

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

Civil Action No. 22-cv-2680-NYW-JPO

ROCKY MOUNTAIN GUN OWNERS,
NATIONAL ASSOCIATION FOR GUN RIGHTS,
CHARLES BRADLEY WALKER,
BRYAN LAFONTE,
GORDON MADONNA,
JAMES MICHAEL JONES, and
MARTIN CARTER KEHOE,

Plaintiffs,

v.

THE TOWN OF SUPERIOR,
CITY OF LOUISVILLE, COLORADO,
CITY OF BOULDER, COLORADO, and
BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFFS' "NOTICE OF STAY AND
SUPPLEMENTAL EXPERT DISCOVERY IN RELATED CASE"**

We are writing with respect to the filing by Plaintiffs yesterday entitled "Notice of Stay and Supplemental Expert Discovery in Related Case" (CM/ECF Dkt. No. 86). Plaintiffs' filing is not styled as a motion under the Court's rules (*see* Civil Practice Standards (NYW)), but if Your Honor construes it as a request either to stay the present case or to reopen expert discovery, Defendants respectfully oppose such relief.

Unlike the *Gates v. Polis* case pending before Judge Gallagher, Defendants in the case before Your Honor agreed to stay enforcement of the challenged ordinances, based on the assumption that the litigation would be carried out expeditiously. To that end, the parties have complied with all principal deadlines in the original scheduling order entered by the Court on

January 19, 2023, and cross-motions for summary judgment have been fully submitted since December 12, 2023. There is no good cause to reopen discovery at this late stage of the proceedings with summary judgment pending before the Court.

Moreover, Judge Gallagher reopened expert discovery in *Gates v. Polis* following a specific finding that the plaintiffs’ expert witness Mark Passamaneck was not “qualified to opine on the number of LCMs in circulation,” further noting that the Court has “serious concerns about [Passamaneck’s] methodology (if you could call it that).” *Gates v. Polis*, Case No. 1:22-cv-01866-GPG-JPO (D. Colo. Dec. 6, 2023) (CM/ECF Dkt. No. 109 at 5 n.3). In the case before Your Honor, even if the Court were to strike Passamaneck’s testimony, no supplemental expert would be necessary because—as discussed in Defendants’ summary judgment papers—Passamaneck’s testimony is irrelevant to the issues in this case. *See* Defs.’ Opp. to Plaintiffs’ Mot. for Summary Judgment (CM/ECF Dkt. No. 82 at 13–15).

Finally, the pendency in the U.S. Supreme Court of *United States v. Rahimi*, No. 22-915, and *Garland v. Cargill*, No. 22-976, should not hold up the case before Your Honor, as the issues in those cases are different, and multiple cases involving assault weapons and large capacity magazines are proceeding in the ordinary course across the country.

Dated: January 31, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2024, I served a true and complete copy of the foregoing **DEFENDANT’S RESPONSE TO PLAINTIFFS’ NOTICE OF STAY AND SUPPLEMENTAL EXPERT DISCOVERY IN RELATED CASE**, upon all parties herein by e-filing with the CM/ECF system maintained by the court and/or email, addressed as follows:

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