

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

Civil Action No. 1:26-cv-02948-NYW-CYC

RAY ELLIOTT, et al.,

Plaintiffs,

v.

CITY AND COUNTY OF DENVER, et al.,

Defendants.

**STATE DEFENDANTS' ANSWER TO
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendants Jared Polis, in his official capacity as Governor of Colorado, Philip J. Weiser, in his official capacity as Attorney General of Colorado, Armando Saldate III, in his official capacity as Director of the Colorado Bureau of Investigation, and Colonel Matthew C. Packard, in his official capacity as Chief of the Colorado State Patrol (collectively, the “State Defendants”), submit this Answer to Plaintiffs’ Complaint for Declaratory and Injunctive Relief (Doc. No. 1).

INTRODUCTION

1. The State Defendants admit that the Second Amendment to the U.S. Constitution establishes “the right of the people to keep and bear Arms,” but denies that the sentence as written is complete or properly punctuated. The State Defendants deny the remaining allegations in Paragraph 1.

2. The State Defendants admit that Denver, Colo. Rev. Mun. Code ch. 38 art. IV, § 38-121(c) establishes that it is “unlawful to carry, store, keep, manufacture, sell, or otherwise

possess assault weapons within the City and County of Denver,” subject to certain exceptions.

The State Defendants further admit that Denver Colo. Mun. Code ch. 38, art. IV, § 38-116(1) defines “assault weapon” to include “[a]ny semiautomatic pistol or centerfire rifle, either of which have a fixed or detachable magazine with a capacity of more than fifteen (15) rounds.”

The State Defendants deny any remaining allegations in Paragraph 2.

3. The State Defendants admit that it is “unlawful to carry, store, or otherwise possess a large capacity ammunition feeding device which can hold or may be modified to hold more than fifteen (15) rounds” under Denver Mun. Code ch. 38, art. IV, § 38-121(g). The State Defendants further admit that subject to certain exceptions, Colo. Rev. Stat. § 18-12-302(1)(a) makes it a class 1 misdemeanor under state law to “sell[], transfer[], or possess[] a large-capacity magazine.” The State Defendants deny the remaining allegations in Paragraph 3.

4. The State Defendants admit that the Denver Municipal Code includes a series of exceptions to section 38-121(c). The State Defendants further admit that if a person or purpose does not meet these exceptions it is unlawful under the Denver Municipal Code for a person to carry, store, keep, manufacture, sell, or otherwise possess assault weapons. The State Defendants deny the remaining allegations in Paragraph 4.

5. The State Defendants admit that Colo. Rev. Stat. § 18-12-302 includes a series of exceptions to Colo. Rev. Stat. § 18-12-302(1). The State Defendants deny that the cited subsection is exhaustive of the applicable exceptions, and denies the remaining allegations in Paragraph 5.

6. The State Defendants deny the allegations in Paragraph 6.

7. The State Defendants deny the allegations in Paragraph 7.

8. The State Defendants deny the allegations in Paragraph 8.

9. The State Defendants deny the allegations in Paragraph 9.

ANSWER TO JURISDICTION & VENUE

10. The State Defendants deny the allegations in Paragraph 10, except admit that Plaintiffs purport to invoke the jurisdiction of this Court.

11. The State Defendants deny the allegations in Paragraph 11, except admit that Plaintiffs purport to seek remedies under the cited section of the U.S. Code, but deny that Plaintiffs are entitled to those remedies.

12. The State Defendants deny the allegations in Paragraph 12, except admit that Plaintiffs purport to invoke the venue of this Court.

ANSWER TO PARTIES

Plaintiffs

13. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore deny them.

14. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and therefore deny them.

15. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore deny them.

16. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and therefore deny them.

17. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore deny them.

Defendants

18. The State Defendants admit the allegations in Paragraph 18.

19. The State Defendants admit that Plaintiffs purport to sue Jared Polis in his official capacity as Governor of Colorado. The State Defendants admit that the Colorado Constitution states that the “supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed.” The State Defendants deny that the Governor, in his official capacity, possesses authority to enforce (and control the enforcement of) the State’s magazine ban.¹ The State Defendants admit that under Colo. Rev. Stat. § 24-31-101(1)(b), the Attorney General “[s]hall appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor,” but deny that the governor has the authority to order the Attorney General to prosecute specific violations of laws in every instance. The State Defendants admit that Governor Polis’s official address is 200 E. Colfax Ave., Room 136, Denver, CO 80203. The State Defendants deny any remaining allegations in Paragraph 19.

20. The State Defendants admit that Plaintiffs purport to sue Philip J. Weiser in his official capacity as Attorney General for the State of Colorado. The State Defendants admit that

¹ The Governor, sued here in his official capacity, enjoys Eleventh Amendment immunity from any claims for prospective relief because he does not “have a particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.” *Peterson v. Martinez*, 707 F.3d 1197, 1205 (10th Cir. 2013) (quotations omitted); *see also Ex parte Young*, 209 U.S. 123, 157 (1908). However, for the purpose of defending Colorado’s large-capacity magazine restriction against Plaintiffs’ claims for declaratory and injunctive relief, the Governor agrees to waive his sovereign immunity and consents to be sued in this Court, only in this case, only in his official capacity, and only for prospective relief. *See MCI Telecomms. Corp. v. Pub. Serv. Comm’n of Utah*, 216 F.3d 929, 935 (10th Cir. 2000) (“[A] state may waive its sovereign immunity by consenting to suit in federal court.”).

under Colorado law, the Attorney General exercises, delegates, or supervises the powers and duties of the Colorado Department of Law. The State Defendants deny that the Attorney General has a general duty to enforce Colorado law in all instances.² The State Defendants further admit that the Attorney General has the authority to “appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in which the state is a party or is interested when required to do so by the governor,” Colo. Rev. Stat. § 24-31-101(1)(b), but deny that the Governor has the authority to order the Attorney General to prosecute specific violations of laws in every instance. The State Defendants admit that the Attorney General’s official address is 1300 Broadway, 10th Floor, Denver, CO 80203. The State Defendants deny any remaining allegations in Paragraph 20.

21. The State Defendants admit that Plaintiffs purport to sue Armando Saldate III in his official capacity as Director of the Colorado Bureau of Investigation (“CBI”). The State Defendants admit that under Colorado law, Director Saldate is the “chief administrative officer of the bureau and . . . an agent.” Colo. Rev. Stat. § 24-33.5-404. The State Defendants also admit that agents of the CBI are “vested with the powers of peace officers of this state and have all the powers of any sheriff or police or other peace officer.” *Id.* § 24-33.5-409. The State Defendants also admit that agents of the CBI “shall perform duties in the investigation, detection, and

² The Attorney General, sued here in his official capacity, enjoys Eleventh Amendment immunity from any claims for prospective relief because he does not “have a particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.” *Peterson*, 707 F.3d at 1205 (quotations omitted); *see also Ex parte Young*, 209 U.S. at 157. However, for the purpose of defending Colorado’s large-capacity magazine restriction against Plaintiffs’ claims for declaratory and injunctive relief, the Attorney General agrees to waive his sovereign immunity and consents to be sued in this Court, only in this case, only in his official capacity, and only for prospective relief. *See MCI Telecomms. Corp.*, 216 F.3d at 935 (“[A] state may waive its sovereign immunity by consenting to suit in federal court.”).

prevention of crime and the enforcement of the criminal laws of this state,” *id.*, and that the large-capacity magazine restriction is a criminal law. The State Defendants admit that Director Saldate’s official address is 690 Kipling St., Lakewood, Colorado, 80215. The State Defendants deny any remaining allegations in Paragraph 21.

22. The State Defendants admit that Plaintiffs purport to sue Colonel Matthew C. Packard in his official capacity as Chief of the Colorado State Patrol. The State Defendants admit that under Colorado law, the chief is “the executive head and senior administrative officer of the Colorado state patrol,” that he is required to “supervise and direct the administration and all activities of the Colorado state patrol,” and that he is an officer of the Colorado State Patrol. Colo. Rev. Stat. § 24-33.5-205. The State Defendants deny any remaining allegations in Paragraph 22.

23. The State Defendants admit that Plaintiffs purport to sue Defendant John Walsh in his official capacity as District Attorney for the City and County of Denver, Colorado. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23 and therefore deny them.

ANSWER TO FACTUAL ALLEGATIONS

I. ANSWER TO DENVER’S UNCONSTITUTIONAL MAGAZINE BAN

24. The State Defendants admit that Paragraph 24 accurately quotes the Denver Municipal Code. Otherwise, the State Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 24 and therefore deny them.

25. The State Defendants admit that Paragraph 25 accurately quotes the Denver Municipal Code. Otherwise, the State Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 25 and therefore deny them.

26. The State Defendants admit that the Denver Municipal Code includes exceptions and exemptions to section 38-121(c), including the example referenced in Paragraph 26. The State Defendants deny the remaining allegations in Paragraph 26.

27. The State Defendants admit that Paragraph 27 accurately states the penalties provided for under section 38-128 of the Denver Municipal Code. Otherwise, the State Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 27 and therefore deny them.

28. The State Defendants admit that Paragraph 28 accurately quotes the Denver Municipal Code. Otherwise, the State Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 28 and therefore deny them.

29. The State Defendants admit that Paragraph 29 accurately quotes the Denver Municipal Code. Otherwise, the State Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 29 and therefore deny them.

30. The State Defendants admit that section 38-121(g) of the Denver Municipal Code includes exceptions and exemptions. The State Defendants deny the remaining allegations in Paragraph 30.

31. The State Defendants admit that section 38-128 of the Denver Municipal Code establishes penalties “in addition to any other penalty imposed” for a “person convicted of violating” division 2 of chapter 38 of the Denver Municipal code. The State Defendants deny any remaining allegations in Paragraph 31.

II. ANSWER TO COLORADO’S UNCONSITUTIONAL MAGAZINE BAN

32. The State Defendants admit that Paragraph 32 accurately quotes Colo. Rev. Stat. § 18-12-302(1)(a). The State Defendants deny the remaining allegations in Paragraph 32.

33. The State Defendants admit that Paragraph 33 accurately quotes Colo. Rev. Stat. § 18-12-301(2)(a). The State Defendants deny that the quoted portion includes the full definition of “large-capacity magazine” under Colorado law. The State Defendants deny any remaining allegations in Paragraph 33.

34. The State Defendants admit that Colo. Rev. Stat. § 18-12-302(1)(a) is subject to exceptions. The State Defendants admit that one of those exceptions is codified at Colo. Rev. Stat. § 18-12-302(2)(a), which states that a person “may possess a large-capacity magazine if he or she (I) Owns the large-capacity magazine on July 1, 2013; and (II) Maintains continuous possession of the large-capacity magazine.” The State Defendants further admit that a person entitled to possess a large-capacity magazine under Colo. Rev. Stat. § 18-12-302(2)(a) may not sell or transfer possession of a large-capacity magazine. The State Defendants deny the remaining allegations in Paragraph 34.

35. The State Defendants admit that a person convicted of violating Colo. Rev. Stat. § 18-12-302(1)(a) is guilty of a class 1 misdemeanor, for which the maximum sentence is “364

days imprisonment, not more than a one thousand dollar fine, or both.” Colo. Rev. Stat. § 18-1.3-501(a.5). The State Defendants deny the remaining allegations in Paragraph 35.

III. ANSWER TO AMMUNITION MAGAZINES CAPABLE OF HOLDING MORE THAN 15 ROUNDS OF AMMUNITION ARE IN COMMON USE

36. The State Defendants admit that both the Denver Municipal Code and the Colorado Revised Statutes describe magazines that can accept more than 15 rounds of ammunition as “large-capacity.” The State Defendants deny the remaining allegations in Paragraph 36.

37. The State Defendants admit that the parties to *Colorado Outfitters Association v. Hickenlooper*, 13-cv-01300-MSK-MJW, including the then-Governor, entered into certain stipulations for the purposes of the trial to the court in that case. The State Defendants admit that one of those stipulations was that “[i]n 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.” The State Defendants deny that those stipulations were entered into on behalf of the State of Colorado, or are otherwise binding here, or that they reflect the evidence that may ultimately be presented in this action. The State Defendants deny any remaining allegations in Paragraph 37.

38. The State Defendants admit that the parties to *Colorado Outfitters Association v. Hickenlooper*, 13-cv-01300-MSK-MJW, including the then-Governor, entered into certain stipulations for the purposes of the trial to the court in that case. The State Defendants admit that one of those stipulations was that “[m]ore 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.” The State Defendants deny that those stipulations were entered into on behalf of the State of Colorado, or are otherwise binding here, or that they reflect the evidence that may ultimately be presented in this action. The State Defendants deny any remaining allegations in Paragraph 38.

39. The State Defendants admit that the parties to *Colorado Outfitters Association v. Hickenlooper*, 13-cv-01300-MSK-MJW, including the then-Governor, entered into certain stipulations for the purposes of the trial to the court in that case. The State Defendants admit that one of those stipulations was that “[m]any full-sized 9mm semi-automatic pistols are sold at retail with magazines with capacities greater than 15, for example, the Glock 17, which is one of the most popular handguns sold in the United States.” The State Defendants deny that those stipulations were entered into on behalf of the State of Colorado, or are otherwise binding here, or that they reflect the evidence that may ultimately be presented in this action. The State Defendants deny any remaining allegations in Paragraph 39.

40. The State Defendants admit that the parties to *Colorado Outfitters Association v. Hickenlooper*, 13-cv-01300-MSK-MJW, including the then-Governor, entered into certain stipulations for the purposes of the trial to the court in that case. The State Defendants admit that one of those stipulations was that “[s]emi-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.” The State Defendants admit that another of those

stipulations was that “[a]lthough 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.” The State Defendants deny that those stipulations were entered into on behalf of the State of Colorado, or are otherwise binding here, or that they reflect the evidence that may ultimately be presented in this action. The State Defendants deny any remaining allegations in Paragraph 40.

41. The State Defendants admit that in 2023, William English published a paper titled “2021 National Firearms Survey: Analysis of Magazine Ownership and Use.” The State Defendants admit that Dr. English concluded that his “survey data implies that . . . 21.6% [of firearm owners] (~ 18 million [individuals]) have owned handgun magazines that hold 16+ rounds,” and “24.8% [of firearm owners] (~ 20 million [individuals]) have owned rifle magazines that hold 16+ rounds.” The State Defendants further admit that Paragraph 41 accurately reports figures from the English paper, but deny that Paragraph 41 captures the complete results of the English paper. The State Defendants deny any remaining allegations in Paragraph 41, including that the English paper, which has not been subjected to cross-examination in this court, is accurate or reliable.

42. The State Defendants admit that Paragraph 42 accurately quotes *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 42 and therefore deny them.

43. The State Defendants admit that not all states impose restrictions on large-capacity magazines. The State Defendants deny the remaining allegations in Paragraph 43.

44. The State Defendants deny the allegations in Paragraph 44.

45. The State Defendants admit that firearms capable of holding or firing multiple rounds existed prior to the founding era, but deny that they existed in any meaningful number or that they resembled modern large-capacity magazines in any material respect. The State Defendants deny the remaining allegations in Paragraph 45.

46. The State Defendants admit that firearms capable of holding or firing multiple rounds existed prior to the founding era, but deny that they existed in any meaningful number or that they resembled modern large-capacity magazines in any material respect. The State Defendants deny the remaining allegations in Paragraph 46.

47. The State Defendants admit that firearms capable of holding or firing multiple rounds existed prior to the founding era, but deny that they existed in any meaningful number or that they resembled modern large-capacity magazines in any material respect. The State Defendants deny the remaining allegations in Paragraph 47.

48. The State Defendants admit that “repeating” firearms existed in the 19th century, but deny that they resembled modern large-capacity magazines or semi-automatic firearms in any material respect. The State Defendants deny the remaining allegations in Paragraph 48.

49. The State Defendants admit that the Henry and Winchester rifles could hold 16 and 17 rounds respectively. The State Defendants deny that those weapons resemble modern large-capacity magazines in any material respect. The State Defendants deny the remaining allegations in Paragraph 49.

50. The State Defendants deny that Colo. Rev. Stat. § 18-12-302(1)(a) has been “routinely enforced” or enforced by any of the named State Defendants. The State Defendants

also deny that they can be expected to enforce that section of Colorado law in the future. The State Defendants lack knowledge or information sufficient to form a belief as to whether section 38-121(c) of the Denver Municipal Code has been enforced or will be enforced in the future, but deny that any of the State Defendants have enforced that section of the Denver Municipal code or will do so in the future. The State Defendants deny the remaining allegations in Paragraph 50.

IV. ANSWER TO THE BAN'S EFFECT ON PLAINTIFFS

51. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 and therefore deny them.

52. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 and therefore deny them.

53. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and therefore deny them.

ANSWER TO COUNT ONE

Deprivation of Plaintiffs' Rights under the Second and Fourteenth Amendments to the United States Constitution (42 U.S.C. § 1983 & *Ex parte Young*)

54. The State Defendants incorporate by reference their Answers to the foregoing paragraphs.

55. The State Defendants admit that the Second Amendment to the U.S. Constitution establishes "the right of the people to keep and bear Arms," but denies that the sentence as written is complete or properly punctuated.

56. The State Defendants admit that the Second Amendment applies to the States.

57. The State Defendants admit that Paragraph 57 accurately quotes *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008).

58. The State Defendants do not know what Paragraph 58 means by “[t]he firearms at issue in this case,” and therefore denies the allegations in Paragraph 58.

59. The State Defendants deny the allegations in Paragraph 59.

60. The State Defendants do not know what Paragraph 60 means by “[t]he firearms at issue in this case,” and therefore deny the allegations in Paragraph 60.

61. The State Defendants deny the allegations in Paragraph 61.

62. The State Defendants admit that 42 U.S.C. § 1983 creates a cause of action against state actors who deprive individuals of federal constitutional rights under color of state law, but deny that Plaintiffs are entitled to relief under 42 U.S.C. § 1983.

63. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 and therefore deny them.

64. The State Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 and therefore deny them.

65. The State Defendants deny the allegations in Paragraph 65.

66. The State Defendants deny the allegations in Paragraph 66.

67. The State Defendants deny the allegations in Paragraph 67.

68. The State Defendants deny the allegations in Paragraph 68.

ANSWER TO PRAYER FOR RELIEF

The State Defendants deny that Plaintiffs are entitled to any of the relief they seek, including, but not limited to, an injunction that extends beyond “each plaintiff with standing to sue.” *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025).

AFFIRMATIVE DEFENSES

The State Defendants assert the following defenses, for which the State Defendants do not concede that they bear the burden of persuasion or proof.

A. Except to the extent waived in footnotes 1 and 2 of this Answer, Plaintiffs’ claims against the Governor and the Attorney General are barred by the Eleventh Amendment, absent a waiver of such immunity.

B. Plaintiffs’ claims are barred by the equitable doctrine of laches.

C. Plaintiffs claims are barred, in whole or in part, by lack of standing.

D. Colo. Rev. Stat. § 18-12-302(1)(a) is not unconstitutional.

The State Defendants reserve the right to assert additional affirmative defenses as appropriate.

Respectfully submitted this 28th day of August, 2026,

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

Peter G. Baumann

Senior Assistant Attorney General
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, Denver, CO 80203
Telephone: 720.508.6152
Email: peter.baumann@coag.gov
Attorneys for State Defendants