “the rarity of state enactments in determining whether they are constitutionally permissible.”<sup>127</sup>

At the time the Second Amendment was adopted, there were no laws restricting ammunition capacity. This was not because all guns were single-shot. As detailed above, multi-shot guns predate the Second Amendment by about two hundred years, and Lewis and Clark carried a powerful twenty-two-round gun on their famous expedition.<sup>128</sup>

The first laws that restricted magazine capacity were enacted during the prohibition era, nearly a century and a half after the Second Amendment was adopted, and over half a century after the adoption of the Fourteenth Amendment. In 1927, Michigan prohibited “any machine gun or firearm which can be fired more than sixteen times without reloading.”<sup>129</sup> Also in 1927, Rhode Island banned “any weapon which shoots more than twelve shots semi-automatically without re-loading.”<sup>130</sup>

The Michigan ban was repealed in 1959.<sup>131</sup> That same year, the \*865 Rhode Island law was changed to fourteen shots, and .22 caliber rimfire guns were excluded.<sup>132</sup> The Rhode Island ammunition capacity law was fully repealed in 1975.<sup>133</sup>

The two statutes applied only to firearms, with Rhode Island only for semiautomatics. Neither statute covered a magazine that was not inserted in a firearm.

In 1933, Ohio began requiring a special permit for the possession or sale of a semiautomatic firearm with an ammunition capacity of greater than eighteen rounds.<sup>134</sup> In 1971, during a recodification of the state criminal code, an exemption for .22 caliber was added, and for other calibers the limit was raised to thirty-two or more rounds.<sup>135</sup>

Significantly, the Ohio statute was interpreted to not ban the sale of any magazine or any gun, but to forbid the simultaneous purchase of a magazine and a compatible gun.<sup>136</sup> (Of course purchase was allowed if one has the special permit.)<sup>137</sup> With or without the permit, one could buy a sixty-round magazine in Ohio.<sup>138</sup> The licensing law was fully repealed in 2014.<sup>139</sup>

\*866 The only longstanding statute banning magazines is found in the District of Columbia. In 1932, Congress passed a District of Columbia law prohibiting the possession of a firearm that “shoots automatically or semiautomatically more than twelve shots without reloading.”<sup>140</sup> In contrast, when Congress enacted the National Firearms Act of 1934 to impose stringent regulations on machine guns, it chose to impose no restrictions on magazines.<sup>141</sup> When the District of Columbia achieved home rule in 1975,<sup>142</sup> the district council did not choose to repeal the law but instead promptly enacted the bans on handguns and on self-defense with any gun in the home,<sup>143</sup> which were later ruled unconstitutional by the Supreme Court in *Heller*.<sup>144</sup> The District of Columbia interpreted the magazine law so that it outlawed all detachable magazines and all semiautomatic handguns.<sup>145</sup> The District stands alone in its historical restriction of magazines.

The only widespread restriction on magazine capacity came in 1994 when Congress enacted a ban on new magazines holding more than ten rounds.<sup>146</sup> The law was in effect until 2004, at which point Congress allowed it to sunset.<sup>147</sup> The effects of this law were studied extensively in a series of U.S. Department of Justice reports authored by Doctor Christopher Koper and two others. The final report, issued in 2004, concluded: “there has been no discernible reduction in the lethality and injuriousness of gun violence, based on indicators like the percentage of gun crimes resulting in death or the share of gunfire incidents resulting in injury . . . .”<sup>148</sup> Further, \*867 “the ban has not yet reduced the use of [such magazines] in crime . . . .”<sup>149</sup> Doctor Koper noted also that state-level firearm bans have not had an impact on crime.<sup>150</sup>

In the modern era, only a few states have enacted magazine restrictions, starting with New Jersey's 1990 ban on magazines over fifteen rounds.<sup>151</sup> That ban applies only to detachable box magazines for semiautomatic firearms.<sup>152</sup> A couple years later, Hawaii banned handgun magazines over twenty rounds, and later reduced that to ten.<sup>153</sup> Maryland in 1994 banned the sale or manufacture of magazines over twenty rounds; the ban did not affect possession, loans, acquisition, or importation.<sup>154</sup> The Maryland limit was reduced to ten in 2013.<sup>155</sup>

In 1999 California banned the sale of magazines over ten rounds but allowed grandfathered possession, and New York did the same in 2000.<sup>156</sup> (Currently, large capacity magazine bans in Colorado, Connecticut, and Massachusetts also



have grandfather provisions, while New Jersey, the District of Columbia, and Hawaii do not.)<sup>157</sup> In 2013 New York removed grandfathering and reduced the limit to seven.<sup>158</sup> The seven-round limit was suspended shortly thereafter, since there are no seven-round magazines available for many guns.<sup>159</sup> Instead, the legislature forbade owners of ten-round magazines to load more than seven rounds.<sup>160</sup> This restriction was \*868 declared to violate the Second Amendment in a federal district court decision.<sup>161</sup> New York City outlaws rifle or shotgun magazines holding more than five rounds.<sup>162</sup>

Also in 2013, Colorado enacted a ban on magazines over fifteen rounds,<sup>163</sup> and Connecticut did the same for magazines over ten.<sup>164</sup> Both statutes allowed current owners to retain possession.<sup>165</sup>

Finally, one state has followed Ohio's former approach of magazine licensing, rather than prohibition. In 1994, Massachusetts began requiring that possession and additional acquisitions of magazines over ten rounds be allowed only for citizens who have a "Class A" firearms license--which most Massachusetts gun owners have.<sup>166</sup>

#### IV. WHAT DOES THE HISTORY MEAN?

Given the history above, what does modern legal doctrine say about the permissibility of outlawing magazines, as in the so-called SAFE Act's ban on possession of magazines of more than ten rounds and loading more than seven rounds in a magazine, or New York City's ban on long gun magazines of more than five rounds? What about bans in other states of more than ten rounds (Maryland, Connecticut, the District of Columbia, California, and Hawaii for handguns only) or more than fifteen rounds (New Jersey and Colorado)?

This Part analyzes these questions in light of Second Amendment \*869 precedents from the *Heller* Court and from subsequent cases that have relied at least in part on history and tradition in judging Second Amendment cases.

##### *A. The Crucial Years: 1789-1791 and 1866-1868*

For original meaning of the Second Amendment, the most important times are when the Second Amendment was created and when the Fourteenth Amendment

was created, since a core purpose of the latter amendment was to make the individual's Second Amendment right enforceable against state and local government.<sup>167</sup> Congress sent the Second Amendment to the states for ratification in 1789, and ratification was completed in 1791.<sup>168</sup> The Fourteenth Amendment was passed by Congress in 1866, and ratification by the states was completed in 1868.<sup>169</sup>

#### 1. Magazines in 1789-1791 and 1866-1868

As of 1789 to 1791, multi-shot magazines had existed for two centuries, and a variety of models had come and gone.<sup>170</sup> The state-of-the-art gun between 1789 and 1791 was the twenty- or twenty-two-shot Girandoni air rifle, powerful enough to take down an elk with a single shot.<sup>171</sup>

By the time that the Fourteenth Amendment was introduced in Congress, firearms with magazines of over ten or fifteen rounds had been around for decades.<sup>172</sup> The best of these was the sixteen-shot Henry Rifle, introduced in 1861 with a fifteen-round magazine.<sup>173</sup> The Henry Rifle was commercially successful, but Winchester Model 1866, with its seventeen-round magazine, was massively successful.<sup>174</sup> So by the time ratification of the Fourteenth Amendment was completed in 1868, it was solidly established that firearms with seventeen-round magazines were in common use.

#### \*870 2. Magazine Prohibitions in 1789-1791 and 1866-1868

From the colonial period to the dawn of American independence on July 4, 1776, and through the ratification of the Fourteenth Amendment, there were no prohibitions on magazines. Indeed, the first magazine prohibition did not appear until the alcohol prohibition era in 1927.<sup>175</sup> Thus, the historical evidence of the key periods for original meaning strongly suggests that magazine bans are unconstitutional.

#### *B. "Typically Possessed by Law-Abiding Citizens for Lawful Purposes" or "Dangerous and Unusual"?*

The Supreme Court's *Heller* decision distinguished two broad types of arms. Some arms, such as handguns, are "typically possessed by law-abiding citizens for lawful purposes."<sup>176</sup> These arms are also described by the Court as being "in common



use.”<sup>177</sup> In contrast, some other arms are “dangerous and unusual.”<sup>178</sup> Examples provided by the Court were short-barreled shotguns or machine guns.<sup>179</sup> The common, typical, arms possessed by law-abiding citizens are protected by the Second Amendment; the “dangerous and unusual” arms are not protected.<sup>180</sup> By definition, “unusual” arms are not “in common use” or “typically possessed by law-abiding citizens for lawful purposes.”<sup>181</sup>

The *Heller* Court did not expressly mandate that historical analysis be used when deciding whether an arm is typical or common or “dangerous and unusual.” The *Heller* Court approvingly quoted the 1939 Supreme Court decision *United States v. Miller*,<sup>182</sup> which had described the original meaning of the Second Amendment as protecting individually-owned firearms that were “in common use at the time.”<sup>183</sup> The *Miller* Court's 1939 decision did not extend Second Amendment protection to sawed-off shotguns;<sup>184</sup> as *Heller* explained *Miller*, the *Miller* principle was that sawed-off shotguns are dangerous and unusual.<sup>185</sup>

To be precise, *Miller* did not formally rule that short shotguns are *not* Second Amendment arms; the Court simply reversed and remanded the district court's decision granting criminal defendant Miller's motion to quash his indictment.<sup>186</sup> The Supreme Court said that the suitability of sawed-off shotguns as Second Amendment arms was not a fact that was subject to “judicial notice.”<sup>187</sup> Presumably the federal district court in Arkansas could have taken up the remanded case and then received evidence regarding what sawed-off shotguns are used for and how common they are. But Miller and his co-defendant Frank Layton had disappeared long before the case was decided by the Supreme Court.<sup>188</sup>

Regardless, subsequent courts, including the court in *Heller*, read *Miller* as affirmatively stating that sawed-off shotguns are not protected by the Second Amendment.<sup>189</sup>

Even though *Heller*'s “common” or “typical” versus “dangerous and unusual” dichotomy seems primarily concerned with contemporary uses of a given type of arm, history can still be useful. As detailed in Part II, magazines of more than ten rounds have been very commonly possessed in the United States since 1862.<sup>190</sup> Common sense tells us that the small percentage of the population who are violent gun criminals is not remotely large enough to explain the massive market for magazines of more than ten rounds that has existed since the mid-nineteenth

century. We have more than a century and a half of history showing such magazines to be owned by many millions of law-abiding Americans.<sup>191</sup>

Thus, a court which today ruled that such magazines are “dangerous and unusual” would seem to have some burden of explaining how such magazines, after a century and a half of being \*872 “in common use” and “typically possessed by law-abiding citizens for lawful purposes,” became “dangerous and unusual” in the twenty-first century.

This is not possible. Today, magazines of more than ten rounds are more common than ever before.<sup>192</sup> They comprise about forty-seven percent of magazines currently possessed by Americans today.<sup>193</sup> The AR-15 rifle (introduced in 1963) is the most popular rifle in American history, with sales of several million;<sup>194</sup> its standard magazines are twenty or thirty rounds.<sup>195</sup>

### C. “Longstanding” Controls Versus “Few Laws in the History of Our Nation”

Just as *Heller* distinguishes types of arms (common or typical versus dangerous and unusual), *Heller* distinguishes types of arms-control laws. One type of arms controls are “longstanding,” and these are “presumptively lawful.”<sup>196</sup> Examples listed by *Heller* are bans on gun possession “by felons and the mentally ill,” bans on carrying guns “in sensitive places such as schools and government buildings,” and “conditions and qualifications on the commercial sale of arms.”<sup>197</sup>

The *Heller* Court highlighted the unusual nature of the District of Columbia anti-gun laws:

Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban. And some of those few have been struck down. In *Nunn v. State*, the Georgia Supreme Court struck down a prohibition on carrying pistols openly (even though it upheld a prohibition on carrying concealed weapons). In *Andrews v. State*, the Tennessee Supreme Court likewise held that a statute that forbade openly carrying a pistol “publicly or privately, without regard to time or place, or circumstances,” violated \*873 the state constitutional provision (which the court equated with the Second Amendment). That



was so even though the statute did not restrict the carrying of long guns.<sup>198</sup>

What was the history that led the Court to declare the handgun prohibition to be “unusual”—that is, to be the opposite of a traditional gun control that was presumptively constitutional? The District of Columbia handgun ban was enacted in 1975 and took effect in 1976.<sup>199</sup> Chicago enacted a similar ban in 1982, and a half-dozen Chicago suburbs followed suit during the 1980s.<sup>200</sup> In 1837, the Georgia legislature had enacted a handgun ban, but that was ruled unconstitutional on Second Amendment grounds by the unanimous Georgia Supreme Court in 1846.<sup>201</sup> In 1982 and 2005, San Francisco enacted handgun bans, but they were both ruled unlawful because of their plain violation of the California state preemption statute, which forbids localities to outlaw firearms which are permitted under state law.<sup>202</sup>

These are the facts under which the Supreme Court declared handgun bans to be suspiciously rare in America's history—at the other end of the spectrum from the presumptively constitutional “longstanding” controls.

The 1975 District of Columbia handgun ban was thirty-three years old when the Supreme Court decided *Heller* in 2008. This suggests that thirty-three years is not sufficient for a gun control to be considered “longstanding.” As detailed in Part III, the first of today's magazine bans was enacted by New Jersey in 1990, at fifteen rounds.<sup>203</sup> The first state-level ten-round ban did not take effect until California passed such a law in 2000.<sup>204</sup> These statutes, and other post-1990 magazine bans, would not qualify as “longstanding.”

Previously, three states and the District of Columbia had enacted some magazine restrictions during the alcohol prohibition era.<sup>205</sup> The District of Columbia ban, with modifications, is still in effect.<sup>206</sup> The Michigan and Rhode Island bans were repealed long ago.<sup>207</sup> The Ohio special licensing statute allowed the free purchase of any magazine, but required a permit to insert a magazine of thirty-two rounds or more into a firearm; the permit requirement was repealed in 2014.<sup>208</sup> It is indisputable in the modern United States that magazines of up to thirty rounds for rifles and up to twenty rounds for handguns are standard equipment for many popular firearms.

Several post- *Heller* lower courts have conducted in-depth examinations of the history of particular gun control laws. The next Part examines each of those cases and then applies their methodology to the historical facts of bans on magazines of more than five, seven, ten, and fifteen rounds.

#### *D. Lower-Court Decisions Applying History*

##### *1. Ezell v. City of Chicago*

After *McDonald v. City of Chicago* made it clear that the Second Amendment applies to municipal governments, the Chicago City Council relegalized handgun possession and outlawed all target ranges within city limits.<sup>209</sup> Assessing the constitutionality of the ban, the Seventh Circuit used a two-step test, similar to analysis that is sometimes used in First Amendment cases: (1) Is the activity or item within the scope of the Second Amendment, as historically understood? If the answer is “no,” then the restrictive law does not violate the Second Amendment.<sup>210</sup> (2) If the answer to the first question is “yes,” then the court will apply some form of the heightened scrutiny. The intensity of the scrutiny will depend on how close the restriction comes to affecting the core right of armed self-defense.<sup>211</sup>

\*875 So the *Ezell* court began the step-one analysis by considering whether target practice was historically considered part of the Second Amendment right.<sup>212</sup> Chicago had argued to the contrary, listing some eighteenth- and nineteenth-century state statutes and municipal ordinances restricting firearms discharge within city limits.<sup>213</sup> The Seventh Circuit found almost all of the listed ordinances to be irrelevant.<sup>214</sup> Many of them did not ban firearms discharge but simply required a permit.<sup>215</sup> Others were plainly concerned with fire prevention, an issue that would not be a problem at a properly-designed modern range.<sup>216</sup> Thus:

Only two--a Baltimore statute from 1826 and an Ohio statute from 1831--flatly prohibited the discharge of firearms based on concerns unrelated to fire suppression, in contrast to the other regulatory laws we have mentioned. This falls far short of establishing that target practice is wholly outside the Second Amendment as it was understood when incorporated as a limitation on the States.<sup>217</sup>



So according to the Seventh Circuit, the historical example of repressive laws in one state and one city are insufficient to support the inference that the repressed activity is outside the scope of the Second Amendment.<sup>218</sup> The historical basis of restrictions that would affect magazines over fifteen rounds is nearly as thin: two states with statutes enacted in 1927, and later repealed, plus the District of Columbia's 1932 law.<sup>219</sup> As for imposing a ban for guns with magazines of more than ten rounds (or seven or five), there is *no* historical basis. Thus, under the *Ezell* analysis, bans on magazines infringe the Second Amendment right as it was historically understood, and such bans must be analyzed under heightened scrutiny.

## 2. *United States v. Rene E.*

In 2009, the First Circuit heard a Second Amendment challenge \*876 to a federal statute that restricted, but did not ban, handgun possession by juveniles.<sup>220</sup> The federal statute was enacted in 1994,<sup>221</sup> and so of course was not “longstanding.”<sup>222</sup> The First Circuit looked at the history of state laws restricting juvenile handgun possession, to see if they were longstanding.<sup>223</sup>

The First Circuit found state or local restrictions on handgun transfers to juveniles and judicial decisions upholding such restrictions from Georgia (1911 case), Tennessee (1878 case),<sup>224</sup> Pennsylvania (1881 case),<sup>225</sup> Indiana (1884 case),<sup>226</sup> Kentucky (1888 case),<sup>227</sup> Alabama (1858 case),<sup>228</sup> Illinois (1917 case upholding a Chicago ordinance),<sup>229</sup> Kansas (1883 case allowing tort liability for transfer), and Minnesota (1918 case allowing tort liability for transfer).<sup>230</sup>

Thus, the First Circuit was able to point to six state statutes, all of them enacted well over a century previously.<sup>231</sup> They were buttressed by one municipal ordinance and two cases allowing tort liability, both of these being nearly a century old.<sup>232</sup>

The history of magazine restrictions is considerably weaker than that of the juvenile handgun statutes analyzed in *Rene E.* There were six statutes on juveniles, all of which were enacted before 1890, and one of which predated the Civil War.<sup>233</sup> This is much more than the pair of state statutes on magazines dating from the late 1920s.



The *Rene E.* case does not attempt to quantify how many state statutes are necessary for a gun control to be longstanding; however, we can say that magazine restrictions fall well short of the historical foundation that the First Circuit relied on to uphold juvenile handgun restrictions. While *Rene E.* and *Ezell* both used history, the particular way that they used it was different. For *Rene E.*, history was mixed in \*877 with substantive analysis of the modern federal statute, which the First Circuit praised for its “narrow scope” and “important exceptions.”<sup>234</sup>

For *Ezell*, history was just the first step. *Ezell* used history to determine that the range ban was not presumptively lawful; once that question was answered, *Ezell* proceeded to analyze the ban under heightened scrutiny.<sup>235</sup>

### 3. *Heller II*

#### a. *Majority Opinion*

In the 2008 case *District of Columbia v. Heller*, the Supreme Court ruled that two District of Columbia ordinances violated the Second Amendment: the handgun ban and the ban on the requirement that any firearm in the home be kept locked or disassembled and thus unusable for self-defense.<sup>236</sup> Further, the District of Columbia required a permit to carry a gun anywhere (even from room to room in one's home)<sup>237</sup> and permits were never granted; the Court ordered that plaintiff Dick Heller be granted a permit.<sup>238</sup>

The Council of the District of Columbia responded by repealing all three of the unconstitutional ordinances and enacting the most severe gun control system in the United States.<sup>239</sup> Dick Heller and several other plaintiffs challenged the new ordinances in the case known as *Heller II*.<sup>240</sup>

Using the two-step test, the District of Columbia Circuit majority first examined whether any of the challenged provisions were “longstanding.”<sup>241</sup> If so, then the provision would be held as not violating the Second Amendment right, with no further analysis needed.<sup>242</sup>

Regarding handgun registration, the majority identified statutes from New York (1911), Illinois (1881), Georgia (1910), Oregon \*878 (1917), and Michigan (1927).<sup>243</sup> In addition, some jurisdictions required handgun buyers to provide information about themselves to retailers, but did not require that the retailer

deliver the information to the government: California (1917), Territory of Hawaii (1927), and the District of Columbia (1932).<sup>244</sup> So “[i]n sum, the basic requirement to register a handgun is longstanding in American law, accepted for a century in diverse states and cities and now applicable to more than one fourth of the nation by population.”<sup>245</sup>

The requirement that the government be provided with some basic information about persons acquiring handguns, in a manner that was “self-evidently de minimis” was therefore constitutional.<sup>246</sup> Seven states, with laws originating between 1881 and 1927, were apparently sufficiently numerous and “diverse” to qualify as “longstanding.”

However, although de minimis registration of handguns was longstanding, many of the new District of Columbia requirements went beyond traditional de minimis systems.<sup>247</sup> Further, “[t]hese early registration requirements, however, applied with only a few exceptions solely to handguns--that is, pistols and revolvers--and not to long guns. Consequently, we hold the basic registration requirements are constitutional only as applied to handguns. With respect to long guns they are novel, not historic.”<sup>248</sup> So the case was remanded to the district court for further fact-finding, since the District of Columbia government had provided the court with almost no information about whether the novel requirements passed heightened scrutiny by being narrowly tailored.<sup>249</sup>

The case had come to the District of Columbia Circuit following cross motions for summary judgment.<sup>250</sup> While the circuit court decided that the novel registration requirements needed a more complete factual record, the panel also decided that the record contained enough information for a ruling on the merits of the District's ban on various semiautomatic rifles, which the district council labeled “assault weapons,” and on the District's ban on \*879 magazines holding more than ten rounds.<sup>251</sup>

The District of Columbia Circuit majority stated “[w]e are not aware of evidence that prohibitions on either semi-automatic rifles or large-capacity magazines are longstanding and thereby deserving of a presumption of validity.”<sup>252</sup> In a footnote, the majority cited the 1927 Michigan magazine statute and the 1932 District of Columbia ordinance detailed in Part III of this article.<sup>253</sup> There is no reason to think that the majority's determination on this point would change if the 1927 Rhode Island statute had also been cited.



Importantly, the majority did not suggest that the magazine bans enacted in 1990 or thereafter had any relevance to whether magazine bans are “longstanding.”

Accordingly, the majority proceeded to analyze the rifle and magazine bans. The majority provided two paragraphs of explanation of why the rifle ban passed intermediate scrutiny and one paragraph on why the magazine ban did so.<sup>254</sup>

Discussion of whether intermediate scrutiny was the correct standard, or whether magazine bans pass intermediate scrutiny, is beyond the scope of this article. However, it does seem to appear that the District of Columbia Circuit would have acted more prudently by remanding the case for fact-finding in the district court. To support the ban, the panel majority could only point to legislative testimony by a gun-prohibition lobbyist and by the District of Columbia police chief, plus a Department of Justice report on the 1994 to 2004 federal ban on such magazines.<sup>255</sup> Notably, the panel majority did not address the report's finding that a ten-year nationwide ban had led to no discernible reduction in homicides, injuries, or the number of shots fired in crimes.<sup>256</sup>

*b. Dissent*

A forceful dissent by Judge Brett Kavanaugh critiqued the majority's application of intermediate scrutiny.<sup>257</sup> He argued that \*880 the majority's approach was necessarily incorrect, because its logic on banning semiautomatic rifles would allow a ban on all semiautomatic handguns--which constitute the vast majority of handguns produced today.<sup>258</sup>

More fundamentally, he argued that *Heller* does not tell courts to use tiered scrutiny to assess gun control laws.<sup>259</sup> Rather, *Heller* looks to history and tradition.<sup>260</sup> So gun controls that are well-grounded in history and tradition are constitutional; gun control laws which are not so grounded are unconstitutional.<sup>261</sup>

Using the standard of history and tradition, Judge Kavanaugh argued that the entire District of Columbia registration scheme was unconstitutional.<sup>262</sup> Regarding de minimis handgun registration, the statutes cited by the majority were mostly record-keeping requirements for gun dealers, not centralized information collection by the government.<sup>263</sup> The novel and much more onerous requirements



of the District of Columbia registration system for all guns had no basis in history and tradition.<sup>264</sup> For all firearms, any registration system beyond dealer record-keeping requirements was unconstitutional.<sup>265</sup>

Judge Kavanaugh examined the history of semiautomatic rifles and found them to be in common use for over a century and thus protected by the Second Amendment from prohibition.<sup>266</sup> He did not have similar information on magazines and thus urged that the magazine issue be remanded for fact-finding.<sup>267</sup> In light of the evidence on magazines that has been presented subsequent to the 2011 *Heller II* decision, Judge Kavanaugh's methodology \*881 straightforwardly leads to the conclusion that the District of Columbia magazine ban is unconstitutional.<sup>268</sup> The *Heller II* majority rightly recognized that magazine bans are not "longstanding,"<sup>269</sup> and this article has demonstrated that magazines of more than ten rounds have been a common part of the American tradition of firearms ownership since before the ratification of the Fourteenth Amendment in 1868.

#### 4. *Silvester v. Harris*

Another decision carefully employing historical analysis is *Silvester v. Harris*,<sup>270</sup> from the United States District Court for the Eastern District of California.

A California statute requires that firearms purchasers wait ten days before they can take their gun home from the store.<sup>271</sup> In California, background checks on firearms buyers are sometimes completed within minutes and sometimes can take a week or longer.<sup>272</sup> Senior District Judge Anthony Ishii (appointed to the federal court in 1997 by President Clinton)<sup>273</sup> ruled the waiting period unconstitutional, to the extent that the waiting period lasted longer than the time required to complete the background check on a given buyer.<sup>274</sup>

Like the Seventh Circuit in *Ezell*, Judge Ishii looked to 1791 and 1868 as the crucial periods.<sup>275</sup>

California Attorney General Kamala Harris had directed the court to a book arguing that between 1790 and 1840 many Americans might have to travel for several days in order to buy a gun, so there was a de facto waiting period between the time a person decided to buy a gun and when a person could take possession

of the gun.<sup>276</sup> Judge Ishii held this irrelevant; the court's job was to consider the legality of government regulations that \*882 might impede the exercise of a constitutional right and the book provided no evidence that government-imposed waiting periods for firearm purchases existed between 1790 and 1840.<sup>277</sup>

Another book explained that the first waiting period law was proposed in 1923-- a one-day waiting period for handguns.<sup>278</sup> The law was adopted in California and eventually by eight other states.<sup>279</sup> This too was irrelevant, ruled the court, because it had nothing to do with 1791 or 1868.<sup>280</sup>

The court explained that "[i]t is Defendant's burden to show that the 10-day waiting period either falls outside the scope of Second Amendment protections as historically understood or fits within one of several categories of longstanding regulations that are presumptively lawful."<sup>281</sup>

The complete absence of evidence of waiting periods in 1791 and 1868 eliminated the first possibility.<sup>282</sup> What about the question of whether waiting periods were "longstanding regulations that are presumptively lawful"? The answer to this question is not confined to 1791 and 1868.

The court explained that "the concept of a 'longstanding and presumptively lawful regulation' is that the regulation has long been accepted and is rooted in history."<sup>283</sup> California's 1923 statute did not come close. Besides that, the California wait was only one day and only for retail handguns.<sup>284</sup> Not until 1975 was the number of days extended to double digits and not until 1991 to long guns.<sup>285</sup> Consistent with the unusual nature of waiting periods, only ten states and the District of Columbia today have a waiting period for at least some firearms.<sup>286</sup>

Thus, the court concluded that the plaintiffs' challenge had passed step one of the two-step test,<sup>287</sup> and the court proceeded to apply heightened scrutiny.<sup>288</sup> The court stated that it did not have to decide whether to use strict or intermediate scrutiny.<sup>289</sup> The \*883 waiting period statute failed intermediate scrutiny, as applied to persons who already possessed a firearm (based on state registration data), and who passed the background check when purchasing an additional firearm.<sup>290</sup> Therefore, *a fortiori*, the statute would fail strict scrutiny. The court gave the state legislature 180 days to revise the statute so as to eliminate the post-background-check waiting period for persons who already have a gun.<sup>291</sup> The



plaintiffs had not challenged the waiting period as applied to first-time gun buyers, nor as to persons who had not yet passed the background check.<sup>292</sup>

## V. CONCLUSION

Rifle magazines holding more than ten or fifteen rounds have been common in the United States since the mid-nineteenth century.<sup>293</sup> Handgun magazines over ten rounds have been common since 1935, and handgun magazines over fifteen have been common since the mid-1960s.<sup>294</sup>

Magazine prohibition has historically been rare. There is *no* historical basis for a magazine limit of ten rounds or lower. As for prohibitions with higher limits, there are only two examples, both of them from 1927, the outer edge of what courts have considered to be examples of state statutes that may be considered “longstanding”: Michigan (enacted 1927, repealed 1959), Rhode Island (enacted 1927, loosened 1959, repealed 1975).<sup>295</sup> Ohio formerly required a special permit to actually insert a magazine above a certain size into a firearm but never banned sales.<sup>296</sup> (The original limit was eighteen rounds or more and later was thirty-two rounds or more.)<sup>297</sup> As is often the case, the District of Columbia is the *sui generis* outlier, with its 1932 restriction still in effect today, with some modifications.<sup>298</sup>

Of all the courts that have examined history when ruling on gun control issues, no court has ever held that laws of two or three states plus one city are sufficient to establish a gun law as being \*884 “longstanding” or part of American history and tradition. To the contrary, ammunition capacity limits are far outside the norm of the traditional exercise and regulation of Second Amendment rights. Not until California in 1999 did any state set a magazine limit as low as ten.<sup>299</sup>

What does this mean for modern legal analysis? Under judicial methods which hew closely to history and tradition, the historical absence (of limits of ten or less) or the extreme rarity (limits of fifteen or less) would be sufficient for any such modern limit to be ruled unconstitutional. Owning such magazines is very long-established manner in which the right to arms has historically been exercised in America.

Other courts perform a two-step test. Challengers to magazine limit laws should always pass step one, since magazine limits are not “longstanding.”



As for step two--review under some form of heightened scrutiny--the Supreme Court taught in *Heller* that when the "severe restriction" of a "ban" has support from "[f]ew laws in the history of our Nation," the law's constitutionality is very doubtful. This was true for the prohibition of handguns, and it is also true for the prohibition of magazines holding more than five, seven, ten, or fifteen rounds.

## Footnotes

- a1 Adjunct Professor of Advanced Constitutional Law, Denver University, Sturm College of Law. Research Director, Independence Institute, Denver, Colorado. Associate Policy Analyst, Cato Institute, Washington, D.C. Professor Kopel is the author of fifteen books and over ninety scholarly journal articles, including the first law school textbook on the Second Amendment. *See generally* NICHOLAS J. JOHNSON, DAVID B. KOPEL, GEORGE A. MOCSARY & MICHAEL P. O'SHEA, *FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY* (2012). Professor Kopel's website is <http://www.davekopel.org>. The author would like to thank Joseph Greenlee and Noah Rauscher for research assistance.
- 1 *See* Clayton E. Cramer & Joseph Edward Olson, *Pistols, Crime, and Public Safety in Early America*, 44 WILLAMETTE L. REV. 699, 716 (2008).
- 2 *District of Columbia v. Heller*, 554 U.S. 570 (2008).
- 3 *Id.* at 624-25, 627.
- 4 *See infra* notes 50-55 and accompanying text.
- 5 *See infra* notes 102-03 and accompanying text.
- 6 The U.S. manufacturing figures were compiled by the Bureau of Alcohol, Tobacco & Firearms. Although they were public documents, they were not made widely available in the 1970s. The following are the full-year production data by U.S. manufacturers. The figures do not include production for sale to the military. 1973: 452,232 pistols, 1,170,966 revolvers; 1974: 399,011 pistols, 1,495,861 revolvers; 1975: 455,267 pistols, 1,425,833 revolvers; 1976: 468,638 pistols, 1,425,407 revolvers; 1977: 440,387 pistols, 1,423,984 revolvers; 1978: 499,257 pistols, 1,458,013 revolvers; 1979: 637,067 pistols, 1,531,362 revolvers; 1980: 785,105 pistols, 1,586,149 revolvers. *Statistical Tabulation of Firearms Manufactured in the United States--and Firearms Exported--as Reported Yearly by Bureau of Alcohol, Tobacco and Firearms on ATF Form 4483-A*, AM. FIREARMS INDUSTRY (Nov. 1981) at 28-29.
- 7 *See* David B. Kopel, *The Great Gun Control War of the Twentieth Century--and Its Lessons for Gun Laws Today*, 39 FORDHAM URB. L.J. 1527, 1578-79 (2012) (beginning of "assault weapon" issue in the mid- and late 1980s); L. Ingram, *Restricting of Assault-Type Guns Okd by Assembly Unit*, L.A. TIMES, Apr. 9, 1985, at 3.
- 8 Below, this article describes many models of semi-automatic rifles introduced since 1927. *See infra* notes 82-101 and accompanying text. All of them have been labeled an "assault weapon" by one or more proposed bills. *See, e.g.*, LEGAL CMTY. AGAINST VIOLENCE, *BANNING ASSAULT WEAPONS--A LEGAL PRIMER FOR STATE AND LOCAL ACTION* 59-60 (2004), available at [http://smartgunlaws.org/wp-content/uploads/2012/05/Banning\\_Assault\\_Weapons\\_A\\_Legal\\_Primer\\_8.05\\_entire.pdf](http://smartgunlaws.org/wp-content/uploads/2012/05/Banning_Assault_Weapons_A_Legal_Primer_8.05_entire.pdf) (proposing a model assault weapons law).
- 9 *See infra* notes 129-30, 134, 140 and accompanying text.
- 10 *See infra* notes 131-33, 135-39 and accompanying text.

- 11 *See infra* notes 140-45 and accompanying text.
- 12 McDonald v. City of Chi., 561 U.S. 742 (2010).
- 13 District of Columbia v. Heller, 554 U.S. 570, 627-29 (2008).
- 14 *Id.* at 625.
- 15 *See infra* notes 21-24 and accompanying text.
- 16 *See infra* note 65 and accompanying text.
- 17 *See infra* notes 43-55, 172-73 and accompanying text.
- 18 *See infra* notes 102-03 and accompanying text.
- 19 *See Heller*, 554 U.S. at 630, 635 (declaring the District of Columbia's requirement that all firearms in the home be "rendered and kept inoperable at all times" as unconstitutional).
- 20 *Id.*
- 21 *See* LEWIS WINANT, FIREARMS CURIOSA 168-70 (2009); *A 16-Shot Wheel Lock, AMERICA'S 1ST FREEDOM* (June 2014), [http:// www.nrapublications.org/index.php/17739/a-16-shot-wheel-lock/](http://www.nrapublications.org/index.php/17739/a-16-shot-wheel-lock/) (NRA member magazine).
- 22 Cramer & Olson, *supra* note 1, at 716.
- 23 *Id.* at 716 & n.94.
- 24 *See id.* at 716-17; *This Day in History: May 15, 1718*, HISTORY, <http://www.historychannel.com.au/classroom/day-in-history/600/defence-rapid-fire-gun-patented> (last visited Feb. 21, 2015).
- 25 *Heller*, 544 U.S. at 582.
- 26 *Id.* ("Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the 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." (citations omitted)).
- 27 JIM SUPICA ET AL., TREASURES OF THE NRA NATIONAL FIREARMS MUSEUM 31 (2013).
- 28 JIM GARRY, WEAPONS OF THE LEWIS & CLARK EXPEDITION 94 (2012).
- 29 JOHN L. PLASTER, THE HISTORY OF SNIPING AND SHARPSHOOTING 69-70 (2008)..
- 30 *See* SUPICA ET AL., *supra* note 27, at 31.
- 31 *Id.* The Lewis and Clark gun is on display at the National Rifle Association's Sporting Arms Museum in Springfield, Missouri. Mark Yost, *The Story of Guns in America*, WALL ST. J., Sept. 3, 2014, at D5.
- 32 NORM FLAYDERMAN, FLAYDERMAN'S GUIDE TO ANTIQUE AMERICAN FIREARMS AND THEIR VALUES 683 (9th ed. 2007) [hereinafter FLAYDERMAN'S GUIDE]. According to James S. Hutchins, historian emeritus at the National Museum of American History, Smithsonian Institution, Mr. Flayderman has been a "revered expert in antique American arms and a vast range of other Americana for half a century..." James S. Hutchins, *Foreword* to NORM FLAYDERMAN, THE BOWIE KNIFE: UNSHEATHING THE AMERICAN LEGEND 7 (2004). Mr. Flayderman has been appointed as historical consultant to the U.S. Army Museum, U.S. Marine Corps Museum, and the State of Connecticut's historic weapons collections. Andrea

Valluzzo, *E. Norman Flayderman*, 84; *Antique Arms Expert*, ANTIQUES & ARTS WKLY. (July 2, 2013), <http://test.antiquesandthearts.com/node/185567#.VMvRAGjF8YM>.

33 JACK DUNLAP, *AMERICAN BRITISH & CONTINENTAL PEPPERBOX FIREARMS* 16 (1964).

34 LEWIS WINANT, *PEPPERBOX FIREARMS* 7 (1952).

35 See, e.g., *Pocketsize Allen and Thurber Pepperbox Revolver*, ANTIQUE ARMS, <http://aaawt.com/html/firearms/f102.html> (last visited Feb. 21, 2015).

36 DOE RUN LEAD COMPANY'S MUSEUM, *CATALOGUE OF CONTENTS* 66 (1912).

37 DUNLAP, *supra* note 33, at 148-49, 167 (describing three European eighteen-shot models and one twenty-four-shot model); SUPICA ET AL., *supra* note 27, at 33 (describing the Marietta eighteen-shot model); WINANT, *supra* note 21, at 249-50 (describing a twenty-four-shot pepperbox).

38 WINANT, *supra* note 34, at 28.

39 FLAYDERMAN'S GUIDE, *supra* note 32, at 711.

40 See *id.*

41 *Id.* at 713, 716.

42 *Id.* The Porter Rifle was said to be able to fire up to sixty shots per minute. Mary Moran, *P.W. Porter, Inventor of the Porter Rifle*, DEAD MEMPHIS TALKING (April 18, 2014), <http://deadmemphistalking.blogspot.com/2014/04/pw-porter-inventor-of-porter-rifle.html> (reprinting an article from New York Post). About 1250 of these guns were produced. S.P. Fjestad, *What's It Worth? The Porter Rifle*, FIELD & STREAM, <http://www.fieldandstream.com/articles/guns/rifles/2009/01/whats-it-worth-porter-rifle> (last visited Feb. 21, 2015).

43 See FLAYDERMAN'S GUIDE, *supra* note 32, at 303 ("The self-contained cartridge was a special type, the hollowed out conical bullet containing the powder, and backed by the primer."); HAROLD F. WILLIAMSON, *WINCHESTER: THE GUN THAT WON THE WEST* 26-27 (1952).

44 See *Smith & Wesson History*, SMITH & WESSON, [http://www.smith-wesson.com/webapp/wcs/stores/servlet/Category4\\_750001\\_750051\\_757941\\_-1\\_757938\\_757812\\_image](http://www.smith-wesson.com/webapp/wcs/stores/servlet/Category4_750001_750051_757941_-1_757938_757812_image) (last visited Feb. 21, 2015).

45 FLAYDERMAN'S GUIDE, *supra* note 32, at 304.

46 *Id.* at 303; WILLIAMSON, *supra* note 43, at 13.

47 WILLIAMSON, *supra* note 43, at 25. Oliver Winchester had an ownership interest in Volcanic and acquired the company in 1857. FLAYDERMAN'S GUIDE, *supra* note 32, at 300.

48 WILLIAMSON, *supra* note 43, at 25.

49 See *Id.*, at 28-31; Joseph Bilby, *The Guns of 1864*, AM. RIFLEMAN ((May 5, 2014), <http://www.americanriflesman.org/articles/2014/5/5/the-guns-of-1864/>). About 14,000 Henry rifles were sold in 1860-66. FLAYDERMAN'S GUIDE, *supra* note 32, at 305. The Henry Rifle is still in production today. See *About Henry Repeating*, HENRY, <http://www.henryrifles.com/about-henry-repeating/> (last visited Feb. 21, 2015).

50 See WILLIAMSON, *supra* note 43, at 49.

51 R.L. WILSON, *WINCHESTER: AN AMERICAN LEGEND* 32 (1991).

52 WILLIAMSON, *supra* note 43, at 49.



- 53 LOUIS A. GARAVAGLIA & CHARLES G. WORMAN, FIREARMS OF THE AMERICAN WEST 1866-1894, at 128 (1985). The Winchester Model 1866 was produced until 1898. FLAYDERMAN'S GUIDE, *supra* note 32, at 306.
- 54 WILSON, *supra* note 51, at 34.
- 55 FLAYDERMAN'S GUIDE, *supra* note 32, at 306.
- 56 *Model 1873 Short Rifle*, WINCHESTER REPEATING ARMS, [http:// www.winchesterguns.com/products/catalog/detail.asp?family=027C&mid=534200](http://www.winchesterguns.com/products/catalog/detail.asp?family=027C&mid=534200) (last visited Feb. 21, 2015).
- 57 *Id.*
- 58 FLAYDERMAN'S GUIDE, *supra* note 32, at 307. The Model 1873 was Pa Cartwright's gun on the 1959 to 1973 television series *Bonanza*. SUPICA ET AL., *supra* note 27, at 108.
- 59 FLAYDERMAN'S GUIDE, *supra* note 32, at 311. The Model 1892 was John Wayne's gun in many movies. SUPICA ET AL., *supra* note 27, at 109.
- 60 2014 STANDARD CATALOG OF FIREARMS: THE COLLECTOR'S PRICE & REFERENCE GUIDE, 1237 (Jerry Lee ed., 2013). The 1995 edition of this annually-published guide was relied on by the court in *Kirkland v. District of Columbia*, 70 F.3d 629, 635 n.3 (D.C. Cir. 1995).
- 61 The original Colt held up to fifteen rounds in calibers of .32-.20, .38-.40, and .44-.40. FLAYDERMAN'S GUIDE, *supra* note 32, at 122. Uberti currently produces a modern replica of the Colt Lightning, medium frame model, of which 89,000 were produced between 1884 and 1902. *Id.*
- 62 *Id.* at 694.
- 63 DWIGHT B. DEMERITT, JR., MAINE MADE GUNS & THEIR MAKERS 293-95 (rev. ed. 1997); FLAYDERMAN'S GUIDE, *supra* note 32, at 694. A later iteration of the rifle held twenty-five or twenty-eight rounds in the buttstock. DEMERITT, *supra*, at 301. The American Society of Arms Collectors endorses the Demeritt book as "the definitive work for historians and collectors" of Maine guns. DEMERITT, *supra*, at vi.
- 64 FLAYDERMAN'S GUIDE, *supra* note 32, at 694.
- 65 WINANT, *supra* note 21, at 244-45. The magazine stuck out horizontally from the side of the firing chamber, making the handgun difficult to carry in a holster, which perhaps explains why the gun never had mass success. SUPICA ET AL., *supra* note 27, at 33.
- 66 *See infra* notes 72-77 and accompanying text.
- 67 SUPICA ET AL., *supra* note 27, at 48-49; WINANT, *supra* note 21, at 67-70.
- 68 SUPICA ET AL., *supra* note 27, at 49.
- 69 *See, e.g.*, WINANT, *supra* note 21, at 62-63, 207-08.
- 70 *Id.* at 204, 206.
- 71 *See id.* at 205.
- 72 JOHN W. BREATHED, JR. & JOSEPH J. SCHROEDER, JR., SYSTEM MAUSER, A PICTORIAL HISTORY OF THE MODEL 1896 SELF-LOADING PISTOL 272 (1967) (production of 1,150,000, of which "almost a million" were sold on the commercial, non-military market); *see* John Elliot, *A Sweeping History of the Mauser C96 Broomhandle Pistol*, GUNS.COM (Jan. 26, 2012), <http://www.guns.com/2012/01/26/a-sweeping-history-of-the-mauser-c96-broomhandle-pistol/>.

- 73 2014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 708-09.
- 74 *Id.*; BREATHED & SCHROEDER, *supra* note 72, at 23, 30-31, 38-39, 54-55. At least between 1896 and 1905, Mauser's direct sales to the United States were small. *Id.* at 266-67. Spain's Astra brought out its own versions of the Mauser, with several models having twenty-round magazines starting in 1928. *Id.* at 208. But these do not appear to have had much distribution in the United States. *Id.* at 266-67.
- 75 See 2014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 650.
- 76 Among the many models was the 1906 American Eagle. *Id.* at 653. George Luger's invention was licensed to many companies, including Mauser (Germany) and Vickers (England). *Id.* at 657-58. The gun was never manufactured under Luger's own name. See *id.* at 650-62.
- 77 JEAN-NOËL MOURET, PISTOLS AND REVOLVERS 126-27 (1993); SUPICA ET AL., *supra* note 27, at 86.
- 78 See *Savage Arms History*, SAVAGE ARMS, <http://www.savagearms.com/history/> (last visited Feb. 21, 2015).
- 79 JIM PERKINS, AMERICAN BOYS' RIFLES 1890-1945, at 191 (1976).
- 80 *Id.* Similarly, the Remington Model 12B Gallery Special was introduced in 1910, with an optional extended magazine that held twenty-five .22 shorts. ROY MARCOT, REMINGTON, "AMERICA'S OLDEST GUN MAKER" 149 (James W. Bequette & Joel J. Hutchcroft eds. 1998).
- 81 See, e.g., 2014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 687-88, 870, 1343.
- 82 Models listed in the 1936 *Shooter's Bible* include; Remington Model 34 bolt action, Remington Model 121 slide action, Remington Model 341 bolt action, Stevens No. 71 slide action, Savage Model 5 bolt action, Stevens Model 76 semiauto, Stevens-Springfield Model 86 bolt action, Winchester Model 62 slide action, and Winchester Model 61 slide action. STOGER ARMS CORP., SHOOTER'S BIBLE, 1936, at 108-09, 112, 123-24, 126-27, 140 (photo. reprint 1974).  
Some additional models include: Stevens Model 87 bolt action, Remington 550 semiauto, Mossberg Model 46B bolt action, Mossberg Model 46M bolt action, Winchester Model 74 semiautomatic, Marlin 39 A lever action, and Marlin Model 81 DL bolt action. BOB BROWNELL, 2 THE GUNSMITHS MART, 1949-1950, at 212, 214, 216, 218, 221 (2011) (reprinting article from *Hunting & Fishing*, Oct. 1948).  
The 1959 annual edition of the *Shooter's Bible* adds the semiautomatic Savage Model 6 to the above list. STOGER ARMS CORP., SHOOTER'S BIBLE, 1959, at 103 (1959). For some of the models previously mentioned, see *id.* at 80, 87, 91, 101.  
Histories of Savage and Stevens firearms include the following not listed above: Stevens No. 66 bolt action, Stevens Model 46 bolt action, Model 1914 slide action, Savage Model 29 slide action, Savage Model 29 G slide action. JAY KIMMEL, SAVAGE AND STEVENS ARMS COLLECTOR'S HISTORY 35 (1990); BILL WEST, SAVAGE AND STEVENS ARMS, at 11-12, 13-8, 14-44, 15-10, 16-10 (1971). Savage purchased Stevens in 1920. *Savage Arms History*, *supra* note 78.  
For use of the *Shooter's Bible* by the courts, see *United States v. Olson*, No. 94-30387, 1995 U.S. App. LEXIS 36973, at \*1-2 (9th Cir. Dec. 15, 1995) (stating that the book was properly used as a source for a Bureau of Alcohol, Tobacco, and Firearms agent's expert opinion); *United States v. Fisher*, 353 F.2d 396, 399 (5th Cir. 1965) (Gwin, J., dissenting) (considering information in the book to determine whether the evidence relied on by the trial court was sufficient to justify the trial court's holding); *Potter v. United States*, 167 Ct. Cl. 28, 48 n.1 (Ct. Cl. 1964) (citing the book for the history of Gabilondo firearms); *United States v. Precise Imports Corp.*, 458 F.2d 1376, 1377 (C.C.P.A. 1972) (reviewing the record produced at the trial court, which included pages from the 1967 edition of the book).
- 83 2014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 84; *T1-C*, THOMPSON, [www.auto-ordnance.com/firearms/thompson-t1-c.asp](http://www.auto-ordnance.com/firearms/thompson-t1-c.asp) (last visited Feb. 21, 2015).
- 84 See *T1-C*, *supra* note 83.



- 85 See BRUCE N. CANFIELD, *BRUCE CANFIELD'S COMPLETE GUIDE TO THE M1 GARAND AND THE M1 CARBINE* 163 (1999).
- 86 See *id.* at 163, 279 (noting high desirability and demand for the firearm after the war ended); see also Joseph P. Tartaro, *The Great Assault Weapon Hoax*, 20 U. DAYTON L. REV. 619, 622 (1995) ("[T]he M1 carbine [is] beloved by millions of war veterans, collectors, and recreational shooters.").
- 87 CANFIELD, *supra* note 85, at 163; LARRY L. RUTH, 2 WAR BABY! COMES HOME: THE U.S. CALIBER .30 CARBINE 575 (R. Blake Stevens ed., 1993); *About the CMP, CIV. MARKSMANSHIP PROGRAM*, <http://thecmp.org/about/> (last visited Feb. 21, 2015).
- 88 See CANFIELD, *supra* note 85, at 163, 279 (noting the large quantity of surplus carbine parts and that firms created commercial carbines using these parts in the 1950s and 1960s). The largest producers were Plainfield's 112,000 from 1962 to 1978 and Iver Johnson's 96,700 from 1978 to 1992. *Post WWII Commercially Manufactured M1 Carbines (U.S.A.): Iver Johnson Arms*, M1CARBINESINC.COM, [http://www.m1carbinesinc.com/carbine\\_ij.html](http://www.m1carbinesinc.com/carbine_ij.html) (last visited Feb. 21, 2015); *Post WWII Commercially Manufactured M1 Carbines (U.S.A.): Plainfield Machine Co., Inc.*, M1CARBINESINC.COM, [http://www.m1carbinesinc.com/carbine\\_plainfield.html](http://www.m1carbinesinc.com/carbine_plainfield.html) (last visited Feb. 21, 2015). The U.S. Government sold 240,000 of its own surplus in 1963 into the Civilian Marksmanship Program. CANFIELD, *supra* note 85, at 163. Thereafter, the program (then known as "DCM"—Director of Civilian Marksmanship) sold M1s to Americans from the supply of World War II M1 carbines that had been exported to allied nations and subsequently returned to the United States when the allied nation switched to a newer type of rifle. See RUTH, *supra* note 87, at 575, 723. As of 2014, the Civilian Marksmanship Program's supply of carbines for sale has been exhausted. *M1 Carbine, CIV. MARKSMANSHIP PROGRAM*, <http://www.thecmp.org/Sales/carbine.htm> (last visited Feb. 21, 2015).
- 89 RUTH, *supra* note 87, at 575.
- 90 See NICHOLAS J. JOHNSON, DAVID B. KOPEL, GEORGE A. MOCSARY & MICHAEL P. O'SHEA, *FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY* 12, 809 (2012) (noting the wide range of uses for the gun and its popularity). The "AR" stands for "ArmaLite Rifle." *Modern Sporting Rifle Facts*, NAT'L SHOOTING SPORTS FOUND., <http://www.nssf.org/msrf/facts.cfm> (last visited Feb. 21, 2015). ArmaLite did the initial design work on the AR-15 before selling the rights to Colt's. ARMALITE, INC., *A HISTORICAL REVIEW OF ARMALITE 3* (Jan. 4, 2010), available at <http://www.armalite.com/images/Library%5CHistory.pdf>.
- 91 PATRICK SWEENEY, *THE GUN DIGEST BOOK OF THE AR-15*, at 104 (2005). About this time, the Cetme-Sport semiauto rifle with an optional twenty-round detachable box mag magazine came on the market. *GUN DIGEST* 1968, at 335 (John T. Amber ed., 22nd Anniversary Deluxe ed. 1967).
- 92 *Staples v. United States*, 511 U.S. 600 (1994).
- 93 *Id.* at 603.
- 94 *Id.* at 602 n.1, 603.
- 95 See *id.* at 612.
- 96 See *id.* at 611-12.
- 97 See *GUN DIGEST* 1970, at 294 (John T. Amber ed., 24th Anniversary Deluxe ed. 1969).
- 98 See 2014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 1102 (noting the twenty-round box magazine); *M1A Series*, SPRINGFIELD ARMORY, <http://www.springfield-armory.com/m1a-series/> (last visited Feb. 21, 2015).
- 99 2014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 1173.



- 100 See M1A Scout, *What is an M1A Rifle*, M1A RIFLES (July 2, 2009), <http://www.m1arifles.com/tag/m14/>; Shawn Skipper, *8 Things You Might Not Know About the Ruger Mini-14*, DAILY CALLER (June 3, 2014), <http://dailycaller.com/2014/06/03/8-things-you-might-not-know-about-the-ruger-mini-14/>. Another gun introduced in 1976 also used magazines larger than fifteen. The Bingham company (from Norcross, Georgia) brought out the PPS 50 and AK-22, .22 caliber rifles with detachable magazines of fifty or twenty-nine rounds. 2 014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 163. The PPS-50 is currently manufactured by Mitchell's Mausers. See PPS-50/22, MITCHELL'S MOUSERS, <http://www.mauser.org/pps-50-22/> (last visited Feb. 21, 2015). That the gun is still in production four decades later is impressive, but the PPS-50 never became an all-American favorite as did the M1, AR-15, M1A and the Mini-14.
- 101 GUN DIGEST 1980, at 319-21 (Ken Warner ed., 34th Anniversary Deluxe ed. 1979). Also on the market were the Commando Arms carbine (five, fifteen, thirty or ninety rounds), and the Wilkinson Terry carbine (thirty-one rounds). *Id.* at 319, 322.
- 102 2 014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 182.
- 103 *Id.* at 432-33.
- 104 See *id.* at 465.
- 105 *Id.* at 72; BREATHED & SCHROEDER, *supra* note 74, at 216-17.
- 106 See GUN DIGEST 1965, at 229 (John T. Amber eds., 19th Anniversary Deluxe ed. 1964).
- 107 2 014 STANDARD CATALOG OF FIREARMS, *supra* note 60, at 121.
- 108 *Id.* at 122. In 1985 the M9 version of this pistol became the standard U.S. military issue sidearm. *Id.* at 124.
- 109 *Id.* at 184.
- 110 See GUN DIGEST 1980, *supra* note 101, at 297-98. L.E.S. was the American partner of Austria's Steyr. The following courts have relied on one of the annual issues of GUN DIGEST: *Sturm, Ruger & Co. v. Arcadia Mach. & Tool, Inc.*, No. CV 85-8459 MRP, 1988 U.S. Dist. LEXIS 16451, at \*3-4 (C.D. Cal. Nov. 4, 1988); *A. Uberti & C. v. Leonardo*, 892 P.2d 1354, 1364 (Ariz. 1995) (discussing how the inclusion of the defendant's guns in the *Gun Digest* established that defendant had sufficient minimum contacts with the state to satisfy personal jurisdiction); *Couplin v. State*, 378 A.2d 197, 202 n.2 (Md. Ct. Spec. App. 1977); *Citizens for a Safer Cmty. v. City of Rochester*, 627 N.Y.S.2d 193, 203 n.5 (Sup. Ct. 1994).
- 111 JULIAN E. ZELIZER, *JIMMY CARTER* 3 (2010).
- 112 See DAVID N. MEYER, *THE BEE GEES: THE BIOGRAPHY* 213-14 (2013).
- 113 PAUL M. BARRETT, *GLOCK: THE RISE OF AMERICA'S GUN* 13-16 (2012).
- 114 GAVIN MACLEOD & MARK DAGOSTINO, *THIS IS YOUR CAPTAIN SPEAKING: MY FANTASTIC VOYAGE THROUGH HOLLYWOOD, FAITH & LIFE* 138-39 (2013).
- 115 See, e.g., BOB DENTON, *THE PC PIONEERS* 97-100 (2d ed. 2014); ROBERT E. WILLIAMS & BRUCE J. TAYLOR, *THE POWER OF: VISICALC* (1981) (advising how to properly use the VisiCalc system and providing practice exercises on the system).
- 116 See generally David Tong, *The Care, Feeding and Reliability of Semi-Automatic Pistols*, CHUCKHAWKS.COM, [http://www.chuckhawks.com/care\\_reliability\\_autopistols.htm](http://www.chuckhawks.com/care_reliability_autopistols.htm) (last visited Feb. 21, 2015).

- 117 See, e.g., Tim Lau, *AR15/M16 Magazine Drop Test: Plastic Vs. Aluminum*, MODERN SERVICE WEAPONS, (Dec. 9, 2012), <http://modernserviceweapons.com/?p=1072> (comparing the performance of plastic and aluminum magazines).
- 118 Michael Shain, Expert Report and Opinion at 5-6, *Cooke v. Hickenlooper*, No. 13-cv-01300-MSK-MJW (D. Colo. Aug. 1, 2013), available at <http://coloradoguncase.org/Shain-report.pdf>. Kopel is counsel for the Colorado Sheriffs who are the plaintiffs in this case, which is currently on appeal to the Tenth Circuit.
- 119 See Mike Wood, *3 Simple Keys to Cleaning Your Pistol Magazines*, POLICEONE.COM, July 11, 2014, <http://www.policeone.com/Officer-Safety/articles/7358758-3-simple-keys-to-cleaning-your-pistol-magazines/>.
- 120 Michael Shain, Expert Report and Opinion at 5-7, *Cooke*, No. 13-cv-01300-MSK-MJW.
- 121 See, e.g., *Magazine Adapters*, TOP GUN SUPPLY, <http://www.topgunsupply.com/gun-accessories-for-sale/magazine-adapters.html> (last visited Feb. 19, 2014) (selling magazine adapters that increase capacity and/or increase grip length).
- 122 *Magazines, Clips, and Speedloaders*, FIREARMS ADVANTAGE, [http://www.firearmsadvantage.com/magazines\\_clips\\_speedloaders.html](http://www.firearmsadvantage.com/magazines_clips_speedloaders.html) (last visited Feb. 21, 2015).
- 123 *Id.*
- 124 *Id.*
- 125 *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008).
- 126 *Id.* at 626, 629.
- 127 *Kerr v. Hickenlooper*, 744 F.3d 1156, 1178 (10th Cir. 2014).
- 128 See *supra* notes 21-31 and accompanying text.
- 129 Act of June 2, 1927, No. 373, § 3, 1927 Mich. Public Acts 887, 888 (repealed 1959) ("It shall be unlawful within this state to manufacture, sell, offer for sale, or possess any machine gun or firearm which can be fired more than sixteen times without reloading ...."). In 1931, the provision was consolidated into section 224 of the Michigan Code.
- 130 Act of Apr. 22, 1927, ch. 1052, §§ 1, 4, 1927 R.I. Acts & Resolves 256, 256-57 (amended 1959).
- 131 Under the 1959 revision: "Any person who shall manufacture, sell, offer for sale or possess any machine gun or firearm which shoots or is designed to shoot automatically more than 1 shot without manual reloading, by a single function of the trigger ... shall be guilty of a felony...." Act of July 16, 1959, No. 175, sec. 1, § 224, 1959 Mich. Pub. Acts 249, 250. Michigan's current statute on machine guns contains very similar language. See MICH. COMP. LAWS SERV. § 750.224 (LexisNexis 2014) ("A person shall not manufacture, sell, offer for sale or possess... [a] machine gun or firearm that shoots or is designed to shoot automatically more than 1 shot without manual reloading, by a single function of the trigger.").
- 132 Firearms Act, ch. 75, secs. 11-47-2, -8, 1959 R.I. Acts & Resolves 260, 260, 263 (amended 1975).
- 133 This was accomplished by changing the Firearms Act's definition of "Machine gun" to mirror the federal definition:  
[A]ny weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

## THE HISTORY OF FIREARM MAGAZINES AND MAGAZINE..., 78 Alb. L. Rev. 849

- Firearms Act, ch. 278, sec. 1, § 11-47-2, 1975 R.I. Pub. Laws 738, 738-39, 742 (amended 1989). Rhode Island's definition of machine gun was changed again in 1989. Act of July 10, 1989, ch. 542, sec. 7, § 11-47-2, 1989 R.I. Pub. Laws. 1371, 1375-76 (codified at R.I. GEN. LAWS ANN. § 11-47-2 (West 2014)).
- 134 Act of Apr. 8, 1933, No. 166, sec. 1, §§ 12819-3, -4, 1933 Ohio Laws 189, 189 (amended 1972).
- 135 Act of Dec. 22, 1972, No. 511, sec. 1, § 2923.11, 1972 Ohio Laws 1866, 1963; OHIO REV. CODE ANN. § 2923.11 (LexisNexis 2014).
- 136 *Ohio: Disclaimer*, BUDSGUNSHOP.COM (July. 11, 2014), [http:// www.budsgunshop.com/catalog/feeds/state\\_reg/ohio\\_restrictions.pdf](http://www.budsgunshop.com/catalog/feeds/state_reg/ohio_restrictions.pdf).
- 137 OHIO REV. CODE ANN. § 2923.17.
- 138 *See, e.g., Surefire 60-Round High-Capacity Magazine MAG5-60*, GANDER MTN., <http://www.gandermountain.com/modperl/product/details.cgi?pdsc=SureFire-60-Round-High-Capacity-Magazine-MAG5-60&i=447625> (last visited Feb. 21, 2015) (allowing online customers to arrange for pick-up of a SureFire 60-Round High-Capacity Magazine at any of nine Ohio stores).
- 139 H.R. 234, 2013-2014 Leg., 130th Sess. § 2 (Ohio 2014) (enacted) (repealing relevant definition statute, and taking effect Mar. 23, 2015).
- 140 Act of July 8, 1932, Pub. L. No. 72-275, §§ 1, 8, 47 Stat. 650, 650, 652.
- 141 National Firearms Act, Pub. L. 73-474, 48 Stat. 1236 (1934).
- 142 *D.C. Home Rule*, COUNCIL D.C., <http://dccouncil.us/pages/dc-home-rule> (last visited Feb. 21, 2015).
- 143 *See* Firearms Control Regulations Act of 1975, No. 1-142, § 201, 23 D.C. Reg. 1091, 1097 (July 23, 1976).
- 144 *See supra* notes 13-14, 19-20 and accompanying text.
- 145 *See* VIVIAN S. CHU, DC GUN LAWS AND PROPOSED AMENDMENTS 5-6 (2011) (“Prior to Heller, the DC Code’s definition of ‘machine gun’ included ‘any firearm, which shoots, is designed to shoot or can be readily converted to shoot... semiautomatically, more than 12 shots without manual reloading.’ By virtue of this broad definition, any semiautomatic weapon that could shoot more than 12 shots without manual reloading, whether pistol, rifle, or shotgun, was deemed a ‘machine gun,’ and prohibited from being registered. It appears that under the District’s old definition, registration of a pistol was largely limited to revolvers.” (quoting D.C. Code § 7-2501.01(10) (LexisNexis 2008))).
- 146 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 110103(a)-(b), 108 Stat. 1796, 1998-99.
- 147 § 110105, 108 Stat. at 2000.
- 148 CHRISTOPHER S. KOPER ET AL., AN UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN: IMPACTS ON GUN MARKETS AND GUN VIOLENCE, 1994-2003, at 96 (2004), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>.
- 149 *Id.* at 2.
- 150 *Id.* at 81 n.95.
- 151 Act of May 30, 1990, ch. 32, §§ 2C:39-1(y), -3(j), 1990 N.J. Laws 217, 221, 235 (codified at N.J. STAT. ANN. § 2C:39-1(y), -3(j) (West 2014)).
- 152 § 2C:39-1(y). There is an exemption for certain competitive target shooters. *Id.* § 2C:39-3(j).



## THE HISTORY OF FIREARM MAGAZINES AND MAGAZINE..., 78 Alb. L. Rev. 849

- 153 Act of June 29, 1992, ch. 286, sec. 3, § 134-8, 1992 Haw. Sess. Laws 740, 742 (codified at HAW. REV. STAT. ANN. § 134-8 (LexisNexis 2014)).
- 154 Act of May 26, 1994, ch. 456, § 36H-5, 1994 Md. Laws 2119, 2165 (amended 2013).
- 155 See Firearm Safety Act of 2013, ch. 427, § 4-305, 2013 Md. Laws 4195, 4210 (codified at MD. CODE ANN., CRIM. LAW § 4-305 (LexisNexis 2014)).
- 156 See Act of July 19, 1999, ch. 129, sec. 3, § 12020(a)(2), (c)(25), 1999 Cal. Stat. 1781, 1785, 1793 (repealed 2012); Act of Aug. 8, 2000, ch. 189, sec. 11, § 265.02(8), 2000 N.Y. Laws 2788, 2793 (amended 2013).
- 157 *Large Capacity Ammunition Magazines Policy Summary*, L. CENTER TO PREVENT GUN VIOLENCE (May 31, 2013), <http://smartgunlaws.org/large-capacity-ammunition-magazines-policy-summary/>; see *supra* notes 158, 165 and accompanying text.
- 158 Act of Jan. 15, 2013, ch. 1, secs. 38, 46-a, §§ 265.00.23, 265.36, 2013 N.Y. Laws 1, 16, 19 (codified at N.Y. PENAL LAW § 265.36 (McKinney 2014)).
- 159 Freeman Klopott, *Cuomo's 7-Bullet Limit to Be Suspended Indefinitely, Skelos Says*, BLOOMBERG (Mar. 24, 2013), <http://www.bloomberg.com/news/2013-03-25/cuomo-s-7-bullet-limit-to-be-suspended-indefinitely-skelos-says.html>.
- 160 PENAL §§ 265.36-.37; OFFICE OF DIV. COUNSEL, GUIDE TO THE NEW YORK SAFE ACT FOR MEMBERS OF THE DIVISION OF STATE POLICE 7, 9 (2013), available at [http://www.nypdcea.org/pdfs/NYSP\\_Safe\\_Act\\_Field\\_Guide.pdf](http://www.nypdcea.org/pdfs/NYSP_Safe_Act_Field_Guide.pdf).
- 161 N.Y. State Rifle & Pistol Ass'n v. Cuomo, 990 F. Supp. 2d 349, 372-73 (W.D.N.Y. 2013).
- 162 N.Y.C., N.Y., ADMIN. CODE § 10-306(b) (2015).
- 163 Act of Mar. 20, 2013, ch. 48, sec. 1, §§ 18-12-301(2)(a)(I), - 302(1), 2013 Colo. Sess. Laws 144, 144-45 (codified at COLO. REV. STAT. § 18-12-302(1) (2014)).
- 164 Act of April 4, 2013, P.A. 13-3, § 23, 2013 Conn. Acts 47, 66 (Reg. Sess.) (codified at CONN. GEN. STAT. ANN. § 53-202w (West 2015)).
- 165 COLO. REV. STAT. § 18-12-302(2) (permitting a person to maintain possession of a banned magazine if he/she owned it prior to the effective date of the law and maintained "continuous possession" thereafter); CONN GEN. STAT. §§ 53-202w(e)(4), 53-202x(a)(1) (permitting a person to maintain possession of a banned magazine if he/she possessed it prior to the effective date of the law and declared it to the government).
- 166 MASS. GEN. LAWS ANN. ch. 140 §§ 121, 131(a) (West 2014) (allowing possession and acquisition of magazines manufactured before Sept. 1994 by anyone with a Class A license); Matt Carroll, *Snapshot: Gun Licenses Per 1,000, 2012*, BOSTON.COM, (Jan. 24, 2013), [http://www.boston.com/yourtown/specials/snapshot/massachusetts\\_snapshot\\_gun\\_licenses\\_2012](http://www.boston.com/yourtown/specials/snapshot/massachusetts_snapshot_gun_licenses_2012) (showing the prevalence of Class A licenses in Massachusetts). A 2014 bill enacted in Massachusetts eliminated the lower category of "Class B" firearms licenses, so presumably all licensed firearms owners in Massachusetts will be able to acquire magazines of more than ten rounds, albeit only magazines manufactured before 1995. Act of Aug. 11, 2014, ch. 284, 2014 Mass. Acts, available at <https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter284>.
- 167 See, e.g., *Ezell v. City of Chi.*, 651 F.3d 684, 702-03 (7th Cir. 2011).
- 168 JOHNSON, KOPEL, MOCSARY & O'SHEA, *supra* note 90, at 218.
- 169 *Id.* at 299.
- 170 See *supra* Part II.B.

Exhibit 12

- 171 *See supra* notes 27-31 and accompanying text.
- 172 *See supra* notes 32-35 and accompanying text..
- 173 RICHARD C. RATTENBURY, A LEGACY IN ARMS: AMERICAN FIREARM MANUFACTURE, DESIGN, AND ARTISTRY, 1800-1900, at 135 (2014); *see supra* note 49 and accompanying text.
- 174 CLIFFORD R. CADWELL, GUNS OF THE LINCOLN COUNTY WAR 50 (2009); RATTENBURY, *supra* note 173, at 136; *supra* notes 55-55 and accompanying text.
- 175 *See supra* notes 129-30 and accompanying text; *see also* Act of June 2, 1927, No. 372, § 3, 1927 Mich. Public Acts 887, 888-89 (repealed 1959) (regulating the possession of and carrying of certain firearms that were capable of firing sixteen shots without reloading).
- 176 *See id.* at 625, 629 (majority opinion).
- 177 *Id.* at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)).
- 178 *Heller*, 554 U.S. at 627.
- 179 *See id.* at 625, 627.
- 180 *See id.* at 627.
- 181 *See id.*
- 182 *Id.* (quoting *Miller*, 307 U.S. at 179).
- 183 *Heller*, 554 U.S. at 627 (quoting *Miller*, 307 U.S. at 179) (internal quotation marks omitted).
- 184 *Miller*, 307 U.S. at 178.
- 185 *Heller*, 554 U.S. at 625.
- 186 *Miller*, 307 U.S. at 177, 183.
- 187 *Id.* at 178. “Judicial notice” is when courts rely on facts that are not in the record of the case, but which are indisputably true. FED. R. EVID. 201. For example, they may be a subject of common knowledge (e.g., that in Arkansas, the sun is never visible in the sky at midnight) or can be ascertained from indisputable sources (e.g., that a particular section of the Code of Federal Regulations contains certain language). *See id.*
- 188 Brian L. Frye, *The Peculiar Story of United States v. Miller*, 3 N.Y.U. J.L. & LIBERTY 48, 65-68 (2008). *The Peculiar Story of United States v. Miller* was cited by the Court in *Heller*. *Heller*, 554 U.S. at 623.
- 189 *Heller*, 554 U.S. at 621-22.
- 190 *See supra* Part II.
- 191 *See supra* Part II.
- 192 *See* *Fyock v. City of Sunnyvale*, No. C-13-5807-RMW, 2014 U.S. Dist. LEXIS 29722, at \*13 (N.D. Cal. Mar. 5, 2014) (agreeing with and incorporating affidavit from plaintiffs’ expert 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.”).
- 193 *Id.* (“Plaintiffs cite statistics showing that magazines having a capacity to accept more than ten rounds make up approximately 47 percent of all magazines owned.”).

- 194 PATRICK SWEENEY, THE GUN DIGEST BOOK OF THE AR-15, at 14 (2005); see Meghan Lisson, *Run on Guns: AR-15s Sales Soar*, CNBC (Apr. 25, 2013), <http://www.cnbc.com/id/100673826>.
- 195 SWEENEY, *supra* note 194, at 99.
- 196 *District of Columbia v. Heller*, 554 U.S. 570, 626, 627 n.26 (2008).
- 197 *Id.* at 626-27.
- 198 *Id.* at 629 (citations omitted) (citing *Nunn v. State*, 1 Ga. 243, 251 (1846); *Andrews v. State*, 50 Tenn. 165, 187 (1871)); see also *Heller*, 554 U.S. at 629 ("A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional ...." (quoting *State v. Reid*, 1 Ala. 612, 616-17 (1840)) (internal quotation marks omitted)).
- 199 Edward D. Jones, III, *The District of Columbia's "Firearms Control Regulations Act of 1975": The Toughest Handgun Control Law in the United States--Or Is It?*, 455 ANNALS AM. ACAD. POL. & SOC. SCI. 138, 139 (1981).
- 200 See *McDonald v. City of Chi.*, 561 U.S. 742, 749 (2010); Steve Chapman, *Chicago's Pointless Handgun Ban: City Gun Ordinances Proved to Be a Failure*, CHI. TRIB., Mar. 4, 2010, at C21.
- 201 *Nunn*, 1 Ga. at 246, 251. The *Heller* Court cited this case with approval. *Heller*, 554 U.S. at 612.
- 202 *Fiscal v. City & Cnty. of S.F.*, 70 Cal. Rptr. 3d 324, 326, 341-42 (Ct. App. 2008); *Doe v. City & Cnty. of S.F.*, 186 Cal Rptr. 380, 381 (Ct. App. 1982).
- 203 See *supra* note 151-52 and accompanying text.
- 204 See *supra* note 156 and accompanying text.
- 205 See *supra* notes 129-30, 134, 140 and accompanying text.
- 206 See *supra* notes 140-45 and accompanying text.
- 207 See *supra* notes 131, 133 and accompanying text.
- 208 See *supra* notes 135-39 and accompanying text.
- 209 *Ezell v. City of Chi.*, 651 F.3d 684, 690-91 (7th Cir. 2011).
- 210 *Id.* at 702-03.
- 211 *Id.* at 703.
- 212 *Id.* at 704.
- 213 *Id.* at 705-06.
- 214 *Id.*
- 215 *Id.* at 705.
- 216 *Id.* at 706.
- 217 *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 632 (2008)); see also *Heller*, 554 U.S. at 632 ("[W]e would not stake our interpretation of the Second Amendment upon a single law... that contradicts the overwhelming weight of other evidence....").
- 218 See *Ezell*, 652 F.3d at 706.



- 219 *See supra* notes 131, 133, 140 and accompanying text.
- 220 18 U.S.C. § 922(x)(2)-(3) (2013); *United States v. Rene E.*, 583 F.3d 8, 16 (1st Cir. 2009).
- 221 *Rene E.*, 583 F.3d at 12.
- 222 *Id.*
- 223 *Id.* at 14-15.
- 224 *State v. Callicutt*, 69 Tenn. 714, 716-17 (1878).
- 225 *McMillan v. Steele*, 119 A. 721, 722 (Pa. 1923).
- 226 *State v. Allen*, 94 Ind. 441, 441 (1884).
- 227 *Tankersly v. Commonwealth*, 9 S.W. 702, 703 (Ky. 1888).
- 228 *Coleman v. State*, 32 Ala. 581, 582-83 (1858).
- 229 *Biffer v. Chicago*, 116 N.E. 182, 184 (Ill. 1917).
- 230 *Schmidt v. Capital Candy Co.*, 166 N.W. 502, 503-04 (Minn. 1918).
- 231 *United States v. Rene E.*, 583 F.3d 8, 14-15 (1st Cir. 2009).
- 232 *Id.*
- 233 *Id.*
- 234 *Id.* at 11-16 (“[T]his law, with its narrow scope and its exceptions, does not offend the Second Amendment.”). Exceptions include farm and ranch work as well as target shooting or other activities under parental supervision. 18 U.S.C. § 922(x)(3)(A)(i)-(ii) (2013).
- 235 *Ezell v. City of Chi.*, 651 F.3d 684, 706 (7th Cir. 2011).
- 236 *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).
- 237 *Id.* at 574-75.
- 238 *Id.* at 635.
- 239 *See Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1248-49 (D.C. Cir. 2011).
- 240 *Id.* at 1247.
- 241 *Id.* at 1252-53.
- 242 *See id.* at 1252.
- 243 *Id.* at 1253-54.
- 244 *See id.* at 1254.
- 245 *Id.* The court listed seven states that today have handgun registration laws. *Id.* at n.\*.
- 246 *Id.* at 1254-55.
- 247 *Id.* at 1255.
- 248 *Id.*

249 *See id.* at 1247.

250 *See id.*

251 *Id.* at 1246, 1260, 1264.

252 *Id.* at 1260.

253 *Id.* at 1260 n.\*.

254 *Id.* at 1262-64.

255 *Id.* at 1263-64.

256 KOPER EL AL., *supra* note 148, at 92.

257 *Heller II*, 670 F.3d at 1285 (Kavanaugh, J., dissenting) (“A ban on a class of arms is not an ‘incidental’ regulation. It is equivalent to a ban on a category of speech. Such restrictions on core enumerated constitutional protections are *not* subjected to mere intermediate scrutiny review. The majority opinion here is in uncharted territory in suggesting that intermediate scrutiny can apply to an outright ban on possession of a class of weapons that have not traditionally been banned.”).

258 *Id.* at 1285-86.

259 *See id.* at 1282.

260 *Id.* (“*Heller* was resolved in favor of categoricalism—with the categories defined by text, history, and tradition—and against balancing tests such as strict or intermediate scrutiny or reasonableness.”).

261 *See id.*

262 *Id.* at 1286.

263 *See id.* at 1292-93.

264 *Id.* at 1294.

265 *See id.*

266 *See id.* at 1287 (citing JOHNSON, KOPEL, MOCSARY & O’SHEA, *supra* note 90, at 11).

267 *Heller II*, 670 F.3d at 1296 n.20 (Kavanaugh, J., dissenting) (“The D.C. ban on magazines of more than 10 rounds requires analysis in the first instance by the District Court. In order to apply *Heller’s* test to this prohibition, we must know whether magazines with more than 10 rounds have traditionally been banned and are not in common use. The parties here did not brief that question in much detail. Evidence presented to the District Court on the history and prevalence of magazines of more than 10 rounds would be helpful to the proper disposition of that issue under the *Heller* test. Therefore, I would remand to the District Court for analysis of that issue.”).

268 *See* Lindsay Colvin, Note, *History, Heller, and High-Capacity Magazines: What Is the Proper Standard of Review for Second Amendment Challenges?*, 41 FORDHAM URB. L.J. 1041, 1075-80 (2014).

269 *Heller II*, 670 F.3d at 1260.

270 *Silvester v. Harris*, No. 1:11-CV-2137 AWI SAB, 2014 U.S. Dist. LEXIS 118284 (E.D. Cal. Aug. 25, 2014).

271 CAL. PENAL CODE §§ 26815(a), 27540(a) (West 2014).

272 *Silvester*, 2014 U.S. Dist. LEXIS 118284, at \*82.

273 *Chief District Court Judge Anthony W. Ishii*, U.S. DIST. COURT: E. DIST. OF CAL., [http://www.caed.uscourts.gov/caed/staticOther/page\\_630.htm](http://www.caed.uscourts.gov/caed/staticOther/page_630.htm) (last visited Feb. 21, 2015).

274 *Silvester*, 2014 U.S. Dist. LEXIS 118284, at \*101-02.

275 *Compare id.* at \*30, with *Ezell v. City of Chi.*, 651 F.3d 684, 702-03 (7th Cir. 2011).

276 *Silvester*, 2014 U.S. Dist. LEXIS 118284, at \*8-9.

277 *See id.* at \*9-10, \*78.

278 *Id.* at \*11.

279 *Id.*

280 *Id.* at \*11-12.

281 *Id.* at \*75.

282 *Id.* at \*75-76.

283 *Id.* at \*78 (citations omitted).

284 *Id.* at \*79.

285 *Id.*

286 *Id.* at \*30.

287 *Id.* at \*75-76.

288 *Id.* at \*80.

289 *Id.*

290 *Id.* at \*90-91, 96-97.

291 *Id.* at \*101-03.

292 *See id.* at \*23-25.

293 *See supra* notes 43-64 and accompanying text.

294 *See supra* notes 102-06 and accompanying text.

295 *See supra* notes 130, 132-33 and accompanying text.

296 *See supra* notes 136-39 and accompanying text.

297 *See supra* notes 134-35 and accompanying text.

298 *See supra* notes 140-45 and accompanying text.

299 *See supra* note 156 and accompanying text.

78 ALBLR 849

End of Document

© 2018 Thomson Reuters. No claim to original  
U.S. Government Works.

Exhibit 12

WESTLAW © 2018 Thomson Reuters. No claim to original U.S. Government Works.

00333

40

ER001840



other purpose. Such persons shall hold office during the term of their employment by the state highway department but the authority herein vested shall cease upon the termination of such employment. The persons so appointed shall by reason of such appointment be members of the department of public safety during the terms of such appointment but shall serve without pay as members thereof.

Approved June 2, 1927.

[No. 372.]

AN ACT to regulate and license the selling, purchasing, possessing and carrying of certain firearms; to prohibit the buying, selling or carrying of certain firearms without a license therefor; to prohibit the possession of certain weapons and attachments; to prohibit the pawning of certain firearms; to prohibit the sale, offering for sale, or possession for the purpose of sale of written or printed matter containing any offer to sell or deliver certain firearms or devices within this state; to provide penalties for the violations of this act, and to repeal act number two hundred seventy-four of the public acts of nineteen hundred eleven, being sections fifteen thousand two hundred thirty-six, fifteen thousand two hundred thirty-seven, fifteen thousand two hundred thirty-eight, fifteen thousand two hundred thirty-nine, fifteen thousand two hundred forty, fifteen thousand two hundred forty-one, fifteen thousand two hundred forty-two, fifteen thousand two hundred forty-three, fifteen thousand two hundred forty-four, fifteen thousand two hundred forty-five and fifteen thousand two hundred forty-six of the compiled laws of nineteen hundred fifteen; act number three hundred thirteen of the public acts of nineteen hundred twenty-five; and section sixteen of chapter one hundred sixty-two of the revised statutes of eighteen hundred forty-six, being section fifteen thousand six hundred forty-one of the compiled laws of nineteen hundred fifteen.

*The People of the State of Michigan enact:*

SECTION 1. The word "pistol" as used in this act shall mean any firearm, loaded or unloaded, thirty inches or less in length. The word "purchaser" shall mean any person who receives a pistol from another by purchase, gift or loan. The word "seller" shall mean any person who sells, furnishes, loans or gives a pistol to another. Words defined.

SEC. 2. No person shall purchase a pistol as defined in this act without first having obtained a license therefor as License before purchase.

Exhibit 69

00010

prescribed herein. The commissioner or chief of police, or his duly authorized deputy, in incorporated cities or in incorporated villages having an organized department of police, and the sheriff, or his authorized deputy, in parts of the respective counties not included within incorporated cities or villages, are hereby authorized to issue licenses to purchase pistols to applicants residing within the respective territories herein mentioned. No such license shall be granted to any person except he be nineteen years of age or over, and has resided in this state six months or more, and in no event shall such a license be issued to a person who has been convicted of a felony or adjudged insane in this state or elsewhere. Applications for such licenses shall be signed by the applicant under oath upon forms provided by the commissioner of public safety. Licenses to purchase pistols shall be executed in duplicate upon forms provided by the commissioner of public safety and shall be signed by the licensing authority. One copy of such license shall be delivered to the applicant and the duplicate of such license shall be retained by such licensing authority as a permanent official record for a period of six years. Such license shall be void unless used within ten days after the date of its issue. Any person who shall sell to another any pistol as defined in this act without complying with the requirements of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars or imprisonment in the county jail not more than ninety days, or both such fine and imprisonment in the discretion of the court. Such license shall be signed in ink by the holder thereof in the presence of the person selling, loaning or giving a pistol to such licensee and shall thereupon be taken up by such person, signed by him in ink and shall be delivered or sent by registered mail within forty-eight hours to the commissioner of public safety. The seller shall certify upon said license in the space provided therefor the name of the person to whom such pistol was delivered, the make, style, calibre and number of such pistol, and shall further certify that such purchaser signed his name on said license in the presence of the seller. The provisions of this section shall not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, nor to the sale, barter or exchange of pistols kept solely as relics, souvenirs or curios.

**To whom granted.**

**Executed in duplicate.**

**Misdemeanor; penalty.**

**Unlawful to manufacture, etc., certain firearms, etc.**

**Penalty for violation.**

**SEC. 3.** It shall be unlawful within this state to manufacture, sell, offer for sale, or possess any machine gun or firearm which can be fired more than sixteen times without reloading, or any muffler, silencer or device for deadening or muffling the sound of a discharged firearm, or any bomb or bombshell, or any blackjack, slung shot, billy, metallic knuckles, sandclub, sandbag or bludgeon. Any person convicted of a violation of this section shall be guilty of a felony and shall be punished by a fine not exceeding one thousand



## PUBLIC ACTS, 1927—No. 372.

889

dollars or imprisonment in the state prison not more than five years, or by both such fine and imprisonment in the discretion of the court. The provisions of this section shall not apply, however, to any person, firm or corporation manufacturing firearms, explosives or munitions of war by virtue of any contracts with any department of the government of the United States, or with any foreign government, state, municipality or any subdivision thereof.

SEC. 4. Any person who, with intent to use the same unlawfully against the person of another, goes armed with a pistol or other firearm or dagger, dirk, razor, stiletto, or knife having a blade over three inches in length, or any other dangerous or deadly weapon or instrument, shall be guilty of a felony and on conviction thereof shall be punished by a fine not exceeding one thousand dollars or imprisonment in the state prison for not more than five years, or by both such fine and imprisonment in the discretion of the court.

Felony,  
what  
deemed.

Penalty.

SEC. 5. No person shall carry a dagger, dirk, stiletto or other dangerous weapon except hunting knives adapted and carried as such, concealed on or about his person, or whether concealed or otherwise in any vehicle operated or occupied by him, except in his dwelling house or place of business or on other land possessed by him. No person shall carry a pistol concealed on or about his person, or, whether concealed or otherwise, in any vehicle operated or occupied by him, except in his dwelling house or place of business or on other land possessed by him, without a license therefor as herein provided. Any person violating the provisions of this section shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars or imprisonment in the state prison for not more than five years, or by both such fine and imprisonment in the discretion of the court.

Unlawful to  
carry, etc.,  
dagger, etc.

SEC. 6. The prosecuting attorney, the commissioner or chief of police and the commissioner of public safety or their respective authorized deputies in incorporated cities or in incorporated villages having an organized department of police, and the prosecuting attorney, the commissioner of public safety or their authorized deputies, and the sheriff, under-sheriff or chief deputy sheriff in parts of the respective counties not included within incorporated cities or villages shall constitute boards exclusively authorized to issue licenses to carry pistols concealed on the person to applicants residing within the respective territories herein mentioned. The county clerk of each county shall be clerk of such licensing boards, which boards shall be known in law as "The Concealed Weapon Licensing Board." No such license to carry a pistol concealed on the person shall be granted to any person except he be nineteen years of age or over and has resided in this state six months or over, and in no event shall such license be issued unless it appears that the applicant has good reason to fear injury to his person or property, or has

Concealed  
weapon  
licensing  
board.

To whom  
license  
granted.

Exhibit 69

00012

ER001843



Chairman  
of board.

other proper reasons, and that he is a suitable person to be so licensed, and in no event to a person who has been convicted of a felony or adjudged insane in this state or elsewhere. The prosecuting attorney shall be the chairman of the said board, which shall convene at least once in each calendar month and at such other times as they shall be called to convene by the chairman. Such licenses shall be issued only upon written application signed by the applicant and on his oath and upon forms provided by the commissioner of public safety. Such licenses shall issue only with the approval of a majority of said board and shall be executed in triplicate upon forms provided by the commissioner of public safety and shall be signed in the name of the concealed weapon licensing board by the county clerk and the seal of the circuit court affixed thereto. One copy of such license shall be delivered to the applicant, the duplicate of said license shall be retained by the county clerk as a permanent official record for a period of six years, and the triplicate of such license shall be forwarded to the commissioner of public safety who shall file and index licenses so received by him and keep the same as a permanent official record for a period of six years. Each license shall be issued for a definite period of not more than one year, to be stated in the license, and no renewal of such license shall be granted except upon the filing of a new application. Every license issued hereunder shall bear the imprint of the right thumb of the licensee, or, if that be not possible, of the left thumb or some other finger of such licensee. Such licensee shall carry such license upon his person at all times when he may be carrying a pistol concealed upon his person and shall display such license upon the request of any peace officer.

When license  
to expire.

SEC. 7. All licenses heretofore issued in this state permitting a person to carry a pistol concealed upon his person shall expire at midnight, December thirty-one, nineteen hundred twenty-seven.

When license  
revoked.

SEC. 8. The licensing board herein created by section six may revoke any license issued by it upon receiving a certificate of any magistrate showing that such licensee has been convicted of violating any of the provisions of this act, or has been convicted of a felony. Such license may also be revoked whenever in the judgment of said board the reason for granting such license shall have ceased to exist, or whenever said board shall for any reasonable cause determine said licensee to be an unfit person to carry a pistol concealed upon his person. No such license shall be revoked except upon written complaint and then only after a hearing by said board, of which at least seven days' notice shall be given to the licensee either by personal service or by registered mail to his last known address. The clerk of said licensing board is hereby authorized to administer an oath to any person testifying before such board at any such hearing.

## PUBLIC ACTS, 1927—No. 372.

891

SEC. 9. On or before the first day of November, nineteen hundred twenty-seven, any person within this state who owns or has in his possession a pistol as defined in this act, shall, if he reside in an incorporated city or an incorporated village having an organized police department, present such weapon for safety inspection to the commissioner or chief of police of such city or village; if such person reside in a part of the county not included within the corporate limits of such city or village he shall so present such pistol for safety inspection to the sheriff of such county. Any person owning or coming into possession of a pistol after the first day of November, nineteen hundred twenty-seven, shall forthwith present such pistol for safety inspection in the manner provided in this section. A certificate of inspection shall thereupon be issued in triplicate on a form provided by the commissioner of public safety, containing the name, age, address, description and signature of the person presenting such pistol for inspection, together with a full description thereof; the original of such certificate shall be delivered to the registrant; the duplicate thereof shall be mailed to the commissioner of public safety and filed and indexed by him and kept as a permanent official record for a period of six years, and the triplicate of such certificate shall be retained and filed in the office of said sheriff, or commissioner or chief of police, as the case may be. The provisions of this section shall not apply to wholesale or retail dealers in firearms or to collections of pistols kept solely for the purpose of display, as relics, souvenirs, curios or antiques, nor to weapons heretofore registered under the provisions of section eleven of act number three hundred thirteen of the public acts of nineteen hundred twenty-five. Any person who fails to comply with the provision of this section shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment in the discretion of the court.

Safety inspection of weapons.

Certificate issued.

SEC. 10. No pawnbroker shall accept a pistol in pawn. Any person violating this section of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars or imprisonment in the county jail for not more than ninety days or by both such fine and imprisonment in the discretion of the court.

Pistol not accepted in pawn.

SEC. 11. No person shall wilfully alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identity of any pistol. Possession of any such firearm upon which the number shall have been altered, removed or obliterated, shall be presumptive evidence that such possessor has altered, removed or obliterated the same. Any person convicted under this section shall be punished by a fine not to exceed five hundred dollars or by imprisonment

Alteration of pistol unlawful.

Exhibit 69

00014

ER001845



in the state prison not to exceed two years or by both such fine and imprisonment in the discretion of the court.

Exceptions  
to act.

SEC. 12. The provisions of section two, three, five and nine shall not apply to any peace officer of the state or any subdivision thereof who is regularly employed and paid by the state or such subdivision, or to any member of the army, navy or marine corps of the United States, or of organizations authorized by law to purchase or receive weapons from the United States or from this state, nor to the national guard or other duly authorized military organizations when on duty or drill, nor to the members thereof in going to or returning from their customary places of assembly or practice, nor to a person licensed to carry a pistol concealed upon his person issued by another state, nor to the regular and ordinary transportation of pistols as merchandise, or to any person while carrying a pistol unloaded in a wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business, or in moving goods from one place of abode or business to another.

When un-  
lawfully  
possessed.

SEC. 13. When complaint shall be made on oath to any magistrate authorized to issue warrants in criminal cases that any pistol or other weapon or device mentioned in this act is unlawfully possessed or carried by any person, such magistrate shall, if he be satisfied that there is reasonable cause to believe the matters in said complaint be true, issue his warrant directed to any peace officer, commanding him to search the person or place described in such complaint, and if such pistol, weapon or device be there found; to seize and hold the same as evidence of a violation of this act.

Forfeited to  
state.

SEC. 14. All pistols, weapons or devices carried or possessed contrary to this act are hereby declared forfeited to the state.

Certain  
books, etc.,  
unlawful to  
sell, etc.

SEC. 15. It shall be unlawful to sell or deliver within this state, or to offer or expose for sale, or to have in possession for the purpose of sale, any book, pamphlet, circular, magazine, newspaper or other form of written or printed matter offering to sell or deliver, or containing an offer to sell or deliver to any person within this state from any place without this state any pistol or any weapon or device mentioned in section three hereof. The provisions of this section shall not apply to sales of or offers to sell pistols at wholesale to persons regularly engaged in the business of selling such pistols at wholesale or retail, nor to sales or offers to sell such pistols made or authorized by the United States government or any department or agency thereof.

Penalty for  
violation.

SEC. 16. Any person violating the provisions of section fifteen of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail not to exceed ninety days, or by both such fine and imprisonment in the discretion of the court.



## PUBLIC ACTS, 1927—No. 373.

893

Sec. 17. Act number two hundred seventy-four of the public acts of nineteen hundred eleven, being sections fifteen thousand two hundred thirty-six, fifteen thousand two hundred thirty-seven, fifteen thousand two hundred thirty-eight, fifteen thousand two hundred thirty-nine, fifteen thousand two hundred forty, fifteen thousand two hundred forty-one, fifteen thousand two hundred forty-two, fifteen thousand two hundred forty-three, fifteen thousand two hundred forty-four, fifteen thousand two hundred forty-five and fifteen thousand two hundred forty-six of the compiled laws of nineteen hundred fifteen; act number three hundred thirteen of the public acts of nineteen hundred twenty-five; and section sixteen of chapter one hundred sixty-two of the revised statutes of eighteen hundred forty-six, being section fifteen thousand six hundred forty-one of the compiled laws of nineteen hundred fifteen, are hereby repealed: *Provided, however,* That any proceedings pending under any of said sections herein repealed shall not be affected hereby but shall be concluded in accordance with the law of such repealed section or sections.

Acts  
repealed.

Proviso.

Sec. 18. This act is declared to be severable, and should any section hereof be hereafter declared unconstitutional or otherwise invalid, the remainder of the act shall not be affected thereby.

Saving  
clause.

Approved June 2, 1927.

[No. 373.]

AN ACT to amend section twenty-five of chapter thirty of act number three hundred fourteen of the public acts of nineteen hundred fifteen, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms of civil actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," being section thirteen thousand two hundred fifty-three of the compiled laws of nineteen hundred fifteen, as amended by act number two hundred forty-three of the public acts of nineteen hundred seventeen, and to add a new section thereto to stand as section thirty-one.

*The People of the State of Michigan enact:*

SECTION 1. Section twenty-five of chapter thirty of act number three hundred fourteen of the public acts of nineteen

Section  
amended.

Exhibit 69

00016

ER001847

## 256 JANUARY SESSION, 1927—CHAPTER 1052.

## CHAPTER 1052.

H 729 A  
Approved  
April 22, 1927.

## AN ACT TO REGULATE THE POSSESSION OF FIREARMS.

*It is enacted by the General Assembly as follows:*

Certain words  
and phrases,  
how construed:

SECTION 1. When used in this act the following words and phrases shall be construed as follows:

"Pistol."

"Pistol" shall include any pistol or revolver, and any shot gun, rifle or similar weapon with overall length less than twenty-six inches, but shall not include any pistol without a magazine or any pistol or revolver designed for the use of blank cartridges only.

"Machine gun."

"Machine gun" shall include any weapon which shoots automatically and any weapon which shoots more than twelve shots semi-automatically without re-loading.

"Firearm."

"Firearm" shall include any machine gun or pistol.

"Person."

"Person" shall include firm, association or corporation.

"Licensing authorities."

"Licensing authorities" shall mean the board of police commissioners of a city or town where such board has been instituted, the chief of police or superintendent of police of other cities and towns having a regular organized police force, and in towns where there is no chief of police or superintendent of police it shall mean the town clerk who may issue licenses upon the recommendation of the town sergeant;

"Crime of violence."

"Crime of violence" shall mean and include any of the following crimes or an attempt to commit any of the same, viz.: murder, manslaughter, rape, mayhem, assault or battery involving grave bodily injury, robbery, burglary, and breaking and entering.

"Sell."

"Sell" shall include let or hire, give, lend and transfer, and the word "purchase" shall include hire, accept

"Purchase."

and borrow, and the expression "purchasing" shall be construed accordingly."

"Purchasing."



## JANUARY SESSION, 1927—CHAPTER 1052. 257

SEC. 2. If any person shall commit or attempt to commit a crime of violence when armed with or having available any firearm, he may in addition to the punishment provided for such crime of violence be punished as provided in this act. In the trial of a person for committing or attempting to commit a crime of violence the fact that he was armed with or had available a pistol without license to carry the same, or was armed with or had available a machine gun, shall be prima facie evidence of his intention to commit said crime of violence.

Additional  
punishment  
under this act.

What to be  
prima facie  
evidence of  
intention to  
commit crime  
of violence.

SEC. 3. No person who has been convicted in this state or elsewhere of a crime of violence shall purchase, own, carry or have in his possession or under his control any firearm.

Who to be  
denied fire-  
arms.

SEC. 4. No person shall, without a license therefor, issued as provided in section six hereof, carry a pistol in any vehicle or concealed on or about his person, except in his dwelling house or place of business or on land possessed by him, and no person shall manufacture, sell, purchase or possess a machine gun except as otherwise provided in this act.

Carrying of  
pistol for-  
bidden, except  
when.

Machine gun.

SEC. 5. The provisions of section four shall not apply to sheriffs, deputy sheriffs, the superintendent and members of the state police, prison or jail wardens or their deputies, members of the city or town police force or other duly appointed law enforcement officers, nor to members of the army, navy or marine corps of the United States, or of the national guard, when on duty, or of organizations by law authorized to purchase or receive firearms from the United States or this state, nor to officers or employees of the United States authorized by law to carry a concealed firearm, nor to duly authorized military organizations when on duty, nor to the members thereof when at or going to or from

Sec. 4 not to  
apply to  
whom.



189

Passed March 30, 1933.

Approved April 6, 1933.

GEORGE WHITE,  
*Governor.*

The sectional number herein is in conformity to the General Code.

JOHN W. BRICKER,  
*Attorney General.*

Filed in the office of the Secretary of State at Columbus, Ohio, on  
the 10th day of April, A. D. 1933.

GEORGE S. MYERS,  
*Secretary of State.*

File No. 63.

---

(House Bill No. 166)

#### AN ACT

To supplement section 12819 of the General Code by the enactment of  
supplemental sections 12819-3, 12819-4, 12819-5, 12819-6 and  
12819-7, relative to the sale and possession of machine guns.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 12819 of the General Code be supple-  
mented by the enactment of sections 12819-3, 12819-4, 12819-5, 12819-6  
and 12819-7, to read as follows:

#### **Definitions.**

Sec. 12819-3. For the purpose of this act, a machine gun, a light  
machine gun or a sub-machine gun shall be defined as any firearm which  
shoots automatically, or any firearm which shoots more than eighteen  
shots semi-automatically without reloading. Automatically as above used  
means that class of firearms which, while the trigger on the firearm is held  
back continues to fire successive shots. Semi-automatically means that  
class of firearm which discharges one shot only each time the trigger is  
pulled, no manual reloading operation being necessary between shots.

#### **Machine gun permit; application; bond of applicant; exceptions.**

Sec. 12819-4. No person shall own, possess, transport, have cus-  
tody of or use a machine gun, light machine gun or sub-machine gun, un-  
less he first procures a permit therefor from and at the discretion of the

650

72d CONGRESS. SESS. I. CHS. 464, 465. JULY 8, 1932.

Punishment for.  
 Jurisdiction.

States, for the purpose of having such communication delivered by the post-office establishment of such foreign country to the post-office establishment of the United States and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post-office establishment of such foreign country to the post-office establishment of the United States and by it delivered to the address to which it is directed in the United States, then such person shall be punished in the same manner and to the same extent as provided in section 1 of this Act: *Provided*, That any person violating this section may be prosecuted either in the district into which such letter or other communication was carried by the United States mail for delivery according to the direction thereon, or in which it was caused to be delivered by the United States mail to the person to whom it was addressed.

Approved, July 8, 1932.

## [CHAPTER 465.]

## AN ACT

July 8, 1932.  
 [H. R. 8754.]  
 [Public, No. 275.]

To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes.

Unauthorized use,  
 etc., of pistols and other  
 dangerous weapons in  
 District of Columbia.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## Definitions.

## DEFINITIONS

"Pistol."

"Sawed-off shot-  
 gun."

"Machine gun."

"Person."

"Sell" and "pur-  
 chase," etc.

"Crime of violence."

SECTION 1. "Pistol," as used in this Act, means any firearm with a barrel less than twelve inches in length.

"Sawed-off shotgun," as used in this Act, means any shotgun with a barrel less than twenty inches in length.

"Machine gun," as used in this Act, means any firearm which shoots automatically or semiautomatically more than twelve shots without reloading.

"Person," as used in this Act, includes, individual, firm, association, or corporation.

"Sell" and "purchase" and the various derivatives of such words, as used in this Act, shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

"Crime of violence" as used in this Act, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, housebreaking, larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary.

## COMMITTING CRIME WHEN ARMED

Committing crime of  
 violence when armed.  
 Punishment for.

SEC. 2. If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than five years; upon a second conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than ten years; upon a third conviction for a crime of violence so committed he may, in addition to the punishment provided for the

72d CONGRESS. SESS. I. CH. 465. JULY 8, 1932.

651

crime, be punished by imprisonment for a term of not more than fifteen years; upon a fourth or subsequent conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for an additional period of not more than thirty years.

## PERSONS FORBIDDEN TO POSSESS CERTAIN FIREARMS

Persons forbidden to possess certain firearms.  
Convicted of a crime.

SEC. 3. No person who has been convicted in the District of Columbia or elsewhere of a crime of violence shall own or have in his possession a pistol, within the District of Columbia.

## CARRYING CONCEALED WEAPONS

SEC. 4. No person shall within the District of Columbia carry concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon.

Illegally carrying, etc., dangerous weapon.

## EXCEPTIONS

Exceptions.

SEC. 5. The provisions of the preceding section shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law-enforcement officers, or to members of the Army, Navy, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving goods from one place of abode or business to another.

Law enforcement officers.

Army, Navy, or Marine Corps.

National Guard, etc., on duty.  
Other organizations.

Carrying to places of assembly, etc.

Manufacturer, etc.

## ISSUE OF LICENSES TO CARRY

SEC. 6. The superintendent of police of the District of Columbia may, upon the application of any person having a bona fide residence or place of business within the District of Columbia or of any person having a bona fide residence or place of business within the United States and a license to carry a pistol concealed upon his person issued by the lawful authorities of any State or subdivision of the United States, issue a license to such person to carry a pistol within the District of Columbia for not more than one year from date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed. The license shall be in duplicate, in form to be prescribed by the Commissioners of the District of Columbia and shall bear the name, address, description, photograph, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, and the duplicate shall be retained by the superintendent of police of the District of Columbia and preserved in his office for six years.

Licenses.



652

72d CONGRESS. SESS. I. CH. 465. JULY 8, 1932.

## SELLING TO MINORS AND OTHERS

Selling to minors or others.

SEC. 7. No person shall within the District of Columbia sell any pistol to a person who he has reasonable cause to believe is not of sound mind, or is a drug addict, or is a person who has been convicted in the District of Columbia or elsewhere of a crime of violence or, except when the relation of parent and child or guardian and ward exists, is under the age of eighteen years.

## TRANSFERS REGULATED

Time, etc., provisions.

Register to be kept.

Limitation.

Wholesale trade.

SEC. 8. No seller shall within the District of Columbia deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law-enforcement officers, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, make, model, and manufacturer's number of the pistol to be purchased and a statement that he has never been convicted in the District of Columbia or elsewhere of a crime of violence. The seller shall, within six hours after such application, sign and attach his address and deliver one copy to such person or persons as the superintendent of police of the District of Columbia may designate, and shall retain the other copy for six years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 14 hereof as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers.

## DEALERS TO BE LICENSED

Dealers to be licensed.

SEC. 9. No retail dealer shall within the District of Columbia sell or expose for sale or have in his possession with intent to sell, any pistol, machine gun, sawed-off shotgun, or blackjack without being licensed as hereinafter provided. No wholesale dealer shall, within the District of Columbia, sell, or have in his possession with intent to sell, to any person other than a licensed dealer, any pistol, machine gun, sawed-off shotgun, or blackjack.

## DEALERS' LICENSES, BY WHOM GRANTED AND CONDITIONS THEREOF

Conditions, etc., for issuing dealers' licenses. *Act, p. 538.*

SEC. 10. The Commissioners of the District of Columbia may, in their discretion, grant licenses and may prescribe the form thereof, effective for not more than one year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in section 9 hereof, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this Act.

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

Exhibit 78

00084

ER001853

72d CONGRESS. SESS. I. CH. 465. JULY 8, 1932.

653

3. No pistol shall be sold (a) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is a drug addict or has been convicted in the District of Columbia or elsewhere of a crime of violence or is under the age of eighteen years, and (b) unless the purchaser is personally known to the seller or shall present clear evidence of his identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 14 hereof as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia.

4. A true record shall be made in a book kept for the purpose, the form of which may be prescribed by the Commissioners, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale. Records.

5. A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Commissioners of the District of Columbia and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model, and manufacturer's number of the weapon, and a statement signed by the purchaser that he has never been convicted in the District of Columbia or elsewhere of a crime of violence. One copy of said record shall, within seven days, be forwarded by mail to the superintendent of police of the District of Columbia and the other copy retained by the seller for six years.

6. No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section. Display, etc., forbidden.

## FALSE INFORMATION FORBIDDEN

SEC. 11. No person, shall, in purchasing a pistol or in applying for a license to carry the same, or in purchasing a machine gun, sawed-off shotgun, or blackjack within the District of Columbia, give false information or offer false evidence of his identity. False information or evidence forbidden.

## ALTERATION OF IDENTIFYING MARKS PROHIBITED

SEC. 12. No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia: *Provided, however,* That nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work. Alteration, etc., of identification marks, prohibited.

## EXCEPTIONS

SEC. 13. This Act shall not apply to toy or antique pistols unsuitable for use as firearms. Toys, etc., excepted.



654

72d CONGRESS. SESS. I. CHS. 465, 466. JULY 8, 1932.

## POSSESSION OF CERTAIN DANGEROUS WEAPONS

Possession of certain  
dangerous weapons for  
billet.

Proviso.  
Exceptions.

SEC. 14. No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, sand club, sandbag, or metal knuckles, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms: *Provided, however,* That machine guns, or sawed-off shotguns, and blackjacks may be possessed by the members of the Army, Navy, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly appointed law-enforcement officers, officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under section 10 of this Act.

## PENALTIES

Punishment for vio-  
lations.

SEC. 15. Any violation of any provision of this Act for which no penalty is specifically provided shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

## CONSTITUTIONALITY

Invalidity of any  
provision not to affect  
remainder.

SEC. 16. If any part of this Act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this Act.

## CERTAIN ACTS REPEALED

Vol. 31, p. 1328,  
repealed.

SEC. 17. The following sections of the Code of Law for the District of Columbia, 1919, namely, sections 855, 856, and 857, and all other Acts or parts of Acts inconsistent herewith, are hereby repealed.

Approved, July 8, 1932.

## [CHAPTER 466.]

## JOINT RESOLUTION

July 8, 1932.  
[H. J. Res. 462.]  
[Pub. Res., No. 35.]

Making an appropriation to provide transportation to their homes for veterans of the World War temporarily quartered in the District of Columbia.


World War veterans.  
Appropriation for, to  
provide transportation  
from District of Colum-  
bia to their homes.  
Post, p. 701.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That to enable the Administrator of Veterans' Affairs, upon the request of any honorably discharged veteran of the World War, temporarily quartered in the District of Columbia, who is desirous of returning to his home, to provide such veteran with railroad transportation thereto prior to July 15, 1932, together with travel subsistence at the rate of 75 cents per day, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000: *Provided,* That all amounts expended under this appropriation in behalf of any veteran shall constitute a loan without interest which, if not repaid to the United States, shall be deducted from any amounts payable to such veteran on his adjusted-service certificate.

Proviso.  
Credited as a loan.

Approved, July 8, 1932.



 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Colorado Revised Statutes Annotated  
Title 18. Criminal Code (Refs & Annos)  
Article 12. Offenses Relating to Firearms and Weapons (Refs & Annos)  
Part 3. Large-Capacity Ammunition Magazines

C.R.S.A. § 18-12-301

§ 18-12-301. Definitions

Effective: July 1, 2013

Currentness

As used in this part 3, unless the context otherwise requires:

(1) "Bureau" means the Colorado bureau of investigation created and existing pursuant to section 24-33.5-401, C.R.S.

(2)(a) "Large-capacity magazine" means:

(I) A fixed or detachable magazine, box, drum, feed strip, or similar device capable of accepting, or that is designed to be readily converted to accept, more than fifteen rounds of ammunition;

(II) A fixed, tubular shotgun magazine that holds more than twenty-eight inches of shotgun shells, including any extension device that is attached to the magazine and holds additional shotgun shells; or

(III) A nontubular, detachable magazine, box, drum, feed strip, or similar device that is capable of accepting more than eight shotgun shells when combined with a fixed magazine.

(b) "Large-capacity magazine" does not mean:

(I) A feeding device that has been permanently altered so that it cannot accommodate more than fifteen rounds of ammunition;

(II) An attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition; or

(III) A tubular magazine that is contained in a lever-action firearm.

**Credits**

Added by Laws 2013, Ch. 48, § 1, eff. July 1, 2013.

Exhibit 79  
00088

C. R. S. A. § 18-12-301, CO ST § 18-12-301

Current through Ch. 2 of the Second Regular Session of the 71st General Assembly (2018)

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 79  
00089

---

Connecticut General Statutes Annotated  
Title 53. Crimes (Refs & Annos)  
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202w

§ 53-202w. Large capacity magazines. Definitions. Sale, transfer or possession prohibited. Exceptions

Effective: June 18, 2013  
Currentness

(a) As used in this section and section 53-202x:

(1) "Large capacity magazine" means any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition, but does not include: (A) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of ammunition, (B) a .22 caliber tube ammunition feeding device, (C) a tubular magazine that is contained in a lever-action firearm, or (D) a magazine that is permanently inoperable;

(2) "Lawfully possesses", with respect to a large capacity magazine, means that a person has (A) actual and lawful possession of the large capacity magazine, (B) constructive possession of the large capacity magazine pursuant to a lawful purchase of a firearm that contains a large capacity magazine that was transacted prior to or on April 4, 2013, regardless of whether the firearm was delivered to the purchaser prior to or on April 4, 2013, which lawful purchase is evidenced by a writing sufficient to indicate that (i) a contract for sale was made between the parties prior to or on April 4, 2013, for the purchase of the firearm, or (ii) full or partial payment for the firearm was made by the purchaser to the seller of the firearm prior to or on April 4, 2013, or (C) actual possession under subparagraph (A) of this subdivision, or constructive possession under subparagraph (B) of this subdivision, as evidenced by a written statement made under penalty of false statement on such form as the Commissioner of Emergency Services and Public Protection prescribes; and

(3) "Licensed gun dealer" means a person who has a federal firearms license and a permit to sell firearms pursuant to section 29-28.

(b) Except as provided in this section, on and after April 5, 2013, any person who, within this state, distributes, imports into this state, keeps for sale, offers or exposes for sale, or purchases a large capacity magazine shall be guilty of a class D felony. On and after April 5, 2013, any person who, within this state, transfers a large capacity magazine, except as provided in subsection (f) of this section, shall be guilty of a class D felony.

(c) Except as provided in this section and section 53-202x: (1) Any person who possesses a large capacity magazine on or after January 1, 2014, that was obtained prior to April 5, 2013, shall commit an infraction and be fined not more than ninety dollars for a first offense and shall be guilty of a class D felony for any subsequent offense, and (2) any person who possesses a large capacity magazine on or after January 1, 2014, that was obtained on or after April 5, 2013, shall be guilty of a class D felony.

(d) A large capacity magazine may be possessed, purchased or imported by:

Exhibit 80  
00091



- (1) The Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States;
  - (2) A sworn and duly certified member of an organized police department, the Division of State Police within the Department of Emergency Services and Public Protection or the Department of Correction, a chief inspector or inspector in the Division of Criminal Justice, a salaried inspector of motor vehicles designated by the Commissioner of Motor Vehicles, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection pursuant to section 26-5, or a constable who is certified by the Police Officer Standards and Training Council and appointed by the chief executive authority of a town, city or borough to perform criminal law enforcement duties, for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty;
  - (3) A member of the military or naval forces of this state or of the United States;
  - (4) A nuclear facility licensed by the United States Nuclear Regulatory Commission for the purpose of providing security services at such facility, or any contractor or subcontractor of such facility for the purpose of providing security services at such facility;
  - (5) Any person who is sworn and acts as a policeman on behalf of an armored car service pursuant to section 29-20 in the discharge of such person's official duties; or
  - (6) Any person, firm or corporation engaged in the business of manufacturing large capacity magazines in this state that manufactures, purchases, tests or transports large capacity magazines in this state for sale within this state to persons specified in subdivisions (1) to (5), inclusive, of this subsection or for sale outside this state, or a federally-licensed firearm manufacturer engaged in the business of manufacturing firearms or large capacity magazines in this state that manufactures, purchases, tests or transports firearms or large capacity magazines in this state for sale within this state to persons specified in subdivisions (1) to (5), inclusive, of this subsection or for sale outside this state.
- (e) A large capacity magazine may be possessed by:
- (1) A licensed gun dealer;
  - (2) A gunsmith who is in a licensed gun dealer's employ, who possesses such large capacity magazine for the purpose of servicing or repairing a lawfully possessed large capacity magazine;
  - (3) A person, firm, corporation or federally-licensed firearm manufacturer described in subdivision (6) of subsection (d) of this section that possesses a large capacity magazine that is lawfully possessed by another person for the purpose of servicing or repairing the large capacity magazine;

(4) Any person who has declared possession of the magazine pursuant to section 53-202x; or

(5) Any person who is the executor or administrator of an estate that includes a large capacity magazine, or the trustee of a trust that includes a large capacity magazine, the possession of which has been declared to the Department of Emergency Services and Public Protection pursuant to section 53-202x, which is disposed of as authorized by the Probate Court, if the disposition is otherwise permitted by this section and section 53-202x.

(f) Subsection (b) of this section shall not prohibit:

(1) The transfer of a large capacity magazine, the possession of which has been declared to the Department of Emergency Services and Public Protection pursuant to section 53-202x, by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary;

(2) The transfer of a large capacity magazine to a police department or the Department of Emergency Services and Public Protection;

(3) The transfer of a large capacity magazine to a licensed gun dealer in accordance with section 53-202x; or

(4) The transfer of a large capacity magazine prior to October 1, 2013, from a licensed gun dealer, pawnbroker licensed under section 21-40, or consignment shop operator, as defined in section 21-39a, to any person who (A) possessed the large capacity magazine prior to or on April 4, 2013, (B) placed a firearm that such person legally possessed, with the large capacity magazine included or attached, in the possession of such dealer, pawnbroker or operator prior to or on April 4, 2013, pursuant to an agreement between such person and such dealer, pawnbroker or operator for the sale of the firearm to a third person, and (C) is eligible to possess the firearm on the date of such transfer.

(g) If the court finds that a violation of this section is not of a serious nature and that the person charged with such violation (1) will probably not offend in the future, (2) has not previously been convicted of a violation of this section, and (3) has not previously had a prosecution under this section suspended pursuant to this subsection, it may order suspension of prosecution in accordance with the provisions of subsection (h) of section 29-33.

#### Credits

(2013, P.A. 13-3, § 23, eff. April 4, 2013; 2013, P.A. 13-220, § 1, eff. June 18, 2013.)

#### Notes of Decisions (3)

C. G. S. A. § 53-202w, CT ST § 53-202w

The statutes and Constitution are current through the 2018 Supplement to the General Statutes of Connecticut, Revision of 1958.

KeyCite Yellow Flag - Negative Treatment  
Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by *Herrington v. U.S.*, D.C., Nov. 04, 2010

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's District of Columbia Code Annotated 2001 Edition  
Division I. Government of District.  
Title 7. Human Health Care and Safety. (Refs & Annos)  
Subtitle J. Public Safety.  
Chapter 25. Firearms Control.  
Unit A. Firearms Control Regulations.  
Subchapter VI. Possession of Ammunition.

DC ST § 7-2506.01  
Formerly cited as DC ST 1981 § 6-2361

§ 7-2506.01. Persons permitted to possess ammunition.

Effective: April 27, 2013  
Currentness

(a) No person shall possess ammunition in the District of Columbia unless:

(1) He is a licensed dealer pursuant to subchapter IV of this unit;

(2) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;

(3) He is the holder of the valid registration certificate for a firearm pursuant to subchapter II of this chapter; except, that no such person shall possess one or more restricted pistol bullets; or

(4) He holds an ammunition collector's certificate on September 24, 1976; or

(5) He temporarily possesses ammunition while participating in a firearms training and safety class conducted by a firearms instructor.

(b) No person in the District shall possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is attached to a firearm. For the purposes of this subsection, the term "large capacity ammunition feeding device" means 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. The term "large capacity ammunition feeding device" shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

Exhibit 81  
00095



**Credits**

(Sept. 24, 1976, D.C. Law 1-85, title VI, § 601, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 4, 30 DCR 3328; Mar. 31, 2009, D.C. Law 17-372, § 3(n), 56 DCR 1365; Sept. 26, 2012, D.C. Law 19-170, § 2(n), 59 DCR 5691; Apr. 27, 2013, D.C. Law 19-295, § 2(c), 60 DCR 2623.)

Notes of Decisions (51)

Copyright (c) 2012 By the District of Columbia. Content previously published in the District of Columbia Official Code, 2001 Edition is used with permission. Copyright (c) 2018 Thomson Reuters

DC CODE § 7-2506.01

Current through February 20, 2018

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 81  
00096

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Hawai'i Revised Statutes Annotated  
Division 1. Government  
Title 10. Public Safety and Internal Security  
Chapter 134. Firearms, Ammunition and Dangerous Weapons  
Part I. General Regulations

HRS § 134-8

§ 134-8. Ownership, etc., of automatic firearms, silencers, etc., prohibited; penalties

Currentness

(a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: assault pistols, except as provided by section 134-4(e); automatic firearms; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; cannons; mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or bombshells, or other explosives; or any type of ammunition or any projectile component thereof coated with teflon or any other similar coating designed primarily to enhance its capability to penetrate metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person who installs, removes, or alters a firearm part with the intent to convert the firearm to an automatic firearm shall be deemed to have manufactured an automatic firearm in violation of subsection (a).

(c) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of detachable ammunition magazines with a capacity in excess of ten rounds which are designed for or capable of use with a pistol is prohibited. This subsection shall not apply to magazines originally designed to accept more than ten rounds of ammunition which have been modified to accept no more than ten rounds and which are not capable of being readily restored to a capacity of more than ten rounds.

(d) Any person violating subsection (a) or (b) shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation. Any person violating subsection (c) shall be guilty of a misdemeanor except when a detachable magazine prohibited under this section is possessed while inserted into a pistol in which case the person shall be guilty of a class C felony.

**Credits**

Laws 1988, ch. 275, § 2; Laws 1989, ch. 261, § 6; Laws 1989, ch. 263, § 4; Laws 1992, ch. 286, §§ 3, 4.

**Notes of Decisions (13)**

H R S § 134-8, HI ST § 134-8

Current through Act 3 (End) of the 2017 1st Special Session, pending text revision by the revisor of statutes.

Exhibit 82  
00098

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 82  
00099



KeyCite Yellow Flag - Negative Treatment  
Unconstitutional or Preempted Validity Called into Doubt by Kolbe v. Hogan, 4th Cir.(Md.), Feb. 04, 2016

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Annotated Code of Maryland  
Criminal Law (Refs & Annos)  
Title 4. Weapon Crimes  
Subtitle 3. Assault Weapons and Detachable Magazines (Refs & Annos)

MD Code, Criminal Law, § 4-305  
Formerly cited as MD CODE Art. 27, § 36H-5

§ 4-305. Detachable magazines--Prohibited

Effective: October 1, 2013  
Currentness

#### Scope

(a) This section does not apply to:

(1) a .22 caliber rifle with a tubular magazine; or

(2) a law enforcement officer or a person who retired in good standing from service with a law enforcement agency of the United States, the State, or any law enforcement agency in the State.

#### Prohibited

(b) A person may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm.

#### Credits

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2013, c. 427, § 1, eff. Oct. 1, 2013.

Formerly Art. 27, § 36H-5.

#### Editors' Notes

#### LEGISLATIVE NOTES

Revisor's Note (Acts 2002, c. 26):

This section is new language derived without substantive change from former Art. 27, § 36H-5(b).

The former reference to "any type of" firearm is deleted as surplusage.

Exhibit 83  
00101

Defined term: "Person" § 1-101

Notes of Decisions (8)

MD Code, Criminal Law, § 4-305, MD CRIM LAW § 4-305

Current through Chapters 1 to 4 from the 2018 Regular Session of the General Assembly

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 83  
00102

KeyCite Yellow Flag - Negative Treatment  
Unconstitutional or Preempted Prior Version Held Unconstitutional by Com. v. Beal, Mass., May 24, 2016

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Massachusetts General Laws Annotated  
Part I. Administration of the Government (Ch. 1-182)  
Title XX. Public Safety and Good Order (Ch. 133-148a)  
Chapter 140. Licenses (Refs & Annos)

M.G.L.A. 140 § 121

§ 121. Firearms sales; definitions; antique firearms; application of law; exceptions

Effective: February 1, 2018

Currentness

As used in sections 122 to 131Q, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Ammunition”, cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun. The term “ammunition” shall also mean tear gas cartridges.

“Assault weapon”, shall have the same meaning as a semiautomatic assault weapon as defined in the federal Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. section 921(a)(30) as appearing in such section on September 13, 1994, and shall include, but not be limited to, any of the weapons, or copies or duplicates of the weapons, of any caliber, known as: (i) Avtomat Kalashnikov (AK) (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; (vi) Steyr AUG; (vii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and (viii) revolving cylinder shotguns, such as, or similar to, the Street Sweeper and Striker 12; provided, however, that the term assault weapon shall not include: (i) any of the weapons, or replicas or duplicates of such weapons, specified in appendix A to 18 U.S.C. section 922 as appearing in such appendix on September 13, 1994, as such weapons were manufactured on October 1, 1993; (ii) any weapon that is operated by manual bolt, pump, lever or slide action; (iii) any weapon that has been rendered permanently inoperable or otherwise rendered permanently unable to be designated a semiautomatic assault weapon; (iv) any weapon that was manufactured prior to the year 1899; (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable assault weapon; (vi) any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition; or (vii) any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.

<[ Definition of “Bump stock” inserted following definition of “Assault weapon” in first paragraph by 2017, 110, Sec. 18 effective February 1, 2018 applicable as provided by 2017, 110, Sec. 53.]>

“Bump stock”, any device for a weapon that increases the rate of fire achievable with such weapon by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

“Conviction”, a finding or verdict of guilt or a plea of guilty, whether or not final sentence is imposed.

Exhibit 84  
00104



“Deceptive weapon device”, any device that is intended to convey the presence of a rifle, shotgun or firearm that is used in the commission of a violent crime, as defined in this section, and which presents an objective threat of immediate death or serious bodily harm to a person of reasonable and average sensibility.

“Firearm”, a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk- through metal detectors.

“Gunsmith”, any person who engages in the business of repairing, altering, cleaning, polishing, engraving, blueing or performing any mechanical operation on any firearm, rifle, shotgun or machine gun.

“Imitation firearm”, any weapon which is designed, manufactured or altered in such a way as to render it incapable of discharging a shot or bullet.

“Large capacity feeding device”, (i) a fixed or detachable magazine, box, drum, feed strip or similar device capable of accepting, or that can be readily converted to accept, more than ten rounds of ammunition or more than five shotgun shells; or (ii) a large capacity ammunition feeding device as defined in the federal Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. section 921(a)(31) as appearing in such section on September 13, 1994. The term “large capacity feeding device” shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber ammunition.

“Large capacity weapon”, any firearm, rifle or shotgun: (i) that is semiautomatic with a fixed large capacity feeding device; (ii) that is semiautomatic and capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; (iii) that employs a rotating cylinder capable of accepting more than ten rounds of ammunition in a rifle or firearm and more than five shotgun shells in the case of a shotgun or firearm; or (iv) that is an assault weapon. The term “large capacity weapon” shall be a secondary designation and shall apply to a weapon in addition to its primary designation as a firearm, rifle or shotgun and shall not include: (i) any weapon that was manufactured in or prior to the year 1899; (ii) any weapon that operates by manual bolt, pump, lever or slide action; (iii) any weapon that is a single-shot weapon; (iv) any weapon that has been modified so as to render it permanently inoperable or otherwise rendered permanently unable to be designated a large capacity weapon; or (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable large capacity weapon.

“Length of barrel” or “barrel length”, that portion of a firearm, rifle, shotgun or machine gun through which a shot or bullet is driven, guided or stabilized and shall include the chamber.

“Licensing authority”, the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.

<[ Definition of “Machine gun” in first paragraph effective until  
February 1, 2018. For text effective February 1, 2018, see below.]>

“Machine gun”, a weapon of any description, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged by one continuous activation of the trigger, including a submachine gun.

Exhibit 84  
00105

<[ Definition of “Machine gun” in first paragraph as amended by 2017, 110, Sec. 20 effective February 1, 2018 applicable as provided by 2017, 110, Sec. 53. For text effective until February 1, 2018, see above.]>

“Machine gun”, a weapon of any description, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged by one continuous activation of the trigger, including a submachine gun; provided, however, that “machine gun” shall include bump stocks and trigger cranks.

“Purchase” and “sale” shall include exchange; the word “purchaser” shall include exchanger; and the verbs “sell” and “purchase”, in their different forms and tenses, shall include the verb exchange in its appropriate form and tense.

“Rifle”, a weapon having a rifled bore with a barrel length equal to or greater than 16 inches and capable of discharging a shot or bullet for each pull of the trigger.

“Sawed-off shotgun”, any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon as modified has one or more barrels less than 18 inches in length or as modified has an overall length of less than 26 inches.

“Semiautomatic”, capable of utilizing a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and requiring a separate pull of the trigger to fire each cartridge.

“Shotgun”, a weapon having a smooth bore with a barrel length equal to or greater than 18 inches with an overall length equal to or greater than 26 inches, and capable of discharging a shot or bullet for each pull of the trigger.

<[ Definition of “Trigger crank” inserted following definition of “Shotgun” in first paragraph by 2017, 110, Sec. 19 effective February 1, 2018 applicable as provided by 2017, 110, Sec. 53.]>

“Trigger crank”, any device to be attached to a weapon that repeatedly activates the trigger of the weapon through the use of a lever or other part that is turned in a circular motion; provided, however, that “trigger crank” shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.

“Violent crime”, shall mean any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.

“Weapon”, any rifle, shotgun or firearm.

Where the local licensing authority has the power to issue licenses or cards under this chapter, but no such licensing authority exists, any resident or applicant may apply for such license or firearm identification card directly to the colonel of state police and said colonel shall for this purpose be the licensing authority.

The provisions of sections 122 to 129D, inclusive, and sections 131, 131A, 131B and 131E shall not apply to:

(A) any firearm, rifle or shotgun manufactured in or prior to the year 1899;

Exhibit 84  
00106



(B) any replica of any firearm, rifle or shotgun described in clause (A) if such replica: (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(C) manufacturers or wholesalers of firearms, rifles, shotguns or machine guns.

#### Credits

Amended by St.1934, c. 359, § 1; St.1957, c. 688, § 4; St.1959, c. 296, § 1; St.1960, c. 186; St.1968, c. 737, § 1; St.1969, c. 799, § 1; St.1971, c. 456, § 1; St.1973, c. 892, § 1; St.1983, c. 516, § 1; St.1984, c. 116, § 1; St.1989, c. 433; St.1990, c. 511, § 1; St.1996, c. 151, §§ 300, 301; St.1998, c. 180, § 8; St.1999, c. 1, § 1; St.2004, c. 150, §§ 1 to 3, eff. Sept. 13, 2004; St.2014, c. 284, §§ 19, eff. Jan. 1, 2015; St.2014, c. 284, §§ 20, 21, eff. Aug. 13, 2014; St.2017, c. 110, §§ 18 to 20, eff. Feb. 1, 2018.

#### Notes of Decisions (97)

M.G.L.A. 140 § 121, MA ST 140 § 121  
Current through the 2017 1st Annual Session

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 84  
00107



KeyCite Yellow Flag - Negative Treatment  
 Unconstitutional or Preempted Prior Version Held Unconstitutional by Fletcher v. Haas, D.Mass., Mar. 30, 2012

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Massachusetts General Laws Annotated  
 Part I. Administration of the Government (Ch. 1-182)  
 Title XX. Public Safety and Good Order (Ch. 133-148a)  
 Chapter 140. Licenses (Refs & Annos)

M.G.L.A. 140 § 131

§ 131. Licenses to carry firearms; Class A and B; conditions and restrictions

Effective: February 1, 2018 to December 31, 2020

Currentness

All licenses to carry firearms shall be designated Class A or Class B, and the issuance and possession of any such license shall be subject to the following conditions and restrictions:

(a) A Class A license shall entitle a holder thereof to purchase, rent, lease, borrow, possess and carry: (i) firearms, including large capacity firearms, and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority deems proper; and (ii) rifles and shotguns, including large capacity weapons, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as it deems proper. A violation of a restriction imposed by the licensing authority under the provisions of this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that the provisions of section 10 of chapter 269 shall not apply to such violation.

The colonel of state police may, after an investigation, grant a Class A license to a club or facility with an on-site shooting range or gallery, which club is incorporated under the laws of the commonwealth for the possession, storage and use of large capacity weapons, ammunition therefor and large capacity feeding devices for use with such weapons on the premises of such club; provided, however, that not less than one shareholder of such club shall be qualified and suitable to be issued such license; and provided further, that such large capacity weapons and ammunition feeding devices may be used under such Class A club license only by such members that possess a valid firearm identification card issued under section 129B or a valid Class A or Class B license to carry firearms, or by such other persons that the club permits while under the direct supervision of a certified firearms safety instructor or club member who, in the case of a large capacity firearm, possesses a valid Class A license to carry firearms or, in the case of a large capacity rifle or shotgun, possesses a valid Class A or Class B license to carry firearms. Such club shall not permit shooting at targets that depict human figures, human effigies, human silhouettes or any human images thereof, except by public safety personnel performing in line with their official duties.

No large capacity weapon or large capacity feeding device shall be removed from the premises except for the purposes of: (i) transferring such firearm or feeding device to a licensed dealer; (ii) transporting such firearm or feeding device to a licensed gunsmith for repair; (iii) target, trap or skeet shooting on the premises of another club incorporated under the laws of the commonwealth and for transporting thereto; (iv) attending an exhibition or educational project or event that is sponsored by, conducted under the supervision of or approved by a public law enforcement agency or a nationally or state recognized entity that promotes proficiency in or education about semiautomatic weapons and for transporting

Exhibit 84

00108

thereto and therefrom; (v) hunting in accordance with the provisions of chapter 131; or (vi) surrendering such firearm or feeding device under the provisions of section 129D. Any large capacity weapon or large capacity feeding device kept on the premises of a lawfully incorporated shooting club shall, when not in use, be secured in a locked container, and shall be unloaded during any lawful transport. The clerk or other corporate officer of such club shall annually file a report with the colonel of state police and the commissioner of the department of criminal justice information services listing all large capacity weapons and large capacity feeding devices owned or possessed under such license. The colonel of state police or his designee, shall have the right to inspect all firearms owned or possessed by such club upon request during regular business hours and said colonel may revoke or suspend a club license for a violation of any provision of this chapter or chapter 269 relative to the ownership, use or possession of large capacity weapons or large capacity feeding devices.

(b) A Class B license shall entitle a holder thereof to purchase, rent, lease, borrow, possess and carry: (i) non-large capacity firearms and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of such firearm as the licensing authority deems proper; provided, however, that a Class B license shall not entitle the holder thereof to carry or possess a loaded firearm in a concealed manner in any public way or place; and provided further, that a Class B license shall not entitle the holder thereof to possess a large capacity firearm, except under a Class A club license issued under this section or under the direct supervision of a holder of a valid Class A license at an incorporated shooting club or licensed shooting range; and (ii) rifles and shotguns, including large capacity rifles and shotguns, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as he deems proper. A violation of a restriction provided under this paragraph, or a restriction imposed by the licensing authority under the provisions of this paragraph, shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that the provisions of section 10 of chapter 269 shall not apply to such violation.

A Class B license shall not be a valid license for the purpose of complying with any provision under this chapter governing the purchase, sale, lease, rental or transfer of any weapon or ammunition feeding device if such weapon is a large capacity firearm or if such ammunition feeding device is a large capacity feeding device for use with a large capacity firearm, both as defined in section 121.

(c) Either a Class A or Class B license shall be valid for the purpose of owning, possessing, purchasing and transferring non-large capacity rifles and shotguns, and for purchasing and possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate, consistent with the entitlements conferred by a firearm identification card issued under section 129B.

(d) Any person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police, an application for a Class A license to carry firearms, or renewal of the same, which the licensing authority or the colonel may issue if it appears that the applicant is not a prohibited person, as set forth in this section, to be issued a license and has good reason to fear injury to the applicant or the applicant's property or for any other reason, including the carrying of firearms for use in sport or target practice only, subject to the restrictions expressed or authorized under this section.

A prohibited person shall be a person who:

(i) has, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in section 52 of chapter 119, for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment

Exhibit 84  
00109



for more than 2 years ; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in section 1 of chapter 94C including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33);

(ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in said section 1 of said chapter 94C including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33);

(iii) is or has been (A) committed to a hospital or institution for mental illness, alcohol or substance abuse, except a commitment pursuant to sections 35 or 36C of chapter 123, unless after 5 years from the date of the confinement, the applicant submits with the application an affidavit of a licensed physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that in the physician's or psychologist's opinion, the applicant is not disabled by a mental illness, alcohol or substance abuse in a manner that shall prevent the applicant from possessing a firearm, rifle or shotgun; (B) committed by a court order to a hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court order pursuant to said section 36C of said chapter 123 and submits a copy of the court order with the application; (C) subject to an order of the probate court appointing a guardian or conservator for an incapacitated person on the grounds that the applicant lacks the mental capacity to contract or manage the applicant's affairs, unless the applicant was granted a petition for relief of the order of the probate court pursuant to section 56C of chapter 215 and submits a copy of the order of the probate court with the application; or (D) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said section 35 of said chapter 123, unless the applicant was granted a petition for relief of the court order pursuant to said section 35 and submits a copy of the court order with the application;

(iv) is younger than 21 years of age at the time of the application;

(v) is an alien who does not maintain lawful permanent residency;

(vi) is currently subject to: (A) an order for suspension or surrender issued pursuant to sections 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or (B) a permanent or temporary protection order issued pursuant to said chapter 209A or a similar order issued by another jurisdiction, including any order described in 18 U.S.C. 922(g)(8);

(vii) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;

(viii) has been discharged from the armed forces of the United States under dishonorable conditions;

(ix) is a fugitive from justice; or

Exhibit 84  
00110



(x) having been a citizen of the United States, has renounced that citizenship.

The licensing authority may deny the application or renewal of a license to carry, or suspend or revoke a license issued under this section if, in a reasonable exercise of discretion, the licensing authority determines that the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on: (i) reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety. Upon denial of an application or renewal of a license based on a determination of unsuitability, the licensing authority shall notify the applicant in writing setting forth the specific reasons for the determination in accordance with paragraph (e). Upon revoking or suspending a license based on a determination of unsuitability, the licensing authority shall notify the holder of a license in writing setting forth the specific reasons for the determination in accordance with paragraph (f). The determination of unsuitability shall be subject to judicial review under said paragraph (f).

(e) Within seven days of the receipt of a completed application for a license to carry or possess firearms, or renewal of same, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a license to carry or possess firearms. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. The colonel shall inquire of the commissioner of the department of mental health relative to whether the applicant is disqualified from being so licensed. If the information available to the colonel does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within said 30 day period.

The licensing authority may also make inquiries concerning the applicant to: (i) the commissioner of the department of criminal justice information services relative to any disqualifying condition and records of purchases, sales, rentals, leases and transfers of weapons or ammunition concerning the applicant; (ii) the commissioner of probation relative to any record contained within the department of probation or the statewide domestic violence record keeping system concerning the applicant; and (iii) the commissioner of the department of mental health relative to whether the applicant is a suitable person to possess firearms or is not a suitable person to possess firearms. The director or commissioner to whom the licensing authority makes such inquiry shall provide prompt and full cooperation for that purpose in any investigation of the applicant.

The licensing authority shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such license shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law.

The licensing authority shall provide to the applicant a receipt indicating that it received the application. The receipt shall be provided to the applicant within 7 days by mail if the application was received by mail or immediately if the application was made in person; provided, however, that the receipt shall include the applicant's name and address; current license number and license expiration date, if any; the date the licensing authority received the application; the name, address and telephone number of the licensing authority; the agent of the licensing authority that received the application; the type of application; and whether the application is for a new license or a renewal of an existing license.

Exhibit 84

00111



The licensing authority shall keep a copy of the receipt for not less than 1 year and shall furnish a copy to the applicant if requested by the applicant.

(f) A license issued under this section shall be revoked or suspended by the licensing authority, or his designee, upon the occurrence of any event that would have disqualified the holder from being issued such license or from having such license renewed. A license may be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such license and the person whose license is so revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended license may be reinstated only upon the termination of all disqualifying conditions, if any.

Any applicant or holder aggrieved by a denial, revocation, suspension or restriction placed on a license, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receiving notice of the denial, revocation or suspension or within 90 days after the expiration of the time limit during which the licensing authority shall respond to the applicant or, in the case of a restriction, any time after a restriction is placed on the license pursuant to this section, file a petition to obtain judicial review in the district court having jurisdiction in the city or town in which the applicant filed the application or in which the license was issued. If after a hearing a justice of the court finds that there was no reasonable ground for denying, suspending, revoking or restricting the license and that the petitioner is not prohibited by law from possessing a license, the justice may order a license to be issued or reinstated to the petitioner or may order the licensing authority to remove certain restrictions placed on the license.

(g) A license shall be in a standard form provided by the executive director of the criminal history systems board in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain a license number which shall clearly indicate whether such number identifies a Class A or Class B license, the name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the licensee. Such license shall be marked "License to Carry Firearms" and shall clearly indicate whether the license is Class A or Class B. The application for such license shall be made in a standard form provided by the executive director of the criminal history systems board, which form shall require the applicant to affirmatively state under the pains and penalties of perjury that such applicant is not disqualified on any of the grounds enumerated above from being issued such license.

(h) Any person who knowingly files an application containing false information shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

(i) A license to carry or possess firearms shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue and shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of issue; provided, however, that, if the licensee applied for renewal before the license expired, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. If a licensee is on active duty with the armed forces of the United States on the expiration date of the license, the license shall remain valid until the licensee is released from active duty and for a period not less than 180 days following the release; provided, however, that, if the licensee applied for renewal prior to the end of that period, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is

Exhibit 84  
00112



approved or denied. An application for renewal of a Class B license filed before the license has expired shall not extend the license beyond the stated expiration date; provided, that the Class B license shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of issue. Any renewal thereof shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years but not more than 6 years from the effective date of such license. Any license issued to an applicant born on February 29 shall expire on March 1. The fee for the application shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth and not less than \$50,000 of the funds deposited into the General Fund shall be allocated to the Firearm Licensing Review Board, established in section 130B, for its operations and that any funds not expended by said board for its operations shall revert back to the General Fund; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. For active and retired law enforcement officials, or local, state, or federal government entities acting on their behalf, the fee for the application shall be set at \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$12.50 of the fee, and \$12.50 of the fee shall be deposited into the general fund of the commonwealth. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit such portion of the license application fee into the Firearms Record Keeping Fund quarterly, not later than January 1, April 1, July 1 and October 1 of each year. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly such portion of the license application fee as is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. For the purposes of section 10 of chapter 269, an expired license to carry firearms shall be deemed to be valid for a period not to exceed 90 days beyond the stated date of expiration, unless such license to carry firearms has been revoked.

Any person over the age of 70 and any law enforcement officer applying for a license to carry firearms through his employing agency shall be exempt from the requirement of paying a renewal fee for a Class A or Class B license to carry.

(j)(1) No license shall be required for the carrying or possession of a firearm known as a detonator and commonly used on vehicles as a signaling and marking device, when carried or possessed for such signaling or marking purposes.

(2) No license to carry shall be required for the possession of an unloaded large capacity rifle or shotgun or an unloaded feeding device therefor by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service, or by the members of any such organization when on official parade duty or during ceremonial occasions. For purposes of this subparagraph, an "unloaded large capacity rifle or shotgun" and an "unloaded feeding device therefor" shall include any large capacity rifle, shotgun or feeding device therefor loaded with a blank cartridge or blank cartridges, so-called, which contain no projectile within such blank or blanks or within the bore or chamber of such large capacity rifle or shotgun.

(k) Whoever knowingly issues a license in violation of this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a jail or house of correction, or by both such fine and imprisonment.

(l) The executive director of the criminal history systems board shall send electronically or by first class mail to the holder of each such license to carry firearms, a notice of the expiration of such license not less than 90 days prior to such expiration and shall enclose therein a form for the renewal of such license. The form for renewal shall include an affidavit in which the applicant shall verify that the applicant has not lost any firearms or had any firearms stolen from the applicant since the date of the applicant's last renewal or issuance. The taking of fingerprints shall not be required in issuing the renewal of a license if the renewal applicant's fingerprints are on file with the department of the state

Exhibit 84  
00113



police. Any licensee shall notify, in writing, the licensing authority who issued said license, the chief of police into whose jurisdiction the licensee moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of said license. The commissioner of criminal justice information services shall provide electronic notice of expiration only upon the request of a cardholder. A request for electronic notice of expiration shall be forwarded to the department on a form furnished by the commissioner. Any electronic address maintained by the department for the purpose of providing electronic notice of expiration shall be considered a firearms record and shall not be disclosed except as provided in section 10 of chapter 66.

(m) Notwithstanding the provisions of section 10 of chapter 269, any person in possession of a firearm, rifle or shotgun whose license issued under this section is invalid for the sole reason that it has expired, not including licenses that remain valid under paragraph (i) because the licensee applied for renewal before the license expired, but who shall not be disqualified from renewal upon application therefor pursuant to this section, shall be subject to a civil fine of not less than \$100 nor more than \$5,000 and the provisions of section 10 of chapter 269 shall not apply; provided, however, that the exemption from the provisions of said section 10 of said chapter 269 provided herein shall not apply if: (i) such license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such license has been denied. Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or shotgun after such person's license has expired, meaning after 90 days beyond the stated expiration date on the license, has been revoked or suspended, solely for failure to give notice of a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended license then in possession and such officer, shall forward such license to the licensing authority by whom it was issued as soon as practicable. The officer shall, at the time of confiscation, provide to the person whose firearm, rifle or shotgun has been confiscated, a written inventory and receipt for all firearms, rifles or shotguns confiscated and the officer and his employer shall exercise due care in the handling, holding and storage of these items. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended license within one year of such confiscation or may be otherwise disposed of in accordance with the provisions of section 129D. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131F.

(n) Upon issuance of a license to carry or possess firearms under this section, the licensing authority shall forward a copy of such approved application and license to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a license under this section.

(o) No person shall be issued a license to carry or possess a machine gun in the commonwealth, except that a licensing authority or the colonel of state police may issue a machine gun license to:

(i) a firearm instructor certified by the municipal police training committee for the sole purpose of firearm instruction to police personnel;

(ii) a bona fide collector of firearms upon application or upon application for renewal of such license.

<[ Second sentence of paragraph (o) added by 2017, 110, Sec. 21 effective February 1, 2018 applicable as provided by 2017, 110, Sec. 53.]>

Exhibit 84  
00114

Clauses (i) and (ii) of this paragraph shall not apply to bump stocks and trigger cranks.

(p) The executive director of the criminal history systems board shall promulgate regulations in accordance with chapter 30A to establish criteria for persons who shall be classified as bona fide collectors of firearms.

(q) Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

(r) The secretary of the executive office of public safety or his designee may promulgate regulations to carry out the purposes of this section.

#### Credits

Amended by St.1936, c. 302; St.1951, c. 201; St.1953, c. 319, § 20; St.1953, c. 454; St.1957, c. 688, § 15; St.1959, c. 296, § 6; St.1960, c. 293; St.1969, c. 799, § 11; St.1972, c. 415; St.1973, c. 138; St.1973, c. 892, § 7; St.1974, c. 312; St.1974, c. 649, § 1; St.1975, c. 4, § 1; St.1975, c. 113, § 1; St.1984, c. 420, § 2; St.1986, c. 481, § 2; St.1987, c. 465, § 33; St.1994, c. 24, § 3; St.1996, c. 151, §§ 325 to 329; St.1996, c. 200, § 28; St.1998, c. 180, § 41; St.1998, c. 358, §§ 6 to 9; St.2002, c. 196, § 22; St.2002, c. 513, § 2; St.2003, c. 26, § 429, eff. July 1, 2003; St.2003, c. 46, § 103, eff. July 31, 2003; St.2004, c. 150, §§ 10 to 16, eff. Sept. 13, 2004; St.2008, c. 224, eff. Oct. 29, 2008; St.2010, c. 256, § 97, eff. Nov. 4, 2010; St.2010, c. 466, § 3, eff. April 14, 2011; St.2011, c. 9, §§ 16, 17, eff. April 11, 2011; St.2014, c. 284, §§ 48, 50, 51, 53, 56, 57, eff. Jan. 1, 2015; St.2014, c. 284, § 55, eff. Aug. 13, 2014; St.2017, c. 110, § 21, eff. Feb. 1, 2018.

#### Notes of Decisions (174)

M.G.L.A. 140 § 131, MA ST 140 § 131  
Current through the 2017 1st Annual Session

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 84  
00115



New Jersey Statutes Annotated

Title 2c. The New Jersey Code of Criminal Justice (Refs & Annos)

Subtitle 2. Definition of Specific Offenses

Part 5. Offenses Against Public Order, Health and Decency

Chapter 39. Firearms, Other Dangerous Weapons and Instruments of Crime (Refs & Annos)

This section has been updated. [Click here for the updated version.](#)

N.J.S.A. 2C:39-1

2C:39-1. Definitions

Effective: December 23, 2002 to January 15, 2018

Definitions. The following definitions apply to this chapter and to chapter 58:

a. "Antique firearm" means any rifle or shotgun and "antique cannon" means a destructive device defined in paragraph (3) of subsection c. of this section, if the rifle, shotgun or destructive device, as the case may be, is incapable of being fired or discharged, or which does not fire fixed ammunition, regardless of date of manufacture, or was manufactured before 1898 for which cartridge ammunition is not commercially available, and is possessed as a curiosity or ornament or for its historical significance or value.

b. "Deface" means to remove, deface, cover, alter or destroy the name of the maker, model designation, manufacturer's serial number or any other distinguishing identification mark or number on any firearm.

c. "Destructive device" means any device, instrument or object designed to explode or produce uncontrolled combustion, including (1) any explosive or incendiary bomb, mine or grenade; (2) any rocket having a propellant charge of more than four ounces or any missile having an explosive or incendiary charge of more than one-quarter of an ounce; (3) any weapon capable of firing a projectile of a caliber greater than 60 caliber, except a shotgun or shotgun ammunition generally recognized as suitable for sporting purposes; (4) any Molotov cocktail or other device consisting of a breakable container containing flammable liquid and having a wick or similar device capable of being ignited. The term does not include any device manufactured for the purpose of illumination, distress signaling, line-throwing, safety or similar purposes.

d. "Dispose of" means to give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer, or otherwise transfer possession.

e. "Explosive" means any chemical compound or mixture that is commonly used or is possessed for the purpose of producing an explosion and which contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects. The term shall not include small arms ammunition, or explosives in the form prescribed by the official United States Pharmacopoeia.

Exhibit 85

00117



Sterling MK-6, MK-7 and SAR types

Steyr A.U.G. semi-automatic firearms

USAS 12 semi-automatic type shotgun

Uzi type semi-automatic firearms

Valmet M62, M71S, M76, or M78 type semi-automatic firearms

Weaver Arm Nighthawk.

(2) Any firearm manufactured under any designation which is substantially identical to any of the firearms listed above.

(3) A semi-automatic shotgun with either a magazine capacity exceeding six rounds, a pistol grip, or a folding stock.

(4) A semi-automatic rifle with a fixed magazine capacity exceeding 15 rounds.

(5) A part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person.

x. "Semi-automatic" means a firearm which fires a single projectile for each single pull of the trigger and is self-reloading or automatically chambers a round, cartridge, or bullet.

y. "Large capacity ammunition magazine" means a box, drum, tube or other container which is capable of holding more than 15 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm.

z. "Pistol grip" means a well-defined handle, similar to that found on a handgun, that protrudes conspicuously beneath the action of the weapon, and which permits the shotgun to be held and fired with one hand.

aa. "Antique handgun" means a handgun manufactured before 1898, or a replica thereof, which is recognized as being historical in nature or of historical significance and either (1) utilizes a match, friction, flint, or percussion ignition, or which utilizes a pin-fire cartridge in which the pin is part of the cartridge or (2) does not fire fixed ammunition or for which cartridge ammunition is not commercially available.

bb. "Trigger lock" means a commercially available device approved by the Superintendent of State Police which is operated with a key or combination lock that prevents a firearm from being discharged while the device is attached to the firearm. It may include, but need not be limited to, devices that obstruct the barrel or cylinder of the firearm, as well as devices that immobilize the trigger.

Exhibit 85  
00118

New Jersey Statutes Annotated

Title 2c. The New Jersey Code of Criminal Justice (Refs & Annos)

Subtitle 2. Definition of Specific Offenses

Part 5. Offenses Against Public Order, Health and Decency

Chapter 39. Firearms, Other Dangerous Weapons and Instruments of Crime (Refs & Annos)

This section has been updated. Click here for the updated version.

N.J.S.A. 2C:39-3

2C:39-3. Prohibited weapons and devices

Effective: September 3, 2003 to January 15, 2018

Prohibited Weapons and Devices.

**a. Destructive devices.** Any person who knowingly has in his possession any destructive device is guilty of a crime of the third degree.

**b. Sawed-off shotguns.** Any person who knowingly has in his possession any sawed-off shotgun is guilty of a crime of the third degree.

**c. Silencers.** Any person who knowingly has in his possession any firearm silencer is guilty of a crime of the fourth degree.

**d. Defaced firearms.** Any person who knowingly has in his possession any firearm which has been defaced, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree.

**e. Certain weapons.** Any person who knowingly has in his possession any gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckle, sandclub, slingshot, cestus or similar leather band studded with metal filings or razor blades imbedded in wood, ballistic knife, without any explainable lawful purpose, is guilty of a crime of the fourth degree.

**f. Dum-dum or body armor penetrating bullets.** (1) Any person, other than a law enforcement officer or persons engaged in activities pursuant to subsection f. of N.J.S.2C:39-6, who knowingly has in his possession any hollow nose or dum-dum bullet, or (2) any person, other than a collector of firearms or ammunition as curios or relics as defined in Title 18, United States Code, section 921 (a) (13) and has in his possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco and Firearms, who knowingly has in his possession any body armor breaching or penetrating ammunition, which means: (a) ammunition primarily designed for use in a handgun, and (b) which is comprised of a bullet whose core or jacket, if the jacket is thicker than .025 of an inch, is made of tungsten carbide, or hard bronze, or other material which is harder than a rating of 72 or greater on the Rockwell B. Hardness Scale, and (c) is therefore capable of breaching or penetrating body armor, is guilty of a crime of the fourth degree. For purposes of this section, a collector may possess not more than three examples of each distinctive variation of the ammunition described above. A distinctive variation includes a different head stamp, composition, design, or color.

Exhibit 85

00119



**g. Exceptions.** (1) Nothing in subsection a., b., c., d., e., f., j. or k. of this section shall apply to any member of the Armed Forces of the United States or the National Guard, or except as otherwise provided, to any law enforcement officer while actually on duty or traveling to or from an authorized place of duty, provided that his possession of the prohibited weapon or device has been duly authorized under the applicable laws, regulations or military or law enforcement orders. Nothing in subsection h. of this section shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General. Nothing in this section shall apply to the possession of any weapon or device by a law enforcement officer who has confiscated, seized or otherwise taken possession of said weapon or device as evidence of the commission of a crime or because he believed it to be possessed illegally by the person from whom it was taken, provided that said law enforcement officer promptly notifies his superiors of his possession of such prohibited weapon or device.

(2) a. Nothing in subsection f. (1) shall be construed to prevent a person from keeping such ammunition at his dwelling, premises or other land owned or possessed by him, or from carrying such ammunition from the place of purchase to said dwelling or land, nor shall subsection f. (1) be construed to prevent any licensed retail or wholesale firearms dealer from possessing such ammunition at its licensed premises, provided that the seller of any such ammunition shall maintain a record of the name, age and place of residence of any purchaser who is not a licensed dealer, together with the date of sale and quantity of ammunition sold.

b. Nothing in subsection f. (1) shall be construed to prevent a designated employee or designated licensed agent for a nuclear power plant under the license of the Nuclear Regulatory Commission from possessing hollow nose ammunition while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties.

(3) Nothing in paragraph (2) of subsection f. or in subsection j. shall be construed to prevent any licensed retail or wholesale firearms dealer from possessing that ammunition or large capacity ammunition magazine at its licensed premises for sale or disposition to another licensed dealer, the Armed Forces of the United States or the National Guard, or to a law enforcement agency, provided that the seller maintains a record of any sale or disposition to a law enforcement agency. The record shall include the name of the purchasing agency, together with written authorization of the chief of police or highest ranking official of the agency, the name and rank of the purchasing law enforcement officer, if applicable, and the date, time and amount of ammunition sold or otherwise disposed. A copy of this record shall be forwarded by the seller to the Superintendent of the Division of State Police within 48 hours of the sale or disposition.

(4) Nothing in subsection a. of this section shall be construed to apply to antique cannons as exempted in subsection d. of N.J.S.2C:39-6.

(5) Nothing in subsection c. of this section shall be construed to apply to any person who is specifically identified in a special deer management permit issued by the Division of Fish and Wildlife to utilize a firearm silencer as part of an alternative deer control method implemented in accordance with a special deer management permit issued pursuant to section 4 of P.L.2000, c. 46 (C.23:4-42.6), while the person is in the actual performance of the permitted alternative deer control method and while going to and from the place where the permitted alternative deer control method is being utilized. This exception shall not, however, otherwise apply to any person to authorize the purchase or possession of a firearm silencer.

Exhibit 85  
00120



**h. Stun guns.** Any person who knowingly has in his possession any stun gun is guilty of a crime of the fourth degree.

**i.** Nothing in subsection e. of this section shall be construed to prevent any guard in the employ of a private security company, who is licensed to carry a firearm, from the possession of a nightstick when in the actual performance of his official duties, provided that he has satisfactorily completed a training course approved by the Police Training Commission in the use of a nightstick.

**j.** Any person who knowingly has in his possession a large capacity ammunition magazine is guilty of a crime of the fourth degree unless the person has registered an assault firearm pursuant to section 11 of P.L.1990, c. 32 (C.2C:58-12) and the magazine is maintained and used in connection with participation in competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the United States Department of the Army.

**k. Handcuffs.** Any person who knowingly has in his possession handcuffs as defined in P.L.1991, c. 437 (C.2C:39-9.2), under circumstances not manifestly appropriate for such lawful uses as handcuffs may have, is guilty of a disorderly persons offense. A law enforcement officer shall confiscate handcuffs possessed in violation of the law.

#### Credits

L.1978, c. 95, § 2C:39-3, eff. Sept. 1, 1979. Amended by L.1979, c. 179, § 2, eff. Sept. 1, 1979; L.1983, c. 58, § 1, eff. Feb. 7, 1983; L.1983, c. 479, § 2, eff. Jan. 12, 1984; L.1985, c. 360, § 2, eff. Nov. 12, 1985; L.1987, c. 228, § 2, eff. July 30, 1987; L.1989, c. 11, § 1, eff. Feb. 1, 1989; L.1990, c. 32, § 10, eff. May 30, 1990; L.1991, c. 437, § 1, eff. Jan. 18, 1992; L.1999, c. 233, § 2, eff. Jan. 1, 2000; L.2000, c. 46, § 5, eff. June 30, 2000; L.2003, c. 168, § 1, eff. Sept. 3, 2003.

#### Editors' Notes

#### SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE STATEMENT

#### Senate, No. 650--L.1989, c. 11

Senate 650 permits a guard who is licensed to carry a firearm and is employed by a private security company to lawfully carry a nightstick when in the actual performance of his official duties, provided that he has satisfactorily completed a training course.

The bill requires that a training course, approved by the Police Training Commission, in the use of a nightstick must be completed before a private security guard licensed to carry a firearm is authorized to carry a nightstick while in the performance of his official duties.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

N. J. S. A. 2C:39-3, NJ ST 2C:39-3

Current with 2017 laws and resolutions through L.2017, c. 323, 325-332, 334-372, 379-380 and J.R. No. 24

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 85  
00121

New Jersey Statutes Annotated

Title 2c. The New Jersey Code of Criminal Justice (Refs & Annos)

Subtitle 2. Definition of Specific Offenses

Part 5. Offenses Against Public Order, Health and Decency

Chapter 39. Firearms, Other Dangerous Weapons and Instruments of Crime (Refs & Annos)

This section has been updated. [Click here for the updated version.](#)

N.J.S.A. 2C:39-9

2C:39-9. Manufacture, transport, disposition and defacement  
of weapons and dangerous instruments and appliances

Effective: November 1, 2013 to January 15, 2018

Manufacture, Transport, Disposition and Defacement of Weapons and Dangerous Instruments and Appliances. a. Machine guns. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any machine gun without being registered or licensed to do so as provided in chapter 58 is guilty of a crime of the third degree.

b. Sawed-off shotguns. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any sawed-off shotgun is guilty of a crime of the third degree.

c. Firearm silencers. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any firearm silencer is guilty of a crime of the fourth degree.

d. Weapons. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any weapon, including gravity knives, switchblade knives, ballistic knives, daggers, dirks, stilettos, billies, blackjacks, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings, or, except as otherwise provided in subsection i. of this section, in the case of firearms if he is not licensed or registered to do so as provided in chapter 58, is guilty of a crime of the fourth degree. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any weapon or other device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air, which is intended to be used for any purpose other than for authorized military or law enforcement purposes by duly authorized military or law enforcement personnel or the device is for the purpose of personal self-defense, is pocket-sized and contains not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, or other than to be used by any person permitted to possess such weapon or device under the provisions of subsection d. of N.J.S. 2C:39-5, which is intended for use by financial and other business institutions as part of an integrated security system, placed at fixed locations, for the protection of money and property, by the duly authorized personnel of those institutions, is guilty of a crime of the fourth degree.

e. Defaced firearms. Any person who defaces any firearm is guilty of a crime of the third degree. Any person who knowingly buys, receives, disposes of or conceals a defaced firearm, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree.

Exhibit 85

00122



f. (1) Any person who manufactures, causes to be manufactured, transports, ships, sells, or disposes of any bullet, which is primarily designed for use in a handgun, and which is comprised of a bullet whose core or jacket, if the jacket is thicker than .025 of an inch, is made of tungsten carbide, or hard bronze, or other material which is harder than a rating of 72 or greater on the Rockwell B. Hardness Scale, and is therefore capable of breaching or penetrating body armor and which is intended to be used for any purpose other than for authorized military or law enforcement purposes by duly authorized military or law enforcement personnel, is guilty of a crime of the fourth degree.

(2) Nothing in this subsection shall be construed to prevent a licensed collector of ammunition as defined in paragraph (2) of subsection f. of N.J.S.2C:39-3 from transporting the bullets defined in paragraph (1) of this subsection from (a) any licensed retail or wholesale firearms dealer's place of business to the collector's dwelling, premises, or other land owned or possessed by him, or (b) to or from the collector's dwelling, premises or other land owned or possessed by him to any gun show for the purposes of display, sale, trade, or transfer between collectors, or (c) to or from the collector's dwelling, premises or other land owned or possessed by him to any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice; provided that the club has filed a copy of its charter with the superintendent of the State Police and annually submits a list of its members to the superintendent, and provided further that the ammunition being transported shall be carried not loaded in any firearm and contained in a closed and fastened case, gun box, or locked in the trunk of the automobile in which it is being transported, and the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

g. Assault firearms. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of an assault firearm without being registered or licensed to do so pursuant to N.J.S.2C:58-1 et seq. is guilty of a crime of the third degree.

h. Large capacity ammunition magazines. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of a large capacity ammunition magazine which is intended to be used for any purpose other than for authorized military or law enforcement purposes by duly authorized military or law enforcement personnel is guilty of a crime of the fourth degree.

i. Transporting firearms into this State for an unlawful sale or transfer. Any person who knowingly transports, ships or otherwise brings into this State any firearm for the purpose of unlawfully selling, transferring, giving, assigning or otherwise disposing of that firearm to another individual is guilty of a crime of the second degree. Any motor vehicle used by a person to transport, ship, or otherwise bring a firearm into this State for unlawful sale or transfer shall be subject to forfeiture in accordance with the provisions of N.J.S.2C:64-1 et seq.; provided however, this forfeiture provision shall not apply to innocent owners, nor shall it affect the rights of a holder of a valid lien.

The temporary transfer of a firearm shall not constitute a violation of this subsection if<sup>1</sup> that firearm is transferred:

(1) while hunting or target shooting in accordance with the provisions of section 1 of P.L.1992, c. 74 (C.2C:58-3.1);

(2) for shooting competitions sponsored by a licensed dealer, law enforcement agency, legally recognized military organization, or a rifle or pistol club which has filed a copy of its charter with the superintendent in accordance with the provisions of section 1 of P.L.1992, c. 74 (C.2C:58-3.1); or

Exhibit 85  
00123



(3) for participation in a training course conducted by a certified instructor in accordance with the provisions of section 1 of P.L.1997, c. 375 (C.2C:58-3.2).

The transfer of any firearm that uses air or carbon dioxide to expel a projectile; or the transfer of an antique firearm shall not constitute a violation of this subsection.

#### Credits

L.1978, c. 95, § 2C:39-9, eff. Sept. 1, 1979. Amended by L.1979, c. 179, § 7, eff. Sept. 1, 1979; L.1980, c. 108, § 1, eff. Sept. 11, 1980; L.1981, c. 480, § 2, eff. Jan. 12, 1982; L.1983, c. 58, § 2, eff. Feb. 7, 1983; L.1987, c. 228, § 3, eff. July 30, 1987; L.1990, c. 32, § 3, eff. May 30, 1990; L.1999, c. 233, § 3, eff. Jan. 1, 2000; L.2007, c. 298, § 1, eff. April 1, 2008; L.2013, c. 111, § 1, eff. Nov. 1, 2013.

#### Footnotes

1 So in original.

N. J. S. A. 2C:39-9, NJ ST 2C:39-9

Current with 2017 laws and resolutions through L.2017, c. 323, 325-332, 334-372, 379-380 and J.R. No. 24

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 85  
00124

KeyCite Yellow Flag - Negative Treatment  
Unconstitutional or Preempted Negative Treatment Reconsidered by New York State Rifle and Pistol Ass'n, Inc. v. Cuomo, 2nd Cir.(Conn.), Oct. 19, 2015

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Penal Law (Refs & Annos)  
Chapter 40. Of the Consolidated Laws (Refs & Annos)  
Part Three. Specific Offenses  
Title P. Offenses Against Public Safety  
Article 265. Firearms and Other Dangerous Weapons (Refs & Annos)

McKinney's Penal Law § 265.00

§ 265.00 Definitions

Effective: July 5, 2013  
Currentness

As used in this article and in article four hundred, the following terms shall mean and include:

1. "Machine-gun" means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.
2. "Firearm silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.
3. "Firearm" means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches; or (e) an assault weapon. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm.
4. "Switchblade knife" means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.
5. "Gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.

Exhibit 86  
00126

5-a. "Pilum ballistic knife" means any knife which has a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.

5-b. "Metal knuckle knife" means a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.

5-c. "Automatic knife" includes a stiletto, a switchblade knife, a gravity knife, a cane sword, a pilum ballistic knife, and a metal knuckle knife.

6. "Dispose of" means to dispose of, give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

7. "Deface" means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

8. "Gunsmith" means any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on, any firearm, large capacity ammunition feeding device or machine-gun.

9. "Dealer in firearms" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any assault weapon, large capacity ammunition feeding device, pistol or revolver.

10. "Licensing officer" means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown, the commissioner of police of that county; for the purposes of section 400.01 of this chapter the superintendent of state police; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance.

11. "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

12. "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

13. "Cane Sword" means a cane or swagger stick having concealed within it a blade that may be used as a sword or stiletto.

Exhibit 86  
00127



14. [See also subd. 14 below] “Chuka stick” means any device designed primarily as a weapon, consisting of two or more lengths of a rigid material joined together by a thong, rope or chain in such a manner as to allow free movement of a portion of the device while held in the hand and capable of being rotated in such a manner as to inflict serious injury upon a person by striking or choking. These devices are also known as nunchakus and centrifugal force sticks.

14. [See also subd. 14 above] “Antique firearm” means:

Any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.

15. “Loaded firearm” means any firearm loaded with ammunition or any firearm which is possessed by one who, at the same time, possesses a quantity of ammunition which may be used to discharge such firearm.

15-a. “Electronic dart gun” means any device designed primarily as a weapon, the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electrical shock to such person by means of a dart or projectile.

15-b. “Kung Fu star” means a disc-like object with sharpened points on the circumference thereof and is designed for use primarily as a weapon to be thrown.

15-c. “Electronic stun gun” means any device designed primarily as a weapon, the purpose of which is to stun, cause mental disorientation, knock out or paralyze a person by passing a high voltage electrical shock to such person.

16. “Certified not suitable to possess a self-defense spray device, a rifle or shotgun” means that the director or physician in charge of any hospital or institution for mental illness, public or private, has certified to the superintendent of state police or to any organized police department of a county, city, town or village of this state, that a person who has been judicially adjudicated incompetent, or who has been confined to such institution for mental illness pursuant to judicial authority, is not suitable to possess a self-defense spray device, as defined in section 265.20 of this article, or a rifle or shotgun.

17. “Serious offense” means (a) any of the following offenses defined in the former penal law as in force and effect immediately prior to September first, nineteen hundred sixty-seven: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding escape from prison; that kind of disorderly conduct defined in subdivisions six and eight of section seven hundred twenty-two of such former penal law; violations of sections four hundred eighty-three, four hundred eighty-three-b, four hundred eighty-four-h and article one hundred six of such former penal law; that kind of criminal sexual act or rape which was designated as a misdemeanor; violation of section seventeen hundred forty-seven-d and seventeen hundred forty-seven-e of such former penal law; any violation of any provision of article thirty-three of the public health law relating to narcotic drugs which was defined as a misdemeanor by section seventeen hundred fifty-one-a of such former penal law, and any violation of any provision of article thirty-three-A of the public health law relating to depressant and stimulant drugs which was defined as a misdemeanor by section seventeen hundred forty-seven-b of such former penal law.

Exhibit 86  
00128

(b) [As amended by L.1999, c. 635, § 11. See, also, par. (b) below.] any of the following offenses defined in the penal law: illegally using, carrying or possessing a pistol or other dangerous weapon; possession of burglar's tools; criminal possession of stolen property in the third degree; escape in the third degree; jostling; fraudulent accosting; endangering the welfare of a child; the offenses defined in article two hundred thirty-five; issuing abortional articles; permitting prostitution; promoting prostitution in the third degree; stalking in the fourth degree; stalking in the third degree; the offenses defined in article one hundred thirty; the offenses defined in article two hundred twenty.

(b) [As amended by L.1999, c. 635, § 15. See, also, par. (b) above.] any of the following offenses defined in the penal law: illegally using, carrying or possessing a pistol or other dangerous weapon; possession of burglar's tools; criminal possession of stolen property in the third degree; escape in the third degree; jostling; fraudulent accosting; endangering the welfare of a child; the offenses defined in article two hundred thirty-five; issuing abortional articles; permitting prostitution; promoting prostitution in the third degree; stalking in the third degree; stalking in the fourth degree; the offenses defined in article one hundred thirty; the offenses defined in article two hundred twenty.

18. "Armor piercing ammunition" means any ammunition capable of being used in pistols or revolvers containing a projectile or projectile core, or a projectile or projectile core for use in such ammunition, that is constructed entirely (excluding the presence of traces of other substances) from one or a combination of any of the following: tungsten alloys, steel, iron, brass, bronze, beryllium copper, or uranium.

19. "Duly authorized instructor" means (a) a duly commissioned officer of the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York; or (b) a duly qualified adult citizen of the United States who has been granted a certificate as an instructor in small arms practice issued by the United States army, navy or marine corps, or by the adjutant general of this state, or by the national rifle association of America, a not-for-profit corporation duly organized under the laws of this state; or (c) by a person duly qualified and designated by the department of environmental conservation under paragraph d of subdivision six of section 11-0713 of the environmental conservation law as its agent in the giving of instruction and the making of certifications of qualification in responsible hunting practices.

20. "Disguised gun" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive and is designed and intended to appear to be something other than a gun.

21. "Semiautomatic" means any repeating rifle, shotgun or pistol, regardless of barrel or overall length, which utilizes a portion of the energy of a firing cartridge or shell to extract the fired cartridge case or spent shell and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge or shell.

22. "Assault weapon" means

(a) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least one of the following characteristics:

(i) a folding or telescoping stock;

- (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
  - (iii) a thumbhole stock;
  - (iv) a second handgrip or a protruding grip that can be held by the non-trigger hand;
  - (v) a bayonet mount;
  - (vi) a flash suppressor, muzzle break, muzzle compensator, or threaded barrel designed to accommodate a flash suppressor, muzzle break, or muzzle compensator;
  - (vii) a grenade launcher; or
- (b) a semiautomatic shotgun that has at least one of the following characteristics:
- (i) a folding or telescoping stock;
  - (ii) a thumbhole stock;
  - (iii) a second handgrip or a protruding grip that can be held by the non-trigger hand;
  - (iv) a fixed magazine capacity in excess of seven rounds;
  - (v) an ability to accept a detachable magazine; or
- (c) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the following characteristics:
- (i) a folding or telescoping stock;
  - (ii) a thumbhole stock;
  - (iii) a second handgrip or a protruding grip that can be held by the non-trigger hand;
  - (iv) capacity to accept an ammunition magazine that attaches to the pistol outside of the pistol grip;



- (v) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
- (vi) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the non-trigger hand without being burned;
- (vii) a manufactured weight of fifty ounces or more when the pistol is unloaded; or
- (viii) a semiautomatic version of an automatic rifle, shotgun or firearm;
- (d) a revolving cylinder shotgun;
- (e) a semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or weapon defined in subparagraph (v) of paragraph (e) of subdivision twenty-two of section 265.00 of this chapter as added by chapter one hundred eighty-nine of the laws of two thousand and otherwise lawfully possessed pursuant to such chapter of the laws of two thousand prior to September fourteenth, nineteen hundred ninety-four;
- (f) a semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or weapon defined in paragraph (a), (b) or (c) of this subdivision, possessed prior to the date of enactment of the chapter of the laws of two thousand thirteen which added this paragraph;
- (g) provided, however, that such term does not include:
  - (i) any rifle, shotgun or pistol that (A) is manually operated by bolt, pump, lever or slide action; (B) has been rendered permanently inoperable; or (C) is an antique firearm as defined in 18 U.S.C. 921(a)(16);
  - (ii) a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition;
  - (iii) a semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine; or
  - (iv) a rifle, shotgun or pistol, or a replica or a duplicate thereof, specified in Appendix A to 18 U.S.C. 922 as such weapon was manufactured on October first, nineteen hundred ninety-three. The mere fact that a weapon is not listed in Appendix A shall not be construed to mean that such weapon is an assault weapon;
  - (v) any weapon validly registered pursuant to subdivision sixteen-a of section 400.00 of this chapter. Such weapons shall be subject to the provisions of paragraph (h) of this subdivision;
  - (vi) any firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof that is validly registered pursuant to subdivision sixteen-a of section 400.00 of this chapter;

Exhibit 86  
00131

(h) Any weapon defined in paragraph (e) or (f) of this subdivision and any large capacity ammunition feeding device that was legally possessed by an individual prior to the enactment of the chapter of the laws of two thousand thirteen which added this paragraph, may only be sold to, exchanged with or disposed of to a purchaser authorized to possess such weapons or to an individual or entity outside of the state provided that any such transfer to an individual or entity outside of the state must be reported to the entity wherein the weapon is registered within seventy-two hours of such transfer. An individual who transfers any such weapon or large capacity ammunition device to an individual inside New York state or without complying with the provisions of this paragraph shall be guilty of a class A misdemeanor unless such large capacity ammunition feeding device, the possession of which is made illegal by the chapter of the laws of two thousand thirteen which added this paragraph, is transferred within one year of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph.

23. "Large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device, that (a) has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition, or (b) [Suspended and not effective, pursuant to L.2013, c. 57, pt. FF, § 4, eff. March 29, 2013, deemed eff. Jan. 15, 2013.] contains more than seven rounds of ammunition, or (c) [Suspended and not effective, pursuant to L.2013, c. 57, pt. FF, § 4, eff. March 29, 2013, deemed eff. Jan. 15, 2013.] is obtained after the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision and has a capacity of, or that can be readily restored or converted to accept, more than seven rounds of ammunition; provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A feeding device that is a curio or relic is defined as a device that (i) was manufactured at least fifty years prior to the current date, (ii) is only capable of being used exclusively in a firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof, (iii) is possessed by an individual who is not prohibited by state or federal law from possessing a firearm and (iv) is registered with the division of state police pursuant to subdivision sixteen-a of section 400.00 of this chapter, except such feeding devices transferred into the state may be registered at any time, provided they are registered within thirty days of their transfer into the state. Notwithstanding paragraph (h) of subdivision twenty-two of this section, such feeding devices may be transferred provided that such transfer shall be subject to the provisions of section 400.03 of this chapter including the check required to be conducted pursuant to such section.

24. "Seller of ammunition" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling or keeping ammunition.

25. "Qualified retired New York or federal law enforcement officer" means an individual who is a retired police officer as police officer is defined in subdivision thirty-four of section 1.20 of the criminal procedure law, a retired peace officer as peace officer is defined in section 2.10 of the criminal procedure law or a retired federal law enforcement officer as federal law enforcement officer is defined in section 2.15 of the criminal procedure law, who: (a) separated from service in good standing from a public agency located in New York state in which such person served as either a police officer, peace officer or federal law enforcement officer; and (b) before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest, pursuant to their official duties, under the criminal procedure law; and (c) (i) before such separation, served as either a police officer, peace officer or federal law enforcement officer for five years or more and at the time of separation, is such an officer; or (ii) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency at or before the time of separation; and (d)(i) has not been found by a qualified medical professional employed by such agency to be unqualified for reasons relating to mental health; or (ii) has not entered into an agreement with such agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified

Exhibit 86

00132



for reasons relating to mental health; and (e) is not otherwise prohibited by New York or federal law from possessing any firearm.

#### Credits

(L.1965, c. 1030. Amended L.1967, c. 791, § 46; L.1969, c. 123, § 1; L.1972, c. 588, § 1; L.1972, c. 605, § 1; L.1974, c. 179, § 1; L.1974, c. 462, § 1; L.1974, c. 986, §§ 1, 2; L.1974, c. 1041, § 1; L.1976, c. 217, § 1; L.1982, c. 492, § 1; L.1985, c. 61, § 1; L.1986, c. 328, § 2; L.1986, c. 646, § 1; L.1988, c. 264, § 1; L.1990, c. 264, § 1; L.1995, c. 219, § 2; L.1996, c. 354, § 2; L.1997, c. 446, § 2, eff. Aug. 25, 1997; L.1998, c. 378, § 1, eff. Nov. 1, 1998; L.1999, c. 210, § 1, eff. Nov. 1, 1999; L.1999, c. 635, §§ 11, 15, eff. Dec. 1, 1999; L.2000, c. 189, §§ 8 to 10, eff. Nov. 1, 2000; L.2003, c. 264, § 33, eff. Nov. 1, 2003; L.2007, c. 510, § 3, eff. Feb. 11, 2008; L.2008, c. 257, § 3, eff. Nov. 1, 2008; L.2010, c. 232, §§ 2, 3, eff. July 30, 2010; L.2013, c. 1, § 37, eff. Jan. 15, 2013; L.2013, c. 1, § 38; L.2013, c. 1, § 39, eff. March 16, 2013; L.2013, c. 98, § 1, eff. July 5, 2013.)

#### Editors' Notes

#### VALIDITY

<For validity of this section, see *New York State Rifle and Pistol Ass'n, Inc. v. Cuomo*, 990 F.Supp.2d 349, 351 (W.D.N.Y. Dec. 31, 2013) and *N.Y. State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015), cert. denied sub nom. *Shew v. Malloy*, 136 S. Ct. 2486, 195 L. Ed. 2d 822 (2016)>

#### PRACTICE COMMENTARIES

*by William C. Donnino*

#### History

#### Second Amendment

#### Definitions

#### Firearm and loaded firearm

#### Antique firearm

#### Assault weapon

#### Automatic knife

#### Billy

#### Chuka stick

#### Electronic dart gun

#### Electronic stun gun

#### Gravity knife

#### Kung Fu star

#### Exhibit 86

00133



**Large capacity ammunition feeding device****Penal Law § 265.00(22)(h)****Penal Law § 265.02(8)****Penal Law § 265.10****Penal Law § 265.11****Penal Law § 265.36 and § 265.37****Machine-gun****Metal knuckles****Metal knuckle knife****Pilum ballistic knife****Rifle or shotgun****History**

In 1963, as a result of years of study and the recommendations of the Joint Legislative Committee on Firearms and Ammunition, the provisions of the former Penal Law dealing with weapons were revised. L.1963, c. 136; former Penal Law §§ 1896-1904. That revision placed in one section the definitions of most of the substantive crimes [see former Penal Law § 1897, "Possession of weapons and dangerous instruments and appliances"].

In 1967, the current Penal Law took effect and carried forward, almost verbatim, the weapon provisions of the former Penal Law, placing the major provisions primarily in Penal Law former § 265.05. In 1974, the then-existing Penal Law § 265.05 was restructured by dividing the various crimes defined in that one section into five sections, currently Penal Law § 265.01 through Penal Law § 265.05, in a degree structure which was generally in accord with the structure of other Penal Law statutes. L.1974, c. 1041.

There were a substantial number of amendments thereafter, most of which added new crimes, and that history is set forth in the comments to the applicable amendment.

**Second Amendment**

The Second Amendment to the Federal Constitution 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."

In *District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), the Supreme Court held that the District of Columbia's "ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." Thereafter, the Supreme Court applied the Second Amendment to the states. *McDonald v. City of Chicago*, 561 U.S. 742, 786, 130 S.Ct. 3020, 3047, 177 L.Ed.2d 894 (2010).

Exhibit 86

00134

In *Heller*'s view, "the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition of an entire class of 'arms' that is overwhelmingly chosen by American society for that lawful purpose." *Heller*, 554 U.S. at 628.

Thus, the protected weapons are those which were in "common use" at the time of the amendment for lawful purposes, such as self-defense and defense of one's home. *Id.* at 624-27. That reference to weapons in "common use" at the time of the amendment was not intended to necessarily exclude from the amendment's protection weapons presently in common use for lawful purposes, given the Court's holding that the 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.* at 582. See *Caetano v. Massachusetts*, 577 U.S. \_\_\_, 136 S.Ct. 1027, 194 L.Ed.2d 99 (2016).

The amendment "does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short barreled shotguns" [*Id.* at 625], machineguns [*Id.* at 624] and a M-16 rifle. *Id.* at 627. Nor does the amendment support "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626.

With respect to regulatory laws, the Court expressly declined to provide an "exhaustive" list of "lawful regulatory measures," but the Court did explain that the Second Amendment does not interdict "prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* 626-27 and n.26; *McDonald v. City of Chicago*, 561 U.S. at 786, *supra* (emphasizing the *Heller* limitations of the Second Amendment with respect the ability to carry any weapon in any manner for whatever purpose and with respect to regulatory measures).

Then, in *Caetano v. Massachusetts*, 577 U.S. \_\_\_, *supra*, the Court, in a per curiam opinion, rejected the three reasons that the Massachusetts court had given for upholding a state ban on the possession of stun guns and remanded the case for further consideration. The Supreme Court began by reiterating that *Heller* held that "the 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." Thus, the state court's first reason, that stun guns "were not in common use at the time of the Second Amendment's enactment" was inconsistent with that holding. Next, the state court had reasoned that stun guns meet the historical exception of prohibiting the carrying of dangerous and "unusual" weapons; but when the state equated "unusual" with the stun gun not in common use at the time of the amendment's enactment, the Supreme Court found that it did no more than reiterate its first erroneous reason. As for its third reason, that stun guns are not readily adaptable to use in the military, the Supreme Court stated that "*Heller* rejected the proposition 'that only those weapons useful in warfare are protected.'"

New York has a statute which parallels the Second Amendment. Civil Rights Law § 4 states: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed."

To date, that statute has not been interpreted to negate any of New York's statutory restrictions on the possession of firearms. See *Moore v. Gallup*, 267 A.D. 64, 45 N.Y.S.2d 63 (3d Dept. 1943), *affirmed without opinion* 293 N.Y. 846, 59 N.E.2d 439 (1944), *but remittitur amended* 294 N.Y. 699, 60 N.E.2d 847 (1945) to state that the Court had held that the New York statutes relating to a license to carry a concealed pistol were not repugnant to the provisions of the Fourteenth Amendment.

Since *Heller*, New York has continued to uphold its statutory scheme which prohibits the possession of a firearm without an appropriate license. In *People v. Hughes*, 22 N.Y.3d 44, 978 N.Y.S.2d 97, 1 N.E.3d 298 (2013), the Court of Appeals held that a conviction of "criminal possession of a weapon in the second degree"

Exhibit 86  
00135



and “criminal possession of a weapon in the third degree,” predicated on the defendant's having been previously convicted of a crime, did not violate the Second Amendment. *See also Schulz v. State of N. Y. Exec.*, 134 A.D.3d 52, 53, 19 N.Y.S.3d 92 (3d Dept. 2015), *appeal dismissed upon the ground that no substantial constitutional question is directly involved* 26 N.Y.3d 1139, 27 N.Y.S.3d 502, 47 N.E.3d 782 (2016); *People v. Perkins*, 62 A.D.3d 1160, 1161, 880 N.Y.S.2d 209 (3d Dept. 2009) (“Unlike the statute at issue in *Heller*, Penal Law article 265 does not effect a complete ban on handguns and is, therefore, not a ‘severe restriction’ improperly infringing upon defendant's Second Amendment rights. Moreover, in our view, New York's licensing requirement remains an acceptable means of regulating the possession of firearms ... and will not contravene *Heller* so long as it is not enforced in an arbitrary and capricious manner”); *People v. Ferguson*, 21 Misc.3d 1120(A), 873 N.Y.S.2d 513 (Criminal Court, Queens County, 2008) (“... *Heller*, is distinguishable from the case at bar for several reasons. Firstly, at the time of his arrest, defendant was not in his home, but was in an airport. Secondly, the requirement that handguns be licensed in the State of New York is not tantamount to a total ban and, therefore, is not a ‘severe restriction’ as was the case in *Heller*. Lastly, the Court identified certain presumptively lawful regulatory measures which would survive a constitutional challenge including the carrying of firearms in ‘sensitive places.’ Licensing is an acceptable regulatory measure and an airport falls within the scope of a ‘sensitive place.’”).

In an extensive opinion, including a detailed recitation of the history of New York's regulation of firearms, the Second Circuit Court of Appeals held that the Second Amendment was not violated by New York's statutory requirement that a person who wants to “have and carry concealed [a hand gun], without regard to employment or place of possession” must show that “proper cause” exists for the issuance of a license to do so [Penal Law § 400.00(2)(f)]. *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012).

#### Definitions

The definitions in Penal Law § 265.00 describe the various types of weapons which are regulated by this article, as well as certain terms utilized in the article regulating the licensing of firearms [Penal Law article 400]. Some of those definitions are discussed here; others are discussed in the sections dealing with the crimes in which they are used. The principal weapon regulated by this article is a firearm and thus it is discussed first, with the remaining terms thereafter in alphabetical order.

#### Firearm and Loaded Firearm

By definition, a “firearm” is limited to: a pistol, revolver, the so-called “sawed-off” shotgun or rifle, and an “assault weapon” [Penal Law § 265.00(3)]. The vast array of other types of rifles and shotguns are not included within that definition and thus are not a subject of the statutes which utilize the term “firearm” to define a crime. A “rifle” and a “shotgun” are separately-defined terms [Penal Law § 265.00(11) & (12)] and there are statutes which define crimes which pertain separately and solely to them.

The statutory definition of “firearm” does not require that the firearm be loaded. A separate term and definition are provided for a “loaded firearm” [Penal Law § 265.00(15)]. In addition to the common understanding that a firearm is loaded when it contains ammunition, by the statutory definition, a firearm is loaded when there is simultaneous possession of the firearm and ammunition, irrespective of whether the ammunition is in the firearm.

The statutory definition of “firearm” also does not specify that the firearm need be operable. By contrast, the definition of “loaded firearm” does require ammunition “which may be used to discharge” the firearm [Penal Law § 265.00(15)], and the definition of a “machine gun,” does require that the weapon, “loaded or unloaded,” be one “from which a number of shots or bullets may be rapidly or automatically discharged from



a magazine with one continuous pull of the trigger....” Compare Penal Law § 10.00(12), defining a “deadly weapon” to mean a “loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged....”; *People v. Shaffer*, 66 N.Y.2d 663, 495 N.Y.S.2d 965, 486 N.E.2d 823 (1985) (the “People failed to establish that the gun ... was a ‘deadly weapon’ ... that is, both operable and loaded with live ammunition”).

However, inherent to the common understanding of what constitutes a firearm and key to its danger is its operability. Hence, to establish that the weapon in issue is a “firearm” the courts have required proof of its operability, that is, that it is capable of discharging ammunition. See *People v. Longshore*, 86 N.Y.2d 851, 852, 633 N.Y.S.2d 475, 657 N.E.2d 496 (1995) (“Although the statute is silent on the point, it is now accepted that to establish criminal possession of a handgun the People must prove that the weapon is operable,” and *Longshore* applied that same requirement of operability to a rifle or shotgun).

A firearm that is found in a disassembled condition but is operable when assembled is an operable firearm without any further proof that the defendant was personally capable of rendering the disassembled firearm operable. *People v. Lugo*, 161 A.D.2d 122, 554 N.Y.S.2d 849 (1st Dept. 1990). See also *People v. Cavines*, 70 N.Y.2d 882, 883, 524 N.Y.S.2d 178, 518 N.E.2d 1170 (1987) (“... the fact that the gun malfunctioned [during the commission of a crime], standing alone, does not defeat the overwhelming inference that immediately prior to the pulling of the trigger, the gun was capable of discharging the ammunition, particularly in view of the uncontradicted evidence that when subsequently test-fired, the gun and the bullets were found to be operable”).

In addition to the firearm being operable, the ammunition of a loaded firearm must be “live,” that is, capable of being discharged by the firearm. Penal Law § 265.00(15). See *People v. Johnson*, 56 A.D.3d 1191, 867 N.Y.S.2d 319 (4th Dept. 2008); *People v. Daniels*, 77 A.D.2d 745, 430 N.Y.S.2d 881 (3d Dept. 1980); *People v. Thomas*, 70 A.D.2d 570, 417 N.Y.S.2d 66 (1st Dept. 1979).

A “firearm” that is not operable may be the subject of a charge of attempted criminal possession of a weapon. *People v. Saunders*, 85 N.Y.2d 339, 624 N.Y.S.2d 568, 648 N.E.2d 1331 (1995).

Neither “pistol” nor “revolver” is defined by statute. They both, however, refer to a handgun. See Random House Webster’s Unabridged Dictionary (1999) definition of “handgun” (“any firearm that can be held and fired with one hand; a revolver or a pistol”); definition of “pistol” (“a short firearm intended to be held and fired with one hand”) and definition of “revolver” (“a handgun having a revolving chambered cylinder for holding a number of cartridges, which may be discharged in succession without reloading”).

“Sawed-off” shotgun or rifle was first defined solely as a firearm of a “size which may be concealed upon the person.” That inherently imprecise definition proved inadequate. See *People v. Cortez*, 110 Misc.2d 652, 442 N.Y.S.2d 873 (Supreme Court, N.Y. County, 1981). The definition was amended in 1982 [c. 492] and that definition appeared to require that the shotgun or rifle have a barrel “and” an overall length of the specified measurement in order to be classified as a sawed-off shotgun or rifle, and that a weapon made from a shotgun or rifle would be so classified only if its overall length was less than that specified in the definition. *People v. Santiago*, 133 Misc.2d 161, 506 N.Y.S.2d 136 (Supreme Court, N.Y. County, 1986) was of the view that the Legislature intended that a shotgun or rifle, or a weapon made from either of them, should be classified as a “sawed-off” weapon depending upon the length of the barrel “or” overall length, and recommended clarifying legislation. See also *People v. Crivillaro*, 142 Misc.2d 527, 538 N.Y.S.2d 152 (Supreme Court, Bronx County, 1989). In 1988, the Legislature amended the definition to specify that a shotgun or rifle may be deemed a sawed-off weapon if the barrel length alone is less than the specified number of inches (18 for a shotgun, 16 for a rifle), and that any weapon made from a shotgun or rifle may be deemed a sawed-off weapon if the overall length is less than 26 inches [Penal Law § 265.00(3)(b), (c), and (d)]. L.1988, c. 264.

Exhibit 86

00137



An “assault weapon,” which is separately defined in Penal Law § 265.00(22), was added to the definition of “firearm” in 2000 [c. 189]. By amending the definition of “firearm” to include an “assault weapon,” the “assault weapon” became the subject of such crimes as: “criminal possession of a weapon” in the fourth degree [Penal Law § 265.01(1), (3)], third degree [Penal Law § 265.02(1), (3), (5)], and second degree [Penal Law § 265.03]; “criminal sale of a firearm” in the second degree [Penal Law § 265.12] and first degree [Penal Law § 265.13]; “criminal sale of a firearm” with the aid of a minor [Penal Law § 265.14] and to a minor [Penal Law § 265.16]; and a couple of crimes defined in Penal Law § 265.10(3) and (6).

In addition to including an “assault weapon” in the definitions of crimes that use the term “firearm,” the legislation added some crimes which specifically name an “assault weapon.” The first of the amended crimes was “criminal possession of a weapon in the third degree,” a felony. It was amended to include a subdivision to prohibit the possession of an assault weapon [Penal Law § 265.02(7)], irrespective of whether it is loaded and irrespective of where the possession takes place. The second of the amended crimes was “manufacture, transport, disposition and defacement of weapons ...” [Penal Law § 265.10]. It was amended to forbid anyone to manufacture, transport, or dispose of any “assault weapon” [Penal Law § 265.10(1), (2) and (3) (first sentence)].

An “antique firearm,” which is separately defined in Penal Law § 265.00(14), is expressly excluded from the definition of “firearm.”

#### Antique Firearm

As noted in the discussion of the definition of “firearm,” an “antique firearm” is expressly excluded from the definition of “firearm” [Penal Law § 265.00(3)]. *See also* Penal Law § 265.00(22)(g)(i) exempting “antique firearm,” as defined by Federal law, from the definition of “assault rifle.” As a result of the exclusion of “antique firearm,” as defined by the instant statute, from the definition of “firearm,” any proscription related to an “antique firearm” requires a specific reference to that term. *See, e.g.* Penal Law § 265.01(4), making it a crime to possess an “antique firearm.”

The term “antique firearm” is separately defined by New York law to mean any “unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade” [Penal Law § 265.00(14)]. It is critical to note that the definition requires that the defined weapon be “unloaded” in order for it to qualify as an “antique firearm”; a weapon which met the structural definition of an “antique firearm” but was loaded would constitute a “firearm” and be subject to the laws applicable thereto. *See People v. Wedgewood*, 106 A.D.2d 674, 483 N.Y.S.2d 440 (2d Dept. 1984); *People v. Mott*, 112 Misc.2d 833; 447 N.Y.S.2d 632 (Supreme Court, N.Y. County, 1982).

In adding the definition of “antique firearm” in 1974 [c. 986] and excluding it from the definition of “firearm,” the Legislature intended that “hobbyists would be permitted to collect ... trade, buy and sell these antique firearms without being subject to the requirements of licensing.” *People v. Mott*, 112 Misc.2d at 835, *supra*, quoting the Legislative Memorandum. In 2011, however, the Legislature changed its mind by amending the crime of “criminal possession of a firearm in the fourth degree” [Penal Law § 265.01(4)] to include as a crime, the possession of an “antique firearm.” [L.2011 c. 357]. The Legislative Memorandum to the companion bill (Assembly 8456) stated that “[m]odern muzzle loading rifles are essentially a modern single shot rifle. They look and operate very much like a sporting rifle and allow accurate shots at distances up to 200 yards ... [and] can be reloaded in seconds...” There is authority to issue a license to have, possess, collect and carry “antique pistols,” as that term is separately defined in Penal Law § 400.00(2)(g).

### Assault Weapon

An “assault weapon” was added to the definition of “firearm” in 2000 [Penal Law § 265.00(3)] and at the same time, was separately defined [Penal Law § 265.00(22)]. L.2000, c. 189. In 2013, the NY SAFE Act amended and significantly revised the definition.

A principal difference between the former and present definition is that the former definition required the requisite firearm to have two military style features or characteristics, while the current definition requires only one. Thus, as the Governor explained: “Under the stricter definitions, semi-automatic pistols [see subdivision 22(c) and (f)] and rifles [see subdivision 22(a) and (f)] with detachable magazines and one military style feature will be considered assault weapons. Semi-automatic shotguns [see subdivision 22(b) and (f)] with one military style feature will also be considered assault weapons.” Governor’s Press Release, “Governor Cuomo Signs NY Safe Act in Rochester,” January 16, 2013. Also included as an assault weapon is a “revolving cylinder shotgun” [subdivision 22(d)].

The definition contains eight paragraphs (a) to (h), several of which define different types of weapon which can be classified as an assault weapon; they are:

- (a) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least one of the listed characteristics;
- (b) a semiautomatic shotgun that has at least one of the listed characteristics;
- (c) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the listed characteristics;
- (d) a revolving cylinder shotgun;
- (e) semiautomatic rifle, shotgun or pistol defined in the former Penal Law § 265.00(22)(e)(v) of the L.2000, c. 189 which had been lawfully possessed, pursuant to laws of 2000, c. 189, prior to September fourteenth, nineteen hundred ninety-four.

The term “semiautomatic” is separately defined in subdivision 21 of the instant section which in lay terms includes any repeating rifle, shotgun or pistol which, although requiring a separate pull of the trigger to fire each round, has the capacity of being fired to extract the spent shell and automatically load a cartridge.

There is a grandfathering provision, paragraphs (f) and (g), exempting certain weapons from the definition.

Assault weapons defined in subdivision (22)(e) or (f), possessed before January 16, 2013, had to be registered by April 15, 2014 [Penal Law § 400.00(16-a)]; except a weapon defined in subdivision (22)(g)(vi) “transferred into the state may be registered at any time, provided such weapons are registered within thirty days of their transfer into the state.” Once having registered, the registrant must “recertify” every five years thereafter or suffer revocation of the registration [Penal Law § 400.00(16-a)].

Owners of a grandfathered assault weapon or large capacity ammunition feeding device may only transfer same to a purchaser authorized to possess same or to an individual or entity outside of the state [subdivision 22(h)]. Governor’s Press Release, *supra*. An individual who transfers a grandfathered weapon or large capacity ammunition device to an individual inside New York State or without complying with the other provisions of



the statute [subdivision 22(h)], shall, except for a large capacity ammunition device transferred within one year of the effective date of the NY SAFE Act, be guilty of a class A misdemeanor [subdivision 22(h)].

#### Automatic knife

In 2007, legislation was passed to support and promote the establishment of a “cutlery and knife museum” in the Hudson Valley. L.2007, c. 510. As a result, the museum and its employees would need an exemption from the crime of possession of certain knives. Thus, the term “automatic knife” was created and defined to include a “stiletto, a switchblade knife, a gravity knife, a cane sword, a pilum ballistic knife, and a metal knuckle knife” [Penal Law § 265.00(5-c)], and an exemption from criminal liability was provided for the possession or ownership of automatic knives by a cutlery and knife museum, established pursuant to Education Law § 216-c, or by any employee of the museum when acting in furtherance of the business of the museum [Penal Law § 265.20(d)].

#### Billy

There is no statutory definition of “billy.” However, in *People v. Ocasio*, 28 N.Y.3d 178, 43 N.Y.S.3d 228, 65 N.E.3d 1263 (2016), the Court described a “billy” as “a cylindrical or rounded, rigid, club or baton with a handle grip which, from its appearance and inherent characteristics, is designed to be used as a striking weapon and not for other lawful purposes.” The Court further explained that it matters not whether the “billy” is comprised of wood, metal, or other synthetic material, or that the billy is collapsible or extendible.

#### Chuka stick

The “chuka stick” definition [Penal Law § 265.00(14)] was added by L.1974, c. 179. In urging the Governor to approve the legislation, the sponsor of the bill wrote: “The chuka stick is an instrument that may be purchased or easily assembled from two pieces of wood and a piece of thong, cord or chain. With a minimum amount of practice, this instrument may be effectively used as a garrote, bludgeon, thrusting or striking device. The chuka stick is designed primarily as a weapon and has no purpose other than to maim or, in some instances, kill.” Letter of Assemblyman Richard C. Ross to the Counsel to the Governor, Governor’s Bill Jacket for the L.1974, c. 179.

#### Electronic dart gun

The “electronic dart gun” definition [Penal Law § 265.00(15-a)] was added in 1976. L.1976, c. 217. In urging the Governor to approve the legislation, the sponsor of the bill wrote: “There are a number of these devices being manufactured, the most popular of which is called a ‘Taser Public Defender.’ It is designed to look like a flashlight which can shoot two barbed darts a distance of 15 to 18 feet and deliver a 50,000 volt jolt of electricity effective through an inch of clothing. While the effect of the charge is to stun, knock out or paralyze a person and is temporary, it causes great pain and may well be lethal to a person in poor health.” Letter of Senator John D. Caemmerer to the Counsel to the Governor, Governor’s Bill Jacket for the L.1976, c. 217.

#### Electronic stun gun

In 1990, the Legislature added the definition of an “electronic stun gun” [Penal Law § 265.00(15-c)]. L.1990, c. 264. That definition is like the definition of an “electronic dart gun.” Penal Law § 265.00(15-a). A principal difference is that the “electronic dart gun” requires that the electrical shock be passed by means of a dart

Exhibit 86

00140

or projectile. The Governor, who recommended the legislation, indicated that the “availability and use” of a weapon “which passes a high voltage electrical shock to a person by means of direct contact or without resort to a projectile” poses the same threat as an electronic dart gun. 1990 Governor’s Approval Memorandum 31. Accordingly, for both weapons, possession per se is a crime. Penal Law §§ 265.01(1); 265.02(1).

There is a difference of judicial opinion on whether, in a prosecution for possession of an “electronic stun gun,” the People are required to prove that the defendant knew it was an “electronic stun gun.” *Compare People v. Small*, 157 Misc.2d 673, 598 N.Y.S.2d 431 (Supreme Court, New York County, 1993)(knowledge required) with *People v. Voltaire*, 18 Misc.3d 408, 413 n.1, 852 N.Y.S.2d 649 (Criminal Court, Kings County, 2007) (disagreeing with *Small* in a case in which the court decided that the defendant need not know that the knife possessed was a gravity knife) and *People v. Parrilla*, 27 N.Y.3d 400, 33 N.Y.S.3d 842, 53 N.E.3d 719 (2016) (in a prosecution for possession of a “gravity knife,” the People must prove that the defendant possessed a “knife,” but not that he or she knew that it met the definition of a “gravity knife”).

#### Gravity knife

The definition of “gravity knife” [Penal Law § 265.00(5)] requires that the knife’s blade lock in place automatically; thus, a “butterfly knife,” which requires manual locking is not a gravity knife. *People v. Zuniga*, 303 A.D.2d 773, 759 N.Y.S.2d 86 (2d Dept. 2003). A local accusatory instrument which charges a defendant with possession of a gravity knife is jurisdictionally defective when it includes only a “conclusory statement that an object recovered from a defendant is a gravity knife,” without any explanation of how the object meets the statutory definition. *People v. Dreyden*, 15 N.Y.3d 100, 104, 905 N.Y.S.2d 542, 931 N.E.2d 526, 528 (2010).

In a prosecution for possession of a “gravity knife,” the People must prove that the defendant possessed a “knife,” but not that he or she knew that it met the definition of a “gravity knife.” *People v. Parrilla*, 27 N.Y.3d 400, 33 N.Y.S.3d 842, 53 N.E.3d 719 (2016). The Appellate Divisions have held that the People are required to prove that the “gravity knife” is operable [*People v. Smith*, 309 A.D.2d 608, 765 N.Y.S.2d 777 (1st Dept. 2003); *People v. Perez*, 123 A.D.2d 721, 506 N.Y.S.2d 961 (2d Dept. 1986)].

#### Kung Fu star

In 1982, the possession of a “Kung Fu star” [Penal Law § 265.00(15-b)] with intent to use it unlawfully against another was made a crime. L.1982, c. 840. In 1985, the manufacturing and transporting of a Kung Fu star was made a crime [Penal Law § 265.10]. L.1985, c. 61. In 1988, in recognition that Kung Fu stars may not be manufactured and, in the words of the Legislative Memorandum, that they “serve no legitimate purpose other than as a weapon,” the statute was again amended to make the per se possession of a Kung Fu star a crime [Penal Law § 265.01(2)]. L.1988, c. 220.

#### Large capacity ammunition feeding device

The concept of a “large capacity ammunition feeding device” [Penal Law § 265.00(23)] (hereinafter “large feeding device”) was introduced in 2000 [c. 189] and significantly amended in 2013 by the NY SAFE Act. [L.2013, c. 1, as amended by L.2013, c. 57]. Prior to the amendment, the definition excluded a large feeding device manufactured after September 30, 1994. That limitation was repealed; thus, those large feeding devices are included in the revised definition of a “large feeding device.” According to the Legislative Memorandum, the reason for doing so was “because it was impossible to tell the difference between magazines manufactured before or after [September 30, 1994].”

Exhibit 86  
00141



Under the revised definition, a large feeding device is one that “(a) has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a large feeding device that is a curio or relic.”

The two alternate definitions initially enacted as subdivisions (b) and (c) were in a convoluted way repealed. The import of those alternate subdivisions was to have the definition of a device ultimately limited to one that had a capacity of seven rounds. But, after enactment, it was noted that the smallest manufactured device normally had a capacity of ten rounds. Kaplan and Hakim, “New York Governor Favors Easing Newly Passed Gun Law,” New York Times, March 20, 2013 (<http://www.nytimes.com/2013/03/21/nyregion/cuomo-seeks-to-ease-a-newly-passed-gun-restriction.html>). Thus, before subdivisions (b) and (c) took effect, the NY SAFE Act was itself amended to declare that “the effective date of the amendments adding paragraphs (b) and (c) to such subdivision shall be suspended and not effective.” L.2013, c. 57 § 4. There is no provision lifting the “suspension” and making the amendments effective on a future date. As a result, that unique Penal Law language of “suspended and not effective” would appear to have the practical effect of repealing each of those subdivisions and was probably utilized for whatever perceived advantage there was in being able to say the provisions were suspended, rather than repealed. The repeal of subdivision (c) did not, however, appear to affect the “provided, however” language recited above which existed in the law prior to the addition of subdivision (c) and had chronologically followed the repealed language of subdivision (c).

The crimes for which the definition of a large feeding device is utilized include Penal Law § 265.00(22)(h), § 265.10, § 265.11, § 265.02(8), § 265.36, and § 265.37. The import of those statutes is as follows:

**Penal Law § 265.00(22)(h)**

A large feeding device that was legally possessed prior to the enactment date of the NY SAFE Act, January 15, 2013, may be transferred to a person authorized to possess same or to an individual or entity outside of New York, provided that such a transfer must be reported, within 72 hours, to the entity with whom the weapon is registered. A person who transfers a device to an individual inside New York state or without otherwise complying with the law's transfer requirements is guilty of a class A misdemeanor, unless the device, the possession of which is made illegal by the NY SAFE Act, was transferred before January 15, 2014 [Penal Law § 265.00(22)(h)].

**Penal Law § 265.02(8)**

Prior to, and after, the NY SAFE Act, a provision of the statute defining “criminal possession of a weapon in the third degree,” makes it a class D felony when a “person possesses a large capacity ammunition feeding device” [Penal Law § 265.02(8)]. The NY SAFE ACT, however, amended that subdivision to specify that “[f]or purposes of this subdivision,” a large feeding device shall “not” include either of the following two feeding devices:

[i] a feeding device lawfully possessed by such person before January 15, 2013 (the effective date of chapter one of the laws of 2013 “which amended this subdivision”), “that has a capacity of, or that can be readily restored or converted to accept more than seven but less than eleven rounds of ammunition.” Parenthetically, this exclusion from liability for this felony became covered by the generic definition of a large feeding device when that definition was amended to specify that a large feeding device is one that “has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.” [L.2013, c. 57 § 4; Penal Law § 265.00(23)].



[ii] a feeding device “that was manufactured before September [13, 1994], that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.” The exclusion from liability for this felony is in recognition that prior to the NY SAFE Act, it was lawful to possess a feeding device manufactured before September 13, 1994. Notably, however, this exclusion from liability for this felony does not also require that the possessor lawfully possessed the feeding device prior to the effective date of the NY SAFE Act.

#### **Penal Law § 265.10**

As part of the 2000 laws [c. 189], Penal Law § 265.10 (“manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances”) was amended (1) to forbid the to manufacture, transport, or disposal of a “large capacity ammunition feeding device” [Penal Law § 265.10(1), (2) and (3) (first sentence)]; (2) to add a prohibition for the buying, receiving or disposing of a “large capacity ammunition feeding device” which has been defaced for a criminal purpose, which parallels the existing prohibition as it relates to a firearm [Penal Law § 265.10(3) (second sentence)]; and (3) to add a prohibition for “wilfully” defacing a “large capacity ammunition feeding device,” which parallels the existing prohibition for wilfully defacing a firearm [Penal Law § 265.10(6)].

#### **Penal Law § 265.11**

Also, as part of the 2000 laws [c. 189], Penal Law § 265.11 (“criminal sale of a firearm in the third degree”) was amended to prohibit a person who is “not authorized” to possess a “firearm” from “unlawfully” selling or otherwise disposing of any firearm or “large capacity ammunition feeding device.” By contrast, one of the amendments to the crime of “manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances” made it a crime to “dispose of” [defined in Penal Law § 265.00(6)] a “large capacity ammunition feeding device” [Penal Law § 265.10(3) (sentence one)], without also requiring that the actor not be authorized to possess a firearm. Thus, unless exempted by Penal Law § 265.20, a person who “disposes of” such device (and does so, for example, by a sale of the device) commits a crime, irrespective of whether that person is authorized or not authorized to possess a “firearm.”

#### **Penal Law § 265.36 and § 265.37**

The NY SAFE Act added two non-felony offenses, apparently intending to include liability for a feeding device subject to the exceptions to the felony, though arguably not completely fulfilling that intent.

The first added offense was “unlawful possession of a large capacity ammunition feeding device” [Penal Law § 265.36], a class A misdemeanor. The statute makes it “unlawful for a person to knowingly possess a large capacity ammunition feeding device manufactured before September [13, 1994] and if such person lawfully possessed such large capacity feeding device before [January 15, 2013], that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.” Penal Law § 265.36.

A safeguard for those who once lawfully possessed such feeding device is a provision excluding from liability for this crime a person “who has a reasonable belief that such device ... may lawfully be possessed,” and who, within 30 days of being notified by law enforcement or a licensing official that possession is unlawful, “surrenders or lawfully disposes of” the feeding device. Once so notified, there exists a reasonable, rebuttable presumption that the possessor knows that the feeding device cannot be lawfully possessed.

The second added offense was “unlawful possession of certain ammunition feeding devices” [Penal Law § 265.37]. This statute makes it “unlawful for a person to knowingly possess an ammunition feeding device where

Exhibit 86

00143

such device contains more than seven rounds of ammunition.” L.2013, c. 57. *But see New York State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 248 (2d Cir. 2015) (“New York’s seven-round load limit does not survive intermediate scrutiny in the absence of requisite record evidence and a substantial relationship between the statutory provision and important state safety interests”; accordingly, that provision is unconstitutional). However, there is an exemption from liability for Penal Law sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15 and 270.05 for the “possession and use” at certain specified “indoor or outdoor” firing ranges of a “magazine, belt, feed strip or similar device” that contains more than seven rounds of ammunition, albeit in a feeding device that does not have the capacity of more than ten rounds of ammunition [Penal Law § 265.20(7-f)].

Instead of placing the sentencing provisions applicable to this offense in the Penal Law articles dealing with sentences, the NY SAFE Act, unfortunately, as too many other statutes have done, further complicated the sentencing laws by setting forth the governing sentences for this offense in the statute defining the crime. If the large feeding device is “possessed within the home of the possessor,” a first offense is a violation, “subject to” a fine of \$250; “each subsequent offense” is a class B misdemeanor, “subject to” a fine of \$250 and a term of imprisonment “up to three months.” If the large feeding device is not possessed within the home of the possessor, a first offense is a class B misdemeanor, “subject to” a fine of \$250 and a term of imprisonment “up to six months”; “each subsequent offense” is a class A misdemeanor. For the class A misdemeanor, no sentence is specified, and thus the normal sentence options will apply. For the specified sentences, it appears that the amount of the fine is the stated amount, there being no language indicating that the fine is “up to” the stated amount; on the other hand, the jail sentences utilize the “up to” language, making them discretionary within that range, which may therefore be from one day up to the stated period. What is mysterious about this type of specified sentences, which are placed outside the sentencing statutes, is whether they exclude any other option in the sentencing statutes which would normally be included in the stated classification.

#### Machine-gun

A “machine-gun” is not included in the definition of a “firearm.” Unlike the definition of a firearm, rifle or shotgun, the requirement of operability of a machine-gun appears subsumed in its definition, which requires that it be a weapon, “loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger....” [Penal Law § 265.00(1)]. *See People v. Woods*, 202 Misc. 562, 564, 114 N.Y.S.2d 611, 613 (N.Y. Magis. Ct. 1952) (purported machine gun was missing two parts and was thus not capable of firing more than one shot at a time and was therefore not a “machine gun”).

To an extent, the definition is expanded in the definition of the crime of “criminal possession of a weapon in the third degree” which prohibits the possession of a machine-gun or any other weapon “simulating a machine-gun and which is adaptable for such use.” Penal Law § 265.02(2). *See People v. Excell*, 254 A.D.2d 369, 680 N.Y.S.2d 259 (2d Dept. 1998) (the court rejected the claim that because a “Uzi cannot be easily converted into a machine gun,” it was thus not adaptable for such use because there was no such statutory qualification).

#### Metal knuckles

There is no statutory definition of “metal knuckles.” However, in *People v. Aragon*, 28 N.Y.3d 125, 42 N.Y.S.3d 646, 65 N.E.3d 675 (2016), the Court described “metal knuckles” as a “metal object with multiple holes, through which an individual places his or her fingers so that a metal bar rests atop the individual’s knuckles. That object is used as a weapon to cause increased pain when the person wearing it hits someone with a fist.”



**Metal knuckle knife**

In 1995, the Legislature added to the list of defined weapons the “metal knuckle knife” [Penal Law § 265.00(5-b)], and then added that weapon to the list of items which constitute a deadly weapon [Penal Law § 10.00(12)], to the list of items the possession or manufacture of which is per se a crime [Penal Law §§ 265.01(1), 265.10(1)], and to the list of items whose presence in an automobile or in a stolen vehicle may give rise to a presumption of possession of that weapon by everyone in the automobile or stolen vehicle [Penal Law § 265.15]. L.1995, c. 219. A “metal knuckle knife” can function as both a set of metal knuckles (possession of which is also a per se crime) and a knife. In the words of the Legislative Memorandum, the “possession and manufacture of weapons such as the metal knuckle knife serve only one purpose, ... to maim or take human life. Police searches of shops in the City of New York have discovered this particular weapon. ... In order to protect society, these weapons must be included within the definition of ‘deadly weapons’ found in the Penal Law.”

In 2008, the definition of “deadly weapon” in Penal Law § 10.00(12) and the instant definition of “metal knuckle knife” were each amended to include “plastic knuckles” because the Legislature determined that “plastic knuckles have just as much impact as the brass knuckles and are just as deadly.” Legislative Memorandum. L.2008, c. 257. Also, a number of statutes which prohibit the possession, manufacture and transportation of various deadly weapons were amended to include a prohibition on the possession of “plastic knuckles” [Penal Law §§ 265.01(1); 265.10(1) and (2)].

**Pilum ballistic knife**

The “pilum ballistic knife” definition [Penal Law § 265.00(5-a)] was added in 1986. L.1986, c. 328. One advertisement for the knife described it as approximately nine-and-one-half inches long, with a four-and-a-half inch blade. When a button inside the knife handle is pushed, a powerful spring inside the handle can eject the blade, propelling it to a distance of up to 30 feet with considerable force.

**Rifle or shotgun**


A sawed-off rifle or shotgun, that is, one with a barrel or overall length less than that prescribed in the statute defining a “firearm” [Penal Law § 265.00(3)], and a rifle or shotgun which qualifies as an “assault weapon” are, for the purposes of this article, a “firearm” and therefore subject to the prohibitions related thereto.

Otherwise, a rifle and a shotgun, as those terms are defined [Penal Law § 265.00(11) and (12)], are not included in the definition of “firearm,” and any prohibition related to either requires the specific use of the term “rifle” or “shotgun.” See, e.g. Penal Law § 265.01(4). In addition to meeting the terms of the definition, a rifle or shotgun must also be operable, that is, capable of discharging ammunition. *People v. Longshore*, 86 N.Y.2d 851, 633 N.Y.S.2d 475, 657 N.E.2d 496 (1995).


Notes of Decisions (132)

McKinney's Penal Law § 265.00, NY PENAL § 265.00  
Current through L.2018, chapter 1.



 KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or PreemptedHeld Unconstitutional by New York State Rifle and Pistol Ass'n, Inc. v. Cuomo, W.D.N.Y., Dec. 31, 2013

 KeyCite Yellow Flag - Negative TreatmentProposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Penal Law (Refs & Annos)  
Chapter 40. Of the Consolidated Laws (Refs & Annos)  
Part Three. Specific Offenses  
Title P. Offenses Against Public Safety  
Article 265. Firearms and Other Dangerous Weapons (Refs & Annos)

McKinney's Penal Law § 265.36

§ 265.36 Unlawful possession of a large capacity ammunition feeding device

Effective: March 16, 2013

Currentness

It shall be unlawful for a person to knowingly possess a large capacity ammunition feeding device manufactured before September thirteenth, nineteen hundred ninety-four, and if such person lawfully possessed such large capacity feeding device before the effective date of the chapter of the laws of two thousand thirteen which added this section, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.

An individual who has a reasonable belief that such device is of such a character that it may lawfully be possessed and who surrenders or lawfully disposes of such device within thirty days of being notified by law enforcement or county licensing officials that such possession is unlawful shall not be guilty of this offense. It shall be a rebuttable presumption that such person knows that such large capacity ammunition feeding device may not be lawfully possessed if he or she has been contacted by law enforcement or county licensing officials and informed that such device may not be lawfully possessed.

Unlawful possession of a large capacity ammunition feeding device is a class A misdemeanor.

**Credits**

(Added L.2013, c. 1, § 46-a, eff. March 16, 2013.)

**Editors' Notes**

**VALIDITY**

<For validity of this section, see New York State Rifle and Pistol Ass'n, Inc. v. Cuomo, 990 F.Supp.2d 349, 351 (W.D.N.Y. Dec. 31, 2013) and N.Y. State Rifle & Pistol Ass'n, Inc. v. Cuomo, 804 F.3d 242 (2d Cir. 2015), cert. denied sub nom. Shew v. Malloy, 136 S. Ct. 2486, 195 L. Ed. 2d 822 (2016)>

**PRACTICE COMMENTARIES**

*by William C. Donnino*

Exhibit 86

00146

See Practice Commentary to Penal Law § 265.00 with respect to the definition of “large capacity ammunition feeding device.”

Notes of Decisions (2)

McKinney's Penal Law § 265.36, NY PENAL § 265.36  
Current through L.2018, chapter 1.

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 86  
00147

## **Exhibit 18**



## Finding of Emergency

The Department of Justice (Department or DOJ) finds that an emergency exists, and that the immediate adoption of sections within Chapter 39, of Division 5, of Title 11 is necessary to avoid serious harm to the public peace, health, safety, or general welfare.

### Specific Facts Demonstrating the Need for Immediate Action

Proposition 63, a measure banning the possession of large-capacity magazines, was approved by the voters on November 8, 2016 and took effect November 9, 2016. In anticipation of its passages, the Legislature pre-amended Proposition 63 with the passage of Senate Bill 1446 (Chapter 48, Statutes of 2016). The clarifying amendments take effect on January 1, 2017.

Pursuant to Proposition 63, as amended, beginning July 1, 2017, it will be an infraction punishable by a fine for a person to possess any large-capacity magazine, regardless of the date the magazine was acquired. (Penal Code, § 32310, subdivision (b).) The new law requires a person in lawful possession of a large-capacity magazine prior to July 1, 2017 to dispose of the magazine. Some persons are exempt from the ban, including active and retired law enforcement, armored car entities, and licensed gun dealers. (Penal Code, §§ 32400, 32405, 32406, 32410, 32430, 32435, 32450.) Starting July 1, 2017, anyone who violates the ban is subject to a year in jail, and a \$100 fine for a first offence, \$250 fine for a second offense, and a \$500 fine for a third offense. (Penal Code § 32310, subdivision (b).)

These emergency regulations are necessary for the implementation and on-going enforcement of the ban on large-capacity magazines. The proposed regulations provide guidance to California residents on how to comply with the ban. These regulations need to be established as soon as possible so the Department has time to notify gun owners and gun owners have time to make the necessary changes to comply with the ban.

There are likely hundreds of thousands of large-capacity magazines in California at this time. In recent years, there has been an increase in these types of firearms on the market. The Department therefore expects many gun owners to be affected by the new ban. Under the new law, gun owners have six months to dispose of or permanently alter their large-capacity magazines. Pursuant to Penal Code section 32310, subdivision (c), a person who legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means prior to July 1, 2017: (1) remove the large-capacity magazine from the state; (2) sell the large-capacity magazine to a licensed firearms dealer; (3) destroy the large-capacity magazine; or (4) surrender the large-capacity magazine to a law enforcement agency for destruction.

Alternatively, gun owners may permanently alter large-capacity magazines by reducing their ammunition capacity so that it no longer meets the definition of a "large-capacity magazine." Penal Code section 16740 defines "large-capacity magazine" to mean any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds. If a gun owner chooses to permanently reduce the capacity of their large-capacity

magazines, these emergency regulations provide guidance for doing so with what the Department has determined to be the acceptable minimum level of permanence.

By providing this information to the public in a timely manner, through the emergency process, the Department will avert serious harm to public peace, health, safety, or general welfare.

**Technical, Theoretical, and Empirical Study, Report, or Similar Document, if any, Upon Which the Department Relied**

In addition to existing regulations forming the basis of these proposed regulations, the following documents were used:

UTAS MAKINE LTD., UTS-15 owners manual, attached for reference  
KEL TEC, KSG owners manual, Rev 042814, attached for reference  
Standard MFG. DP-12 shotgun owners manual, attached for reference

**Authority and Reference Citations**

Authority: Penal Code sections 26905, 26910, 32310, 32311, 32315.

Reference: Penal Code sections 16740, 32310, 32311, 32315, 32400, 32405, 32406, 32410, 32415, 32425, 32430, 32435, 32440, 32445, 32450.

Repealed: Penal Code section 32420 was removed from the authority of section 5480 because SB 1446 repealed that section.

**Informative Digest/Policy Statement Overview**

Existing law prohibits the sale, gift, and loan of a large-capacity magazine. A violation of this prohibition is punishable as a misdemeanor with specified penalties, or as a felony. The new law goes further and provides that possession of large-capacity magazines by a non exempt person is an infraction punishable by a fine not to exceed \$100 for the first offense, by a fine not to exceed \$250 for the second offense, and by a fine not to exceed \$500 for the third or subsequent offense, regardless of the date the magazine was acquired. The law requires a person in lawful possession of a large-capacity magazine prior to July 1, 2017, to dispose of the magazine as provided. By creating a new crime, this law imposes a state-mandated local program.

Existing law creates various exceptions to the prohibition on the sale, gift or loan of a large-capacity magazine including, but not limited to, the sale of, giving of, lending of, importation into this state, or purchase of, any large-capacity magazine to, or by the holder, of a special weapons permit for use as a prop for a motion picture or any federal, state, county, city and 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, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties. The new law makes conforming changes to those exceptions by including possession of a large-capacity magazine in those provisions and would establish additional exceptions, including exceptions to allow



licensed gunsmiths and honorably retired sworn peace officers to possess large-capacity magazines.

The objective of the proposed regulations is to inform California gun owners of their options for complying with new California laws while maintaining public safety.

Article 4. Large-Capacity Magazine Permits

§ 5480. Requirements for Large-Capacity Magazine Permits Pursuant to Penal Code Section 32315.

This section is amended to state that a separate Large-Capacity Magazine Permit is needed for each licensed location. The permit will automatically transfer with an existing California Firearms Dealer if their physical store moves and they notify the Department prior to moving. Large-Capacity Magazine Permit applications can only be submitted online.

§ 5483. Large-Capacity Magazine Permit Record Keeping.

This section is amended to include instructions on how permittees shall document the Large-Capacity Magazine Permit records, which form to use, any additional documentation to be kept with the form, and timeframe for completing the documentation.

§ 5484. Large-Capacity Magazine Permit Revocations.

This section is amended to include the grounds for revocation of a Large-Capacity Magazine Permit, and the factors surrounding the revocation.

Article 5. Large-Capacity Magazines and Large-Capacity Magazine Conversion Kits

§ 5490. Large-Capacity Magazine; manufacturing

This section has been added to inform gun owners who legally possess a large-capacity magazine that they may disassemble and clean the magazine without triggering the ban.

§ 5491. Large-Capacity Magazine; capacity

This section has been added to inform gun owners of the legal definition of a large-capacity magazine and provide guidance on reducing the capacity on their large-capacity magazines.

§ 5492. Large-Capacity Magazine Conversion Kits.

This section has been added to clarify the definition of large-capacity magazine conversion kits.

Government Code Section 11346.5(a)(3)(D) Evaluation

The proposed regulations are not inconsistent or incompatible with existing state regulations.

Mandate on Local Agencies or School Districts

The Department has determined the proposed emergency regulations do impose a state-mandated local program or a mandate requiring reimbursement by the State pursuant to Chapter 58, Statutes of 2016, because it creates a new crime. However, SB 1446 states that no reimbursement



is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction.

**Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations**

None.

**Nonduplication of State Statutes as Necessary To Satisfy Government Code Section 11349.1(a)(6)**

To satisfy the requirements of Government Code section 11349.1(a)(6), the text of the proposed regulations are nonduplicative.

**Forms Incorporated by Reference**

Large-Capacity Magazine Permit Application, BOF 050 (Rev. 12/2016)  
Large Capacity Magazine Report, BOF 1002 (Rev. 12/2016)

**Cost Estimates**

The Department has assessed the potential for significant adverse impact that might result from the proposed emergency action and has determined:

- There will be no non-discretionary costs or savings to local agencies
- There will be no costs to school districts
- There will be no costs or savings in federal funding to the State

As detailed on the attachment to the Economic and Fiscal Impact Statement (STD. 399), the Department estimates its costs (state agency) directly related to the large-capacity magazine permit and enforcement of the large-capacity magazine laws and regulations will be insignificant.

**Finding of Emergency**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

**Explanation of Failure to Adopt Nonemergency Regulations**

The Department is unable to develop regulations in the standard manner because of the short timeframes provided in the legislation. The legislation was signed into law on July 1, 2016, and the ban commences on July 1, 2017. It is the Department's intention to provide guidance to California's gun owners so that by July 1, 2017, they will be in compliance with the law. The proposed regulations provide options for disposal of large-capacity magazines, as well as instructions for reducing the capacity of a large-capacity magazine, and need to be formalized and provided to California residents as soon as possible.

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Justice**

**Regulatory Action:**

**Title 11, California Code of Regulations**

**Adopt sections:** 5490, 5491, 5492

**Amend sections:** 5480, 5483, 5484

**Repeal sections:**

**AMENDED NOTICE OF WITHDRAWAL**

**Government Code Section 11349.3(c)**

**OAL Matter Number: 2016-1223-02**

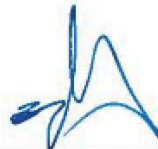
**OAL Matter Type: Emergency (E)**

---

This notice confirms that your proposed regulatory action regarding Large-Capacity Magazines was withdrawn from OAL review pursuant to Government Code section 11349.3(c).

OAL will return your rulemaking record promptly.

**Date:** December 29, 2016



---

**Mark Storm**  
**Senior Attorney**

**For:** Debra M. Cornez  
**Director**

**Original:** Kamala D. Harris

**Copy:** Melan Noble



SENIOR PARTNER  
C. D. MICHEL\*

MANAGING PARTNER  
JOSHUA ROBERT DALE

SPECIAL COUNSEL  
ERIC M. NAKASU  
W. LEE SMITH

ASSOCIATES  
ANNA M. BARVIR  
SEAN A. BRADY  
MATTHEW D. CUBEIRO  
SCOTT M. FRANKLIN  
MARGARET E. LEIDY  
BEN A. MACHIDA  
CLINT B. MONFORT  
JOSEPH A. SILVOSO, III  
LOS ANGELES, CA

\* ALSO ADMITTED IN TEXAS AND THE  
DISTRICT OF COLUMBIA

OF COUNSEL  
MATTHEW M. HORECZKO  
LOS ANGELES, CA



WRITER'S DIRECT CONTACT:  
562-216-4444  
JSILVOSO@MICHELLAWYERS.COM

December 28, 2016

Office of Administrative Law  
ATTN: OAL Reference Attorney  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
staff@oal.ca.gov  
**BY MAIL & EMAIL**

Department of Justice  
Bureau of Firearms  
ATTN: Jacqueline Dosch and Melan Noble  
P.O. Box 160487  
Sacramento, CA 95816  
Regulations@doj.ca.gov  
jacqueline.dosch@doj.ca.gov  
melan.noble@doj.ca.gov  
Fax: (916) 324-5033  
**BY MAIL, EMAIL, & FAX**

**RE: OPPOSITION to the Proposed Emergency Regulations Regarding "Large-Capacity Magazines" and "Large-Capacity Magazine Conversion Kits"**

To Whom It May Concern:

We write on behalf of our clients, the National Rifle Association of America ("NRA") and the California Rifle & Pistol Association, Incorporated ("CRPA"), as well as their respective members throughout California and the United States. We write in opposition to the California Department of Justice's ("DOJ") proposed emergency regulations relating to "large-capacity magazines"<sup>1</sup> (OAL File Nos. 2016-1223-02E Parts 1a and 1b and 2016-1223-02 Part 2).

For the following reasons, the Office of Administrative Law ("OAL") should reject the proposed regulations and require DOJ to follow the standard rulemaking process:

1. The laws covering "large-capacity magazines" ("LCMs"), affected by the proposed emergency regulations, have been on California's books for 17 years.
2. The laws restricting "large-capacity magazine conversion kits" ("Conversion Kits")

---

<sup>1</sup> These regulations also, briefly, address "large-capacity magazine conversion kits." Because these regulations predominantly cover "large-capacity magazines," and for the sake of brevity, we will refer to these regulations as covering "large-capacity magazines." But we will address the concerns relating to "large-capacity magazine conversion kits" as well.

December 28, 2016

Page 2 of 17

went into effect in 2014.

3. The new laws restricting the possession of LCMs do not go into effect until July 1, 2017. There is no change to the restrictions on conversion kits.
4. DOJ presented zero evidence that an emergency exists, and there is ample time to address the regulations using the standard rulemaking procedure.
5. There is no need to clarify the existing or the new laws. DOJ has let the California public and firearm industry dictate the definitions of key terms used in California law without clarification or guidance.
6. The regulations are not necessary to avoid serious harm to the public. More troubling is the fact that if these regulations go into effect, DOJ will create unwitting felons without adequate notice or giving the public reasonable opportunity to comment.

Both the content of DOJ's proposed regulations and the timing of their submission are suspect. Our clients are gravely concerned about DOJ's attempt to circumvent the notice and hearing requirements of the California Administrative Procedure Act ("APA") during a time that encompasses both a holiday and one of the busiest periods of the year for firearm dealers and manufacturers.

On December 23, 2016, DOJ submitted its proposed regulations to the OAL, seeking an emergency exception to the requirements of the APA. This submission occurred on the Friday before Christmas Eve (Saturday) and Christmas (Sunday). Monday, December 26, is the federally-observed holiday for Christmas this year and taken as a holiday by many other Californians due to its connection to the Christmas weekend. It is also one of the busiest shopping days of the year. The timing of DOJ's submission is dubious at best if not downright deceitful.

As explained below, no actual emergency exists to justify the application of the regulations here. Even if there is an emergency, DOJ's proposed regulations do not address it, as the regulations are not needed to implement or enforce the new ban on LCM possession. And the shortened notice and comment period that DOJ seeks, along with the consequences of certain proposed regulations, will lead to detriment and damages for thousands of Californians.

## **I. BACKGROUND**

### **A. The Current Law for "Large-Capacity Magazines" and "Large-Capacity Magazine Conversion Kits" and How Permanently Altering a "Large-Capacity Magazine" Can Exempt a Device from the Definition and Restrictions for "Large-Capacity Magazines"**

The current restrictions relating to LCMs were part of Senate Bill 23, which passed in 1999. They have been on the books for 17 years and were relatively unchanged for that entire period of time. Meanwhile, the laws defining and restricting "large-capacity magazine conversion kits" went into



December 28, 2016

Page 3 of 17

effect in 2014 and remained unchanged from their original versions.<sup>2</sup>

### **1. Definition of “Large-Capacity Magazine”**

The definition of “large-capacity magazine” has also been relatively unchanged since 2000. Back then, “‘large-capacity magazine’ mean[t] any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds nor shall it include any .22 caliber tube ammunition feeding device.”<sup>3</sup>

Today, the Penal Code defines “large-capacity magazine” as:

“‘[A]ny ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- (a) *Feeding devices that have been permanently altered so that they cannot accommodate more than 10 rounds.*
- (b) A .22 caliber tube ammunition feeding device.
- (c) A tubular magazine that is contained in a lever-action firearm.”<sup>4</sup>

### **2. Definition of “Large-Capacity Magazine Kit”**

A “large-capacity magazine conversion kit” “is a device or combination of parts of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine.”<sup>5</sup>

### **3. Restrictions on “Large-Capacity Magazine”/“Large-Capacity Magazine Conversion Kit” Activities, Not Possession**

The original restrictions on LCMs stated that: “Commencing January 1, 2000, [any person who] manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes

---

<sup>2</sup> Compare Enacted Legislation Stats. 2013, c. 728 (A.B. 48) with Cal. Penal Code § 32311.

<sup>3</sup> See, e.g., Cal. Penal Code § 12020, subd. (c)(25) (2000); see also Enacted Legislation Stats. 1999, c. 129 (S.B. 23). Former Penal Code section 12020 was broken up by the general renumbering of the “dangerous weapons” sections of the Penal Code in 2012.

<sup>4</sup> Cal. Penal Code § 16740 (emphasis added). California law does not explain further what an LCM is. However, in its definition of “detachable magazine,” California states that an “ammunition feeding device” includes “any belted or linked ammunition” but not “clips, en bloc clips, or stripper clips that load cartridges into the magazine.” (Cal. Code Regs. tit. 11, § 5469, subd. (a).)

<sup>5</sup> Cal. Penal Code § 32311.



December 28, 2016

Page 4 of 17

for sale, or who gives, or lends, any large-capacity magazine” will be punished by imprisonment.<sup>6</sup> A violation of these restrictions is punishable as a misdemeanor or a felony.<sup>7</sup> Of note, possession of “large-capacity magazines” was not restricted. So those in possession of “large-capacity magazines” before January 1, 2000 could continue to possess them under California law.

The current restrictions on LCMs state that LCMs are illegal to make, manufacture, import, sell, keep or expose for sale, give, buy, receive, or loan within California.<sup>8</sup> The restrictions on buying and receiving LCMs were added to the code on 2014.<sup>9</sup> Violation of any of these restrictions remains a misdemeanor or felony pursuant to the prosecutor or court’s discretion.<sup>10</sup>

Just like LCMs, the *possession* of conversion kits is not a restricted activity that violates the law. “Any person in [California] who knowingly manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives” a conversion kit violates California law.<sup>11</sup> Unlike the punishments for LCMs, a person may only be prosecuted for a misdemeanor for violating the restrictions relating to conversion kits.<sup>12</sup>

#### 4. *Exceptions to the Restrictions*

Penal Code section 12020, the precursor to the current restrictions on LCMs, lumped LCMs with other weapons. Therefore, there were exceptions that applied to that entire group of weapons, including LCMs. Today, those exceptions are located under the exceptions for “generally prohibited weapons,” of which LCMs are included.<sup>13</sup> In addition, LCMs were provided their own specific exceptions.<sup>14</sup> Hence, there are two sets of exceptions that apply to LCMs: those for “generally prohibited weapons” and those specific to LCMs. All of the exceptions for LCMs also apply to conversion kits.<sup>15</sup>

---

<sup>6</sup> Cal. Penal Code § 12020, subd. (a)(2) (2000).

<sup>7</sup> See Cal. Penal Code § 12020, subd. (a) (2000).

<sup>8</sup> Cal. Penal Code § 32310, subd. (a).

<sup>9</sup> See Enacted Legislation Stats. 2013, c. 728 (A.B. 48) (adding “buys” and “receives” to the list of restricted activities in Penal Code section 32310, subdivision (a)).

<sup>10</sup> See Cal. Penal Code § 32310, subd. (a).

<sup>11</sup> Cal. Penal Code § 32311, subd. (a).

<sup>12</sup> See *id.*

<sup>13</sup> See Cal. Penal Code §§ 17700 *et seq.*

<sup>14</sup> See Cal. Penal Code §§ 32400 *et seq.*

<sup>15</sup> See Cal. Penal Code § 32311, subd. (a).

December 28, 2016

Page 5 of 17

a. *Interplay of the Exceptions and DOJ's "Large-capacity Magazine" Permit*

There are a number of exceptions to the restrictions for LCMs. However, these exceptions have an interesting interplay. For those who want to import LCMs or conversion kits into California, the law is clear that they have to first obtain an LCM Permit from DOJ for the importation.<sup>16</sup> The law is also clear that the restrictions on LCMs and conversion kits "do not apply to the importation into this state of, or sale of, any large-capacity magazine by" such Permit holders, "when those activities are in accordance with the terms and conditions of that permit."<sup>17</sup> But once the LCMs and conversion kits are in California, however, another exception to the general restriction must be used (e.g., sell to law enforcement or the entertainment industry) in order to lawfully transfer the device(s).

b. *DOJ's Lack of Guidance and Clarification Resulting in (Heretofore Accepted) Industry and Public Modification of "Large-Capacity Magazines" Based on the "Permanent Alteration" Exception*

For 17 years, Californians knew that an ammunition feeding device holding more than 10 rounds would lose its LCM status if someone *permanently alters* it so that it can no longer accept more than 10 rounds.<sup>18</sup> We know of no cases where DOJ and law enforcement ever questioned or challenged any of the many types of alterations people used to modify their LCMs to hold no more than 10 rounds.

When the original restrictions on LCMs passed in 2000, DOJ attempted to define "permanently altered" in the California Code of Regulations, but it then deleted the definition<sup>19</sup> and never provided further regulations or guidance. Therefore, over the course of so many years, Californians naturally assumed that DOJ did not have its own definition of "permanently altered" and that common sense modifications to LCM would suffice.

For the last 17 years, Californian firearm owners, dealers, and manufacturers made or remade LCMs "California compliant" through "permanent alteration." There are countless articles and videos online on how to modify LCMs to hold 10 rounds. And there are a number of different ways to restrict a magazine so that it cannot hold more than 10 rounds. Yet, to reiterate, there has *never* been a case to our knowledge where DOJ (or any law enforcement/prosecuting agency for that matter) has challenged

---

<sup>16</sup> See Cal. Penal Code § 32315.

<sup>17</sup> Cal. Penal Code § 32430.

<sup>18</sup> See Cal. Penal Code § 16740, subd. (a).

<sup>19</sup> See generally *Notice of Modification to Text of Proposed Regulations*, California Department of Justice, Office of the Attorney General, <http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/sb23rev.pdf> (last visited Dec. 20, 2016).



December 28, 2016

Page 6 of 17

an alteration of a magazine restricting its capacity to 10 rounds or less.

Thus, because of DOJ's silence on this issue, firearm dealers, manufacturers, and members of the public, have, for years, been "permanently altering" LCMs according to make them "California compliant." In its package of materials submitted to the OAL, DOJ does not state (much less cite to factual evidence showing) that this 17-year-old industry standard has in any way harmed public peace, health, safety, or welfare. DOJ's long-lasting silence and apparent support of these modifications support the lack of emergency for the pending regulations.

**B. The New Ban on the Possession of "Large-Capacity Magazine" Introduced by Senate Bill 1446 and Proposition 63**

*Beginning on July 1, 2017*, the possession of LCMs shall generally be illegal within California.<sup>20</sup> This is due to the passage of Senate Bill ("SB") 1446 on July 1, 2016 and the people's decision to pass Proposition 63 on November 8, 2016.

It is important to note:

1. There are no appreciable differences between the texts of SB 1446 and Proposition 63.
2. Aside from expanding the restrictions on LCMs to include possession and making minor changes to the exceptions to those restrictions, SB 1446 and Proposition 63 leave current law relatively unchanged.
3. The restriction on the possession of LCMs for both SB 1446 and Proposition 63 goes into effect on July 1, 2017.

SB 1446 generally prohibits the possession of LCMs in California, unless the possessor qualifies for an exception (e.g., being a certain kind of museum or historical society).<sup>21</sup> Meanwhile, Proposition 63 is an initiative measure that also bans the possession of LCMs in California. It just eliminates some of the exceptions available under SB 1446 and presents a slightly different punishment<sup>22</sup> – differences that have no bearing on how the possession ban itself is to be implemented or enforced by DOJ's proposed emergency regulations.

Significantly, both SB 1446 and Proposition 63 state that the new ban on LCM possession will not take effect until July 1, 2017, which is a full year after the passage of SB 1446 and more than half a

---

<sup>20</sup> Cal. Penal Code § 32310, subd. (b) (effective July 1, 2017). Certain local jurisdictions, such as Los Angeles and Sunnyvale, already have restrictions on LCMs.

<sup>21</sup> See generally Stats. 2016, c. 58 (S.B.1446).

<sup>22</sup> For instance, Proposition 63 states in its Findings and Declaration section that "[n]o one except trained law enforcement should be able to possess [LCMs]." (See generally 2016 Cal. Legis. Serv. Prop. 63 (Proposition 63) (West).)



December 28, 2016

Page 7 of 17

year after the passage of Proposition 63.<sup>23</sup> Under both SB 1446 and Proposition 63, firearm owners have until July 1, 2017 to (1) permanently alter or (2) dispose of their LCMs if the magazines are affected by the new law.<sup>24</sup> A person can lawfully dispose of an LCM by any of the following means:

- (1) Remove the LCM from the state;
- (2) Sell the LCM to a licensed firearms dealer;
- (3) Destroy the LCM; or
- (4) Surrender the LCM to a law enforcement agency for destruction.<sup>25</sup>

Neither SB 1446 nor Proposition 63 changed any laws covering conversion kits. The changes in the laws only relate to the possession of LCMs, not conversion kits.

### **C. The Content at Issue in DOJ's Proposed Emergency Regulations**

DOJ says that it is issuing emergency regulations in response to the new ban on LCM possession implemented by SB 1446 and Proposition 63. In its most relevant parts, DOJ's set of proposed emergency regulations:

- Require firearm dealers to get a separate LCM Permit for each licensed location;<sup>26</sup>
- Require LCM Permit holders to keep records of the sales of LCMs and require this to be done within 24 hours of any sale;<sup>27</sup>
- Expand the scope of violations constituting LCM Permit revocation;<sup>28</sup>
- Provide guidance stating that a lawful possessor/owner of an LCM may take it apart and put it back together;<sup>29</sup>

---

<sup>23</sup> See generally Cal. Penal Code § 32310, subd. (b) (effective July 1, 2017).

<sup>24</sup> See *id.*

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

<sup>26</sup> Cal. Code Regs., tit. 11, § 5480, subd.(d) (proposed).

<sup>27</sup> See Cal. Code Regs., tit. 11, § 5483, subds. (b)-(f) (proposed).

<sup>28</sup> See Cal. Code Regs., tit. 11, § 5484, subds. (b)-(e) (proposed).

<sup>29</sup> See Cal. Code Regs., tit. 11, § 5490 (proposed).

December 28, 2016

Page 8 of 17

- Clarify that an owner of an LCM may modify the magazine and clarify the ways the LCM can be “permanently altered” for purposes of exempting it from the definition of “LCM”<sup>30</sup> (i.e., DOJ “has determined the acceptable minimum level of permanence”<sup>31</sup>);
- State how magazine capacity for shotguns ought to be measured (i.e., either based on shotgun shells that are 2.75 inches or the shotgun shell standard indicated on the firearm);<sup>32</sup>
- Provide the circumstances under which magazines, each having a 10-round capacity or less, would be deemed “LCMs” when they are attached to each other (e.g., with tape or welded together);<sup>33</sup>
- Designate certain shotguns to have LCMs if they are equipped with more than one magazine tube that can hold (collectively) more than 10 shells, and can either (1) fire all of the shells without the use of a magazine tube selector switch or (2) have a switch that allows the user to utilize the shells from both tubes;<sup>34</sup> and
- Clarify what constitutes a conversion kit and that a person may disassemble his or her lawfully-possessed LCM and reassemble it without violating Penal Code section 32311.<sup>35</sup>

## II. DOJ’S PROPOSED “EMERGENCY” REGULATIONS ARE NOT NECESSARY TO ADDRESS AN EMERGENCY

DOJ cannot utilize the APA’s emergency rulemaking process. DOJ had, and still has, time to act via the APA’s “standard” (i.e., non-emergency) rulemaking process, and it does not justify its failure (or refusal) to abide by the APA’s “standard” rulemaking process. Simply put, there is no emergency based on time frame. Further, there is also no emergency based on the level of harm that is threatening public peace, health, safety, or welfare. It is significant that **DOJ does not present any evidence suggesting an emergency exists.**

Not only is there no harm that needs to be addressed when it comes to the new ban on LCM possession, but there is also no uncertainty that needs to be addressed. Accordingly, DOJ’s proposed regulations do not address any unresolved issues arising from the new ban on LCM possession. In the

---

<sup>30</sup> See Cal. Code Regs., tit. 11, § 5491, subds. (a)-(b)(2) (proposed).

<sup>31</sup> DOJ, *Finding of Emergency* (submitted with the proposed emergency regulations at issue), page 2 (2016).

<sup>32</sup> Cal. Code Regs., tit. 11, § 5491, subd. (b)(3) (proposed).

<sup>33</sup> Cal. Code Regs., tit. 11, § 5491, subd. (b)(4) (proposed).

<sup>34</sup> Cal. Code Regs., tit. 11, § 5491, subd. (b)(5) (proposed).

<sup>35</sup> Cal. Code Regs., tit. 11, § 5492 (proposed).



December 28, 2016

Page 9 of 17

end, it appears as if DOJ is yoking the new ban to its proposed regulations as a means to poach a deadline, however artificial it may be, to further its attempt to circumvent the APA's "standard" rulemaking process.

**A. The Law Governing the Shortened Notice/Comment Period for the APA's Emergency Rulemaking Process and the Requisite Finding of "Emergency"**

**1. *The Law re: Shortened Notice and Comment Period for Emergency Regulations, Contrasted with the APA's "Standard" Rulemaking Process***

Emergency regulations are not subject to the regular notice and comment procedures set forth in the APA. The emergency rulemaking process, rather, has specific requirements outlined in section 11346.1 of the Government Code. The section provides a brief notice period,<sup>36</sup> a short public comment period,<sup>37</sup> and limited time for the OAL to approve or deny the emergency regulations based on an adjudication of whether they are necessary to address an emergency.<sup>38</sup> If approved by the OAL, the emergency regulation will be effective upon filing with the Secretary of State and thrust upon the unsuspecting public. Thus, DOJ's "emergency" LCM regulations can become effective and fully applicable to all Californians in just 17 days or so without any further notice.

In contrast, the "standard" APA rulemaking process requires the state agency to: give the public a 45-day opportunity to comment on the proposed regulation (and hold a public hearing if any member of the public requests one within 15 days prior to the close of that 45-day written comment period); consider the public's comments as it decides whether to amend its proposed regulations; (if it does decide to make amendments,) make the amendments available for public comment for at least 15 or 45 days depending on the substantiality of the amendment; summarize and respond on the record to timely public comments that are directed to it; and then submit a rule-making action to the OAL, which then has 30 days to reach a decision on whether to approve or deny the proposed regulations.<sup>39</sup>

Based on simple arithmetic—and even providing additional buffer room for time spent on consideration, research, and everyday delays—common sense dictates that the APA's "standard" rulemaking process can be completed in approximately 4 to 5 months. Moreover, a final regulation just has to be filed between March 1 and May 31, 2017 to become effective on July 1, 2017.<sup>40</sup>

It bears repeating, then, that the laws covering LCMs have been around for *17 years* (including the "permanently altered" exception). And the restrictions for conversion kits were implemented in 2014. DOJ had ample time to implement regulations in a timely fashion, which would have allowed for

---

<sup>36</sup> Cal. Govt. Code, § 11346.1, subd. (a)(2).

<sup>37</sup> Cal. Code Regs., tit. 1, § 55, subd. (b).

<sup>38</sup> See Cal. Code Regs., tit. 1, § 56, subd. (a)(1).

<sup>39</sup> See *Guide to Public Participation in the Regulatory Process*, Office of Administrative Law, <http://www.oal.ca.gov/files/2016/10/How-2-Participate-102016.pdf> (last visited Dec. 20, 2016).

<sup>40</sup> See *id.* at page 18.



December 28, 2016

Page 10 of 17

public comment and criticism as intended by the APA. As discussed below, DOJ cannot justify its fabricated “emergency.”

Furthermore, the timing of its “emergency” regulations, over the holiday season, calls into serious question DOJ’s motives and willingness to provide Californians ample notice or opportunity to comply and/or comment on the pending laws.

## 2. *The Law re: The Requisite Finding of Emergency for the APA’s Emergency Rulemaking Process*

Presumably because there is such a marked difference between the notice and comment periods for the APA’s “standard” rulemaking process and that of its emergency rulemaking process, California has safeguards in place to ensure that the emergency rulemaking process is not abused and only used when it is truly needed. Hence, California only allows the APA’s emergency rulemaking process to be used when “the adoption of a regulation . . . is necessary to address an emergency[.]”<sup>41</sup>

According to state law, “[e]mergency” means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.”<sup>42</sup> To establish a sufficient “emergency,” DOJ “must . . . *describ[e] specific facts supported by substantial evidence* that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation,” unless the situation is expressly deemed an emergency by statute.<sup>43</sup>

In addition, if the emergency existed and was known by the agency in sufficient time to have been addressed through non-emergency regulations, the finding of emergency shall include facts explaining the failure to address the situation through non-emergency regulations. *A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, is not adequate to demonstrate the existence of an emergency.*<sup>44</sup>

---

<sup>41</sup> See Cal. Govt. Code, § 11346.1(b)(1).

<sup>42</sup> Cal. Govt. Code, § 11342.545.

<sup>43</sup> *About the Emergency Rulemaking Process*, Office of Administrative Law, [http://www.oal.ca.gov/regulations/emergency\\_regulations/emergency\\_regulation\\_process/](http://www.oal.ca.gov/regulations/emergency_regulations/emergency_regulation_process/) (last visited Dec. 20, 2016) (citing Cal. Govt. Code, § 11346.1, subd. (b)(2)) (emphasis added).

<sup>44</sup> *Id.* (emphasis added).

December 28, 2016

Page 11 of 17

**B. DOJ's "Finding of Emergency" Does Not Sufficiently Demonstrate that the Proposed Regulations Are Necessary to Address an Emergency and to Avoid Serious Public Harm**

**1. *Assuming Arguendo that the Proposed Emergency Regulations Are Even Needed to Implement/Enforce/Clarify the New Law, There Is No Emergency Based on Time Frame***

DOJ turns a blind eye on the fact that it has had sufficient time to address its claimed "emergency" through non-emergency regulations. In the documents it submitted to the OAL, DOJ willfully overlooks the facts that: (1) the new ban on LCM possession does not go into effect until July 1, 2017, (2) DOJ knew as early as *July 1, 2016* that a ban on LCM possession would occur starting on July 1, 2017, and (3) therefore, DOJ has had ample time—and *still* has time—to issue the regulations it thinks it needs by going through the "standard" APA rulemaking process.

DOJ cannot claim that it was waiting for the November 8, 2016 vote on Proposition 63 to act because the Governor already signed the LCM restrictions in Proposition 63 into law on July 1, 2016 when he passed SB 1446. The differences between Proposition 63 and SB 1446 do not affect the substance of DOJ's proposed regulations (*see* Section I.B above).<sup>45</sup>

What was DOJ doing since July 1, 2016 that prevented it from drafting its proposed regulations—a mere five pages—until just a couple of days ago?

And, more importantly, what is preventing DOJ from proceeding via the APA's "standard" rule making process now, given the facts that the process can be completed in 4 months *and DOJ has until May 31, 2017 to file final regulations for a July 1, 2017 deadline?*

DOJ failed to address these crucial concerns and, therefore, failed to show that an emergency exists to justify the utilization of the APA's emergency rulemaking process. Half-heartedly, DOJ attempts to argue on page 1 of its *Finding of Emergency* that "[t]hese regulations need to be established as soon as possible so [DOJ] has time to notify gun owners and gun owners have time to make the necessary changes to comply with the ban."<sup>46</sup>

The logic of this argument fails on many levels. For one, as shown in Section II.B.3 below, DOJ's proposed emergency regulations are not needed to implement, clarify, or enforce the new law banning the possession of LCMs (i.e., the *only* law that DOJ identified in its *Finding of Emergency* that comes with a deadline). So there is no time pressure to notify gun owners about the proposed regulations if DOJ is truly worried about ensuring people's compliance with the new ban. And the

---

<sup>45</sup> DOJ states on page 1 of its *Finding of Emergency* that "the Legislature pre-amended Proposition 63 with the passage of Senate Bill 1446 . . . The clarifying amendments take effect on January 1, 2017." This is not only confusingly worded, but it also gives the wrong impression that a January 1, 2017 deadline somehow looms on the horizon for DOJ.

<sup>46</sup> DOJ, *Finding of Emergency* (submitted with the proposed emergency regulations at issue), page 1 (2016).



December 28, 2016  
Page 12 of 17

proposed regulations relating to permit applications, record keeping, and revocation are certainly not needed in an “emergency” capacity (and DOJ makes absolutely no attempt to connect them with any deadline or temporal urgency).

Second, due to its longer periods for public comment, hearing, and feedback, the APA’s “standard” rulemaking process gives Californians more notice of a proposed regulation than the APA’s emergency rulemaking procedure. If DOJ is truly worried about lack of notice to gun owners and giving them more time to comply with the law, DOJ should have proceeded via the APA’s “standard” rulemaking process. At that point, Californians would have ample opportunity to review, understand, and make suggestions to DOJ’s regulations, and, indeed, DOJ would have the ability to not only correct errors and oversights in the current regulations, but also to make corrections so that the regulations are more workable for the public.

As a result, DOJ altogether fails to show why there is a time crunch necessitating the finding of an emergency and the issuance of emergency regulations.

**2. *Assuming Arguendo that an Emergency Exists and DOJ Has Run Out of Time to Proceed via the APA’s “Standard” Rulemaking Process, DOJ Fails to Justify Its Failure to Meet the Non-Emergency Deadlines***

Because DOJ’s alleged “emergency” “existed and was known by [DOJ] in sufficient time to have been addressed through non-emergency regulations,” DOJ must meet its burden to justify its “failure to address the situation through non-emergency regulations[.]”<sup>47</sup> DOJ has failed to do so.

Essentially, all DOJ does is state in its *Explanation of Failure to Adopt Nonemergency Regulations* that it:

is unable to develop regulations in the standard manner because of the short timeframes [sic] provided in the legislation. The legislation was signed into law on July 1, 2016, and the ban commences on July 1, 2017.<sup>48</sup>

It is not sufficient to state the (comfortable) length of time one has to act and then dismiss it with a short, unqualified, and incorrect statement that the length of time to enact non-emergency regulations is too short. As explained above in Section II.B.1, the time frame given to DOJ was not too short. Actually, DOJ could propose, hold public comment, modify, and submit for final approval a number of regulations back-to-back during this timeframe. DOJ does not seem to have any countering explanation as to why a year is too short.

---

<sup>47</sup> *Id.* at page 2.

<sup>48</sup> *Id.* at page 1.



December 28, 2016  
Page 13 of 17

3. ***DOJ's Proposed Regulations Are Not Necessary to Implement/Enforce/Clarify the New "Large-Capacity Magazine" Possession Ban***

In its *Finding of Emergency*, DOJ disingenuously states that its proposed emergency regulations are

*necessary* to provide guidance to California's gun owners so that by July 1, 2017, they will be in compliance with the law. The proposed regulations provide options for disposal of large-capacity magazines, as well as instructions for reducing the capacity of a large-capacity magazine[.]<sup>49</sup>

Any reasonable person reading the texts of SB 1446 and Proposition 63, and who understands just the general contours of California's LCM laws during the last 17 years and conversion kit laws over the last three, would know that DOJ's assertion rings false.

A reasonable review of the texts reveals that neither SB 1446 nor Proposition 63 introduce any new legal requirements *necessitating new*, clarifying regulations on how an LCM Permit holder should keep records, how "permanent alteration" should be defined, how magazine capacity for shotguns ought to be measured, how magazines attached to one another can be LCMs, how dual-tube shotguns can be LCMs, etc.

The issues addressed by DOJ's proposed emergency regulations arose long before California even contemplated SB 1446 and Proposition 63, and have been on the horizon for quite some time. Accordingly, Californians have asked DOJ numerous times to address these issues. DOJ has generally refused to do so. As a result of years of silence from DOJ, firearm manufacturers, dealers, and owners created their own compliance mechanisms independent of DOJ. All these years, DOJ failed to provide guidance, comment, and even challenges to these mechanisms.

So why do these issues only *now* need to be addressed over the holiday season? What possible part of SB 1446 and Proposition 63 changes the status quo and/or landscape of LCM law in a way to make the regulations so necessary? Why didn't DOJ identify such a provision or explain how the status quo was changed in the materials it submitted to the OAL?

DOJ's meaningful silence on this matter and the statutory language itself show that the proposed emergency regulations are not needed to implement, enforce, and/or clarify the new ban on LCM possession. Unlike the case with the new "assault weapon" laws taking effect on January 1, 2017,<sup>50</sup> there is no indication that California gun owners cannot comply with the new laws banning LCM possession in the absence of DOJ's regulations. There is no need for DOJ to be so paternalistic or officious when it comes to grown-up gun owners, saying that the regulations are *necessary* for compliance.

---

<sup>49</sup> *Id.* at page 5 (emphasis added).

<sup>50</sup> Cal. Penal Code §§ 30515, 30680, 30900 (effective January 1, 2017).

1 XAVIER BECERRA  
Attorney General of California  
2 TAMAR PACTER  
Supervising Deputy Attorney General  
3 NELSON R. RICHARDS  
ANTHONY P. O'BRIEN  
4 Deputy Attorneys General  
ALEXANDRA ROBERT GORDON  
5 Deputy Attorney General  
State Bar No. 207650  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5509  
Fax: (415) 703-5480  
8 E-mail:  
Alexandra.RobertGordon@doj.ca.gov  
9 *Attorneys for Defendant*  
*Attorney General Xavier Becerra*

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
13  
14

15 **VIRGINIA DUNCAN, et al.,**

16 Plaintiffs,

17 v.  
18

19 **XAVIER BECERRA, in his official**  
20 **capacity as Attorney General of the**  
21 **State of California; et al.,**

22 Defendants.  
23  
24  
25  
26  
27  
28

17-cv-1017-BEN-JLB

**ATTORNEY GENERAL XAVIER  
BECERRA'S ANSWER**

Judge: Hon. Roger T. Benitez  
Courtroom: 5A  
Action Filed: May 17, 2017

1 Defendant Attorney General Xavier Becerra submits this Answer in response  
2 to Plaintiffs' Complaint. The Attorney General answers, in paragraphs that  
3 correspond to the Complaint's paragraphs, as follows:

4 1. To the extent that the allegations contained in paragraph 1 are Plaintiffs'  
5 characterization of their case and conclusions of law, no answer is required. With  
6 respect to the remainder of the allegations in paragraph 1, the Attorney General  
7 lacks sufficient knowledge or information to form a belief as to the truth of the  
8 allegations, and on that basis denies the allegations of paragraph 1. Except as  
9 specifically admitted, the Attorney General denies the allegations of paragraph 1.

10 2. To the extent that the allegations contained in paragraph 2 are Plaintiffs'  
11 characterization of their case and conclusions of law, no answer is required. The  
12 Attorney General admits that California Penal Code section 32310 speaks for itself.  
13 The Attorney General further admits that large-capacity magazines, as defined by  
14 California law, *see* Cal. Penal Code § 16740, are a threat to public safety. The  
15 Attorney General denies the remainder of the allegations in paragraph 2. Except as  
16 specifically admitted, the Attorney General denies the allegations of paragraph 2.

17 3. To the extent that the allegations contained in paragraph 3 are Plaintiffs'  
18 characterization of their case and conclusions of law, no answer is required. The  
19 Attorney General admits that California Penal Code section 32310 speaks for itself.  
20 The Attorney General further admits that each judicial opinion referenced in  
21 paragraph 3 speaks for itself. The Attorney General denies the remainder of the  
22 allegations in paragraph 3. Except as specifically admitted, the Attorney General  
23 denies the allegations of paragraph 3.

24 4. To the extent that the allegations contained in paragraph 4 are legal  
25 conclusions, no answer is required. To the extent they may be deemed allegations  
26 of fact, the Attorney General denies the allegations of paragraph 4.

27 5. To the extent that the allegations contained in paragraph 5 are Plaintiffs'  
28 characterization of their case and conclusions of law, no answer is required. To the



1 extent they may be deemed allegations of fact, the Attorney General denies the  
2 allegations of paragraph 5.

3 6. Paragraph 6 sets forth a description of the relief sought by Plaintiffs. The  
4 Attorney General denies that Plaintiffs are entitled to such relief. The Attorney  
5 General denies the remaining allegations of paragraph 6.

6 7. The Attorney General admits that this Court has jurisdiction. The  
7 Attorney General denies the remaining allegations of paragraph 7.

8 8. The Attorney General admits that Plaintiffs seek declaratory and  
9 injunctive relief, as well as attorneys' fees. The Attorney General further admits  
10 that each statute referenced in paragraph 8 speaks for itself. Except as specifically  
11 admitted, the Attorney General denies the allegations of paragraph 8.

12 9. The Attorney General admits the allegations of paragraph 9.

13 10. The Attorney General lacks sufficient knowledge or information to form  
14 a belief as to the truth of the allegations in paragraph 10, and on that basis denies  
15 the allegations of paragraph 10.

16 11. The Attorney General lacks sufficient knowledge or information to form  
17 a belief as to the truth of the allegations in paragraph 11, and on that basis denies  
18 the allegations of paragraph 11.

19 12. The Attorney General lacks sufficient knowledge or information to form  
20 a belief as to the truth of the allegations in paragraph 12, and on that basis denies  
21 the allegations of paragraph 12.

22 13. The Attorney General lacks sufficient knowledge or information to form  
23 a belief as to the truth of the allegations in paragraph 13, and on that basis denies  
24 the allegations of paragraph 13.

25 14. The Attorney General lacks sufficient knowledge or information to form  
26 a belief as to the truth of the allegations in paragraph 14, and on that basis denies  
27 the allegations of paragraph 14.

28

1           15. The Attorney General lacks sufficient knowledge or information to form  
2 a belief as to the truth of the allegations in paragraph 15, and on that basis denies  
3 the allegations of paragraph 15.

4           16. The Attorney General lacks sufficient knowledge or information to form  
5 a belief as to the truth of the allegations in paragraph 16, and on that basis denies  
6 the allegations of paragraph 16.

7           17. The Attorney General lacks sufficient knowledge or information to form  
8 a belief as to the truth of the allegations in paragraph 17, and on that basis denies  
9 the allegations of paragraph 17.

10           18. To the extent that the allegations contained in paragraph 18 are Plaintiffs'  
11 characterization of their case and conclusions of law, no answer is required. To the  
12 extent that they are allegations of fact, the Attorney General lacks sufficient  
13 knowledge or information to form a belief as to the truth of the allegations in  
14 paragraph 18, and on that basis denies the allegations of paragraph 18.

15           19. To the extent that the allegations contained in paragraph 19 are legal  
16 conclusions, no answer is required. The Attorney General admits that he is the  
17 Attorney General of California and the chief law officer of the State. The Attorney  
18 General admits that article V, section 13 of the California Constitution speaks for  
19 itself. Except as specifically admitted, the Attorney General denies the allegations  
20 of paragraph 19.

21           20. The Attorney General lacks sufficient knowledge or information to form  
22 a belief as to the truth of the allegations in paragraph 20, and on that basis denies  
23 the allegations of paragraph 20.

24           21. The Attorney General admits that he is the chief law officer of the State,  
25 and as such, is charged with upholding and enforcing the laws of the State. The  
26 Attorney General denies the remaining allegations of paragraph 21.

27           22. The Attorney General denies the allegations of paragraph 22.  
28

1           23. To the extent that the allegations contained in paragraph 23 are Plaintiffs'  
2 characterization of their case and conclusions of law, no answer is required. The  
3 Attorney General admits that the Second Amendment speaks for itself. Except as  
4 specifically admitted, the Attorney General denies the allegations of paragraph 23.

5           24. To the extent that the allegations contained in paragraph 24 are Plaintiffs'  
6 characterization of their case and conclusions of law, no answer is required. The  
7 Attorney General admits that each judicial opinion referenced in paragraph 24  
8 speaks for itself. Except as specifically admitted, the Attorney General denies the  
9 allegations of paragraph 24.

10           25. To the extent that the allegations contained in paragraph 25 are Plaintiffs'  
11 characterization of their case and conclusions of law, no answer is required.  
12 Attorney General admits that each judicial opinion referenced in paragraph 25  
13 speaks for itself. Except as specifically admitted, the Attorney General denies the  
14 allegations of paragraph 25.

15           26. To the extent that the allegations contained in paragraph 26 are Plaintiffs'  
16 characterization of their case and conclusions of law, no answer is required.  
17 Attorney General admits that each constitutional provision and judicial opinion  
18 referenced in paragraph 26 speaks for itself. Except as specifically admitted, the  
19 Attorney General denies the allegations of paragraph 26.

20           27. To the extent that the allegations contained in paragraph 27 are Plaintiffs'  
21 characterization of their case and conclusions of law, no answer is required. The  
22 Attorney General admits that the Takings Clause of the Fifth Amendment speaks  
23 for itself. Except as specifically admitted, the Attorney General denies the  
24 allegations of paragraph 27.

25           28. To the extent that the allegations contained in paragraph 28 are Plaintiffs'  
26 characterization of their case and conclusions of law, no answer is required. The  
27 Attorney General admits that the judicial opinion referenced in paragraph 28 speaks  
28



1 for itself. Except as specifically admitted, the Attorney General denies the  
2 allegations of paragraph 28.

3 29. To the extent that the allegations contained in paragraph 29 are Plaintiffs'  
4 characterization of their case and conclusions of law, no answer is required.  
5 Attorney General admits that each judicial opinion referenced in paragraph 29  
6 speaks for itself. Except as specifically admitted, the Attorney General denies the  
7 allegations of paragraph 29.

8 30. To the extent that the allegations contained in paragraph 30 are Plaintiffs'  
9 characterization of their case and conclusions of law, no answer is required. The  
10 Attorney General admits that the judicial opinion referenced in paragraph 30 speaks  
11 for itself. Except as specifically admitted, the Attorney General denies the  
12 allegations of paragraph 30.

13 31. To the extent that the allegations contained in paragraph 31 are Plaintiffs'  
14 characterization of their case and conclusions of law, no answer is required. The  
15 Attorney General admits that the Due Process Clause of the Fourteenth Amendment  
16 speaks for itself. Except as specifically admitted, the Attorney General denies the  
17 allegations of paragraph 31.

18 32. To the extent that the allegations contained in paragraph 32 are Plaintiffs'  
19 characterization of their case and conclusions of law, no answer is required.  
20 Attorney General admits that each judicial opinion referenced in paragraph 32  
21 speaks for itself. Except as specifically admitted, the Attorney General denies the  
22 allegations of paragraph 32.

23 33. To the extent that the allegations contained in paragraph 33 are Plaintiffs'  
24 characterization of their case and conclusions of law, no answer is required.  
25 Attorney General admits that each judicial opinion referenced in paragraph 33  
26 speaks for itself. Except as specifically admitted, the Attorney General denies the  
27 allegations of paragraph 33.

28

1           34. To the extent that the allegations contained in paragraph 34 are Plaintiffs'  
2 characterization of their case and conclusions of law, no answer is required. The  
3 Attorney General admits that the judicial opinion referenced in paragraph 34 speaks  
4 for itself. Except as specifically admitted, the Attorney General denies the  
5 allegations of paragraph 34.

6           35. The Attorney General admits that a magazine is a container that holds  
7 and feeds rounds of ammunition to a firearm. Except as specifically admitted, the  
8 Attorney General denies the allegations of paragraph 35.

9           36. The Attorney General admits that magazines may be fixed or detachable.  
10 The Attorney General lacks sufficient knowledge or information to form a belief as  
11 to the truth of the remainder of the allegations in paragraph 36, and on that basis  
12 denies the allegations of paragraph 36. Except as specifically admitted, the  
13 Attorney General denies the allegations of paragraph 36.

14           37. The Attorney General lacks sufficient knowledge or information to form  
15 a belief as to the truth of the allegations in paragraph 37, and on that basis denies  
16 the allegations of paragraph 37.

17           38. The Attorney General lacks sufficient knowledge or information to form  
18 a belief as to the truth of the allegations in paragraph 38, and on that basis denies  
19 the allegations of paragraph 38.

20           39. The Attorney General lacks sufficient knowledge or information to form  
21 a belief as to the truth of the allegations in paragraph 39, and on that basis denies  
22 the allegations of paragraph 39.

23           40. The Attorney General lacks sufficient knowledge or information to form  
24 a belief as to the truth of the allegations in paragraph 40, and on that basis denies  
25 the allegations of paragraph 40.

26           41. The Attorney General lacks sufficient knowledge or information to form  
27 a belief as to the truth of the allegations in paragraph 41, and on that basis denies  
28 the allegations of paragraph 41.

1           42. The Attorney General lacks sufficient knowledge or information to form  
2 a belief as to the truth of the allegations in paragraph 42, and on that basis denies  
3 the allegations of paragraph 42.

4           43. The Attorney General lacks sufficient knowledge or information to form  
5 a belief as to the truth of the allegations in paragraph 43, and on that basis denies  
6 the allegations of paragraph 43.

7           44. The Attorney General lacks sufficient knowledge or information to form  
8 a belief as to the truth of the allegations in paragraph 44, and on that basis denies  
9 the allegations of paragraph 44.

10          45. The Attorney General admits that California law speaks for itself. The  
11 Attorney General lacks sufficient knowledge or information to form a belief as to  
12 the truth of the remainder of the allegations in paragraph 45, and on that basis  
13 denies the allegations of paragraph 45. Except as specifically admitted, the  
14 Attorney General denies the allegations of paragraph 45.

15          46. To the extent that the allegations contained in paragraph 46 are legal  
16 conclusions, no answer is required. The Attorney General admits that a number of  
17 jurisdictions have laws prohibiting large-capacity magazines. The Attorney  
18 General admits that each statute referenced in paragraph 46 and footnote 7 speaks  
19 for itself. Except as specifically admitted, the Attorney General denies the  
20 allegations of paragraph 46.

21          47. To the extent that the allegations contained in paragraph 47 are Plaintiffs'  
22 characterization of their case, no answer is required. The Attorney General lacks  
23 sufficient knowledge or information to form a belief as to the truth of the  
24 allegations in paragraph 47, and on that basis denies the allegations of paragraph  
25 47.

26          48. The Attorney General admits that Senate Bill 23, Senate Bill 1080, and  
27 California Penal Code sections 16740 and 32310 speak for themselves. Except as  
28 specifically admitted, the Attorney General denies the allegations of paragraph 48.



1           49. The Attorney General admits that Senate Bill 23 speaks for itself. Except  
2 as specifically admitted, the Attorney General denies the allegations of paragraph  
3 49.

4           50. The Attorney General admits that in July 2016, the California Legislature  
5 passed and the Governor signed Senate Bill 1446 into law. The Attorney General  
6 further admits that in November 2016, California voters approved Proposition 63.  
7 The Attorney General admits that Senate Bill 1446, Proposition 63, and California  
8 Penal Code section 32310 speak for themselves. Except as specifically admitted,  
9 the Attorney General denies the allegations of paragraph 50.

10           51. The Attorney General admits that California Penal Code section 32310  
11 speaks for itself. Except as specifically admitted, the Attorney General denies the  
12 allegations of paragraph 51.

13           52. The Attorney General admits that California Penal Code section 32310  
14 speaks for itself. Except as specifically admitted, the Attorney General denies the  
15 allegations of paragraph 52.

16           53. The Attorney General admits that each section of the California Penal  
17 referenced in paragraph 53 speaks for itself. Except as specifically admitted, the  
18 Attorney General denies the allegations of paragraph 53.

19           54. To the extent that the allegations contained in paragraph 54 are Plaintiffs'  
20 characterization of their case and conclusions of law, no answer is required. The  
21 Attorney General admits that California Penal Code section 32310 speaks for itself.  
22 The Attorney General further admits that each judicial opinion referenced in  
23 paragraph 54 speaks for itself. The Attorney General denies the remainder of the  
24 allegations in paragraph 54. Except as specifically admitted, the Attorney General  
25 denies the allegations of paragraph 54.

26           55. To the extent that the allegations contained in paragraph 55 are Plaintiffs'  
27 characterization of their case and conclusions of law, no answer is required. The  
28 Attorney General denies the allegations of paragraph 55.

1           56. To the extent that the allegations contained in paragraph 56 are Plaintiffs'  
2 characterization of their case and conclusions of law, no answer is required. The  
3 Attorney General admits that California Penal Code section 32310 speaks for itself.  
4 The Attorney General denies the remainder of the allegations in paragraph 56.  
5 Except as specifically admitted, the Attorney General denies the allegations of  
6 paragraph 56.

7           57. To the extent that the allegations contained in paragraph 57 are Plaintiffs'  
8 characterization of their case and conclusions of law, no answer is required. The  
9 Attorney General denies the allegations of paragraph 57.

10           58. To the extent that the allegations contained in paragraph 58 are Plaintiffs'  
11 characterization of their case and conclusions of law, no answer is required. The  
12 Attorney General denies the allegations of paragraph 58.

13           59. To the extent that the allegations contained in paragraph 59 are Plaintiffs'  
14 characterization of their case and conclusions of law, no answer is required. The  
15 Attorney General admits that the Due Process Clause of the Fourteenth Amendment  
16 speaks for itself. The Attorney General further admits that each judicial opinion  
17 referenced in paragraph 59 speaks for itself. Except as specifically admitted, the  
18 Attorney General denies the allegations of paragraph 59.

19           60. To the extent that the allegations contained in paragraph 60 are Plaintiffs'  
20 characterization of their case and conclusions of law, no answer is required. The  
21 Attorney General denies the allegations of paragraph 60.

22           61. To the extent that the allegations contained in paragraph 61 are Plaintiffs'  
23 characterization of their case and conclusions of law, no answer is required. The  
24 Attorney General denies the allegations of paragraph 61.

25           62. To the extent that the allegations contained in paragraph 62 are Plaintiffs'  
26 characterization of their case and conclusions of law, no answer is required. The  
27 Attorney General denies the allegations of paragraph 62.  
28

1           63. To the extent that the allegations contained in paragraph 63 are Plaintiffs'  
2 characterization of their case and conclusions of law, no answer is required. The  
3 Attorney General denies the allegations of paragraph 63.

4           64. The Attorney General incorporates and reasserts each and every response  
5 contained in the foregoing paragraphs of this Answer, as though fully set forth  
6 herein.

7           65. To the extent that the allegations contained in paragraph 65 are Plaintiffs'  
8 characterization of their case and conclusions of law, no answer is required. The  
9 Attorney General admits that California Penal Code section 32310 speaks for itself.  
10 The Attorney General denies the remainder of the allegations in paragraph 65.  
11 Except as specifically admitted, the Attorney General denies the allegations of  
12 paragraph 65.

13           66. The Attorney General denies the allegations of paragraph 66.

14           67. The Attorney General denies the allegations of paragraph 67.

15           68. To the extent that the allegations contained in paragraph 68 are Plaintiffs'  
16 characterization of their case and conclusions of law, no answer is required. The  
17 Attorney General admits that California Penal Code section 32310 speaks for itself.  
18 The Attorney General denies the remainder of the allegations in paragraph 68.  
19 Except as specifically admitted, the Attorney General denies the allegations of  
20 paragraph 68.

21           69. The Attorney General denies the allegations of paragraph 69.

22           70. The Attorney General incorporates and reasserts each and every response  
23 contained in the foregoing paragraphs of this Answer, as though fully set forth  
24 herein.

25           71. To the extent that the allegations contained in paragraph 71 are Plaintiffs'  
26 characterization of their case and conclusions of law, no answer is required. The  
27 Attorney General admits that California Penal Code section 32310 speaks for itself.  
28 The Attorney General denies the remainder of the allegations in paragraph 71.



1 Except as specifically admitted, the Attorney General denies the allegations of  
2 paragraph 71.

3 72. The Attorney General denies the allegations of paragraph 72.

4 73. The Attorney General denies the allegations of paragraph 73.

5 74. The Attorney General incorporates and reasserts each and every response  
6 contained in the foregoing paragraphs of this Answer, as though fully set forth  
7 herein.

8 75. The Attorney General admits that the Dupe Process Clause and each  
9 judicial opinion referenced in paragraph 75 speaks for itself. The Attorney General  
10 denies the remainder of the allegations in paragraph 75. Except as specifically  
11 admitted, the Attorney General denies the allegations of paragraph 75.

12 76. The Attorney General denies the allegations of paragraph 76.

13 The Attorney General denies that Plaintiffs are entitled to the relief set forth in  
14 the Prayer for Relief immediately following paragraph 76, or to any relief  
15 whatsoever. To the extent that the Prayer for Relief states any allegations, the  
16 Attorney General denies them.

17 **FIRST AFFIRMATIVE DEFENSE**

18 The Complaint, and the claims for relief alleged therein, fails to state facts  
19 sufficient to constitute a cause of action.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Plaintiff's claims in this action are barred in that they do not have standing to  
22 bring them.

23 **THIRD AFFIRMATIVE DEFENSE**

24 The Complaint, and each cause of action therein, is improper as Plaintiffs have  
25 an adequate remedy at law.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 The Complaint, and every cause of action therein, is barred by the equitable  
28 doctrines of estoppel, laches, unclean hands, and/or waiver.

**FIFTH AFFIRMATIVE DEFENSE**

To the extent that the Attorney General has undertaken any conduct with regard to the subjects and events underlying Plaintiffs' Complaint, such conduct was, at all times material thereto, undertaken in good faith and in reasonable reliance on existing law.

**SIXTH AFFIRMATIVE DEFENSE**

The Attorney General has not knowingly or intentionally waived any applicable affirmative defense. The Attorney General reserves the right to assert and rely upon other such defenses as may become available or apparent during discovery proceedings or as may be raised or asserted by others in this case, and to amend the Answer and/or affirmative defenses accordingly. The Attorney General further reserves the right to amend the Answer to delete affirmative defenses that he determines are not applicable after subsequent discovery.

WHEREFORE, Defendant prays that:

1. Plaintiffs take nothing by reason of the Complaint;
2. Judgment be entered in favor of Defendant;
3. Defendant be awarded costs incurred in defending this action; and
4. Defendant be awarded such further relief that the Court may deem just and proper.

1 Dated: June 12, 2017

Respectfully submitted,

2 XAVIER BECERRA  
Attorney General of California  
3 TAMAR PACHTER  
Supervising Deputy Attorney General  
4 NELSON R. RICHARDS  
ANTHONY P. O'BRIEN  
5 Deputy Attorneys General

6 */s/ Alexandra Robert Gordon*  
ALEXANDRA ROBERT GORDON  
7 Deputy Attorney General  
*Attorneys for Defendant*  
8 *Attorney General Xavier Becerra*  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 C.D. Michel – SBN 144258  
2 Sean A. Brady – SBN 262007  
3 Anna M. Barvir – SBN 268728  
4 Matthew D. Cubeiro – SBN 291519  
5 MICHEL & ASSOCIATES, P.C.  
6 180 E. Ocean Boulevard, Suite 200  
7 Long Beach, CA 90802  
8 Telephone: (562) 216-4444  
9 Facsimile: (562) 216-4445  
10 Email: cmichel@michellawyers.com

11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 VIRGINIA DUNCAN, RICHARD  
15 LEWIS, PATRICK LOVETTE, DAVID  
16 MARGUGLIO, CHRISTOPHER  
17 WADDELL, and CALIFORNIA RIFLE  
18 & PISTOL ASSOCIATION,  
19 INCORPORATED, a California  
20 corporation,

21 Plaintiffs,

22 v.

23 XAVIER BECERRA, in his official  
24 capacity as Attorney General of the State  
25 of California; and DOES 1-10,

26 Defendants.

Case No.: '17CV1017 BEN JLB

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1 Plaintiffs Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio,  
2 Christopher Waddell, and California Rifle & Pistol Association, Incorporated, through  
3 their counsel, bring this action against Defendant Attorney General Xavier Becerra, in his  
4 official capacity, and make the following allegations.

### 5 INTRODUCTION

6 1. Millions of law-abiding Americans own firearms equipped with magazines  
7 capable of holding more than ten rounds of ammunition.<sup>1</sup> There is nothing unusual or  
8 novel about this technology. Indeed, many of the nation's best-selling handguns and rifles  
9 come *standard* with magazines that can hold more than ten rounds, and firearms  
10 equipped with such magazines are safely possessed by law-abiding citizens in the vast  
11 majority of states. The reason for the popularity of these magazines is straightforward: In  
12 a confrontation with a violent attacker, having enough ammunition can be the difference  
13 between life and death.

14 2. Although magazines capable of holding more than ten rounds have existed and  
15 been in common use for more than a century, California banned their manufacture, sale,  
16 import, or transfer effective January 1, 2000. In the state's view, these standard-issue  
17 magazines are actually "large-capacity magazines" that threaten public safety.<sup>2</sup> Last year,  
18 the state took the additional and extreme step of banning the mere *possession* of  
19 magazines over ten rounds. Under the revised law, California Penal Code section 32310  
20 ("Section 32310"), owners of such magazines who want to keep the property they  
21 lawfully acquired and have used only for lawful purposes may no longer continue to do  
22

---

23 <sup>1</sup> A firearm "magazine" is a device that holds ammunition cartridges or shells, and  
24 (along with other parts of the firearm) it feeds the ammunition into the chamber for firing.  
25 Sporting Arms & Ammunition Mfrs.' Inst. (SAAMI), *Glossary Results-M* (2009),  
<http://saami.org/glossary/display.cfm?letter=M>.

26 <sup>2</sup> Defined as "any ammunition feeding device with the capacity to accept more  
27 than 10 rounds," but not including a feeding device that has been permanently altered so  
28 that it cannot accommodate more than 10 rounds, a .22 caliber tube ammunition feeding  
device, or a tubular magazine that is contained in a lever-action firearm. Cal. Penal Code  
§ 16740.

1 so.

2 3. Section 32310 violates multiple constitutional provisions. First, it  
3 impermissibly burdens Plaintiffs' Second Amendment rights. The Second Amendment  
4 protects the right to keep and bear arms "typically possessed by law-abiding citizens for  
5 lawful purposes," *District of Columbia v. Heller*, 554 U.S. 570, 624-25 (2008), including  
6 the ammunition and magazines necessary to make them effective, *see Jackson v. City and*  
7 *County of San Francisco*, 746 F.3d 953, 967-68 (9th Cir. 2014); *Fyock v. Sunnyvale*, 779  
8 F.3d 991, 998 (9th Cir. 2015). Because the magazines California has prohibited are "in  
9 common use . . . for lawful purposes like self-defense," the prohibition "cannot stand."  
10 *Heller*, 554 U.S. at 624, 636.

11 4. Section 32310 also violates the Takings Clause. By banning *possession*—in  
12 addition to sales and use—of magazines that were lawfully acquired and are presently  
13 lawfully possessed, Section 32310 constitutes a physical appropriation of property  
14 without just compensation that is *per se* unconstitutional. *See Horne v. Dep't of Agric.*, --  
15 U.S. --, 135 S. Ct. 2419, 2427 (2015).

16 5. Finally, Section 32310 violates the Due Process Clause. Banning magazines  
17 over ten rounds is no more likely to reduce criminal abuse of guns than banning high  
18 horsepower engines is likely to reduce criminal abuse of automobiles. To the contrary,  
19 the only thing the ban ensures is that a criminal unlawfully carrying a firearm with a  
20 magazine over ten rounds will have a (potentially devastating) advantage over his law-  
21 abiding victim. And Section 32310 raises particularly acute due process concerns because  
22 it criminalizes the continued possession of magazines that were lawful when acquired.  
23 *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 541 (2005); *id.* at 548-49 (Kennedy, J.,  
24 concurring).

25 6. Desiring to acquire, possess, use, and/or transfer these constitutionally protected  
26 firearm magazines for lawful purposes including self-defense, but justifiably fearing  
27 prosecution if they do, Plaintiffs respectfully request that this Court: (1) declare that  
28 California Penal Code section 32310 infringes Plaintiffs' constitutional rights; and (2)



1 permanently enjoin Defendants from enforcing section 32310 to the extent it prevents  
2 law-abiding Californians, like Plaintiffs, from acquiring, possessing, using, or  
3 transferring constitutionally protected arms.

#### 4 JURISDICTION AND VENUE

5 7. The Court has original jurisdiction of this civil action under 28 U.S.C. § 1331,  
6 because the action arises under the Constitution and laws of the United States, thus  
7 raising federal questions. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3)  
8 and 42 U.S.C. § 1983 since this action seeks to redress the deprivation, under color of the  
9 laws, statutes, ordinances, regulations, customs and usages of the State of California and  
10 political subdivisions thereof, of rights, privileges or immunities secured by the United  
11 States Constitution and by Acts of Congress.

12 8. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28  
13 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys' fees is authorized  
14 by 42 U.S.C. § 1988.

15 9. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), because a  
16 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this  
17 district.

#### 18 PARTIES

##### 19 [Plaintiffs]

20 10. Plaintiff Virginia Duncan is a resident of San Diego County, California, and a  
21 law-abiding citizen of the United States. Plaintiff Duncan does not currently own a  
22 magazine prohibited by Section 32310, but she seeks to acquire such a magazine to keep  
23 in her home for self-defense and other lawful purposes. But for California's restrictions  
24 on magazines over ten rounds and her reasonable fear of criminal prosecution for  
25 violating them, Plaintiff Duncan would immediately acquire and continuously possess a  
26 magazine over ten rounds within California for lawful purposes, including in-home self-  
27 defense.

28 11. Plaintiff David Marguglio is a resident of San Diego County, California, and a

1 law-abiding citizen of the United States. Plaintiff Marguglio does not currently own a  
2 magazine prohibited by Section 32310, but he seeks to acquire such a magazine to keep  
3 in his home for self-defense and other lawful purposes. But for California's restrictions  
4 on magazines over ten rounds and his reasonable fear of criminal prosecution for  
5 violating them, Plaintiff Marguglio would immediately acquire and continuously possess  
6 a magazine over ten rounds within California for lawful purposes, including in-home  
7 self-defense.

8 12. Plaintiff Christopher Waddell is a resident of San Diego County, California, and  
9 a law-abiding citizen of the United States. Plaintiff Waddell does not currently own a  
10 magazine prohibited by Section 32310, but he seeks to acquire such a magazine to keep  
11 in his home for self-defense and other lawful purposes. But for California's restrictions  
12 on magazines over ten rounds and his reasonable fear of criminal prosecution for  
13 violating them, Plaintiff Waddell would immediately acquire and continuously possess a  
14 magazine over ten rounds and a firearm capable of accepting such a magazine within  
15 California for lawful purposes, including in-home self-defense.

16 13. Plaintiff Richard Lewis is a resident of San Diego County, California, a law-  
17 abiding citizen of the United States, and an honorably discharged 22-year veteran of the  
18 United States Marine Corps. Plaintiff Lewis currently owns magazines capable of holding  
19 more than 10 rounds, items that he has lawfully possessed for over 20 years. He is not  
20 exempt from California laws barring the acquisition, possession, and/or transfer of  
21 magazines over ten rounds. Plaintiff Lewis seeks to continue possessing his lawfully  
22 owned property, acquire additional magazines capable of holding more than 10 rounds,  
23 and devise or transfer his lawfully owned property to his offspring. But for California's  
24 restrictions on magazines over ten rounds and his reasonable fear of criminal prosecution  
25 for violating them, Plaintiff Lewis would continue to possess his lawfully owned  
26 magazines over ten rounds, immediately acquire additional such magazines, and devise  
27 or transfer them to his offspring.

28 14. Plaintiff Patrick Lovette is a resident of San Diego County, California, a law-

1 abiding citizen of the United States, and an honorably retired 22-year veteran of the  
2 United States Navy. He intends to relocate to Arizona in August 2017. Plaintiff Lovette  
3 currently owns magazines capable of holding more than 10 rounds, items that he has  
4 lawfully possessed for over 20 years. He is not exempt from California laws barring the  
5 acquisition, possession, and/or transfer of magazines over ten rounds. Plaintiff Lovette  
6 seeks to continue to possess his lawfully owned property, acquire additional magazines  
7 over 10 rounds, and devise or transfer his lawfully owned property to his offspring. Once  
8 he relocates to Arizona, Mr. Lovette also intends to visit California with his firearm and a  
9 magazine over ten rounds for self-defense. But for California's restrictions on magazines  
10 over ten rounds and his reasonable fear of criminal prosecution for violating them,  
11 Plaintiff Lovette would continue to possess his lawfully owned magazines over ten  
12 rounds, immediately acquire additional such magazines, travel between California and  
13 Arizona with those magazines, and devise or transfer them to his offspring.

14 15. Each of the individual Plaintiffs identified above seeks to keep, acquire,  
15 possess, and/or transfer magazines capable of holding more than 10 rounds for lawful  
16 purposes, including in-home self-defense, as is their right under the Second Amendment  
17 to the United States Constitution. Each of the individual Plaintiffs identified above is  
18 eligible under the laws of the United States and of the State of California to receive and  
19 possess firearms.

20 16. Plaintiff California Rifle & Pistol Association, Incorporated ("CRPA"), is a  
21 nonprofit membership and donor-support organization qualified as tax-exempt under 26  
22 U.S.C. § 501(c)(4) with its headquarters in the City of Fullerton, in Orange County,  
23 California. Founded in 1875, CRPA seeks to defend the civil rights of all law-abiding  
24 individuals, including the fundamental right to acquire and possess commonly owned  
25 firearm magazines.

26 17. CRPA regularly provides guidance to California gun owners regarding their  
27 legal rights and responsibilities. In addition, CRPA is dedicated to promoting the  
28 shooting sports and providing education, training, and organized competition for adult



1 and junior shooters. CRPA members include law enforcement officers, prosecutors,  
2 professionals, firearm experts, and the public.

3 18. In this suit, CRPA represents the interests of the tens of thousands of its  
4 members who reside in the state of California, including in San Diego County, and who  
5 are too numerous to conveniently bring this action individually. Specifically, CRPA  
6 represents the interests of those who are affected by California's restriction on magazines  
7 capable of holding more than 10 rounds. In addition to their standing as citizens and  
8 taxpayers, those members' interest includes their wish to exercise their constitutionally  
9 protected right to keep and bear arms without being subjected to criminal prosecution,  
10 and to continue to lawfully possess property that they lawfully obtained. But for  
11 California's restrictions on magazines over ten rounds and their reasonable fear of  
12 prosecution for violating them, CRPA members would seek to acquire, keep, possess  
13 and/or transfer such magazines for in-home self-defense and other lawful purposes.

14 **[Defendants]**

15 19. Defendant Xavier Becerra is the Attorney General of California. He is the chief  
16 law enforcement officer of California. Defendant Becerra is charged by Article V,  
17 Section 13 of the California Constitution with the duty to see that the laws of California  
18 are uniformly and adequately enforced. Defendant Becerra also has direct supervision  
19 over every district attorney and sheriff in all matters pertaining to the duties of their  
20 respective officers. Defendant Becerra's duties also include informing the public, local  
21 prosecutors, and law enforcement regarding the meaning of the laws of California,  
22 including restrictions on certain magazines classified as "large-capacity magazines." He  
23 is sued in his official capacity.

24 20. The true names or capacities—whether individual, corporate, associate, or  
25 otherwise—of the Defendants named herein as Does 1-10, are presently unknown to  
26 Plaintiffs, and are therefore sued by these fictitious names. Plaintiffs pray for leave to  
27 amend this Complaint to show the true names or capacities of these Defendants if and  
28 when they have been determined.

1 21. Defendants Becerra and Does 1-10 are responsible for formulating, executing,  
2 and administering California's restrictions on magazines capable of holding more than 10  
3 rounds at issue in this lawsuit, and they are in fact presently enforcing them.

4 22. Defendants enforce California restrictions on magazines capable of holding  
5 more than 10 rounds against Plaintiffs and other California citizens under color of state  
6 law within the meaning of 42 U.S.C. § 1983.

### 7 **GENERAL ALLEGATIONS**

#### 8 **[Right to Keep and Bear Arms]**

9 23. The Second Amendment to the United States Constitution declares that "the  
10 right of the people to keep and bear arms shall not be infringed." U.S. CONST. amend. II.

11 24. The United States Supreme Court has concluded that "[s]elf-defense is a basic  
12 right, recognized by many legal systems from ancient times to the present day, and . . .  
13 individual self-defense is 'the central component' of the Second Amendment right."  
14 *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (quoting *Heller*, 554 U.S. at  
15 628). The Court has held that "a prohibition of an entire class of 'arms' that is  
16 overwhelmingly chosen by American society" is unconstitutional, especially when that  
17 prohibition extends "to the home, where the need for defense of self, family, and property  
18 is most acute." *Heller*, 554 U.S. at 628.

19 25. The "arms" protected by the Second Amendment are those "typically possessed  
20 by law-abiding citizens for lawful purposes" today. *See, e.g., id.* at 624-25; *see also*  
21 *Caetano v. Massachusetts*, -- U.S. --, 136 S. Ct. 1027, 1027-28 (2016). The Second  
22 Amendment's protection also includes the ammunition and magazines necessary to  
23 meaningfully keep and bear arms for self-defense. *See Jackson*, 746 F.3d at 967-68;  
24 *Fyock*, 779 F.3d at 998. As such, the Second Amendment protects magazines and the  
25 firearms equipped with them that are in common use for lawful purposes.

26 26. The Supreme Court has also held that the Second Amendment right to keep and  
27 bear arms is incorporated into the Due Process Clause of the Fourteenth Amendment and  
28 may not be infringed by state and local governments. *McDonald*, 561 U.S. at 750.

**[Takings Clause]**

27. The Takings Clause of the Fifth Amendment provides “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. The Takings Clause applies against the states through the Fourteenth Amendment. *See Lingle*, 544 U.S. at 536.

28. The Takings Clause protects against two kinds of governmental takings: “a restriction on the *use* of property,” which is known as a “regulatory taking,” and a direct “physical *appropriation*” of “an interest in property.” *Horne*, 135 S. Ct. at 2425, 2427.

29. “When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 535 U.S. 302, 322 (2002). That rule applies to takings of both real and personal property. *See Horne*, 135 S. Ct. at 2427.

30. A regulation that “goes too far”—for example, by depriving a property owner of economically beneficial use or otherwise “interfer[ing] with legitimate property interests”—also requires just compensation. *Lingle*, 544 U.S. at 537-39.

**[Due Process Clause]**

31. The Due Process Clause of the Fourteenth Amendment provides that “No state shall ... deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV.

32. “The touchstone of due process is protection of the individual against arbitrary action of government.” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *see also, Cty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (collecting cases). Thus, a statute that deprives an individual of life, liberty, or property without furthering “any legitimate governmental objective” violates the Due Process Clause. *Lingle*, 544 U.S. at 542.

33. Legislation that changes the law retroactively—making conduct that was legal when undertaken illegal—is especially likely to run afoul of the Due Process Clause. *See Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17 (1976); *E. Enterprs. v. Apfel*, 524



1 U.S. 498, 547-550 (1998) (Kennedy, J., concurring in part and dissenting in part). “If  
 2 retroactive laws change the legal consequences of transactions long closed, the change  
 3 can destroy the reasonable certainty and security which are the very objects of property  
 4 ownership. Consequently, due process protection for property must be understood to  
 5 incorporate our settled tradition against retroactive laws of great severity.” *E. Enterprs.*,  
 6 524 U.S. at 548-49.

7 34. A law that deprives an owner of private property without a permissible  
 8 justification violates the Due Process Clause regardless of whether it also violates the  
 9 Takings Clause. *See Lingle*, 544 U.S. at 541-42; *id.* at 548-49 (Kennedy, J., concurring).

#### 10 [The Restricted Items and Their Uses]

11 35. A firearm magazine is a device that stores ammunition, and it is a critical part  
 12 of delivering a loaded cartridge to the firing chamber of a rifle, pistol, or shotgun for  
 13 discharge of a projectile (bullet or shot).

14 36. Magazines can be either fixed to (“integral”) or detachable from a firearm.  
 15 Removal of fixed magazines requires disassembly of the firearm. Once a fixed magazine  
 16 is removed from a firearm, the firearm lacks a structure to store ammunition, rendering  
 17 the firearm unable to accept ammunition for firing, unless manually loaded into the  
 18 chamber one round at a time after each discharge.

19 37. On the other hand, detachable magazines are designed to be routinely removed  
 20 from and reinserted into a firearm.<sup>3</sup> Removal generally requires a shooter to use a finger  
 21 on the shooter’s dominant hand to press a button or push a lever that releases the  
 22 magazine from the cavity into which it is inserted to feed ammunition into the firearm’s  
 23 chamber for firing. Once a detachable magazine is removed, the firearm is unable to

---

24  
 25 <sup>3</sup> “Detachable magazine” means, in relevant part, “any ammunition feeding device  
 26 that can be removed readily from the firearm with neither disassembly of the firearm  
 27 action nor use of a tool being required.” Cal. Code Regs. tit. 11, § 5469(a). They  
 28 generally consist of four parts—a follower, a spring, the magazine-body, and a floor  
 plate—but can vary between three and five parts. *See Ex. A* (image of a disassembled  
 detachable magazine in five parts).

1 accept ammunition for firing, unless manually loaded into the chamber one round at a  
2 time after each discharge.<sup>4</sup>

3 38. Originally, firearms only had “fixed” magazines.<sup>5</sup> The modern detachable  
4 magazine was given form in 1879 with the introduction of the Remington-Lee bolt-action  
5 rifle, and detachable magazines have been in common use ever since. Frank M. Sellers,  
6 *Sharps Firearms* (1978).

7 39. Detachable magazines offer several advantages beyond ease of reloading the  
8 firearm. Most important to self-defense, including in the home, detachable magazines  
9 allow for quick loading. This is especially beneficial if the gun is stored in an unloaded  
10 condition.

11 40. The detachable magazine is also useful if the firearm “jams.” A “jam” is the  
12 failure of an expended cartridge case to eject or the failure of a loaded cartridge to enter  
13 the chamber properly. The proper procedure for clearing a “jam” usually involves first  
14 removing the magazine. If the magazine is fixed, clearing the “jam” can be more difficult  
15 (and dangerous) because the next round in the magazine is trying to feed into the  
16 chamber and the user does not have the option, as there would be with a detachable  
17 magazine, of removing the magazine from below to stop that pressure.

18 41. Even outside a “jam” situation, detachable magazines offer safety advantages.  
19 Many fixed magazines require that the cartridges be cycled through the loading process  
20 for unloading. That creates many more opportunities for an accidental discharge—  
21 opportunities that are exacerbated when unloading must occur in a vehicle, in darkness,  
22  
23  
24

---

25 <sup>4</sup> This may not even be an option for some firearm models, e.g., ones with  
26 magazine disconnect safety.

27 <sup>5</sup> Examples are the Lewis & Clark’s Girandoni rifle (20-round capacity) and the  
28 Henry lever action rifle used in America’s civil war (15-round capacity). Silvio Calabi,  
Steve Helsley & Roger Sanger, *The Gun Book for Boys* (2012).

1 or in a crowded location.<sup>6</sup>

2 42. Detachable magazines are a convenient and safe way to store and transport  
3 ammunition. And if mud or dirt gets into the magazine, it is often much easier to clean or  
4 replace a detachable magazine.

5 43. Finally, pre-loaded detachable magazines allow shooters to conveniently share  
6 ammunition while practicing—if they have similar firearms—or to safely reload while  
7 waiting one's turn to shoot, since the magazine is outside of the firearm while reloading  
8 takes place.

9 44. Firearm users have had the choice of magazine types and capacity for over 130  
10 years. What they select is based on their respective need. For generations, Americans  
11 have overwhelmingly chosen detachable magazines.

12 45. While California does not prohibit all detachable magazines—allowing for  
13 those with a capacity of ten rounds or less—it does prohibit the sizes of magazines that  
14 are most popular among the American public. Indeed, detachable magazines capable of  
15 holding more than ten rounds come standard with countless handgun and rifle models  
16 throughout the country. And law-abiding Americans own such magazines by the tens of  
17 millions.

18 46. Detachable magazines capable of holding more than ten rounds are so common  
19 that only seven states and the District of Columbia place any restrictions on them. Not  
20 only are all those restrictions of recent vintage, they differ as to what capacity is  
21 acceptable and for what types of firearms magazine-capacity should be restricted.<sup>7</sup>

---

24 <sup>6</sup> For instance, the Evans rifle with its 34-round integral capacity would involve  
25 cycling the action 34 times to completely unload it.

26 <sup>7</sup> Colorado (Colo. Rev. Stat. Ann. § 18-12-302) (15-round capacity maximum);  
27 Connecticut (Conn. Gen. Stat. Ann. § 53-202w) (10-round capacity maximum); District  
28 of Columbia (D.C. Code Ann. § 7-2506.01) (10-round capacity maximum); Hawaii  
(Haw. Rev. Stat. Ann. § 134-8(c)) (10-round capacity maximum for handguns only);  
Maryland (Md. Code Ann., Crim. Law § 4-305(b)) (10-round capacity maximum);  
Massachusetts (Mass. Gen. Laws Ann. ch. 140, § 131M) (10-round capacity maximum);



1        47. There is little dispute that magazines having a capacity over 10 rounds are  
 2 popular for self-defense purposes. The grip of a handgun is sized to the common human  
 3 hand. If enough space exists inside the grip for detachable magazines capable of holding  
 4 more than 10 rounds—as is true for most commonly sold handguns and rifles—it makes  
 5 sense, from a self-defense perspective, to take advantage of that space by accommodating  
 6 as much ammunition as possible. Each available round is an additional opportunity to end  
 7 a threat. That is precisely why millions of Americans choose magazines over ten rounds  
 8 for self-defense, including in the home.

9                                **[California’s Ban on Magazines Over Ten Rounds]**

10        48. In 1999, the California legislature enacted Senate Bill 23 (“SB 23”), making it a  
 11 crime, beginning January 1, 2000, to manufacture, import, sell, or transfer any “large-  
 12 capacity magazine” in the state of California. S. B. 23, 1999-2000 Reg. Sess. (Cal. 1999)  
 13 (codified at Cal. Penal Code § 32310 [formerly Cal. Penal Code § 12020(a)(2)]).<sup>8</sup> SB 23  
 14 defined “large-capacity magazine” as “any ammunition feeding device with the capacity  
 15 to accept more than 10 rounds,” but not including feeding devices that have been  
 16 permanently altered to accommodate no more than 10 rounds or any .22 caliber tube  
 17 ammunition feeding device. Cal. Penal Code § 16740 (formerly Cal. Penal Code §  
 18 12020(c)(25)).

19        49. As originally enacted, California’s restriction did not include “possession” as  
 20 one of the prohibited activities relating to magazines over ten rounds. This meant that  
 21 individuals who lawfully possessed such magazines prior to the enactment of SB 23 did  
 22 not have to dispose of them.

23  
 24  
 25 New Jersey (N.J. Stat. Ann. § 2C:39-9(h)); (10-round capacity maximum); and New  
 26 York (N.Y. Penal Law § 265.02(8)) (10-round capacity maximum).

27        <sup>8</sup> In 2010, California enacted Senate Bill 1080 (“SB 1080”), which reorganized  
 28 the Penal Code sections relating to firearms “without substantive change.” S. B. 1080,  
 2009-2010 Reg. Sess. (Cal. 2010). Penal Code section 12020(a)(2) thus became Penal  
 Code section 32310.

1        50. In July 2016, however, the California legislature passed and the Governor  
 2 signed Senate Bill 1446 (“SB 1446”), amending Section 32310 to also prohibit the mere  
 3 possession of magazines capable of holding more than 10 rounds. S. B. 1446, 2015-2016  
 4 Reg. Sess. (Cal. 2016). On November 8, 2016, California voters approved Proposition 63,  
 5 which made effectively the same amendment as SB 1446 did to Section 32310,  
 6 prohibiting (again) the possession of magazines capable of holding more than 10 rounds.<sup>9</sup>

7        51. Under either version of the recently amended Section 32310, any person in  
 8 lawful possession of a magazine capable of holding more than ten rounds has until July 1,  
 9 2017, to: (1) remove it from the state; (2) sell it to a licensed firearms dealer; or (3)  
 10 surrender it to law enforcement.

11        52. Penalties for violating Section 32310 range from an infraction punishable by a  
 12 fine of up to \$100 to a felony punishable by a fine and/or imprisonment.

13        53. California law identifies several exceptions to the ammunition magazine  
 14 restrictions, including but not limited to possession by military and possession by law  
 15 enforcement while acting “in the course and scope of their duties.” *See* Cal. Penal Code  
 16 §§ 32400-32450. None of the listed exceptions to Section 32310’s magazine ban applies  
 17 to the acquisition, making, and possession of magazines capable of holding more than ten  
 18 rounds by law-abiding citizens, including Plaintiffs, for self-defense.

19                                **[Violation of Plaintiffs’ Right to Keep and Bear Arms]**

20        54. Section 32310 prohibits magazines that come standard with or are commonly  
 21 used in firearms that are “typically possessed by law-abiding citizens for lawful  
 22

---

23  
 24        <sup>9</sup> While laws passed by way of voter initiative generally supersede those made via  
 25 legislation, Cal. Const. art. 2, § 10(c), Proposition 63 provides that its provisions may be  
 26 amended “by a vote of 55 percent of the members of each house of the Legislature and  
 27 signed by the Governor so long as such amendments are consistent with and further [its]  
 28 intent . . . .” SB 1446 was passed by such a majority, but before the people voted to adopt  
 Proposition 63. It is thus unclear which controls. This is largely irrelevant because both  
 versions amended Section 32310 (albeit in different subdivisions), however, to prohibit  
 the possession of magazines capable of holding more than 10 rounds. Whichever version  
 controls, Plaintiffs seek an injunction of Section 32310 for the same reasons.

1 purposes,” *Heller*, 554 U.S. at 624-25, throughout the United States. Indeed, millions of  
2 firearms—including the most popular models—that come stock from the factory with  
3 magazines over ten rounds have been sold in the United States. People also buy such  
4 magazines aftermarket by the millions. Notwithstanding California’s description of the  
5 prohibited magazines as being “large capacity,” magazines with capacities of more than  
6 ten rounds are, instead, *standard*-capacity for many common firearms that are lawfully  
7 possessed in the clear majority of states.

8 55. Prohibiting law-abiding adults from acquiring, keeping, possessing, and/or  
9 transferring these commonly owned magazines implicates and violates their Second  
10 Amendment rights. A total ban on standard-issue, commonly possessed magazines is not  
11 remotely tailored to increasing public safety. To the contrary, limiting magazine capacity  
12 to ten rounds decreases public safety.

13 **[Violation of the Plaintiffs’ Rights Under the Takings Clause]**

14 56. Section 32310 makes it a crime for individuals to continue to possess  
15 magazines that they lawfully acquired and presently lawfully possess.

16 57. By forcing individuals who would otherwise keep their lawfully acquired  
17 property to instead physically surrender that property without government compensation,  
18 Section 32310 effects a per se unconstitutional taking. *See Horne*, 135 S. Ct. at 2427.

19 58. In the alternative, to the extent that Section 32310 does not constitute a physical  
20 taking, it is an unconstitutional regulatory taking.

21 **[Violation of Plaintiffs’ Right to Due Process]**

22 59. Under the Due Process Clause, the government may deprive individuals of their  
23 property only when doing so furthers a “legitimate governmental objective.” *Lingle*, 544  
24 U.S. at 542. The due process concerns are heightened when a law applies retroactively to  
25 change the consequences of conduct that was lawful at the time. *See E. Enterprs.*, 524  
26 U.S. at 547-550 (Kennedy, J., concurring in part and dissenting in part).

27 60. By making it a crime for individuals to continue to possess property that they  
28 lawfully acquired, Section 32310 deprives individuals of protected property interests



1 without due process of law. For prohibiting law-abiding adults from possessing lawfully  
2 acquired and commonly owned magazines based solely on their ability to accept more  
3 than 10 rounds does not further a “legitimate governmental objective” in a permissible  
4 way. *Lingle*, 544 U.S. at 542.

#### 5 **DECLARATORY JUDGMENT ALLEGATIONS**

6 61. There is an actual and present controversy between the parties. Plaintiffs  
7 contend that Section 32310 infringes on Plaintiffs’ right to keep and bear arms under the  
8 Second and Fourteenth Amendments to the United States Constitution, by generally  
9 prohibiting commonly possessed ammunition feeding devices that it deems “large-  
10 capacity magazines.” Plaintiffs also contend that Section 32310 violates the Takings  
11 Clause by requiring owners who lawfully purchased “large-capacity magazines” to  
12 surrender physical possession of their property to the government rather than keeping it  
13 in their possession. And Plaintiffs contend that Section 32310 violates the Due Process  
14 Clause by banning lawfully acquired magazines based on a feature (capacity to accept  
15 more than 10 rounds) that has no relation to enhancing public safety or any other valid  
16 governmental objective. Defendants deny these contentions. Plaintiffs desire a judicial  
17 declaration that the California Penal Code section 32310 violates Plaintiffs’ constitutional  
18 rights. Plaintiffs should not be forced to choose between risking criminal prosecution and  
19 exercising their constitutional rights.

#### 20 **INJUNCTIVE RELIEF ALLEGATIONS**

21 62. Plaintiffs are presently and continuously injured by Defendants’ enforcement of  
22 California Penal Code section 32310 insofar as that provision violates Plaintiffs’ rights  
23 under the Second Amendment, the Takings Clause, and the Due Process Clause by  
24 precluding the acquisition, possession, and use of firearm magazines that are “typically  
25 possessed by law-abiding citizens for lawful purposes” nationwide.

26 63. If not enjoined by this Court, Defendants will continue to enforce Section  
27 32310 in derogation of Plaintiffs’ constitutional rights. Plaintiffs have no plain, speedy,  
28 and adequate remedy at law. Damages are indeterminate or unascertainable and, in any

1 event, would not fully redress any harm suffered by Plaintiffs because they are unable to  
2 engage in constitutionally protected activity due to California's ongoing enforcement of  
3 Section 32310.

4  
5 **FIRST CLAIM FOR RELIEF**  
6 **Right to Keep and Bear Arms**  
(U.S. Const., amends. II and XIV)

7 64. Paragraphs 1-63 are realleged and incorporated by reference.

8 65. Section 32310's definition of "large-capacity magazine" includes many firearm  
9 magazines that come standard with or are common for firearms "typically possessed by  
10 law-abiding citizens for lawful purposes" nationwide. Section 32310, therefore, generally  
11 prohibits Californians, including Plaintiffs, from acquiring, keeping, possessing, and/or  
12 transferring magazines protected by the Second Amendment, subject to significant  
13 criminal penalties, including imprisonment.

14 66. These restrictions on magazines that are commonly possessed throughout the  
15 United States by law-abiding, responsible adults for lawful purposes infringe on the right  
16 of the People of California, including Plaintiffs, to keep and bear protected arms as  
17 guaranteed by the Second Amendment of the United States Constitution, and as made  
18 applicable to California by the Fourteenth Amendment.

19 67. In violation of the Second Amendment, Section 32310 prohibits law-abiding,  
20 responsible adults, including Plaintiffs, who would otherwise do so, from acquiring,  
21 keeping, possessing, and/or transferring magazines capable of holding more than ten  
22 rounds that are in common use by law-abiding citizens for lawful purposes throughout  
23 the United States.

24 68. Section 32310's prohibitions extend into Plaintiffs' homes, where Second  
25 Amendment protections are at their zenith, but also affects lawful and constitutionally  
26 protected conduct such as hunting, recreational shooting, and competitive marksmanship  
27 participation.

28 69. Defendants cannot satisfy their burden of justifying Section 32310's restrictions

1 on the Second Amendment right of the People, including Plaintiffs, to acquire, keep,  
 2 possess, transfer, and use magazines that are in common use by law-abiding adults  
 3 throughout the United States for the core right of defense of self and home and other  
 4 lawful purposes.

## 5 **SECOND CLAIM FOR RELIEF**

### **Takings Clause**

6 (U.S. Const. amends. V, XIV)

7 70. Paragraphs 1-69 are realleged and incorporated by reference.

8 71. Section 32310 makes it a crime for individuals to continue to possess  
 9 magazines that they lawfully acquired and presently lawfully possess.

10 72. By forcing individuals who would otherwise keep their lawfully acquired  
 11 property to instead physically surrender that property without government compensation,  
 12 Section 32310 effects a per se unconstitutional taking. *See Horne*, 135 S. Ct. at 2427.

13 73. In the alternative, to the extent that Section 32310 does not constitute a physical  
 14 taking, it is an unconstitutional regulatory taking.

## 15 **THIRD CLAIM FOR RELIEF**

### **Due Process Clause**

16 (U.S. Const. amend. XIV)

17 74. Paragraphs 1-73 are realleged and incorporated by reference.

18 75. Under the Due Process Clause, the government may deprive individuals of their  
 19 property only when doing so furthers a “legitimate governmental objective.” *Lingle*, 544  
 20 U.S. at 542. The due process concerns are heightened when a law applies retroactively to  
 21 change the consequences of conduct that was lawful at the time. *See E. Enterprs.*, 524  
 22 U.S. at 547-550 (Kennedy, J., concurring in part and dissenting in part).

23 76. By making it a crime for individuals to continue to possess property that they  
 24 lawfully acquired, Section 32310 deprives individuals of protected property interests  
 25 without due process of law, as prohibiting law-abiding adults from possessing lawfully  
 26 acquired and commonly owned magazines based solely on their ability to accept more  
 27 than 10 rounds does not further a “legitimate governmental objective” in a permissible  
 28 way. *Lingle*, 544 U.S. at 542.



**PRAYER FOR RELIEF**

Plaintiffs pray that the Court:

1. Enter a declaratory judgment under 28 U.S.C. § 2201 that California Penal Code section 32310 is unconstitutional on its face or, alternatively, to the extent its prohibitions apply to law-abiding adults seeking to acquire, use, or possess firearm magazines that are in common use by the American public for lawful purposes, because such unlawfully infringes on the right of the People to keep and bear arms in violation of the Second and Fourteenth Amendments to the United States Constitution, unconstitutionally takes property without compensation in violation of the Takings Clause, and arbitrarily deprives Plaintiffs of protected property interests under the Due Process Clause.

2. Issue an injunction enjoining Defendants and their officers, agents, and employees from enforcing California Penal Code section 32310 in its entirety, or, alternatively, to the extent such can be segregated from the rest of the statute, any provision of section 32310 that prohibits the acquiring, using, or possessing of firearm magazines that are in common use by the American public for lawful purposes;

3. Award remedies available under 42 U.S.C. § 1983 and all reasonable attorneys' fees, costs, and expenses under 42 U.S.C. § 1988, or any other applicable law; and

4. Grant any such other and further relief as the Court may deem proper.

Dated: May 17, 2017

MICHEL & ASSOCIATES, P.C.

/s/C.D. Michel

C.D. Michel  
*Counsel for Plaintiffs*

# EXHIBIT A

**SAFETY CAUTION:**

With the GLOCK pistol field stripped, the trigger should not be manually reset to its forward position and pulled, as damage to the trigger safety could result.

**SAFETY CAUTION:**

With the GLOCK pistol field stripped, do not manually pull the firing pin to the rear of the slide and allow it to snap forward, as doing so can damage the firing pin and the firing pin safety.

**MAGAZINE DISASSEMBLY**

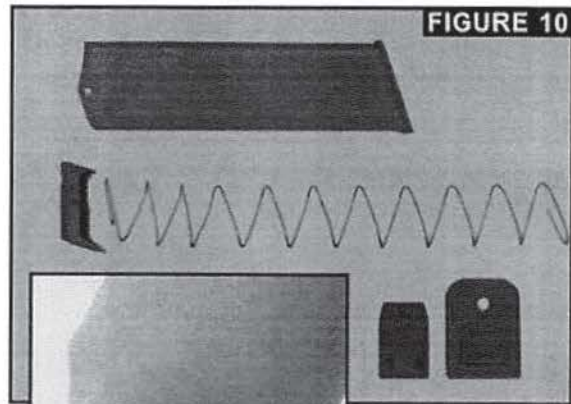
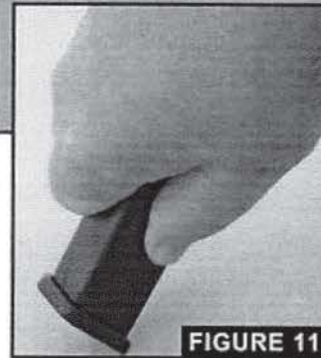
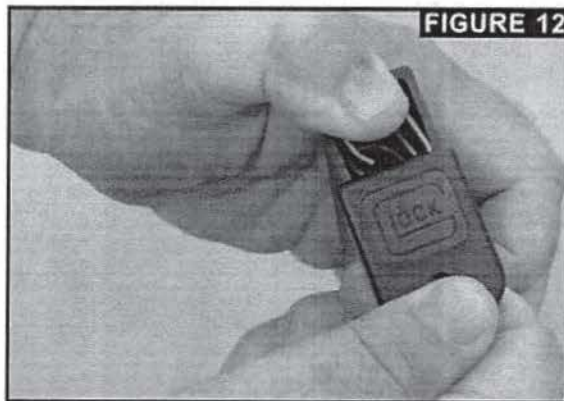
Magazines do not normally need to be disassembled for cleaning each time your GLOCK pistol is cleaned. Disassembling and cleaning magazines at less frequent intervals (perhaps every 3-4 months) is normally sufficient, unless the magazines have been exposed to dirt or other adverse conditions or inspection indicates the need for cleaning.

When it is necessary to disassemble magazines for cleaning, proceed as follows:

**SAFETY CAUTION:**

The magazine spring, follower, and inner floorplate are under spring tension, and can cause eye or other injury if not controlled during removal. Wear protective safety glasses to reduce the risk of eye injuries. Be sure to maintain downward pressure on the magazine spring, with your thumb, while disassembling.

For all magazines with the standard magazine floorplate and magazine insert, insert punch fully into the opening in the floorplate (Fig. 13). Push the magazine insert down into the magazine tube, and with the punch still in place, pull the floor plate forward with the punch while holding firmly on the sides of the magazine near its base. Remove the floor plate (Fig. 10), the magazine insert, the magazine spring and the follower.

**FIGURE 10****FIGURE 11****FIGURE 12**

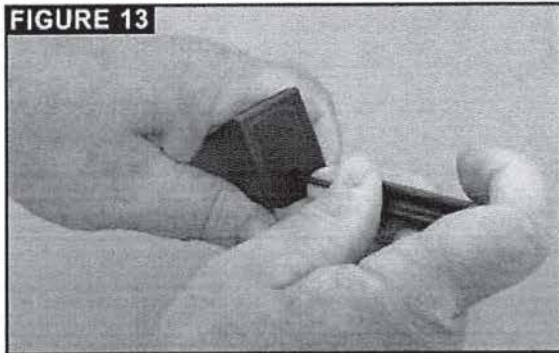
**WARNING: THE MAGAZINE SPRING IS UNDER COMPRESSION. BE SURE TO MAINTAIN DOWNWARD PRESSURE ON MAGAZINE SPRING WITH YOUR THUMB WHILE DISASSEMBLING. FAILURE TO DO SO COULD RESULT IN INJURY.**

For older magazines without the magazine insert, press inward with thumb and first finger as you push the magazine floor plate forward or use a hard surface (Fig. 11). As soon as the floor plate starts to move, reposition hand so thumb retains magazine spring. Remove the floor plate, magazine spring and follower.



For GLOCK magazines with a retaining pin visible in the center hole:

The retaining pin is part of a reinforcement plate. To remove the floorplate the reinforcement plate is disengaged by pushing it into the magazine tube. This is accomplished by pushing the retaining pin in with a punch (Figure 13). Then follow the procedures outlined above.



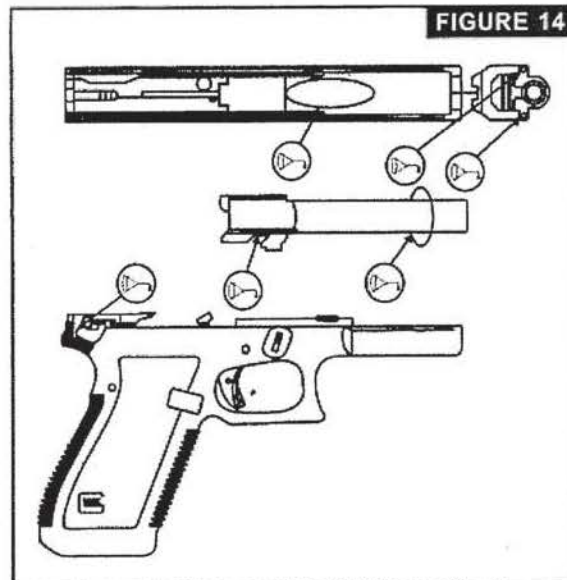
## CLEANING THE FIELD STRIPPED PISTOL

**BARREL.** Once field stripped, the barrel and chamber are easily cleaned from the chamber end using a bore brush and solvent. Standard firearm solvents can be used on the pistol. The inside of both the chamber and barrel should be wiped completely dry using clean patches once they have been thoroughly cleaned.

**SLIDE.** The slide rail cuts should be cleaned of dirt and debris by using a clean patch on the end of a toothbrush-type cleaning tool. Note that the copper colored lubricant found on portions of the slide of brand new GLOCK pistols should not be removed, as it will help to provide long-term lubrication of the slide. The breech face and the area under the extractor claw should be held muzzle down and cleaned with a toothbrush-type cleaning tool, and should both be absolutely dry and free of any dirt or debris after cleaning. All other exposed areas of the slide should be checked for cleanliness, and wiped or brushed clean as required.

**FRAME.** The frame should be checked for cleanliness. Exposed parts in the frame may be wiped with a clean, soft cloth that has been slightly dampened with a quality firearm cleaning solvent. All solvent should then be wiped from the parts so that they are clean and dry.

**MAGAZINE.** When necessary, the disassembled magazines can be brushed out with a dry brush, and the magazine springs and followers wiped off with a soft, clean cloth. If solvent or lubricant are used, they must be completely dried from the magazine parts prior to reassembly to prevent contamination of ammunition and possible failures to fire.



## LUBRICATING THE FIELD STRIPPED PISTOL

To properly lubricate your GLOCK pistol after it has been thoroughly cleaned and dried, use a clean patch that has been slightly dampened with quality gun oil. Wipe the outside of barrel, including the barrel hood and lugs, the inside top of the slide forward of the ejection port where the barrel hood rubs against the slide and the opening that the barrel slides through in front of the slide. One drop of oil should be spread along the entire length of each slide rail cut. Most importantly, a drop of oil is needed (Figure 14) where the rear end of the trigger bar touches the connector at the right rear corner of the frame.

JS 44 (Rev. 11/15)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Duncan, Virginia; Lewis, Richard; Lovette, Patrick; Marguglio, David; Waddell, Christopher; and California Rife & Pistol Association, Inc.

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michel & Associates, P.C.  
180 East Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
(562) 216-4444

**DEFENDANTS**

Becerra, Xavier, in his official capacity as Attorney General of the State of California

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'17CV1017 BEN JLB****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability			<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud			<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability				<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice				<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 196 Franchise					<input type="checkbox"/> 890 Other Statutory Actions
					<input type="checkbox"/> 891 Agricultural Acts
					<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 896 Arbitration
					<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
					<input checked="" type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. section 1983 (U.S. Constitution, Amendments II, V, and XIV)

Brief description of cause:

Deprivation of rights under Second Amendment, Takings Clause, and Due Process

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
May 17, 2017

SIGNATURE OF ATTORNEY OF RECORD

/s/C.D. Michel

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS-44

**ER001965**

Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 1 of 12

APPEAL,CLOSED,STAYED,ENE

**U.S. District Court  
Southern District of California (San Diego)  
CIVIL DOCKET FOR CASE #: 3:17-cv-01017-BEN-JLB**

Duncan et al v. Becerra et al  
Assigned to: Judge Roger T. Benitez  
Referred to: Magistrate Judge Jill L. Burkhardt  
Related Case: 3:18-cv-00802-BEN-JLB  
Case in other court: USCA, 17-56081  
USCA, 19-55376

Date Filed: 05/17/2017  
Date Terminated: 03/29/2019  
Jury Demand: None  
Nature of Suit: 950 Constitutional – State  
Statute  
Jurisdiction: Federal Question

Cause: 42:1983cv Civil Rights Act – Civil Action for  
Deprivation of Rights

**Plaintiff**

**Virginia Duncan**

represented by **Carl D. Michel**  
Michel & Associates PC  
180 East Ocean Boulevard  
Suite 200  
Long Beach, CA 90802  
(562) 216-4444  
Fax: (562)216-4445  
Email: [cmichel@michellawyers.com](mailto:cmichel@michellawyers.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Anna M. Barvir**  
Michel & Associates, P. C.  
180 East Ocean Blvd.  
Suite 200  
Long Beach, CA 90802  
562-216-4444  
Fax: 562-216-4445  
Email: [abarvir@michellawyers.com](mailto:abarvir@michellawyers.com)  
**ATTORNEY TO BE NOTICED**

**Sean Brady**  
Michel & Associates PC  
180 East Ocean Boulevard  
Suite 200  
Long Beach, CA 90802  
(562) 216-4444  
Fax: (562) 216-4445  
Email: [sbrady@michellawyers.com](mailto:sbrady@michellawyers.com)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Richard Lewis**  
*TERMINATED: 01/09/2018*

represented by **Carl D. Michel**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Anna M. Barvir**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Sean Brady**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**ER001966**



Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 2 of 12

**Patrick Lovette**

represented by **Carl D. Michel**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Anna M. Barvir**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Sean Brady**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**David Marguglio**

represented by **Carl D. Michel**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Anna M. Barvir**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Sean Brady**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Christopher Waddell**

represented by **Carl D. Michel**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Anna M. Barvir**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Sean Brady**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**California Rifle & Pistol Association,  
Incorporated**  
*a California corporation*

represented by **Carl D. Michel**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Anna M. Barvir**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Sean Brady**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Xavier Becerra**  
*in his official capacity as Attorney  
General of the State of California*

represented by **Attorney General**  
State of California  
Office of the Attorney General  
600 West Broadway

Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 3 of 12

Suite 1800  
San Diego, CA 92101-3702  
(619)645-2076  
Fax: (619)645-2313  
Email: [docketingsdwt@doj.ca.gov](mailto:docketingsdwt@doj.ca.gov)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Alexandra Robert Gordon**  
CA Dept of Justice, Attorney General's  
Office  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, CA 94102-7004  
415-703-5509  
Fax: 415-703-5480  
Email: [Alexandra.RobertGordon@doj.ca.gov](mailto:Alexandra.RobertGordon@doj.ca.gov)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Anthony P O'Brien**  
California Office of Attorney General  
1300 I Street  
Suite 125  
Sacramento, CA 95814  
916-210-6002  
Fax: 916-324-8835  
Email: [Anthony.O'Brien@doj.ca.gov](mailto:Anthony.O'Brien@doj.ca.gov)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**John Darrow Echeverria**  
Office of the California Attorney General  
300 S. Spring Street  
Suite 1702  
Los Angeles, CA 90013  
213-897-4902  
Fax: 213-897-5775  
Email: [John.Echeverria@doj.ca.gov](mailto:John.Echeverria@doj.ca.gov)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Does 1-10**

**Movant**

**Law Center to Prevent Gun Violence**

represented by **Anthony P Schoenberg**  
Pillsbury Winthrop Shaw Pittman  
50 Fremont Street  
Suite 500  
San Francisco, CA 94120-7880  
(415)983-1462  
Email: [TSchoenberg@fbm.com](mailto:TSchoenberg@fbm.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Movant**

**Everytown for Gun Safety**

Date Filed	#	Docket Text
------------	---	-------------

Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 4 of 12

05/17/2017	<u>1</u>	COMPLAINT against All Defendants ( Filing fee \$ 400 receipt number 0974-10088872.), filed by California Rifle & Pistol Association, Incorporated, Richard Lewis, David Margulio, Christopher Waddell, Virginia Duncan, Patrick Lovette. (Attachments: # <u>1</u> Civil Cover Sheet)  The new case number is 3:17-cv-1017-BEN-JLB. Judge Roger T. Benitez and Magistrate Judge Jill L. Burkhardt are assigned to the case. (Michel, Carl)(fth) (sjt). (Entered: 05/18/2017)
05/18/2017	<u>2</u>	Summons Issued. <b>Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1.</b> (fth) (Entered: 05/18/2017)
05/25/2017	<u>3</u>	SUMMONS Returned Executed by California Rifle & Pistol Association, Incorporated, Richard Lewis, David Marguglio, Christopher Waddell, Virginia Duncan, Patrick Lovette. Xavier Becerra served. (Michel, Carl) (Entered: 05/25/2017)
05/25/2017	<u>4</u>	Ex Parte MOTION to Shorten Time to Hear Plaintiffs' Motion for Preliminary Injunction by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell. (Attachments: # <u>1</u> Memo of Points and Authorities in Support of Ex Parte Application for Order Shortening Time, # <u>2</u> Declaration of Anna M. Barvir in Support of Ex Parte Application for Order Shortening Time, # <u>3</u> Declaration of Sean Brady in Support of Ex Parte Application for Order Shortening Time)(Michel, Carl) (Entered: 05/25/2017)
05/26/2017	<u>5</u>	ORDER Granting <u>4</u> Ex Parte Application to Shorten Time. Motion Hearing set for 6/13/2017 at 10:00 AM in Courtroom 5A before Judge Roger T. Benitez. Signed by Judge Roger T. Benitez on 5/26/2017. (jjg) (Entered: 05/26/2017)
05/26/2017	<u>6</u>	MOTION for Preliminary Injunction by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell. (Attachments: # <u>1</u> Memo of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>2</u> Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>3</u> Exhibit F-G to Declaration of Anna M. Barvir, # <u>4</u> Exhibit H-V to Declaration of Anna M. Barvir, # <u>5</u> Exhibit W-GG to Declaration of Anna M. Barvir, # <u>6</u> Exhibit HH-RR to Declaration of Anna M. Barvir, # <u>7</u> Exhibit SS-LLL to Declaration of Anna M. Barvir, # <u>8</u> Declaration of Massad Ayoob in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>9</u> Declaration of James Curcuruto in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>10</u> Declaration of Steven Helsley in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>11</u> Declaration of Gary Kleck in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>12</u> Declaration of Virginia Duncan in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>13</u> Declaration of Richard Lewis in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>14</u> Declaration of Patrick Lovette in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>15</u> Declaration of David Marguglio in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>16</u> Declaration of Christopher Waddell in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>17</u> Declaration of Michael Barranco in Support of Plaintiffs' Motion for Preliminary Injunction)(Michel, Carl) (Entered: 05/26/2017)
05/30/2017	<u>7</u>	NOTICE of Appearance by Alexandra Robert Gordon on behalf of Xavier Becerra (Gordon, Alexandra)Attorney Alexandra Robert Gordon added to party Xavier Becerra(pty:dft) (Entered: 05/30/2017)
05/30/2017	<u>8</u>	AMENDED DOCUMENT by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell. Amendment to <u>6</u> MOTION for Preliminary Injunction <i>Certificate of Service</i> . (Michel, Carl) (knb). (Entered: 05/30/2017)
06/05/2017	<u>9</u>	RESPONSE in Opposition re <u>6</u> MOTION for Preliminary Injunction filed by Xavier Becerra. (Gordon, Alexandra) (knb). (Entered: 06/05/2017)
06/05/2017	<u>10</u>	MOTION for Leave to File <i>Brief of Amicus Curiae</i> by Law Center to Prevent Gun Violence. (Attachments: # <u>1</u> Memo of Points and Authorities in Support of Motion for Leave to Participate as Amicus Curiae)(Schoenberg, Anthony)Attorney Anthony P Schoenberg added to party Law Center to Prevent Gun Violence(pty:mov) (knb).

ER001969



Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 5 of 12

		(Entered: 06/05/2017)
06/05/2017	<u>11</u>	AFFIDAVIT in Opposition re <u>6</u> MOTION for Preliminary Injunction of <i>Lucy Allen</i> filed by Xavier Becerra. (Gordon, Alexandra) (knb). (Entered: 06/05/2017)
06/05/2017	<u>12</u>	AFFIDAVIT in Opposition re <u>6</u> MOTION for Preliminary Injunction by <i>John Donohue</i> filed by Xavier Becerra. (Gordon, Alexandra) (knb). (Entered: 06/05/2017)
06/05/2017	<u>13</u>	AFFIDAVIT in Opposition re <u>6</u> MOTION for Preliminary Injunction by <i>Blake Graham</i> filed by Xavier Becerra. (Gordon, Alexandra) (knb). (Entered: 06/05/2017)
06/05/2017	<u>14</u>	AFFIDAVIT in Opposition re <u>6</u> MOTION for Preliminary Injunction by <i>Ken James</i> filed by Xavier Becerra. (Gordon, Alexandra) (knb). (Entered: 06/05/2017)
06/05/2017	<u>15</u>	AFFIDAVIT in Opposition re <u>6</u> MOTION for Preliminary Injunction by <i>Daniel W. Webster</i> filed by Xavier Becerra. (Gordon, Alexandra) (knb). (Entered: 06/05/2017)
06/05/2017	<u>16</u>	Amicus Curiae Appearance entered by Anthony P Schoenberg on behalf of Law Center to Prevent Gun Violence. (Attachments: # <u>1</u> Exhibit A to Brief of Amicus Curiae Law Center to Prevent Gun Violence in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction)(Schoenberg, Anthony) (knb). (Entered: 06/05/2017)
06/05/2017	<u>17</u>	AFFIDAVIT in Opposition re <u>6</u> MOTION for Preliminary Injunction of <i>Alexandra Robert Gordon</i> filed by Xavier Becerra. (Attachments: # <u>1</u> Exhibits 1-15 to Dec of Alexandra Robert Gordon)(Gordon, Alexandra) (knb). (Entered: 06/05/2017)
06/05/2017	<u>18</u>	Exhibit List <i>16-108</i> re <u>17</u> AFFIDAVIT in Opposition by Xavier Becerra. (Attachments: # <u>1</u> Exhibit 25-43, # <u>2</u> Exhibit 44-54, # <u>3</u> Exhibit 55-56, # <u>4</u> Exhibit 57-62, # <u>5</u> Exhibit 63-69, # <u>6</u> Exhibit 70-73, # <u>7</u> Exhibit 74-76, # <u>8</u> Exhibit 77-84, # <u>2</u> Exhibit 85-108)(Gordon, Alexandra) (knb). (Entered: 06/05/2017)
06/06/2017	<u>19</u>	NOTICE of Appearance by Anthony P O'Brien on behalf of Xavier Becerra (O'Brien, Anthony)Attorney Anthony P O'Brien added to party Xavier Becerra(pty:dft) (Entered: 06/06/2017)
06/07/2017	<u>20</u>	NOTICE of Appearance by Anna M. Barvir on behalf of California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell (Barvir, Anna)Attorney Anna M. Barvir added to party California Rifle & Pistol Association, Incorporated(pty:pla), Attorney Anna M. Barvir added to party Virginia Duncan(pty:pla), Attorney Anna M. Barvir added to party Richard Lewis(pty:pla), Attorney Anna M. Barvir added to party Patrick Lovette(pty:pla), Attorney Anna M. Barvir added to party David Marguglio(pty:pla), Attorney Anna M. Barvir added to party Christopher Waddell(pty:pla) (Entered: 06/07/2017)
06/07/2017	<u>21</u>	Joint MOTION for Extension of Time to File Answer by Xavier Becerra. (O'Brien, Anthony) (knb). (Entered: 06/07/2017)
06/07/2017	<u>22</u>	NOTICE of Appearance by Sean Brady on behalf of California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell (Brady, Sean)Attorney Sean Brady added to party California Rifle & Pistol Association, Incorporated(pty:pla), Attorney Sean Brady added to party Virginia Duncan(pty:pla), Attorney Sean Brady added to party Richard Lewis(pty:pla), Attorney Sean Brady added to party Patrick Lovette(pty:pla), Attorney Sean Brady added to party David Marguglio(pty:pla), Attorney Sean Brady added to party Christopher Waddell(pty:pla) (Entered: 06/07/2017)
06/09/2017	<u>23</u>	REPLY to Response to Motion re <u>6</u> MOTION for Preliminary Injunction filed by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Law Center to Prevent Gun Violence, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell. (Attachments: # <u>1</u> Supplement Objections to Defendants' Evidence in Support of Opposition to Motion for Preliminary Injunction, # <u>2</u> Declaration of Anna M. Barvir in Support of Motion for Preliminary Injunction, # <u>3</u> Declaration of Gary Kleck in Support of Motion for Preliminary Injunction)(Michel, Carl) (knb). (Entered: 06/09/2017)

Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 6 of 12

06/12/2017	<u>24</u>	OBJECTION by Xavier Becerra re <u>23</u> Reply to Response to Motion,, <i>Barvir and Kleck declarations</i> . (Gordon, Alexandra) (Entered: 06/12/2017)
06/12/2017	<u>25</u>	ANSWER to <u>1</u> Complaint, by Xavier Becerra.(Gordon, Alexandra) (Entered: 06/12/2017)
06/13/2017	<u>26</u>	Minute Order for proceedings held before Judge Roger T. Benitez: Motion Hearing held on 6/13/2017. Submitting <u>6</u> MOTION for Preliminary Injunction filed by Virginia Duncan, Patrick Lovette, David Marguglio, California Rifle & Pistol Association, Incorporated, Christopher Waddell, Richard Lewis. Court to issue written Order. (Court Reporter/ECR Debbie OConnell). (Plaintiff Attorney Clint B. Monfort, Sean A. Brady).(Defendant Attorney Alexandra Robert Gordon). (no document attached) (gxr) (Entered: 06/14/2017)
06/15/2017	<u>27</u>	NOTICE OF RELATED CASE(S) by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell of case(s) 2:17-cv-00903-WBS-KJN . (Michel, Carl) Proposed Now Number Order not prepared – related case in different district on 6/16/2017 (knb). (Entered: 06/15/2017)
06/29/2017	<u>28</u>	ORDER Granting <u>6</u> Motion for Preliminary Injunction. Signed by Judge Roger T. Benitez on 6/29/2017. (knb) (Entered: 06/29/2017)
07/06/2017	<u>29</u>	NOTICE AND ORDER for Early Neutral Evaluation Conference. Early Neutral Evaluation set for 8/2/2017 02:45 PM in chambers before Magistrate Judge Jill L. Burkhardt. In the event the case does not settle at the ENE, a Case Management Conference is set for August 2, 2017 and will be held at the conclusion of the ENE Conference. Joint Discovery Plan due 7/21/2017. Signed by Magistrate Judge Jill L. Burkhardt on 7/6/2017.(knb) (Entered: 07/06/2017)
07/12/2017	<u>30</u>	DECLARATION re <u>28</u> Order on Motion for Preliminary Injunction <i>Re: Notice of Order</i> by Defendant Xavier Becerra. (Gordon, Alexandra) (knb). (Entered: 07/12/2017)
07/19/2017	<u>31</u>	REPORT of Rule 26(f) Planning Meeting. (Barvir, Anna) (Entered: 07/19/2017)
07/27/2017	<u>32</u>	NOTICE OF APPEAL to the 9th Circuit as to <u>28</u> Order granting Motion for Preliminary Injunction, by Xavier Becerra. (Filing fee \$ 505 receipt number 0974-10288817.) (Notice of Appeal electronically transmitted to US Court of Appeals.) (Gordon, Alexandra). (Main Document 32 replaced on 7/27/2017 with printed .pdf of document, which was originally e-filed as an active fillable form. Edited docket text re linked Order.) (akr). (Entered: 07/27/2017)
07/27/2017	<u>33</u>	NOTICE of Representation Statement re <u>32</u> Notice of Appeal, by Xavier Becerra. (Gordon, Alexandra). (Modified on 7/27/2017: Added link to Notice of Appeal.) (akr). (Entered: 07/27/2017)
07/28/2017	<u>34</u>	USCA Case Number 17-56081 for <u>32</u> Notice of Appeal to 9th Circuit, filed by Xavier Becerra. (akr) (Entered: 07/28/2017)
07/28/2017	<u>35</u>	ORDER of USCA as to <u>32</u> Notice of Appeal to 9th Circuit, filed by Xavier Becerra. The appeal filed July 27, 2017 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply. The mediation questionnaire is due three days after the date of this order. If they have not already done so, within 7 calendar days after the filing date of this order, the parties shall make arrangements to obtain from the court reporter an official transcript of proceedings in the USDC that will be included in the record on appeal. Briefing schedule issued and instructions issued. Failure to file timely the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. (akr) (Entered: 07/28/2017)
08/02/2017	<u>36</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings (Motion Hearing) held on 6/13/2017, before Judge Roger T. Benitez. Court Reporter/Transcriber: Deborah M. O'Connell. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request

Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 7 of 12

		Statement due to Court Reporter/Transcriber 8/23/2017. Redacted Transcript Deadline set for 9/5/2017. Release of Transcript Restriction set for 10/31/2017. (akr) (Entered: 08/02/2017)
08/02/2017	<u>37</u>	Minute Entry for proceedings held before Magistrate Judge Jill L. Burkhardt: Telephonic Early Neutral Evaluation Conference held on 8/2/2017. The case did not settle. Telephonic Case Management Conference held on 8/2/2017. Scheduling order to follow. (Plaintiff Attorney Anna M. Barvir). (Defendant Attorney Alexandra Robert Gordon). (no document attached) (smm) (Entered: 08/03/2017)
08/04/2017	<u>38</u>	SCHEDULING ORDER: Memorandum of Contentions of Fact and Law due by 5/4/2018. Proposed Pretrial Order due by 5/25/2018. Final Pretrial Conference set for 6/4/2018 10:30 AM before Judge Roger T. Benitez. Signed by Magistrate Judge Jill L. Burkhardt on 8/4/2017.(knb) (Entered: 08/04/2017)
08/07/2017	<u>39</u>	MOTION to Stay <i>Proceedings Pending Appeal</i> by Xavier Becerra. (Attachments: # <u>1</u> Memo of Points and Authorities in Support of Motion to Stay Proceedings Pending Appeal, # <u>2</u> Proposed Order, # <u>3</u> Proof of Service)(Gordon, Alexandra) (knb). (Entered: 08/07/2017)
08/28/2017	<u>40</u>	RESPONSE in Opposition re <u>39</u> MOTION to Stay <i>Proceedings Pending Appeal</i> filed by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (knb). (Entered: 08/28/2017)
08/29/2017	41	Minute Order issued by the Honorable Roger T. Benitez: Submitting <u>39</u> MOTION to Stay <i>Proceedings Pending Appeal</i> . Court to issue written Order. Motion Hearing date of 9/11/2017 10:30AM is hereby vacated. (no document attached) (gxr) (Entered: 08/29/2017)
09/05/2017	<u>42</u>	REPLY to Response to Motion re <u>39</u> MOTION to Stay <i>Proceedings Pending Appeal</i> filed by Xavier Becerra. (Gordon, Alexandra) (knb). (Entered: 09/05/2017)
09/07/2017	<u>43</u>	ORDER of USCA as to <u>32</u> Notice of Appeal to 9th Circuit, filed by Xavier Becerra. Appellant's unopposed motion for a second extension of time to file the opening brief is granted. Briefing schedule issued. (akr) (Entered: 09/07/2017)
10/10/2017	<u>44</u>	ORDER Denying <u>39</u> Motion to Stay Proceedings. Signed by Judge Roger T. Benitez on 10/10/2017. (knb) (Entered: 10/10/2017)
12/01/2017	<u>45</u>	Joint MOTION for Extension of Time to File <i>Motions for Summary Judgment</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell. (Attachments: # <u>1</u> Proof of Service)(Barvir, Anna) (anh). (Entered: 12/01/2017)
12/05/2017	<u>46</u>	ORDER granting <u>45</u> Motion for Extension of Time to File <i>Motions for Summary Judgment</i> . Signed by Magistrate Judge Jill L. Burkhardt on 12/5/2017. (anh) (Entered: 12/06/2017)
12/28/2017	<u>47</u>	MOTION to Dismiss Party <i>Plaintiff Richard Lewis</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (anh). (Entered: 12/28/2017)
01/09/2018	<u>48</u>	ORDER granting <u>47</u> Plaintiffs' Unopposed Motion For Dismissal of Plaintiff Richard Lewis. Richard Lewis terminated. Signed by Judge Roger T. Benitez on 1/9/2018. (anh) (Entered: 01/09/2018)
03/02/2018	<u>49</u>	Joint MOTION to Adopt Stipulated Briefing Schedule for <i>Plaintiffs' Motion for Summary Judgment</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna)(anh). (Entered: 03/02/2018)
03/05/2018	<u>50</u>	MOTION for Summary Judgment by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Attachments: # <u>1</u> Memo of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment, # <u>2</u> Request for Judicial Notice in Support of Plaintiffs' Motion for Summary Judgment, # <u>3</u> Declaration of Virginia Duncan in Support of Plaintiffs' Motion for Summary Judgment, # <u>4</u> Declaration of David

ER001972



Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 8 of 12

		Marguglio in Support of Plaintiffs' Motion for Summary Judgment, # <u>5</u> Declaration of Patrick Lovette in Support of Plaintiffs' Motion for Summary Judgment, # <u>6</u> Declaration of Christopher Waddell in Support of Plaintiffs' Motion for Summary Judgment, # <u>7</u> Declaration of Richard Francis Travis in Support of Plaintiffs' Motion for Summary Judgment, # <u>8</u> Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Summary Judgment; Exhibits 1–5, # <u>9</u> Exhibit 6–9 to the Declaration of Anna M. Barvir, # <u>10</u> Exhibit 10–19 to the Declaration of Anna M. Barvir, # <u>11</u> Exhibit 20–26 to the Declaration of Anna M. Barvir, # <u>12</u> Exhibit 27–30 to the Declaration of Anna M. Barvir, # <u>13</u> Exhibit 31–32 to the Declaration of Anna M. Barvir, # <u>14</u> Exhibit 33–42 to the Declaration of Anna M. Barvir, # <u>15</u> Exhibit 43–51 to the Declaration of Anna M. Barvir, # <u>16</u> Exhibit 52 Part 1 of 2 to the Declaration of Anna M. Barvir, # <u>17</u> Exhibit 52 Part 2 of 2 to Exhibit 55 to the Declaration of Anna M. Barvir, # <u>18</u> Exhibit 56–68 to the Declaration of Anna M. Barvir, # <u>19</u> Proof of Service)(Barvir, Anna) (anh). (Entered: 03/05/2018)
03/16/2018	<u>51</u>	NOTICE of Appearance by John Darrow Echeverria on behalf of Xavier Becerra (Echeverria, John)Attorney John Darrow Echeverria added to party Xavier Becerra(pty:dft) (anh). (Entered: 03/16/2018)
04/09/2018	<u>52</u>	Joint MOTION to Set Aside <i>Upcoming Pretrial Deadlines Pending Resolution of Plaintiffs' Motion for Summary Judgment</i> by Xavier Becerra. (Attachments: # <u>1</u> Proof of Service)(O'Brien, Anthony) (anh). (Entered: 04/09/2018)
04/09/2018	<u>53</u>	RESPONSE in Opposition re <u>50</u> MOTION for Summary Judgment <i>or, Alternatively, Partial Summary Judgment</i> filed by Xavier Becerra. (Attachments: # <u>1</u> Request for Judicial Notice in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment; Declaration of John D. Echeverria, # <u>2</u> Declaration of Blake Graham in Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>3</u> Declaration of Ken James in Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>4</u> Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment; Exhibits 1–3, # <u>5</u> Exhibit 4–6 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>6</u> Exhibit 7–11 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>7</u> Exhibit 12–15 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>8</u> Exhibit 16–19 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>9</u> Exhibit 20–23 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>10</u> Exhibit 24–28 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>11</u> Exhibit 29–33 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>12</u> Exhibit 34–43 to the Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, # <u>13</u> Notice of Defendant's Objections to Evidence Filed in Support of Plaintiffs' Motion for Summary Judgment, # <u>14</u> Proof of Service)(Echeverria, John) (anh). (Entered: 04/09/2018)
04/16/2018	<u>54</u>	MOTION for Leave to File <i>/Participate as Amicus Curiae</i> by Everytown for Gun Safety. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Proposed Order, # <u>3</u> Proposed Amicus Brief)(Potischman, Neal) QC Mailer Sent Re: Proposed Order (anh). (Entered: 04/16/2018)
04/18/2018	<u>55</u>	ORDER granting <u>54</u> Motion of Everytown for Gun Safety for Leave to Participate As Amicus Curiae. Signed by Judge Roger T. Benitez on 4/18/2018. (anh) (Entered: 04/18/2018)
04/18/2018	<u>56</u>	Brief of Amicus Curiae Everytown For Gun Safety in Support of <u>53</u> Defendant's Opposition to Plaintiffs' Motion for Summary judgment or, Alternatively, Partial

Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 9 of 12

		Summary Judgment by Movant Everytown for Gun Safety. (anh) (Entered: 04/18/2018)
04/23/2018	<u>57</u>	REPLY – Other re <u>53</u> Response in Opposition to Motion,,,,,,,,, filed by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Attachments: # <u>1</u> Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary Judgment; Exhibits 87–88, # <u>2</u> Supplement Objections to Evidence Filed in Support of Defendant's Opposition to Motion for Summary Judgment)(Barvir, Anna) (anh). (Entered: 04/23/2018)
04/24/2018	<u>58</u>	Minute Order by Judge Roger T. Benitez: Resetting Hearing date re <u>50</u> MOTION for Summary Judgment . Motion Hearing set for 4/30/2018 is vacated and reset for 5/10/2018 10:00 AM before Judge Roger T. Benitez.(no document attached) (jak) (Entered: 04/24/2018)
04/24/2018	<u>59</u>	Amended Scheduling ORDER; denying <u>52</u> Motion to Set Aside. Final Pretrial Conference set for 9/10/2018 10:30 AM before Judge Roger T. Benitez. Memorandum of Contentions of Fact and Law due by 8/3/2018. Proposed Pretrial Order due by 8/31/2018. Signed by Magistrate Judge Jill L. Burkhardt on 4/24/2018. (anh) (Entered: 04/24/2018)
05/10/2018	<u>60</u>	Minute Entry for proceedings held before Judge Roger T. Benitez: Motion Hearing held on 5/10/2018 re <u>50</u> MOTION for Summary Judgment filed by Virginia Duncan, Patrick Lovette, David Marguglio, California Rifle & Pistol Association, Incorporated, Christopher Waddell. Post–hearing 25–page briefs due to the Court within 30 days from today's hearing. Response briefs due to the Court within 10 days thereafter. (Court Reporter/ECR Juliet Eichenlaub). (Plaintiff Attorney Clint B. Monfort, Anna M. Barvir). (Defendant Attorney John Darrow Echeverria). (no document attached) (gxr) (Entered: 05/11/2018)
05/22/2018	<u>61</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT (Motion Hearing) held on 5/10/2018, before Judge Roger T. Benitez. Court Reporter/Transcriber: Juliet Y. Eichenlaub. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E–File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 6/12/2018. Redacted Transcript Deadline set for 6/22/2018. Release of Transcript Restriction set for 8/20/2018. (akr) (Entered: 05/22/2018)
06/11/2018	<u>62</u>	RESPONSE in Opposition re <u>50</u> MOTION for Summary Judgment filed by Xavier Becerra. (Echeverria, John) (anh). (Entered: 06/11/2018)
06/11/2018	<u>63</u>	RESPONSE in Support re <u>50</u> MOTION for Summary Judgment filed by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Attachments: # <u>1</u> Declaration of Anna M. Barvir)(Barvir, Anna) (anh). (Entered: 06/11/2018)
06/21/2018	<u>64</u>	RESPONSE in Opposition re <u>50</u> MOTION for Summary Judgment filed by Xavier Becerra. (Echeverria, John) (anh). (Entered: 06/21/2018)
06/21/2018	<u>65</u>	REPLY – Other re <u>62</u> Response in Opposition to Motion <i>for Summary Judgment</i> filed by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (anh). (Entered: 06/21/2018)
07/24/2018	<u>66</u>	Joint MOTION to Amend/Correct <u>59</u> Order on Motion to Set Aside, <i>Scheduling Order</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) M (anh). (Entered: 07/24/2018)
07/26/2018	<u>67</u>	NOTICE of Supplemental Authority re: <i>Young v. State of Hawaii</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell (Barvir, Anna) (anh). (Entered: 07/26/2018)

ER001974

Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 10 of 12

07/27/2018	<u>68</u>	ORDER granting <u>66</u> Joint Motion of the Parties to Amend Scheduling Order Memorandum of Contentions of Fact and Law due by 9/7/2018. Proposed Pretrial Order due by 10/5/2018. Final Pretrial Conference set for 10/16/2018 10:30 AM before Judge Roger T. Benitez. Signed by Magistrate Judge Jill L. Burkhardt on 7/27/2018. (anh) (Entered: 07/27/2018)
08/06/2018	<u>69</u>	NOTICE of Supplemental Authority by Xavier Becerra (Echeverria, John) (anh). (Entered: 08/06/2018)
08/22/2018	<u>70</u>	ORDER of USCA as to <u>32</u> Notice of Appeal to 9th Circuit, filed by Xavier Becerra. A judge of the USCA has called for a vote to determine whether this case will be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a). Within 21 days of the filed date of this order, the parties shall file simultaneous briefs addressing their respective positions on whether this case should be reheard en banc. Instructions issued. (akr) (Entered: 08/22/2018)
08/23/2018	<u>71</u>	Joint MOTION to Amend/Correct <u>68</u> Order on Motion to Amend/Correct, <i>Scheduling Order</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (anh). (Entered: 08/23/2018)
08/27/2018	<u>72</u>	ORDER Granting <u>71</u> Joint Motion And Issuing Third Amended Scheduling Order. Memorandum of Contentions of Fact and Law due by September 7, 2018 is reset for October 5, 2018. Proposed Pretrial Order due by October 5, 2018 is reset for November 2, 2018. Final Pretrial Conference scheduled for October 16, 2018 is reset for Tuesday, November 13, 2018 at 10:30 AM before Judge Roger T. Benitez. Signed by Magistrate Judge Jill L. Burkhardt on 8/27/2018. (sjm) (Entered: 08/27/2018)
09/25/2018	<u>73</u>	Joint MOTION to Amend/Correct <u>72</u> Order on Motion to Amend/Correct, <i>Scheduling Order</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (anh). (Entered: 09/25/2018)
09/28/2018	<u>74</u>	ORDER granting Joint Motion and Issuing Fourth Amended Scheduling Order [ECF Nos. <u>72</u> , <u>73</u> ] Memorandum of Contentions of Fact and Law due by 11/9/2018. Proposed Pretrial Order due by 12/7/2018. Final Pretrial Conference set for 12/18/2018 10:30 AM before Judge Roger T. Benitez.. Signed by Magistrate Judge Jill L. Burkhardt on 9/28/2018. (anh) (Entered: 09/28/2018)
10/26/2018	<u>75</u>	***RECALLED AS ISSUED IN ERROR PER <u>77</u> ORDER OF USCA***: MANDATE of USCA affirming the decision of the USDC as to <u>32</u> Notice of Appeal to the 9th Circuit filed by Xavier Becerra. (akr). (Modified on 10/26/2018: This Mandate has been recalled by the USCA.) (akr). (Entered: 10/26/2018)
10/26/2018	<u>76</u>	NOTICE of Supplemental Authority by Xavier Becerra (Echeverria, John) (anh). (Entered: 10/26/2018)
10/26/2018	<u>77</u>	ORDER of USCA as to <u>32</u> Notice of Appeal to 9th Circuit, filed by Xavier Becerra. The mandate issued on October 24, 2018 is recalled as issued in error. (akr) (Entered: 10/26/2018)
10/30/2018	<u>78</u>	Joint MOTION to Amend/Correct <u>74</u> Order on Motion to Amend/Correct, <i>Scheduling Order</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (rmc). (Entered: 10/30/2018)
10/31/2018	<u>79</u>	ORDER of USCA as to <u>32</u> Notice of Appeal to 9th Circuit filed by Xavier Becerra. A judge requested a vote on whether to rehear this case en banc pursuant to Federal Rule of Appellate Procedure 35(a). After reviewing the supplemental briefing submitted by the parties, the request has been withdrawn. The mandate shall issue forthwith. (akr) (Entered: 10/31/2018)
11/01/2018	<u>80</u>	MANDATE of USCA affirming the decision of the USDC as to <u>32</u> Notice of Appeal to the 9th Circuit filed by Xavier Becerra. (akr) (Entered: 11/01/2018)
11/06/2018	<u>81</u>	ORDER Granting Joint Motion and Issuing Fifth Amended Scheduling Order [ECF Nos. <u>74</u> , <u>78</u> ]. Signed by Magistrate Judge Jill L. Burkhardt on 11/6/2018. (anh) (Entered: 11/06/2018)

ER001975



Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 11 of 12

11/27/2018	<u>82</u>	NOTICE of Supplemental Authority by Xavier Becerra (Echeverria, John) (anh). (Entered: 11/27/2018)
12/11/2018	<u>83</u>	NOTICE of Supplemental Authority by Xavier Becerra (Echeverria, John) (anh). (Entered: 12/11/2018)
02/01/2019	<u>84</u>	Joint MOTION to Amend/Correct <u>81</u> Order on Motion to Amend/Correct <i>Scheduling Order</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (anh). (Entered: 02/01/2019)
02/12/2019	<u>85</u>	ORDER Granting Joint Motion and Issuing Sixth Amended Scheduling Order [ECF Nos. <u>81</u> , <u>84</u> ]. Signed by Magistrate Judge Jill L. Burkhardt on 2/12/2019. (anh) (Entered: 02/12/2019)
02/13/2019	<u>86</u>	NOTICE of Filing Amicus Brief in <i>Wiese v. Becerra</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell (Barvir, Anna) (rmc). (Entered: 02/13/2019)
03/29/2019	<u>87</u>	ORDER Granting <u>50</u> Plaintiffs' Motion for Summary Judgment, Declaring California Penal Code § 32310 Unconstitutional and Enjoining Enforcement. Plaintiffs' motion for summary judgment is granted. California Penal Code § 32310 is hereby declared to be unconstitutional in its entirety and shall be enjoined. Defendant Attorney General Xavier Becerra, and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him, and those duly sworn state peace officers and federal law enforcement officers who gain knowledge of this injunction order, or know of the existence of this injunction order, are enjoined from enforcing California Penal Code section 32310. Defendant Becerra shall provide, by personal service or otherwise, actual notice of this order to all law enforcement personnel who are responsible for implementing or enforcing the enjoined statute. The government shall file a declaration establishing proof of such notice. Signed by Judge Roger T. Benitez on 3/29/2019. (aef) (Entered: 03/29/2019)
03/29/2019	<u>88</u>	CLERK'S JUDGMENT. IT IS SO ORDERED AND ADJUDGED Plaintiffs' motion for summary judgment is granted. California Penal Code § 32310 is hereby declared to be unconstitutional in its entirety and shall be enjoined. Defendant Attorney General Xavier Becerra, and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him, and those duly sworn state peace officers and federal law enforcement officers who gain knowledge of this injunction order, or know of the existence of this injunction order, are enjoined from enforcing California Penal Code section 32310. Defendant Becerra shall provide, by personal service or otherwise, actual notice of this order to all law enforcement personnel who are responsible for implementing or enforcing the enjoined statute. The government shall file a declaration establishing proof of such notice.(aef) (Entered: 03/29/2019)
04/01/2019	<u>89</u>	Ex Parte MOTION to Stay re <u>88</u> Clerk's Judgment,,, <i>Pending Appeal</i> by Xavier Becerra. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Declaration, # <u>3</u> Proof of Service)(Echeverria, John) (anh). (Entered: 04/01/2019)
04/02/2019	<u>90</u>	**DOCUMENT WITHDRAWN PER DOC. NO. <u>92</u> ** RESPONSE in Opposition re <u>89</u> Ex Parte MOTION to Stay re <u>88</u> Clerk's Judgment,,, <i>Pending Appeal</i> filed by Virginia Duncan. (Barvir, Anna) (anh). QC EMail Sent re: Missing signatures (anh). (anh). (Entered: 04/02/2019)
04/02/2019	<u>91</u>	RESPONSE in Support re <u>89</u> Ex Parte MOTION to Stay re <u>88</u> Clerk's Judgment,,, <i>Pending Appeal</i> filed by Xavier Becerra. (Echeverria, John) (anh). (Entered: 04/02/2019)
04/03/2019	<u>92</u>	NOTICE of Withdrawal of Document Number <u>90</u> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell re <u>90</u> Response in Opposition to Motion (Barvir, Anna) (anh). (Entered: 04/03/2019)
04/03/2019	<u>93</u>	RESPONSE in Opposition re <u>89</u> Ex Parte MOTION to Stay re <u>88</u> Clerk's Judgment,,, <i>Pending Appeal</i> filed by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (anh). (Entered: 04/03/2019)

Case: 3:17-cv-01017-BEN-JLB As of: 05/22/2019 09:28 AM PDT 12 of 12

04/03/2019	<u>94</u>	RESPONSE in Opposition re <u>89</u> Ex Parte MOTION to Stay re <u>88</u> Clerk's Judgment,,, <i>Pending Appeal</i> filed by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Attachments: # <u>1</u> Declaration of Anna M. Barvir, # <u>2</u> Declaration of Charles David Wylie, Jr.)(Barvir, Anna) (anh). (Entered: 04/03/2019)
04/04/2019	<u>95</u>	RESPONSE in Support re <u>89</u> Ex Parte MOTION to Stay re <u>88</u> Clerk's Judgment,,, <i>Pending Appeal</i> filed by Xavier Becerra. (Echeverria, John) (jms). (Entered: 04/04/2019)
04/04/2019	<u>96</u>	NOTICE OF APPEAL to the 9th Circuit as to <u>87</u> Order, <u>88</u> Clerk's Judgment, by Xavier Becerra. (Filing fee \$ 505 receipt number 0974-12373646.) (Notice of Appeal electronically transmitted to US Court of Appeals.) (Echeverria, John). (Modified on 4/4/2019: Edited docket text re linked Order.) (akr). (Entered: 04/04/2019)
04/04/2019	<u>97</u>	ORDER Staying In Part Judgment Pending Appeal. Signed by Judge Roger T. Benitez on 4/4/2019. (anh) (Entered: 04/04/2019)
04/04/2019	<u>98</u>	USCA Case Number 19-55376 for <u>96</u> Notice of Appeal to the 9th Circuit filed by Xavier Becerra. (akr) (Entered: 04/05/2019)
04/04/2019	<u>99</u>	USCA Time Schedule Order as to <u>96</u> Notice of Appeal to the 9th Circuit filed by Xavier Becerra. (NOTICE TO PARTIES of deadlines regarding appellate transcripts: Appellant shall file transcript designation and ordering form with the US District Court (see attached), provide a copy of the form to the court reporter, and make payment arrangements with the court reporter on or by 5/6/2019 (see Ninth Circuit Rule 10-3.1); Due date for filing of transcripts in US District Court is 6/3/2019.) (cc: Court Reporter). (Attachments: # <u>1</u> Transcript Designation and Ordering Form). (akr) (Entered: 04/05/2019)
04/12/2019	<u>100</u>	Joint MOTION to Stay <i>Litigation of Attorneys' Fees and Costs Pending Appeal</i> by California Rifle & Pistol Association, Incorporated, Virginia Duncan, Patrick Lovette, David Marguglio, Christopher Waddell. (Barvir, Anna) (anh). (Entered: 04/12/2019)
04/18/2019	<u>101</u>	ORDER Granting Joint Motion to Stay Litigation of Attorneys' Fees and Costs Pending Appeal. Signed by Judge Roger T. Benitez on 4/16/2019. (anh) (Entered: 04/18/2019)
04/25/2019	<u>102</u>	DECLARATION re <u>88</u> Clerk's Judgment,,, by Defendant Xavier Becerra. (Echeverria, John) (anh). (Entered: 04/25/2019)

## CERTIFICATE OF SERVICE

Case Name: **Duncan, Virginia et al v. Xavier** No. **19-55376**  
**Becerra**

---

I hereby certify that on July 15, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### APPELLANT'S EXCERPTS OF RECORD VOLUME EIGHT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 15, 2019, at Los Angeles, California.

---

Beth L. Gratz  
Declarant

---

*s/ Beth L. Gratz*  
Signature

SA2019101514  
53574549.docx