

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
TRENTON VICINAGE**

ASSOCIATION OF NEW JERSEY  
RIFLE & PISTOL CLUBS, INC.,  
BLAKE ELLMAN, and ALEXANDER  
DEMBOWSKI,

Plaintiffs,

v.

GURBIR GREWAL, in his official  
capacity as Attorney General of New  
Jersey, PATRICK J. CALLAHAN, in  
his official capacity as Superintendent  
of the New Jersey Division of State  
Police, THOMAS WILLIVER, in his  
official capacity as Chief of Police of  
the Chester Police Department, and  
JAMES B. O'CONNOR, in his official  
capacity as Chief of Police of the  
Lyndhurst Police Department,

Defendants.

Hon. Peter G. Sheridan, U.S.D.J.  
Hon. Lois H. Goodman, U.S.M.J.

Docket No. 3:18-cv-10507-PGS-LHG

**DECLARATION OF JOHN J.  
DONOHUE**

I, John J. Donohue, am competent to state, and declare the following, based on my personal knowledge:

1. I am a citizen of the United States and a resident of California.
2. I am over 21 years of age.

**BACKGROUND AND QUALIFICATIONS**

3. I am the C. Wendell and Edith M. Carlsmith Professor of Law at Stanford Law School. (A copy of my complete C.V. is attached as Exhibit A.) After

earning a law degree from Harvard and a Ph.D. in economics from Yale, I have been a member of the legal academy since 1986. I have previously held tenured positions as a chaired professor at both Yale Law School and Northwestern Law School. I have also been a visiting professor at a number of prominent law schools, including Harvard, Yale, the University of Chicago, Cornell, the University of Virginia, Oxford, Toon University (Tokyo), St. Gallens (Switzerland), and Renmin University (Beijing).

4. For a number of years I have been teaching at Stanford a course on empirical law and economics issues involving crime and criminal justice, and I have previously taught similar courses at Yale Law School, Tel Aviv University Law School, the Gerzensee Study Center in Switzerland, and St. Gallen University School of Law in Switzerland. Since gun crime is such an important aspect of American criminal justice, my courses evaluate both the nature of gun regulation in the United States and the impact of gun regulation (or the lack thereof) on crime, which is an important part of my research, about which I have published extensively (as reflected in my C.V.). I have also consistently taught courses on law and statistics for two decades.
5. I am a Research Associate of the National Bureau of Economic Research, and a member of the American Academy of Arts and Sciences. I was a

Fellow at the Center for Advanced Studies in Behavioral Sciences in 2000-2001, and served as the co-editor (handling empirical articles) of the *American Law and Economics Review* for six years. I have also served as the President of the American Law and Economics Association and as Co-President of the Society of Empirical Legal Studies.

6. I am also a member of the Committee on Law and Justice of the National Research Council (“NRC”), which “reviews, synthesizes, and proposes research related to crime, law enforcement, and the administration of justice, and provides an intellectual resource for federal agencies and private groups.” (See <http://www7.national-academies.org/claj/online> for more information about the NRC.)
7. I filed an expert declaration in each of two cases involving a National Rifle Association (“NRA”) challenge to city restrictions on the possession of large-capacity magazines: *Fyock v. City of Sunnyvale*, United States District Court (N.D. Cal.), January 2014; *Herrera v. San Francisco*, United States District Court (N.D. Cal.), January 2014.
8. I also filed an expert declaration in a case involving an NRA challenge to Maryland’s restrictions on assault weapons and large-capacity magazines: *Tardy v. O’Malley*, United States District Court (District of Maryland), February 2014.

9. In all these cases, the relevant gun regulations have (ultimately) been sustained in the relevant federal appellate courts.
10. I also filed (June 1, 2017) an expert declaration in a case involving a challenge to California's restrictions on carrying of weapons in public: *Flanagan v. Becerra*, United States District Court (C.D. Cal.), Case No. 2:16-cv-06164-JAK-AS. Finally, I filed expert declarations on June 4, 2017 and June 16, 2017 in two separate cases challenging California's ban on the possession of large-capacity magazines: *Duncan v. Becerra*, United States District Court (S.D. Cal.), Case No. 17-cv-1017-BEN-JLB. and *Weise v. Becerra*, United States District Court (E.D. Cal.), Case No. 2:17-cv-00903-WBS-KJN.

### SUMMARY OF CONCLUSIONS

11. It is a sound, evidence-based, and longstanding harm-reducing strategy virtually uniformly embraced throughout the developed world for governments to place constraints on the harm that weapons can inflict. Restrictions on the size of large-capacity magazines (LCMs) sit comfortably in this appropriate regulatory approach, and can be expected to reduce deaths and injury from gun violence.
12. A ban on LCMs would be expected to have little or no effect on the ability of individuals to possess weapons for self-defense in the home, but should

have a restraining impact on the effectiveness of those who have the criminal intent to kill as many individuals as possible. The LCM ban is thus well-tailored to limit the behavior of criminals engaging in the most dangerous forms of violent criminal behavior, and at the same time is likely to have little or no impact on the defensive capabilities of law-abiding citizens.

13. Over the last few decades, the number of households owning firearms has been declining, currently down to about 31 percent of Americans households. At the same time, the growth in gun purchases reflects the highly concentrated rate of ownership with 20 percent of gun owners now owning 60 percent of the nation's firearms. While there is far less evidence on ownership of large-capacity magazines, one would expect the ownership of such products to be at least as concentrated as gun ownership.

### **DISCUSSION**

#### **Gun Ownership Is Becoming More Concentrated In a Declining Portion of the Population**

14. A discussion of the social science literature concerning gun ownership rates must begin with the General Social Science Survey (GSS), which is an annual survey conducted by the National Opinion Research Center, headquartered at the University of Chicago. The GSS is widely regarded by social science researchers as the most reliable indicator of national social

trends, in part because of its professional implementation of face-to-face interviews using a very large sample size (the latest GSS data comes from 2,867 respondents versus roughly 1000 in a typical telephone survey) with a high response rate (always in excess of 70 percent versus telephone survey responses which have fallen below 10 percent in recent surveys). *See* Pew Research Center, "Assessing the Representativeness of Public Opinion Surveys," (May 15, 2012), *available at* <http://www.people-press.org/2012/05/15/assessing-the-representativeness-of-public-opinion-surveys/>.

15. GSS data from 2016, the most recent year that data is available, states that 30.8% of American households have at least one gun, and that 20.5% of adults personally own a gun. *See* Donohue & Rabbani, "Recent Trends in American Gun Prevalence," (attached as Exhibit B). A carefully executed 2015 national survey showed that 34% of households owned guns, and that ownership of private firearms is highly concentrated among a small percentage of gun owners.<sup>1</sup>

16. This is a considerable drop from the approximately 50% of United States households with one or more guns in the late 1970s, as reflected in GSS

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<sup>1</sup> Azrael et al., "The Stock and Flow of US Firearms: Results from the 2015 National Firearms Survey," (Russell Sage Foundation J. Soc. Sci., forthcoming 2018) (attached as Exhibit C).

surveys. *See* Donohue & Rabbani, *supra*. Other national surveys show similar results, such as research by the Pew Research Center and the National Behavioral Risk Factor Surveillance System, which both find a persistent decline in household gun ownership over the past several decades. A recent report from the Pew Research Center states:

The Pew Research Center has tracked gun ownership since 1993, and our surveys largely confirm the General Social Survey trend. In our December 1993 survey, 45% reported having a gun in their household; in early 1994, the GSS found 44% saying they had a gun in their home. A January 2013 Pew Research Center survey found 33% saying they had a gun, rifle or pistol in their home, as did 34% in the 2012 wave of the General Social Survey.<sup>2</sup>

17. The weight of the survey evidence on gun ownership conducted over time shows that the percentage of household with guns today is lower than it was two decades ago.<sup>3</sup>

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<sup>2</sup> Pew Research Center, "Section 3: Gun Ownership Trends and Demographics," *available at* <http://www.people-press.org/2013/03/12/section-3-gun-ownership-trends-and-demographics>.

<sup>3</sup> While the GSS in 2016 put the percentage of American households with guns at less than 31%, the most recent Gallup survey found that 39% of American adults live in a household that contains a gun, and 29% personally own one. There is no consensus about why Gallup's estimates are somewhat higher than those from the more reliable GSS (and Pew) surveys, but it should be noted that the Gallup polls are far smaller surveys based on less reliable telephone interviews with dramatically lower response rates than the GSS. In any event, even the Gallup

18. The evidence that gun ownership is concentrated is strong and uncontradicted. Researchers analyzing the results of a 2015 national survey found that 8% of individual gun owners reported owning ten or more firearms—collectively accounting for 39% of the American gun stock—and that the 20% of gun owners who owned the most guns collectively possessed about 60% of the nation's guns.<sup>4</sup> A decade earlier, researchers found a similar pattern: a 2004 survey indicated that 48% of gun owners possessed four or more guns and that the top 20% of firearms owners possessed 65% of all firearms.<sup>5</sup>

19. The FBI publishes records of the number of background checks requested, and such background checks are often initiated pursuant to a desired purchase of firearms. With only a couple of exceptions, the trend has been for the number of background checks conducted each year to grow every year.<sup>6</sup> Gun industry trade groups cite increased background checks and an

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results confirm the long-term decline in the proportion of American households owning firearms.

<sup>4</sup> See Azrael et al., *supra*.

<sup>5</sup> Hepburn et al., "The US Gun Stock: Results from the 2004 National Firearms Survey," *Injury Prevention* 2007;13:15-19.

<sup>6</sup> See National Instant Criminal Background Check System (NICS) Firearm Checks: Month/Year 2017, available at [https://www.fbi.gov/file-repository/nics\\_firearm\\_checks\\_-\\_month\\_year.pdf/view](https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf/view).



increase in collections of the federal excise taxes collected on the sale of firearms and ammunition as reflecting strong demand for firearms.<sup>7</sup>

20. Because reliable social science data shows that the number of households that own guns has likely dropped in recent decades, and certainly has not grown, it seems most likely that robust gun sales can be attributed not to increasingly broad gun ownership but instead largely to purchases of guns by members of households that previously owned guns.
21. While I am not aware of any current social science research providing an estimate for the number of American households that own large-capacity magazines or LCMs (defined as an ammunition feeding device with the capacity to hold more than 10 rounds of ammunition) or for the number of LCMs in private hands in America, we know that many American gun-owning households only possess handguns, shotguns, or rifles that do not accommodate LCMs.
22. Accordingly, the share of households containing a weapon with a large-capacity magazine will only be a subset of gun owners. This minority status of LCM ownership by household both reflects the judgment that most Americans and even more citizens of New Jersey do not consider LCMs to

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<sup>7</sup> See, e.g., NRA-ILA, "The Myth Of 'Declining' Gun Ownership" (July 13, 2016), available at <http://dailycaller.com/2016/07/13/the-myth-of-declining-gun-ownership/>.

be important to their self-defense, and would be consistent with a January 2013 New York Times/CBS News poll of 1,110 adults nationwide showing that nearly two-thirds of Americans favored a ban on large-capacity magazines.<sup>8</sup>

**The Problem of Mass Shootings in the U.S. Is Getting Worse**

23. Although the long-term secular trend in overall crime has been benign over the last 25 years, there has been a concurrent upward trend in mass shootings, from an average of 2.7 events per year in the 1980s to an average of 4.5 events per year from 2010 to 2013.<sup>9</sup>

24. Writing in May of this year, Louis Klarevas, an Associate Lecturer of Global Affairs at the University of Massachusetts–Boston, noted:

“Last week's school shooting in Texas marks a new milestone in American history. It's the first time we have ever experienced four gun massacres resulting in double-digit fatalities within a 12-month period.

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<sup>8</sup> Jennifer Steinhauer, "Pro-Gun Lawmakers Are Open to Limits on Size of Magazines," *N.Y. Times* (Feb. 18, 2013), available at <http://www.nytimes.com/2013/02/19/us/politics/lawmakers-look-at-ban-on-high-capacity-gun-magazines.html>.

<sup>9</sup> William J. Krouse & Daniel J. Richardson, Cong. Research Serv., R44126, "Mass Murder with Firearms: Incidents and Victims," 1999-2013, at 14-15 (2015), available at <http://fas.org/sgp/crs/misc/R44126.pdf>; Mark Follman, "Yes, Mass Shootings Are Occurring More Often," *Mother Jones* (Oct. 21, 2014), available at <http://www.motherjones.com/politics/2014/10/mass-shootings-rising-harvard>.

In October 2017, 58 were killed at a concert in Las Vegas. A month later, 26 were killed at a church in Sutherland Springs, Texas. Earlier this year, 17 people lost their lives at a high school in Parkland, Fl. And to this list we can now add the 10 people who lost their lives at a high school in Santa Fe, Texas.”<sup>10</sup>

25. While the total number of deaths in these mass shootings has been too small relative to the overall homicide rate to overcome the downward trend in murders, mass shootings are particularly high-visibility events that are quite shocking to the public and unsettling to the sense of public safety. Horrific mass shootings – such as those perpetrated by white supremacists at a church in Charleston<sup>11</sup> and at Umpqua Community College in Oregon,<sup>12</sup> and by ISIS sympathizers at Inland Regional Center in San Bernardino<sup>13</sup>

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<sup>10</sup> Louis Klarevas, "After the Santa Fe massacre, bury the 'good guy with a gun' myth: Armed staffers won't deter shooters or keep kids safe," *N.Y. Daily News* (May 22, 2018), available at <http://www.nydailynews.com/opinion/santa-fe-massacre-bury-good-guy-gun-myth-article-1.4003952>.

<sup>11</sup> Alan Blinder & Kevin Sack, "Dylann Roof Found Guilty in Charleston Church Massacre," *N.Y. Times* (Dec. 15, 2016), available at <http://www.nytimes.com/2016/12/15/us/dylann-roof-trial.html> (noting Roof killed nine members of a black church in Charleston in June 2015).

<sup>12</sup> Julie Turkewitz, "Oregon Gunman Smiled, Then Fired, Student Says," *N.Y. Times* (Oct. 9, 2015), available at <http://www.nytimes.com/2015/10/10/us/roseburg-oregon-shooting-christopher-harper-mercero.html> (noting eight students and a professor were killed in an attack in Oregon in October 2015).

<sup>13</sup> Christine Hauser, "San Bernardino Shooting: The Investigation So Far," *N.Y. Times* (Dec. 4, 2015), available at <http://www.nytimes.com/2015/12/05/us/san-bernardino-shooting.html>.

and at Pulse in Orlando<sup>14</sup> – although small in number compared to the total number of homicides, have generated widespread apprehension and increased demand for effective responses from government.

26. In addition to the well-documented overall increase in mass public shootings in the United States, there has been an equally dramatic rise of these events in school settings.<sup>15</sup> Indeed, the authors of a recent study on mass school shootings concludes that “More people have died or been injured in mass school shootings in the US in the past 18 years than in the entire 20th century.”<sup>16</sup>

**Limiting the Size of Ammunition Magazines Should Save Lives and Reduce Injuries**

27. It is widely recognized that gun control can limit the extent of gun violence,

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bernardino-shooting-the-investigation-so-far.html (noting fourteen were killed in December 2015).

<sup>14</sup> Gregor Aisch et al., "What Happened Inside the Orlando Nightclub," *N.Y. Times* (June 12, 2016), available at <http://www.nytimes.com/interactive/2016/06/12/us/what-happened-at-the-orlando-nightclub-shooting.html> (noting a gunman killed forty-nine in a June 2016 attack).

<sup>15</sup> Antonis Katsiyannis, Denise K. Whitford, "Robin Parks Ennis. Historical Examination of United States Intentional Mass School Shootings in the 20th and 21st Centuries: Implications for Students, Schools, and Society," *Journal of Child and Family Studies*, 2018; DOI: 10.1007/s10826-018-1096-2.

<sup>16</sup> Springer, "Rapid rise in mass school shootings in the United States, study shows: Researchers call for action to address worrying increase in the number of mass school shootings in past two decades," *ScienceDaily* (Apr. 19, 2018), available at [www.sciencedaily.com/releases/2018/04/180419131025.htm](http://www.sciencedaily.com/releases/2018/04/180419131025.htm).

and a variety of measures have been adopted throughout the developed world, including efforts to restrict who has access to weapons and where they may be carried and to restrict the types of guns in circulation and the size of ammunition magazines. As two political scientists explain, there are two primary rationales behind such measures: “One, they make it less likely that someone intent on violence will be able to get a gun. And two, by making the weapon less deadly, gun control laws reduce the danger that the victim of a gun attack will die.”<sup>17</sup>

28. Indeed, no single gun control measure is likely to be as effective in addressing the problem of mass shootings as the limitation on the size of the ammunition magazine, and the evidence from the ten year period when the federal assault weapons ban was in effect from 1994-2004 indicates that limiting the size of ammunition magazines to ten bullets saved lives and reduced the mayhem from mass shootings.

29. Louis Klarevas, the author of *Rampage Nation: Securing America from Mass Shootings* (Amherst, NY: Prometheus 2016) has become the primary authority on research concerning mass shootings in the United States. He concludes that bans on large-capacity magazines will be effective in

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<sup>17</sup> Jonathan Spiegler & Jacob Smith, "More mental health care alone will not stop gun violence," *The Conversation* (June 19, 2018), available at <https://theconversation.com/more-mental-health-care-alone-will-not-stop-gun-violence-94201>.

reducing the death toll from mass shootings. Klarevas finds that the use of large-capacity magazines leads to more bullet wounds for victims (thereby substantially increasing the death toll of those who are shot), results in more shots fired (thus increasing the number of individuals who are shot), and reduces the capacity of potential victims to flee to safety or take effective defensive action.

30. A review of the resolution of mass shootings and other public shootings unleashed with large-capacity magazines in the U.S. suggests that bans on large-capacity magazines can help save lives by forcing mass shooters to pause and reload ammunition. Citizens have frequently taken advantage of a perpetrator stopping to reload his weapon to tackle him or otherwise subdue him in at least 20 separate shootings in the United States since 1991, notably including the December 7th, 1993 shooting of passengers on a Long Island Railroad car,<sup>18</sup> the October 29th, 1994 shooting near the grounds of the White House,<sup>19</sup> and the January 8th, 2011 shooting in

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<sup>18</sup> "DEATH ON THE L.I.R.R.: The Rampage; Gunman in a Train Aisle Passes Out Death," *N.Y. Times* (Dec. 9, 1993), available at <http://www.nytimes.com/1993/12/09/nyregion/death-on-the-lirr-the-rampage-gunman-in-a-train-aisle-passes-out-death.html> (9-millimeter pistol, 15 round magazine).

<sup>19</sup> Public Report of the White House Security Review, Department of the Treasury, 1995, available at <http://www.fas.org/irp/agency/ustreas/ussst1pubrpt.html> (Chinese-made SKS semiautomatic rifle, 30 round magazine).

Tucson, AZ that targeted U.S. Congresswoman Gabby Giffords.<sup>20</sup> In many other incidents, targeted victims were able to escape while a shooter reloaded. Perhaps the most vivid illustration of this benefit was seen when at least nine children at Sandy Hook Elementary School were able to escape while Adam Lanza reloaded his 30 round LCM.<sup>21</sup>

31. On April 22, 2018, a man walked into a Nashville Waffle House and opened fire, killing 4 and wounding 7. The police credited a customer with ending the slaughter when he saw the shooter trying to reload his rifle. The 29 year old customer “burst out from behind a swinging door where he had been hiding, wrested the weapon away and threw it over a countertop.”<sup>22</sup> When shooters stop to reload, they are overtaken by citizens, shot by police, or provide opportunities for escape, all of which government policy should

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<sup>20</sup> "Crowd members took gunman down," *L.A. Times* (Jan. 9, 2011), available at <http://articles.latimes.com/2011/jan/09/nation/la-na-arizona-shooting-heroes-20110110> (9mm Glock handgun, 30 round extended magazine).

<sup>21</sup> "Legislative Leaders Say Bipartisan Agreement Could Yield Nation's Strongest Gun-Control Bill," *The Hartford Courant* (Apr. 1, 2013), available at <http://www.courant.com/news/politics/hc-gun-deal-newtown-0413-20130401,0,7341094.story> (Bushmaster .223 caliber rifle, high capacity 30 round magazine). While some contend that 11 children were saved in this fashion at Sandy Hook, Louis Klarevas puts the number at 9 in his book, *Rampage Nation: Securing America from Mass Shootings* (Amherst, NY: Prometheus 2016). p. 22.

<sup>22</sup> Christopher Mele & Jacey Fortin, "Man Sought in Waffle House Shooting Had Been Arrested Near White House," *N.Y. Times* (Apr. 22, 2018), available at <https://www.nytimes.com/2018/04/22/us/waffle-house-shooting.html>.

seek to facilitate. The lower the size of the magazine, the more reloading must take place in mass shooting situations.

32. Since 1990, New Jersey residents have been banned from acquiring large-capacity magazines that held in excess of 15 bullets, and the plaintiffs have not offered any evidence that this compromised anyone's right to self-defense. How the further restriction to only 10 rounds of ammunition, given its evident and demonstrated benefit to potential victims and police, becomes problematic for human safety is never explained.

33. There is not the slightest evidence that the federal restrictions on large-capacity magazines exceeding 10 rounds that was enacted in 1994 (and lapsed ten years later) compromised the safety of law-abiding citizens. Since large-capacity magazines are useful for those bent on mass killing, further limiting their availability will have a beneficial effect on a problem that is serious and growing in the United States.

34. It should be noted that even if a ban on large-capacity magazines does not reduce the criminal use of guns, it can be expected to reduce the overall death toll from the criminal use of guns for a host of reasons.

35. First, as I noted, Adam Lanza was able to kill more (a total of 20 children and six adults) because he was using lawfully purchased weapons equipped with a 30 round LCM. It may well be that Lanza would have criminally



abused the guns that his mother had made available to him even if he had not had an LCM, but there is every reason to believe that he would have killed fewer individuals if he had to persistently reload during his murderous rampage. In other words, the LCM ban is designed precisely to save lives and by raising the costs for killers, the LCM ban would be expected to advance that goal.

36. Second, while the plaintiffs conjure a situation that a law-abiding citizen will be overwhelmed by a criminal who carries a firearm with an LCM (but would otherwise be held off if the victim were allowed to have an LCM), the fact is that fewer law-abiding citizens will confront such heavily armed criminals if LCM's are banned. The federal assault weapons ban – which did not contain a ban on possession of LCM's, and thus would be considerably less effective than the more complete New Jersey prohibition – led to increases in the price of LCM's. Therefore, New Jersey's LCM ban should elevate the cost that a criminal will need to pay to procure an LCM, which means that fewer criminals will be equipped with LCM's (under standard economic principles). In other words, fewer law-abiding individuals will be confronted by a criminal with an LCM because of the LCM ban.

37. Third, most mass killings by Americans involve the use of guns, and many

of these killers – Adam Lanza (Newtown), James Holmes (the Batman movie killer in Aurora, Colorado killed 12 and injured 70), Jared Loughner (shooting Congresswoman Gabby Giffords), Stephen Paddock (who killed 58 and wounded roughly 500 in Las Vegas in October 2017) to name just a few – were drawn to a vision of killing large number of individuals in a certain way that included the use of LCM's. On November 5, 2009, Nidal Hassan killed 13 and injured more than 30 others at Fort Hood, near Killeen, Texas. When Hasan purchased his killing arsenal, he asked for "the most technologically advanced weapon on the market and the one with the highest standard magazine capacity."<sup>23</sup> This is exactly what one would do if one wanted to simply kill as many people as possible in the shortest amount of time. If one is serious about stopping mass killings, a good first step is to deprive such killers of their preferred killing approaches.<sup>24</sup>

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<sup>23</sup> Scott Huddleston, "Hasan Sought Gun with 'High Magazine Capacity,'" (Oct. 21, 2010), *available at* <http://blog.mysanantonio.com/military/2010/10/hasan-sought-gun-with-high-magazine-capacity/>.

<sup>24</sup> Anders Breivik who committed mass murder in Norway was aided in his efforts because of lax rules concerning LCM's in the United States. Breivik was very unhappy that he could not get the large-capacity magazines that he wanted to use since they were banned in Europe. In his manifesto, he wrote about his attempts to legally buy weapons, stating, "I envy our European American brothers as the gun laws in Europe sucks ass in comparison." Under the section titled, "December and January - Rifle/gun accessories purchased," Breivik wrote that he purchased ten

38. Louis Klarevas has illustrated that while the impact of restrictions on LCMs is less potent on other crimes, it appears to be quite significant with respect to the most deadly mass shootings in which at least six were killed, which he refers to as gun massacres. He found that, from 1994-2004, there were only 12 incidents – slightly over one per year – due to assault weapons, resulting in 89 deaths. In the following decade when the federal assault weapons ban was no longer in place, there was a dramatic surge in both the number of gun massacres and the total death toll: From 2004-2014, the number of gun massacres rose from 12 to 34 and the number of gun deaths jumped from 89 to 302. Moreover, since overall crime was trending down over this period, the link between the expansion of high capacity magazines following the lapse in the federal assault weapon ban and the increased number of gun massacres is further buttressed.<sup>25</sup>

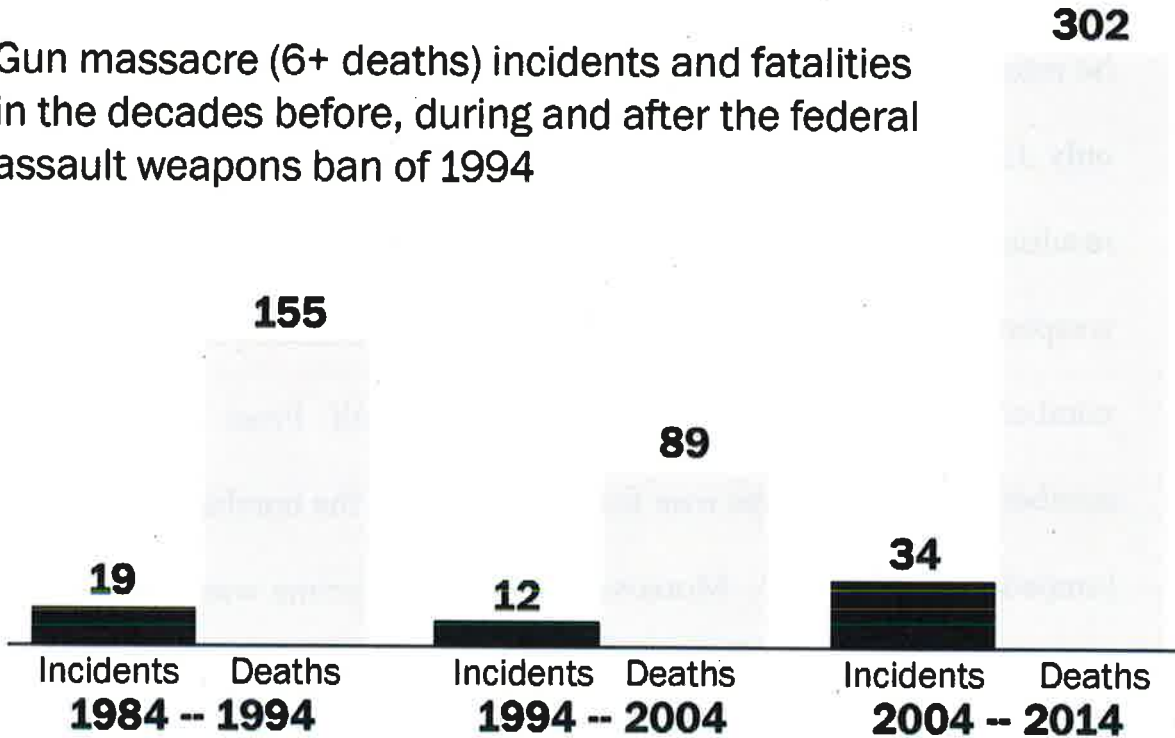
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30-round ammunition magazines from a U.S. supplier who mailed the devices to him. Stephanie Condon, "Norway Massacre Spurs Calls For New U.S. Gun Laws," *CBS News* (July 28, 2011), available at <http://www.cbsnews.com/news/norway-massacre-spurs-calls-for-new-us-gun-laws/>.

<sup>25</sup> The plaintiffs cite a 2004 report that tried to tease out the effect of the federal assault weapons ban (which included a ban on newly manufactured high capacity magazines in excess of 10 rounds), but their citation is of little value to the current discussion. First, the federal ban was unlike the New Jersey ban under attack because the former grandfathered possession of existing high capacity magazines and indeed the delayed effective date of the law allowed gun merchants to flood the market with high capacity magazines before the federal ban became operative. Consequently, the period just prior to the implementation of the ban included a

## Gun massacres fell during the assault weapons ban

Gun massacre (6+ deaths) incidents and fatalities in the decades before, during and after the federal assault weapons ban of 1994



Source: Louis Klarevas  
THE WASHINGTON POST

flooding of the market with *legal* high capacity magazines, which would naturally tend to undercut the beneficial impact at least for a period of this particular gun control measure. Since the new law in New Jersey would prohibit all possession of high capacity magazines, it would clearly have a greater potential to achieve its goal of reducing the cost of gun violence than a simple prospective ban would do. Second, while the 2004 report was looking at the impact of the federal assault weapon ban on all crime, Klarevas has shown that the big impact of restrictions on large-capacity magazines is seen in the reduction in deaths in mass shootings. Finally, while the plaintiffs' brief does note that lax gun laws in neighboring states can weaken the effectiveness of gun bans, this is more of an argument for a revived federal ban on high capacity magazines than an argument that the states that are most committed to reducing the cost of gun violence should be restrained by the desires of a relatively small minority of Americans.

39. The events in Las Vegas on October 1, 2017, have underscored – yet again – the wisdom of the efforts of the New Jersey legislature “to aid in the shaping and application of those wise restraints that make men free” by banning from our state the large-capacity magazines (LCMs)<sup>26</sup> that were a key element enabling the extent of the carnage in that horrific mass shooting.<sup>27</sup>

40. The first line of defense to reducing mass shootings is clearly to try to keep guns out of the hands of those who may end up using them for criminal purposes, but this approach will never be fully effective since not all killers can be easily identified in advance. Therefore, a critical element in trying to stop the death and injury from the growing problem of mass shootings is to limit the killing power of the weaponry available to the civilian population. Assault weapons bans are one important regulatory measure designed to achieve this goal, but the ability of gun merchants to design around such bans is well-established. The value of a ban on high capacity magazines is that it is easily definable, hard to circumvent through cosmetic

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<sup>26</sup> LCMs are defined as ammunition-feeding devices with the capacity to hold more than 10 rounds of ammunition.

<sup>27</sup> The quote is from John MacArthur Maguire and is enshrined at the Harvard Law School library. See <https://asklib.law.harvard.edu/friendly.php?slug=faq/115309>.

changes by gun merchants, and effective at somewhat reducing the lethality of mass shooters by limiting the number of bullets that can be fired without reloading. Indeed, an effective ban on high capacity magazines would likely have significantly reduced the number of deaths at the Las Vegas concert because Stephen Paddock would have only been able to fire one-third the number of bullets he did had he been forced to rely on guns with only 10 bullets in each magazine (instead of the thirty he used).

41. The *New York Times* video of the recent Las Vegas shooting shows how the Las Vegas concert attendees would use the pauses in firing when the shooter's high-capacity magazines were spent to flee the deadly venue before more shots were fired.<sup>28</sup> If Stephen Paddock had been limited to using only 10-round magazines during his deadly rampage, potentially hundreds of victims at the concert could have been spared.

42. It is my opinion that if, rather than allowing the federal ban on these devices to lapse in 2004, the country had moved to the more complete ban that New Jersey has finally adopted, tragedies like the one in Las Vegas would have been far less deadly and damaging to countless individuals who have been

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<sup>28</sup> Malachy Browne, et al., "10 Minutes. 12 Gunfire Bursts. 30 Videos. Mapping the Las Vegas Massacre," N.Y. Times Video (Oct. 21, 2017), *available at* <https://www.nytimes.com/video/us/100000005473328/las-vegas-shooting-timeline-12-bursts.html>.

maimed and injured throughout the United States and perhaps the world.<sup>29</sup>

It is also my opinion that the ban on possession of LCMs would decrease the mayhem from at least some mass killings, by making it incrementally harder for those bent on mass destruction to implement their criminal designs.

**Use of LCMs for Self-Defense are Extremely Rare**

43. In the face of the clear evidence from around the United States and the world, some of the comments in the complaint and plaintiffs' declarations in this case seem to suggest that large-capacity magazines might protect against crime rather than simply increase the death toll. First, it is worth noting that the vast majority of the time that an individual in the United States is confronted by violent crime, they do *not* use a gun for self-defense. Specifically, over the period from 2007-2011 when roughly 6 million violent crimes occurred each year, data from the National Crime Victimization Survey shows that the victim was not able to defend with a gun in 99.2 percent of these incidents – this in a country with 300 million guns in civilian hands.

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<sup>29</sup> The horrendous mass killing in Norway by Anders Breivik, endangered by the restrictive gun laws of Europe, was salvaged by his ability to procure ten 30-round high-capacity magazines from the United States. Stephanie Condon, "Norway Massacre Spurs Call for New U.S. Gun Laws," *CBS News* (July 28, 2011), available at <https://www.cbsnews.com/news/norway-massacre-spurs-calls-for-new-us-gun-laws/>.

44. Second, even if a gun were available for self-defense use, the need for a LCM is slight according to decades of statements by NRA affiliated and pro-gun experts. For example John Lott has repeatedly made the following claims:

- based on “about 15 national survey[s] ... about 98 percent of [defensive gun uses] involve people brandishing a gun and not using them.”<sup>30</sup>
- “When victims are attacked, 98 percent of the time merely brandishing a gun is enough to cause the criminal to stop his attack.”<sup>31</sup>
- “Considerable evidence supports the notion that permitted handguns deter criminals. .... In 98% of the cases, people simply brandish weapons to stop attacks.”<sup>32</sup>

45. Gary Kleck offers a similar albeit less precise claim: “More commonly, guns are merely pointed at another person, or perhaps only referred to (“I’ve got a gun”) or displayed, and this is sufficient to accomplish the ends of the

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<sup>30</sup> Statements by John R. Lott, Jr. on Defensive Gun Brandishing, Posted by Tim Lambert on Oct. 17, 2002 <http://scienceblogs.com/deltoid/2002/10/17/lottbrandish/>. Page 41, State of Nebraska, Committee on Judiciary LB465, February 6, 1997, statement of John Lott, Transcript prepared by the Clerk of the Legislature, Transcriber's Office.

<sup>31</sup> John R. Lott, Jr., Packing Protection, Letters, *Chicago Sun-Times* (Apr. 30, 1997), Pg. 52.

<sup>32</sup> John R. Lott Jr., "Unraveling Some Brady Law Falsehoods," *L.A. Times* (July 2, 1997).



user, whether criminal or non-criminal.”<sup>33</sup>

46. Gun Owners of America cite published survey results on gun brandishing by Gary Kleck for the following statement about gun brandishing: “Of the ... times citizens use their guns to defend themselves every year, the overwhelming majority merely brandish their gun or fire a warning shot to scare off their attackers.”<sup>34</sup>

47. In other words, a gun is used in defense less than 1 percent of the time when someone is attacked in the United States. In the “overwhelming majority” of cases (according to the plaintiffs’ expert) in the small percentage of the time that a gun *is* used, brandishing is all that is needed for defense. One would imagine that the vast majority of the times that the gun is fired in this increasingly small subset, it will be fired no more than 10 times.

48. Should there be a future case of a law-abiding citizen who 1) has a gun and 2) the need and opportunity to use it in self-defense, and 3) the desire to fire more than 10 rounds, the individual can either re-load the defensive weapon by inserting a new clip or by using a second weapon, which an increasingly

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<sup>33</sup> Guns and Self-Defense by Gary Kleck, Ph.D., <http://www.pulpless.com/gunclock/kleck2.html>.

<sup>34</sup> Gary Kleck & Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun," 86(1) *Journal of Criminal Law and Criminology* 150-187 (Fall 1995), available at <https://pdfs.semanticscholar.org/91da/afbf92d021f06426764e800a4e639a1c1116.pdf>.

large number of gun owners currently possess. This implies that the LCM ban, which is designed to limit the mayhem caused by criminals engaging in the most dangerous forms of violent criminal behavior, is likely to have little or no impact on the defensive capabilities of law-abiding citizens in their homes.

### **Law Enforcement Support for LCM Bans**

49. A prescient December 2016 editorial in the *Las Vegas Sun* noted the danger presented—and the lack of practical use for—LCMs:

By overwhelmingly supporting universal background checks for firearms purchases, Clark County voters made it abundantly clear last month that they were concerned about gun violence.

Now, it's time for Las Vegas-area lawmakers to go a step further to protect Nevadans and push to ban the sale of high-capacity magazines in the state.

Eight states and the District of Columbia already have imposed such prohibitions, and with good reason. There's simply no legitimate civilian use for magazines that hold dozens upon dozens of rounds of ammunition.

Don't believe us? Fine, then listen to Clark County Sheriff Joe Lombardo.

"I'm a very avid hunter, I was in the military myself, and there's no need to have a high-capacity magazine for any practical reason," Lombardo said during a recent interview with the Sun.

To the contrary, the dangers posed by such magazines are obvious. Lombardo says the time it takes for suspects to change magazines gives potential victims an opportunity to escape and law enforcement officials an opportunity to safely fire back. That being the case, the fewer times a shooter has to switch out magazines, the fewer the chances for people to get away and authorities to get a protected shot.<sup>35</sup>

50. Sheriff Lombardo's views were similarly endorsed in the testimony of United States Attorney (District of Colorado) John Walsh before the Senate Judiciary Committee on February 27, 2013, in which he noted:

From the point of view of most law enforcement professionals, a perspective I share as a long-time federal prosecutor and sitting United States Attorney, shutting off the flow of military-style assault weapons and high-capacity magazines is a top public safety priority. [...]

One of the most disturbing aspects of the recent mass shootings our Nation has endured is the ability of a shooter to inflict massive numbers of fatalities in a matter of minutes due to the use of high-capacity magazines. High-capacity magazines were defined in the 1994 ban as magazines capable of holding more than 10 rounds, and this is a definition the Department endorses. The devastating impact of such magazines is not limited to their use in military-style assault rifles; they have also been used with horrific results in recent mass shootings involving handguns. The 2007 mass shooting at Virginia

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<sup>35</sup> "High-capacity magazine ban a must for Nevadans' safety," *Las Vegas Sun* (Dec. 11, 2016), available at <https://lasvegassun.com/news/2016/dec/11/high-capacity-magazine-ban-a-must-for-nevadans-saf/> (last visited Nov. 1, 2017).

Tech involved a shooter using handguns with high-capacity magazines. Similarly, recent mass shootings in Tucson, Arizona; Oak Creek, Wisconsin; and Fort Hood, Texas all involved handguns with magazines holding more than 10 rounds. As evidenced by these events, a high capacity magazine can turn any weapon into a tool of mass violence. Forcing an individual bent on inflicting large numbers of casualties to stop and reload creates the opportunity to reduce the possible death toll in two ways: first, by affording a chance for law enforcement or bystanders to intervene during a pause to reload; and second, by giving bystanders and potential victims an opportunity to seek cover or escape when there is an interruption in the firing. This is not just theoretical: In the mass shooting in Tucson, for example, 9-year old Christina-Taylor Green was killed by the 13th shot from a 30-round high-capacity magazine. The shooter was later subdued as he was trying to reload his handgun after those 30 shots. The outcome might have been different if the perpetrator had been forced to reload after firing only 10 times.

Furthermore, high-capacity magazines are not required for defending one's home or deterring further action by a criminal. The majority of shootings in self-defense occur at close range, within a distance of three yards. In such a scenario, and at such close ranges, a 10-round magazine is sufficient to subdue a criminal or potential assailant. Nor are high-capacity magazines required for hunting or sport shooting. Like military-style assault weapons, high-capacity magazines should be reserved for war, and for law enforcement officers protecting the public. The continued commercial sale of high-capacity magazines serves only to provide those determined to produce a high body count with the

opportunity and the means to inflict maximum damage. Indeed, there is evidence suggesting that when the previous ban was in effect, it reduced the number of high-capacity magazines seized by the police, as well as the lethality of incidents.<sup>36</sup> [The citation is from Walsh's statement.]<sup>37</sup>

### **Gun Control Dramatically Reduced Mass Shootings in Australia**

51. In this regard, consider what happened in Australia after a crazed gunman killed 35 people in Port Arthur, Tasmania in 1996. The Australian federal government persuaded all states and territories to implement tough new gun control laws. Under the National Firearms Agreement (NFA), firearms legislation was tightened throughout the country, national registration of guns was imposed, and it became illegal to hold certain long guns that might be used in mass shootings. The effect was that both while there were 13 mass public shootings in Australia during the period 1979–1996 (a per capita rate that was higher than in the U.S. at the time), there have been none in the 22 years since (while the problem of mass shootings in the

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<sup>36</sup> See David S. Fallis & James V. Grimaldi, "In Virginia, high-yield clip seizures rise," *Wash. Post* (Jan. 23, 2011), available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204046.html>.

<sup>37</sup> Statement of John F. Walsh before the United States Senate Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/2-27-13WalshTestimony.pdf>.

United States is getting worse<sup>38</sup>).

52. The important point of the Australian experience for present purposes is that by depriving disturbed individuals of the vehicle by which they imagined they would unleash their murderous impulses, Australia showed that mass shootings can be dramatically reduced – even if guns are still widely available, as they remain in Australia.

**Some Responses to Points in the Complaint and Declarations by Plaintiffs' Experts**

53. I reviewed a declaration by James Curcuruto who works for a “trade association for the firearms industry.” Mr. Curcuruto provides irrelevant information, opining as his main conclusion that “There are at least one hundred million magazines of a capacity of more than ten rounds in possession of American citizens” (Curcuruto Report at Paragraph 12), only to concede later that he really does not know but “it is safe to say whatever the actual number of such magazines in United States consumers’ hands is, it is in the tens-of-millions....” (Curcuruto Report at Paragraph 22.)

54. While Mr. Curcuruto offers his wildly varying estimates of the number of

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<sup>38</sup> Tristan Bridges & Tara Leigh Tober, "Mass shootings in the US are on the rise. What makes American men so dangerous?" *The Society Pages* (Dec. 31, 2015), available at <https://thesocietypages.org/socimages/2015/12/31/mass-shootings-in-the-u-s-what-makes-so-many-american-men-dangerous/>; Dan Diamond, "Mass Shootings Are Rising. Here's How To Stop Them," *Forbes* (June 18, 2015), available at <https://www.forbes.com/sites/dandiamond/2015/06/18/charleston-deaths-are-an-american-tragedy-mass-shootings-are-rising/#12bd32ef787b>.

high-capacity magazines in the United States, his undifferentiated national speculations offer no insight into how many of these magazines are possessed in rural areas throughout the United States. As a result, his figures would have little relevance to the appropriate regulatory regime for a state with large urban population centers like New Jersey.

55. I could not understand how Mr. Curcuruto's comments about the number of LCM's in other states were relevant to whether banning large-capacity magazines would save the lives of citizens of New Jersey. Obviously, if Congress had banned LCM's sufficiently earlier than 1994 and retained the ban there would be few in the hands of law-abiding citizens today. Governments certainly don't relinquish their ability and responsibility to protect their citizens simply because they do not perceive the need for action quickly enough or if technological advances or other developments generate new or greater dangers, such as the worsening problem of mass shootings in the United States.
56. The plaintiffs have also relied on the work of a firearm instructor Massad Ayooob (see Exhibit B to Plaintiffs' Declaration of Daniel L. Schmutter), who stated in an expert report he submitted in trying to overturn California's identical ban on the possession of LCMs:

“The average citizen is not trained like law enforcement personnel and is thus generally not readily prepared, mentally or physically, for combat with an armed criminal. As noted, they are likely to have a single firearm loaded with a single magazine available, and they are more susceptible to the psychological effects of fear, anxiety, and stress that naturally occur when faced with the threat of deadly violence and tend to deprive one of the focus and clarity of mind necessary to make accurate shots at the attacker.”

57. Of course, this is true, which also explains why citizen defense with guns occurs in such a tiny fraction of violent crimes. Ayoob offers no reason to believe that equipping a fearful, stressed individual who is unprepared both physically and mentally for combat with an armed criminal with more potent killing power will enhance citizen safety. As every gun expert knows, bullets from modern guns with large-capacity magazines can easily penetrate walls, which means that poorly directed shooting will pose a significant threat to other family members and neighbors.

58. The first paragraph of the complaint in this case alleges that “The State of New Jersey has criminalized one of the most common and important means by which its citizens exercise their fundamental right of self-defense. By banning the possession of standard-capacity firearm magazines that can carry more than 10 rounds of ammunition, the State has reached into the homes of its law-abiding citizens, invading their constitutional right to keep



and bear arms for the defense of themselves and their families in the most intimate of private spaces.” The claim that a ban on high capacity magazines of more than ten rounds constitutes an “important” interference with the right of self-defense seems blissfully unaware that for ten years this nation banned such magazines, and that crime fell substantially throughout the United States over this period.

59. In paragraphs 32 and 33 of their complaint, the plaintiffs offer examples of where large-capacity magazines were neither used nor needed to thwart criminal misconduct to argue that high capacity magazines are needed for self-defense, but these anecdotes instead stand for the exact opposite proposition. Presumably, the complaint or one of their expert witnesses would have cited an example of where a large-capacity magazine actually served some legitimate goal of self-defense if they could have found one but this is not easy to do since, as I noted above, the cases in which potential victims of crime have actually benefitted from having and using large-capacity magazines are extremely rare.

60. The complaint also betrays a deep ignorance of the rationale behind a ban on large-capacity magazines. Since the value of LCMs for legitimate self-defense is so limited, the primary impact of removing large-capacity magazines from circulation will be to decrease the prospect that a law-

abiding citizen will be confronted by a criminal with such weaponry. Even if the plaintiffs could have found an example where a large-capacity magazine was used lawfully for self-defense that would have little bearing on the relevant public policy question of whether all citizens of New Jersey would be made safer if criminals had less access to these devices designed to more effectively kill others.<sup>39</sup>

61. Moreover, the frequent references to “law-abiding citizens” also betrays a lack of understanding of crime in America. First, one of the most important sources of arming criminals in the United States are “law-abiding citizens” whose guns are lost and stolen each year. The best current estimates are that

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<sup>39</sup> The June 2017 order granting a preliminary injunction against implementation of the California ban on possession of LCMs in *Duncan v. Bacera* seemed to be persuaded that the facts of one case from Florida in 1997 in which a woman ran out of bullets in defending against a home invasion showed that such bans are harmful. It did not. First, as noted above, one episode from 21 years ago in a country as large as the United States does not provide powerful evidence on an issue of public policy. Second, the attackers in that case apparently were carrying LCMs, and the primary goal of the New Jersey ban is to reduce that prospect. Third, the article which the court relied on specifically noted that after the terrible home invasion (which thankfully she and her husband both survived), all of the family’s guns were subsequently stolen in a burglary when the family was not home. In other words, whatever benefit the woman might have had had she had a different weapon when first attacked (which of course involves some speculation – if she had been able to continue firing there is no guarantee things would have turned out better for her than they did), we know that if the lesson she drew from that incident was to have guns with LCMs in her house, those guns would have ended up in the hands of criminals after the burglary (as all her weapons did). Again, this underscores that LCMs in the hands of perfectly law-abiding citizens can and do add to arming of criminals – and this arming of criminals occurs vastly more often than any benign use of an LCM for self-defense.

roughly 400,000 guns move into the hands of criminals this way each year in the United States.<sup>40</sup> In other words, it is orders of magnitudes more likely that a criminal will steal a gun of a law-abiding citizen than a law-abiding citizen will fire more than 10 bullets in lawful self-defense. The more large-capacity magazines in the hands of law-abiding citizens means the more large-capacity magazines in the hands of criminals. Second, many of the most horrific mass shootings in America were perpetrated by previously law-abiding citizens. The list is too long to recite from Stephen Paddock (killed 58 in Las Vegas), Omar Mateen (killed 49 in Pulse nightclub), Adam Lanza (killed 26 in Newtown, Connecticut), Jared Loughner (killed 8 and severely wounded Congresswoman Gabby Giffords), the Batman killer in Aurora, Colorado who killed 12 in 2012, the

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<sup>40</sup> According to Larry Keane, senior vice president of the National Shooting Sports Foundation (a trade group that represents firearms manufacturers), "There are more guns stolen every year than there are violent crimes committed with firearms." More than 237,000 guns were reported stolen in the United States in 2016, according to the FBI's National Crime Information Center. The actual number of thefts is obviously much higher since many gun thefts are never reported to police, and "many gun owners who report thefts do not know the serial numbers on their firearms, data required to input weapons into the NCIC." The best survey estimated 380,000 guns were stolen annually in recent years, but given the upward trend in reports to police, that figure likely understates the current level of gun thefts. See Brian Freskos 2017c, "These Gun Owners Are at the Highest Risk of Having Their Firearms Stolen," *The Trace* (Apr. 11, 2017), available at <https://www.thetrace.org/2017/04/gun-owners-high-risk-firearm-theft/>; Brian Freskos 2017b, "Missing Pieces," *The Trace* (Nov. 20, 2017), available at <https://www.thetrace.org/features/stolen-guns-violent-crime-america/>.

Virginia Tech killer who killed 32, etc.

62. The complaint also tells us that “in 2011, New York City police officers fired more than 10 rounds in 29% of incidents in which they fired their weapons to defend themselves and others. The fact that police officers frequently need to fire more than 10 rounds to defend themselves suggests that law-abiding citizens likewise will sometimes find themselves in a similar situation.” But analogies to soldiers during war and “on duty, uniformed police officers” are entirely inapposite because the risks and responsibilities faced by soldiers and police are vastly different from those faced by civilians.

63. Private individuals have completely different needs than police officers. The former only need to scare off criminals (or hold them off until the police arrive). The police need to effectuate arrests. Thus, while having the criminal run away is a desired outcome for the average citizen, this is a bad outcome for a police officer, which is why an extended gun battle is extremely rare for law-abiding citizens and far more common for the police. Accordingly, plaintiffs’ effort to look to officer-involved shootings to make judgments about the needs of average citizens widely misses the mark.

64. In opposing the ban on high-capacity magazines, Kleck seeks refuge in the argument that gunfights frequently involve a lot of “missing,” particularly

because the average citizen is not well-trained and is under stress when threatened. But the notion that more bullets will be sprayed by law-abiding citizens actually provides stronger support for a ban on LCMs rather than an argument against such a ban. Bullets fired by a modern weapon with an LCM will easily penetrate walls, threatening family members or occupants in attached dwellings. This point was dramatically underscored when a hapless concealed carry permit holder attending a gun safety class inadvertently fired his weapon, which discharged a bullet that easily penetrated the classroom wall, striking and killing the owner of the gun store who was working in the next room.<sup>41</sup> Encouraging untrained, stressed individuals to spray bullets from a high-capacity magazine is a recipe for generating similar unwelcome outcomes that will put family members and

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<sup>41</sup> Peter Holley, "Ohio gun store owner accidentally killed by student during firearm-safety class," *Wash. Post* (June 19, 2016), available at [https://www.washingtonpost.com/news/morning-mix/wp/2016/06/19/ohio-gun-store-owner-accidentally-killed-by-student-during-firearm-safety-class/?utm\\_term=.ed4c232d20ad](https://www.washingtonpost.com/news/morning-mix/wp/2016/06/19/ohio-gun-store-owner-accidentally-killed-by-student-during-firearm-safety-class/?utm_term=.ed4c232d20ad).

Another example of how doors and walls do not stop bullets from modern handguns occurred on September 13, 2015, when "39-year-old Mike Lee Dickey was babysitting an 8-year-old Casa Grande, Arizona boy. According to police, at about 2 a.m., Dickey was in the bathroom removing his .45-caliber handgun from the waistband of his pants when he unintentionally discharged the gun. The bullet passed through two doors and struck the 8-year-old in his arm while he lay sleeping in a nearby bedroom. The boy was flown to a hospital in Phoenix for treatment." See "8-year-old boy unintentionally shot by babysitter," *Ohh Shoot* (Sept. 13, 2016), available at <http://ohhshoot.blogspot.com/2015/09/8-year-old-boy-unintentionally-shot-by.html>.

neighbors at considerable risk.

65. The complaint also makes the erroneous argument the ban on large-capacity magazines will tip the balance in favor of criminals who will have multiple magazines or multiple guns:

“Even if violent criminals were prevented from acquiring banned magazines, they could easily compensate by bringing multiple firearms or magazines with them to the scene of the crime. Their ability to do so is made possible by the fact that violent criminals, and not their law-abiding victims, choose the time and place of crimes and can plan accordingly. New Jersey’s law thus clearly favors criminals bent on mass mayhem, as they will ignore the law and continue using banned magazines; use multiple magazines, which can be switched out in a matter of seconds; use multiple firearms; or employ all of these strategies simultaneously. Law abiding citizens will be reduced to countering this threat with a single firearm equipped with a single sub-standard capacity magazine, as people generally are not in the habit of having spare firearms and magazines readily accessible to them at all times.”

66. This argument makes little sense. First, the right to have a weapon for self-defense in the home means that those who want multiple magazines and guns can buy them and keep them in their homes and nothing in the New Jersey law restricts that ability. Since New Jersey is not a right to carry state (and therefore enjoys a lower violent crime rate than it would have if it

were to have such a law<sup>42</sup>), no one can expect to have a gun of any kind accessible to them at all times in the state of New Jersey.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 5, 2018



John J. Donohue

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<sup>42</sup> See John Donohue et al., "Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Controls Analysis," NBER Working Paper (June 2018) (finding that adopting a right-to-carry law elevates violent crime, leading to increases of roughly 13-15 percent after ten years).