

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 22-cv-1866**

BENJAMIN GATES,  
TRAVIS SWARTZ, and  
NATIONAL FOUNDATION FOR GUN RIGHTS, INC.

Plaintiffs,

v.

JARED S. POLIS, in his official capacity as Governor of the State of Colorado

Defendant.

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**COMPLAINT**

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Plaintiffs Benjamin Gates (“Gates”), Travis Swartz (“Swartz”) and National Foundation for Gun Rights, Inc. (“NFGR”) submit the following Complaint against Defendant Jared S. Polis.

**I. PARTIES**

1. C.R.S. § 18-12-301 *et seq.* shall be referred to herein as the “Magazine Ban.” Plaintiffs Gates and Swartz are residents of the State of Colorado (the “State”) and are law-abiding citizens of the United States. Gates and Swartz each currently own magazines capable of holding more than 15 rounds of ammunition, which they have possessed lawfully since before July 1, 2013. Gates and Swartz each seek to (1) acquire putatively banned magazines to replace the magazines he owed prior to July 1, 2013; (2) acquire additional putatively banned magazines; and (3) lawfully transfer his property to others. In particular, Gates and Swartz each wishes to give and/or devise banned magazines to his family members, which is prohibited

by the Magazine Ban. But for the State's restrictions on commonly used arms, and their reasonable fear of criminal prosecution for violating these restrictions, Gates and Swartz would engage in these activities.

2. Plaintiff NFGR is a nonprofit membership and donor-supported organization qualified as tax-exempt under 26 U.S.C. § 501(c)(3). NFGR seeks to defend the right of all law-abiding individuals to keep and bear arms. NFGR has members who reside within the State. NFGR represents the interests of its members who reside in the State. Specifically, NFGR represents the interests of those who are affected by the Magazine Ban. In addition to their standing as citizens and taxpayers, those members' interests include their wish to exercise their constitutionally protected right to keep and bear arms without being subjected to criminal prosecution, and to continue to lawfully possess and/or transfer property that they lawfully obtained. But for the State's unlawful prohibition of commonly used arms and their reasonable fear of prosecution for violating these prohibitions, NFGR members would seek to bear arms in public and acquire, keep, possess and/or transfer lawful arms for self-defense and other lawful purposes. For purposes of this Complaint, the terms "Plaintiffs" is meant to include NFGR in its capacity as a representative of its members.

3. Defendant Jared S. Polis is the Governor of the State of Colorado. This action is brought against him in his official capacity.

4. Defendant is or will enforce the unconstitutional provisions of the Magazine Ban against Plaintiffs under color of state law within the meaning of 42 U.S.C. § 1983.

### **III. JURISDICTION AND VENUE**

5. The Court has original jurisdiction of this civil action under 28 U.S.C. § 1331, because the action arises under the Constitution and laws of the United States. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the deprivation, under color of the laws, ordinances, regulations, customs and usages of the State, of rights, privileges or immunities secured by the United States.

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys' fees is authorized by 42 U.S.C. § 1988.

7. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

#### **IV. GENERAL ALLEGATIONS**

8. The Second Amendment to the United States Constitution declares that "the right of the people to keep and bear arms shall not be infringed." U.S. CONST. amend. II; *see also D.C. v. Heller*, 554 U.S. 570 (2008) ("Heller"); *McDonald v. City of Chicago*, 561 U.S. 742 (2010) ("McDonald"); and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 2022 WL 2251305 (U.S. June 23, 2022) ("Bruen").

9. The right to keep and bear arms recognized in the Second Amendment is made applicable to the states by the Fourteenth Amendment. *McDonald, supra*.

10. This action challenges the constitutionality of the Magazine Ban. C.R.S. § 18-12-301(2) defines "large-capacity magazine" to mean 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. C.R.S. § 18-12-302(1) makes it a generally a

crime to sell, transfer, or possess in the State a “large-capacity magazine.” C.R.S. § 18-12-302(2) grandfathered magazines that were owned prior to July 1, 2013, but these magazines may not be transferred to any other person, including by gift or devise to members of a person’s own family. Therefore, even for grandfathered magazines the Magazine Ban operates as a rolling generational ban.

11. The Magazine Ban uses politically charged rhetoric to describe the arms it bans. The Magazine Ban’s characterization of these magazines as “large capacity” is a misnomer. Magazines capable of holding more than 15 rounds are standard capacity magazines. Plaintiffs refuse to adopt the State’s politically charged rhetoric in this Complaint. Therefore, for purposes of this Complaint, the term “Banned Magazine” shall have the same meaning as the term “large-capacity magazine” in C.R.S. § 18-12-301(2).

12. *Colorado Outfitters Ass’n v. Hickenlooper*, 24 F. Supp. 3d 1050 (D. Colo. 2014), *vacated and remanded*, 823 F.3d 537 (10th Cir. 2016), was a prior challenge to the Magazine Ban in which the State was a defendant.<sup>1</sup> In that case, the State stipulated as follows:

More than 300,000,000 firearms are lawfully owned in the United States. A significant percentage of firearms privately owned are semi-automatic, most of which utilize a detachable box magazine. Although the total number is not known, the number of lawfully owned semi-automatic firearms that utilize a detachable box magazine with a capacity greater than 15 rounds is in the tens of millions.

Exhibit B, Stipulated Facts Section to Proposed Final Pretrial Order filed in *Hickenlooper* on January 31, 2014 ¶ 10.

Although the total number of magazines of any size in the United States is not known, the number of large capacity magazines is in the tens of millions.

*Id.*, ¶ 25.

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<sup>1</sup> A suit against a state official in her official capacity is equivalent to a suit against the state. *Muscogee (Creek) Nation v. Oklahoma Tax Comm’n*, 611 F.3d 1222, 1229 (10th Cir. 2010).

Although the total number of magazines of any size in Colorado is not known, the number of large capacity magazines is in the millions.

*Id.*, ¶ 26.

13. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, 467 P.3d 314, was another case in which the State was a party. In that case, the State stipulated as follows:

In states without laws regulating magazine capacity, AR-15 platform rifles are usually sold at retail with a detachable box magazine capable of holding up to 30 rounds. In states without laws regulating magazine capacity, the majority of owners of AR-15 platform rifles use magazines with a capacity of 20 and/or 30 rounds.

Exhibit A, “Stipulations” attached to Proposed Trial Management Order, filed in *Rocky Mountain Gun Owners v. Polis* on April 4, 2017 ¶ 10.

Prior to the effective date of §18-12-301, *et seq.*, semi-automatic firearms equipped with detachable box magazines with a capacity greater than 15 rounds were frequently used in Colorado for multiple lawful purposes, including recreational target shooting, competition shooting, collecting, hunting, and were kept for home defense and defense outside the home.

*Id.*, ¶ 13.

Many full-sized 9mm semi-automatic pistols are sold at retail with magazines with capacities of greater than 15, such as the Glock 17. The Glock 17 is one of the most popular handguns sold in the United States and it is often used by law enforcement personnel.

*Id.*, ¶ 17.

Although the total number of magazines of any size in Colorado is not known, the number of magazines with a capacity greater than 15 rounds is in the millions.

*Id.*, ¶ 20.

Prior to the effective date of §18-12-301, *et seq.*, magazines with a capacity greater than 15 rounds were not unusual in Colorado.

*Id.*, ¶ 2.

Through December 2016 there were 41 prosecutions under §18-12-301, *et seq.*,

*Id.*, ¶ 29.

14. Law-abiding citizens own literally tens of millions of magazines such as the magazines made unlawful by the Magazine Ban. The Magazine Ban’s prohibition on the possession, sale, or other transfer of the Banned Magazines violates the Second Amendment.

15. There is an actual and present controversy between the parties. The Magazine Ban infringes on Plaintiffs’ right to keep and bear arms under the Second Amendment by generally prohibiting the possession of arms that are commonly possessed by millions of Americans for lawful purposes. Defendant denies these contentions. Plaintiffs desire a judicial declaration that the Magazine Ban, facially and/or as applied to them, violates their constitutional rights. Plaintiffs should not be forced to choose between risking criminal prosecution and exercising their constitutional rights. The risk of criminal prosecution on account of exercising a constitutionally protected right unlawfully chills the exercise of that right and thus violates the Constitution even if the criminal defendant ultimately prevails.

16. Plaintiffs are or will be injured by Defendants’ enforcement of the Magazine Ban insofar as those provisions violate Plaintiffs’ rights under the Second Amendment by precluding the possession, transfer and use of arms that are “typically possessed by law-abiding citizens for lawful purposes” nationwide. If not enjoined by this Court, Defendant will enforce the Magazine Ban in derogation of Plaintiffs’ constitutional rights. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages are indeterminate or unascertainable and, in any event, would not fully redress any harm suffered by Plaintiffs because they are unable to engage in constitutionally protected activity due to Defendant’s present or contemplated enforcement of these provisions.

**V. FIRST CLAIM FOR RELIEF**  
**Right to Keep and Bear Arms**  
**U.S. Const., amends. II and XIV**

17. Paragraphs 1-16 are realleged and incorporated by reference.
18. The Magazine Ban generally prohibits residents of the State, including Plaintiffs, from acquiring, keeping, possessing, and/or transferring arms protected by the Second Amendment. There are significant penalties for violations of the Magazine Ban.
19. These restrictions infringe on the right of the people of the State, including Plaintiffs, to keep and bear arms as guaranteed by the Second Amendment and made applicable to Colorado and its political subdivisions by the Fourteenth Amendment.
20. The Magazine Ban's prohibitions extend into Plaintiffs' homes, where Second Amendment protections are at their zenith.
21. Defendant cannot satisfy his burden of justifying these restrictions on the Second Amendment right of the People, including Plaintiffs, to bear, acquire, keep, possess, transfer, and use arms that are in common use by law-abiding adults throughout the United States for the core right of self-defense in the home and other lawful purposes.

**VI. PRAYER FOR RELIEF**

Plaintiffs pray that the Court:

22. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 that the Magazine Ban is unconstitutional on its face or as applied to the extent its prohibitions apply to law-abiding adults seeking to acquire, use, transfer, or possess arms that are in common use by the American public for lawful purposes;
23. Enter preliminary and permanent injunctive relief enjoining Defendant and his officers, agents, and employees from enforcing the Magazine Ban;

24. 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

25. Grant any such other and further relief as the Court may deem proper.

Respectfully submitted this 28<sup>th</sup> day of July 2022.

*/s/ Barry K. Arrington*

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<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO          1437 Bannock Street          Denver, Colorado 80523          Phone Number: (720) 865-8301</p> <p>Plaintiffs: Rocky Mountain Gun Owners, a Colorado nonprofit corporation, National Association for Gun Rights, Inc., a Virginia non-profit corporation, and John A. Sternberg</p> <p>Defendant: John W. Hickenlooper, in his official capacity as Governor of the State of Colorado</p>	<p><a href="#">DATE FILED: April 4, 2017 2:56 PM</a>  <a href="#">FILING ID: 72D2C71F637D5</a>  <a href="#">CASE NUMBER: 2013CV33879</a></p>
	<p>▲      COURT USE ONLY      ▲</p>
<p>Case Number: 2013CV33879</p> <p>Division 203</p> <p><b>PROPOSED TRIAL MANAGEMENT ORDER</b></p>	

Pursuant to C.R.C.P. § 16(f), IT IS HEREBY ORDERED as follows:

**I. STATEMENT OF CLAIMS AND DEFENSES**

**A. Nature of the Case.**

This case involves Plaintiffs' challenge to certain provisions of C.R.S. § 18-12-301, *et seq.* pursuant to the Colorado Constitution.

**B. Plaintiffs' Claims**

Plaintiffs contend that certain provisions of C.R.S. § 18-12-301, *et seq.*, violate the guaranty of the right to keep and bear arms set forth in Article II, Section 13 of the Colorado Constitution.

**C. Defendant's Defenses**

Defendant contends that the conduct prohibited by C.R.S. § 18-12-301, *et seq.*, is not protected by Article II, Section 13 of the Colorado Constitution. To the extent that the conduct prohibited by C.R.S. § 18-12-301, *et seq.*, does implicate the protections set forth in Article II, Section 13 of the Colorado Constitution, the statute is a reasonable

exercise of the Colorado General Assembly's police power, and thus does not violate the constitutional guaranty of the right to keep and bear arms. The statute would also satisfy the intermediate scrutiny test that the federal circuits have adopted in analyzing similar restrictions under the Second Amendment.

## **II. STIPULATED FACTS.**

See Exhibit A.

## **III. PRETRIAL MOTIONS**

Defendant's March 17, 2017 Motion in Limine is pending.

## **IV. TRIAL BRIEFS**

The parties believe that there are controverted legal issues which they anticipate addressing in trial briefs. The deadline for trial briefs is April 17, 2017.

## **V. ITEMIZATION OF DAMAGES OR OTHER RELIEF SOUGHT**

Neither party seeks monetary damages. Plaintiffs seek injunctive relief against enforcement of the statute.

## **VI. IDENTIFICATION OF WITNESSES AND EXHIBITS – JUROR NOTEBOOKS**

A. Lay Witnesses. C.R.C.P. § 16(f)(3)(VI)(A). Plaintiffs' list of lay witnesses is attached as Exhibit B. Defendant's list of lay witnesses is attached as Exhibit C.

B. Exhibits. C.R.C.P. § 16(f)(3)(VI)(B). Plaintiffs' list of exhibits is attached as Exhibit D. Defendant's list of exhibits is attached as Exhibit E.

C. Expert Witnesses. C.R.C.P. § 16(f)(3)(VI)(A). Plaintiffs' list of expert witnesses is attached as Exhibit F. Defendant's list of expert witnesses is attached as Exhibit G.

D. Juror Notebooks. This matter will be tried to the Court and juror notebooks will not be submitted.

E. Presentation of Testimony. The parties anticipate all testimony will be presented by live witnesses.

## **VII. TRIAL EFFICIENCIES AND OTHER MATTERS**

Plaintiffs believe that because there will be several complex factual and legal matters implicated by the evidence at trial, written closings would be more efficient and effective than oral closings. Plaintiffs suggest that the parties submit simultaneous closing briefs and proposed findings of fact, conclusions of law and judgment 14 days after trial and short (no more than 10 pages) simultaneous rebuttal briefs 21 days after trial.

Defendant disagrees with Plaintiff's proposal. Defendant believes that closing argument would benefit the Court's determination of the issues raised in the case.

The parties believe this matter can be tried in five days. No party believes any issues should be tried separately. The parties confirm that they have considered ways in which the use of technology can simplify the case and make it more understandable.

This Trial Management Order shall control the subsequent course of the trial. Modification to or divergence from the Trial Management Order, whether prior to or during trial, shall be permitted upon a demonstration that the modification or divergence could not with reasonable diligence have been anticipated. In the event of any ambiguity in the Trial Management Order, the Court shall interpret the Order in the manner which best advances the interests of justice.

DATED this \_\_\_\_\_ day of April, 2017

BY THE COURT

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District Court Judge

APPROVED:

**Attorney for Plaintiffs**

**/s/ Barry K. Arrington**

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## **EXHIBIT A**

### **STIPULATIONS**

The parties stipulate to the following facts:

1. Firearms have been lawfully and privately owned in Colorado since before statehood in 1876 and at all times since.
2. Most handguns are either semi-automatic pistols or revolvers. No currently manufactured revolvers hold more than 15 rounds. There are also other less popular styles of handguns, such as derringers, and other handguns with a one or two shot capacity. In its data reporting, the ATF classifies these guns as “other” and excludes them from “pistols” and “revolvers,” and none currently manufactured has a capacity greater than 15 rounds.
3. Long guns are rifles or shotguns. Some shotguns are single shot and some are double-barreled, and neither of these types of shotguns has an ammunition capacity of greater than 15. Shotguns also come in pump action, lever action, bolt action, and semi-automatic models. Most shotguns have one or two fixed magazine tubes each of 28 inches or less, and are not affected by §18-12-301, *et seq.*, C.R.S. (2016) A few shotgun models have magazine tubes longer than 28 inches and a few others models use detachable box magazines which can store more than 8 rounds of ammunition. These latter two types of shotguns are subject to the restrictions in §18-12-301, *et seq.*
4. Rifles may be single shot, bolt action, lever action, pump action, or semi-automatic. There are numerous models of semi-automatic rifles, including those based on the popular AR-15 platform.
5. Some bolt action rifles use detachable box magazines of various sizes, but most hold fewer than 10 rounds. As with any detachable box magazine, such magazines may be of any size. Lever action rifles typically use tube magazines. Lever action rifles with tube magazines and rifles that are capable of operating only with .22 rimfire ammunition are exempt under §18-12-301, *et seq.*
6. In the United States, the number of lawfully owned semi-automatic firearms capable of using a detachable box magazine with a capacity greater than 15 rounds is in the tens of millions.
7. After July 1, 2013, thousands of models and variants of firearms with detachable box magazines remain available for lawful purchase and use for home defense in Colorado. With very few exceptions, every gun that was available before July 1, 2013, is compatible with magazines holding 15 or fewer rounds. Similarly, after July 1, 2013 many models and variants of magazines designed to hold 15 or fewer rounds remain available for lawful purchase and use for home defense in Colorado.

8. In 2011, AR-15 platform rifles accounted for approximately 18% of all rifles made in the United States for the domestic market. Many of these are used by law enforcement officers in the line of duty and many are used by private citizens. There are a large number of other models of semi-automatic rifles, including models from companies such as Ruger and Marlin, which use detachable box magazines and which have been lawfully purchased and used in the United States and Colorado.

9. All AR-15 platform rifles are semi-automatic and all utilize a detachable box magazine.

10. In states without laws regulating magazine capacity, AR-15 platform rifles are usually sold at retail with a detachable box magazine capable of holding up to 30 rounds. In states without laws regulating magazine capacity, the majority of owners of AR-15 platform rifles use magazines with a capacity of 20 and/or 30 rounds.

11. All AR-15 platform rifles are capable of accepting and functioning properly with magazines of 15 or fewer rounds. In Colorado, AR-15 platform rifles are sold at retail with detachable box magazines having capacities of 15 or fewer rounds.

12. §18-12-301, *et seq.* (2016), C.R.S., does not prevent a manufacturer from shipping to Colorado a semi-automatic rifle or pistol without any magazine, or with a magazine that complies with the statute.

13. Prior to the effective date of §18-12-301, *et seq.*, semi-automatic firearms equipped with detachable box magazines with a capacity greater than 15 rounds were frequently used in Colorado for multiple lawful purposes, including recreational target shooting, competition shooting, collecting, hunting, and were kept for home defense and defense outside the home.

14. Semi-automatic pistols and rifles cannot function as designed without a magazine.

15. Semi-automatic firearms are designed to discharge a bullet for each pull of the trigger, automatically extract and eject the spent cartridge case from the firing chamber, re-cock the firing mechanism, and load a new cartridge into the firing chamber so it can be fired again with another pull of the trigger.

16. Detachable magazines can be purchased independently of firearms, including for use with semi-automatic rifles and semi-automatic pistols.

17. Many full-sized 9mm semi-automatic pistols are sold at retail with magazines with capacities of greater than 15, such as the Glock 17. The Glock 17 is one of the most popular handguns sold in the United States and it is often used by law enforcement personnel. The Glock 17 is also sold with factory magazines with a capacity of ten rounds. Nine millimeter handguns come with a variety of magazine sizes, some of which

have a capacity of 15 or fewer rounds. Compacts and sub-compact handguns are sold at retail with magazines of 15 or fewer rounds.

18. Most semi-automatic pistols in calibers of .40 or larger are not sold at retail with magazines capable of holding more than 15 rounds. Many such magazines are compatible with extenders that add capacity so that the magazines, as extended, hold more than 15 rounds.

19. No semi-automatic pistols in calibers of .45 are sold at retail with magazines capable of holding more than 15 rounds.

20. Although the total number of magazines of any size in Colorado is not known, the number of magazines with a capacity greater than 15 rounds is in the millions. There are also millions of magazines in sizes of 15 rounds or less.

21. Prior to the effective date of §18-12-301, *et seq.*, magazines with a capacity greater than 15 rounds were not unusual in Colorado.

22. With a few exceptions, manufacturers of semi-automatic pistols that have standard magazines that hold more than 15 rounds also manufacture magazines with a capacity of 15 rounds or less. Aftermarket manufacturers also make and sell magazines with a capacity of 15 rounds or less. In the current market, for semi-automatic pistols and rifles for which the standard magazine is greater than 15 rounds and for which a substitute magazine is available, the substitute magazine's capacity is often 10 rounds. Fifteen round magazines also are commercially available for AR-15 platform rifles and some pistols.

23. Magazines with a capacity of 15 or fewer rounds are manufactured in the United States and are available for purchase in Colorado. Magazines with removable base pads or baseplates that hold 15 rounds or less are widely available for purchase in retail outlets throughout Colorado.

24. Many law enforcement agencies, including the Colorado State Patrol and the Federal Bureau of Investigation, issue handguns as duty weapons that have magazines containing 15 or fewer rounds. Some officers in these agencies are authorized to carry semi-automatic rifles with large capacity magazines in addition to the sidearm issued by their employers.

25. The distal end of a box magazine is referred to as a baseplate or a basepad. Metal baseplates (on box magazines) and end caps (on tube magazines) may be permanently affixed. Plastic baseplates (or basepads) are always removable. The vast majority of handgun magazines sold in the United States and Colorado feature a removable base plate or base pad.

26. Removable base pads, base plates, and end caps allow for cleaning, maintenance, repair and other functions, such as weighting the magazine.

27. A removable base pad, base plate, floor plate or end cap alone does not increase a magazine's capacity.

28. John A. Sternberg wishes to purchase and possess magazines with capacities of greater than 15 rounds to use for lawful purposes. Members of Rocky Mountain Gun Owners and the National Association for Gun Rights, Inc., wish to purchase and possess magazines with capacities of greater than 15 rounds to use for lawful purposes.

29. Through December 2016 there were 41 prosecutions under §18-12-301, *et seq.*, as outlined in Plaintiffs' Exhibit 1. There is no evidence known to plaintiffs that any person has been prosecuted on the basis of their possession of a magazine with a removable base pad where the magazine has a capacity of 15 rounds or less.

30. Twelve students and one teacher were killed at Columbine High School on April 20, 1999. Seven students were killed by shots coming from one of the assailant's shotguns; three students were killed by shots coming from a 9mm carbine equipped with 10-round magazines; two students were killed by shots coming from a 9mm "TEC9" equipped with magazines capacities of 28 or more rounds. The weapon that was employed to kill the teacher was not determined in the official report.

31. Twelve moviegoers were killed and 58 injured when a shooter opened fire in the Cinemark theater in Aurora, Colorado early in the morning of July 20, 2012. All were killed or injured by either shotgun fire or by semiautomatic rifle fire. The shooter fired six rounds from a shotgun. He then transitioned to a semiautomatic rifle. Using a 100-round drum magazine, the shooter fired 65 rounds at moviegoers from the semiautomatic rifle. The rifle jammed, and while the shooter was attempting to clear the malfunction and reload the rifle with a 30-round magazine, many people escaped from the theater. Apparently unable to clear the malfunction of the rifle, the shooter abandoned the rifle and transitioned to a .40 caliber handgun. Using the handgun, he fired an additional five rounds at fleeing moviegoers before exiting the theater.

32. On December 14, 2012, a shooter opened fire in an elementary school in Newtown, Connecticut, killing 20 children and six adults. Two adults were wounded but survived. The shooter used a semiautomatic rifle with 30-round magazines to kill or wound all the victims. He fired approximately 150 rounds with the rifle. Nine children escaped when the shooter paused to unjam or reload his rifle.

33. According to United States census records, in 1880 the total population of Colorado was 194,327; the population of Pueblo, Colorado was 3,217; and the population of Gunnison, Colorado was 888.

No party intends to concede the relevance of a fact by stipulating to it, and the parties reserve the right to object on relevance and other grounds.

#### **4. STIPULATIONS**

1. Firearms have been lawfully and privately owned in the United States since before the adoption of the Second Amendment to the United States Constitution, and at all times since.

2. Most firearm owners own more than one firearm. The full extent of private ownership is unknown, but half or more of all households claim that they do not own a firearm.

3. Since 2004, manufacturing of all types of handguns and rifles in the United States for sale to the non-military market has increased annually from approximately 2.35 million in 2004 to 5.49 million in 2011. In 2011, 224,000 rifles and handguns were exported, and 2.72 million were imported. Source: Bureau of Alcohol Tobacco, Firearms & Explosives, *Firearms Commerce in the United States, Annual Statistical Update 2013*, Exhibits 1-3.

4. The total number of handguns, rifles or shotguns in Colorado or the United States is not known.

5. There are hundreds of different firearm manufacturers, but the majority of firearms are produced by several dozen American and foreign manufacturers. There are thousands of different models of firearms, and often numerous variations of a given model. For example, the Ruger SR9 is a model of 9mm semi-automatic pistol that has at least four variants: 3301, 3309, 3312, 3321. The specifications on all four are the same, except the 3301 comes with a 17 round magazine in a brushed stainless finish; the 3309 comes with a 10 round magazine in a brushed stainless finish; the 3312 comes with a 10

round magazine in a black nitride finish; the 3321 comes with a 17 round magazine in a black nitride finish.

6. Handguns predominantly include semi-automatic pistols and revolvers. No currently-manufactured revolvers hold more than 15 rounds. There are also other less popular styles of handguns, such as derringers, and other handguns with a one or two shot capacity. In its data reporting, the ATF classifies these guns as “other” and excludes them from “pistols” and “revolvers,” and none currently manufactured has a capacity greater than 15 rounds.

7. Long guns are rifles or shotguns. Some shotguns are single shot and some are double-barreled. Neither has an ammunition capacity of greater than 15. Some shotguns are pump action, lever action, bolt action, or semi-automatic. Most shotguns have one or two fixed magazine tubes each of 28 inches or less, and are not affected by HB 1224. A few shotgun models have magazine tubes longer than 28 inches and a few others models use detachable box magazines which can store more than 8 rounds of ammunition. These latter two types of shotguns are subject to the restrictions in HB 1224.

8. Rifles may be single shot, bolt action, lever action, pump action, or semi-automatic. There are numerous models of semi-automatic rifles, including those based on the popular AR-15 platform.

9. Bolt action rifles do not use magazine tubes that hold more than 15 rounds. Some bolt action rifles use detachable box magazines of various sizes, but most hold less than 10 rounds. As with any detachable box magazine, such magazines may be of any size. Lever action rifles typically use tube magazines. Lever action rifles with tube

magazines are exempt from HB 1224. Additionally, rifles with tube magazines that can hold more than 15 rounds and that use .22 rimfire ammunition are exempt under HB 1224

10. More than 300,000,000 firearms are lawfully owned in the United States.

A significant percentage of firearms privately owned are semi-automatic, most of which utilize a detachable box magazine. Although the total number is not known, the number of lawfully owned semi-automatic firearms that utilize a detachable box magazine with a capacity greater than 15 rounds is in the tens of millions.

11. After July 1, 2013, thousands of models and variants of firearms with detachable box magazines remain available for lawful purchase and use for home defense in Colorado. With very few exceptions, every gun that was available before July 1, 2013, is compatible with magazines holding 15 or fewer rounds. Similarly, after July 1, 2013 many models and variants of magazines designed to hold 15 or fewer rounds remain available for lawful purchase and use for home defense in Colorado.

12. Several million AR-15 platform rifles have been lawfully purchased in the United States and are used for lawful purposes. In 2011, AR-15 platform rifles accounted for approximately 18% of all rifles made in the United States for the domestic market. Many of these are used by law enforcement officers in the line of duty and many are used by private citizens. There are a large number of other models of semi-automatic rifles, including from companies such as Ruger and Marlin, which use detachable box magazines and which have been lawfully purchased and used in the United States and Colorado. An unknown number of AR-15 platform and other semi-automatic rifles have been transferred or obtained unlawfully or used for unlawful purposes.

13. The number of AR-15 platform or other semi-automatic rifles in Colorado is not known. The number of AR-15 platform or other semi-automatic rifles in Colorado equipped with magazines of more than 15 rounds is not known, but is less than the total.

14. All AR-15 platform rifles are semi-automatic and all utilize a detachable box magazine.

15. In states without laws regulating magazine capacity, AR-15 platform rifles are usually sold at retail with a detachable box magazine capable of holding up to 30 rounds. In states without laws regulating magazine capacity, the majority of owners of AR-15 platform rifles use magazines with a capacity of 20 and/or 30 rounds.

16. All AR-15 platform rifles are capable of accepting and functioning properly with magazines of 15 or fewer rounds.

17. In 2011, the most recent year for which data is available, more than 2.5 million pistols were manufactured nationally; more than 500,000 revolvers were manufactured nationally.

18. HB 1224 does not prevent a manufacturer from shipping to Colorado a semi-automatic rifle or pistol without any magazine, or with a magazine that complies with HB 1224.

19. Semi-automatic firearms equipped with detachable box magazines with a capacity greater than 15 rounds are used for multiple lawful purposes, including recreational target shooting, competition shooting, collecting, hunting, and are kept for home defense and defense outside the home.

20. Semi-automatic pistols and rifles cannot function as designed without a magazine. Semi-automatic firearms are designed to discharge a bullet for each pull of the

trigger, automatically extract and eject the spent cartridge case from the firing chamber, re-cock the firing mechanism, and load a new cartridge into the firing chamber so it can be fired again with another pull of the trigger.

21. Detachable magazines can be purchased independently of firearms, including for use with semi-automatic rifles and semi-automatic pistols. The most widely utilized firearm magazine is a detachable box magazine. Detachable box magazines come in a wide variety of capacities.

22. Many full-sized 9mm semi-automatic pistols are sold at retail with magazines with capacities of greater than 15, for example the Glock 17, which is one of the most popular handguns sold in the United States. The Glock 17 is often used by law enforcement personnel. Nine millimeter handguns come with a variety of magazine sizes, including 15 or fewer rounds. Compacts and sub-compact handguns are sold at retail with magazines of 15 or fewer rounds.

23. Most semi-automatic pistols in calibers of .40 or larger are not sold at retail with magazines capable of holding more than 15 rounds. Some owners of such handguns use extenders which add 1, 2, or 3 rounds of capacity.

24. No semi-automatic pistols in calibers of .45 are sold at retail with magazines capable of holding more than 15 rounds.

25. Although the total number of magazines of any size in the United States is not known, the number of large capacity magazines is in the tens of millions. There are also tens of millions of magazines in sizes of 15 rounds or less.

26. Although the total number of magazines of any size in Colorado is not known, the number of large capacity magazines is in the millions. There are also millions of magazines in sizes of 15 rounds or less.

27. With some exceptions, manufacturers of semi-automatic pistols that have standard magazines that hold more than 15 rounds also manufacture magazines with a capacity of 15 rounds or less. Aftermarket manufacturers also make and sell magazines with a capacity of 15 rounds or less. In the current market, for semi-automatic pistols and rifles for which the standard magazine is greater than 15 rounds and for which a substitute magazine is available, the substitute magazine's capacity is often 10 rounds. Fifteen round magazines also are commercially available for AR-15 platform rifles and some pistols.

28. Magazines with a capacity of 15 or fewer rounds are manufactured in the United States and are available for purchase in Colorado.

29. Many law enforcement agencies, including the Colorado State Patrol and the Federal Bureau of Investigation, issue handguns as duty weapons that have magazines containing 15 or fewer rounds. Some officers in these agencies are authorized to carry semi-automatic rifles with large capacity magazines in addition to the sidearm issued by their employers.

30. Firearm magazines can become non-operational due to normal wear and tear or other damage. The lifespan of any firearm magazine cannot be known and varies based on materials, design, maintenance and use, as well as several other factors. As with any mechanical device, magazines can become non-functional over time. Depending upon use and maintenance, magazines may operate properly for decades or more.

31. Components such as limiters that can decrease the capacity of magazines are manufactured and are available for purchase in the United States.

32. There are magazines manufactured to accommodate no more than fifteen rounds of ammunition that can be converted to accept additional ammunition.

33. Base and floor plates (on box magazines) and end caps (on tube magazines) may be either removable or permanently affixed. However, most magazines contain removable base and floor plates or end caps.

34. Removable base and floor plates and end caps allow for cleaning and maintenance and repair.

35. A removable base or floor plate or end cap alone does not increase a magazine's capacity.

36. Magazines with removable base or floor plates or end caps may accept additional components, such as extensions, that increase capacity.

37. Components that can increase the capacity of magazines are manufactured in the United States.

38. After July 1, 2013, the following models of Magazines manufactured by Magpul may not be sold to individuals in Colorado: MAG557 – 30 rounds; MAG556 – 30 rounds; MAG570 – 30 rounds; MAG571 – 30 rounds; MAG560 – 20 rounds; MAG555 – 30 rounds; MAG291 – 20 rounds; MAG234 – 30 rounds; MAG241 – 30 rounds; MAG292 – 25 rounds.

39. Magpul has lost the revenue associated with the inability to sell the model magazines listed in No. 38 above to customers in Colorado after July 1, 2013.

40. Because Magpul principally sells to distributors, it does not know the precise number of magazines that it manufactures that are sold in Colorado and therefore cannot know the actual amount of lost sales revenue. Magpul also sells through direct Internet sales, and sold at least 500,000 magazines to Colorado residents in 2013 before the effective date of HB 1224. Sales in Colorado in 2013 were inflated by increased demand to purchase Magpul magazines prior to the effective date of HB 1224.

41. Magpul has more than \$100 million in total sales annually. Magpul had more than \$7.5 million in sales of magazines to Colorado alone in 2013. Magpul had a Colorado “spend” of \$46 million in 2012 and expected to have a Colorado spend of \$85 million during 2013.

42. Between 20% and 50% of Magpul total magazine sales are to government entities (International, Federal, and State) depending on numerous variables, such as troop deployments. For example, in 2010, Magpul entered a 4-year contract with the British Army to deliver 1,000,000 thirty-round magazines.

43. In 2013, Magpul sold more magazines in Colorado than in any prior year.

44. Colorado law enforcement officers and agencies may acquire and possess the Magpul magazines listed in No. 1 above. Pursuant to HB 1224, any Colorado FFL or distributor may still purchase the Magpul model magazines listed in No. 38 above to sell the magazines out of state or in any other manner permitted by law.

45. In December 2012, Magpul announced new magazines with a 10-cartridge capacity -- the MAG559 and MAG290. The magazines began shipping in April 2013.

Both models are sold direct to individuals in Colorado. Both models are manufactured with the same materials and are tested to be just as functional and reliable as Magpul magazines of higher capacity. The MAG559 and MAG290 are marketed by Magpul as being “Perfect for hunting applications, depending on local hunting laws, and also for states where overall capacity is limited.”

46. Magpul manufactures nearly 500 products for sale worldwide.
47. Magpul manufactures and sells dozens of products for AR styled semi-automatic firearms unaffected by HB1224, including stocks, slings, grips and sights.
48. Magpul manufactures magazine accessories – many designed to facilitate changing magazines of any size – including magazine couplers, magazine loops and speed plates.
49. Magpul manufactures and sells magazine limiters in all states in 5 and 10 round configurations.
50. To date, Magpul has not chosen to manufacture a 15 round magazine.
51. Magpul does not manufacture a product to extend any of its magazines to hold a larger capacity. Magpul does not manufacture a product designed to extend the capacity of any semi-automatic magazine made by any manufacturer.
52. All of Magpul’s magazines feature a removable baseplate. This design feature allows for ease of access to the magazine’s internal parts for cleaning and maintenance.
53. Magpul designs and manufactures high-quality magazines, many of which meet or exceed military grade standards.

54. Magpul has not modified its standard magazines in order to sell them into states that have enacted magazine capacity restrictions.

55. Magpul does not design its magazines or magazine components to function with other companies' accessories.

56. Magpul gave away thousands of magazines in Colorado in June 2013. Certain promotional magazines were manufactured with different imprinted logos, including "Boulder Airlift", "Free Colorado" and "1999 2013."

57. Since at least 2007, Magpul has manufactured all its magazines with a manufacturing date stamp.

58. Magpul is currently operating in Colorado. As reported in multiple outlets, Magpul plans to relocate operations outside of Colorado.

59. Between March 1 and June 30, 2013, Magpul gave Colorado residents priority in ordering magazines with 20- or 30-round capacity.

60. Magpul describes firearm magazines in its literature as follows: "We ask a lot from this little box, without which our firearms become far less useful. This 'simple' feeding device can easily be taken for granted...until it doesn't work."

61. Since July 1, 2013, Magpul has and will continue to sell or donate magazines to law enforcement agencies located in Colorado as well as law enforcement agencies in other states.

62. Richard Fitzpatrick, Doug Smith, Libardo Jimenez, Jessica Johnson, and Tara Heller are all current employees of Magpul.