



Written by [Bob Adelman](#) on May 19, 2013

Colorado Sheriffs and Other Plaintiffs Sue to Void Two Gun Laws

Fifty-four of Colorado's 64 sheriffs and 20 other plaintiffs have filed a [lawsuit](#) in U.S. District Court to overturn two of the four gun control measures signed into law by Governor John Hickenlooper in March. When the plaintiffs announced the lawsuit on May 17 in Denver's Independence Institute's offices, the media were well represented. According to John Caldera, the institute's president, the lobby was "overflowing with microphones, cameras and news reporters ... quite literally reporters were spilling out of our front door ... I've never seen anything like it."



The 55-page complaint alleges that the two contested laws are unconstitutional under the Second and Fourteenth Amendments and under the Americans With Disabilities Act. The laws include: HB 1224, which prohibits the possession, sale, or transfer of magazines holding more than 15 rounds; and HB 1229, which requires all sellers of firearms, including private sales between individuals, to obtain a background check.

In addition to 54 of Colorado's sheriffs, the plaintiffs include the National Shooting Sports Foundation, Magpul Industries, USA Liberty Arms, Women for Concealed Carry, Specialty Sports & Supply, and the Colorado Shooting Association. They contend that the two laws are not only unconstitutional under the Supreme Court's rulings in [Heller](#) and [McDonald](#) but that they place impossible difficulties upon the sheriffs who will be called upon to enforce the laws when they become effective on July 1.

Attorney General John Suthers, who remained strangely neutral during the legislative debates leading up to passage of the bills, said his office would move "as expeditiously as possible" with the suit and that "Colorado citizens, and law-abiding gun owners in particular, deserve such clarification." But he studiously avoided saying whether the laws in his or his office's opinion were unconstitutional. And the County Sheriffs of Colorado association — despite the stand taken by the great majority of the sheriffs in the state — remained absent from both the public announcement on May 17 and in joining with the other plaintiffs in the suit.

In its complaint the lawsuit, drawn up with the help of constitutional scholar and research director for the institute [David Kopel](#), began:

Peace officers and peaceable citizens join together to bring this action in defense of public safety, the Second and Fourteenth Amendments of the Constitution of the United States, and the Americans with Disabilities Act.

Plaintiffs are 54 Colorado elected sheriffs, retired law enforcement officers, disabled individuals, civil rights and disability rights organizations, licensed firearms dealers, associations of law-abiding gun owners, hunting outfitters, and the firearms industry, and a manufacturer of firearm



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accessories.

On March 20, 2013, Colorado Governor John Hickenlooper signed two measures that severely restrict citizens' rights to own, use, manufacture, sell, or transfer firearms and firearms accessories.

Kopel and the suit presented arguments against both measures, including the fact that the magazine limitation law is so overly broad as to ban virtually all magazines in existence in the state as it includes magazines that are "designed to be readily converted" to hold more than 15 rounds. The filing concluded:

Thus, the magazine ban amounts to a ban on having a functional, operating unit for most handguns and a very large fraction of rifles — a patent violation of the Second and Fourteenth Amendments under *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 130 S. Ct. 3020 (2010).

The mandate for background checks is also designed to virtually eliminate all private sales of handguns due to the requirement that those checks must be done through Federal Firearm Licensees (FFLs) who may charge no more than \$10 per background check although the time and responsibility imposed on FFLs greatly exceeds that amount. Said the lawsuit:

To conduct the transfer pursuant to HB 1229, the FFL must complete the same paperwork as if he or she were selling from his or her own inventory. This means that for each firearm transferred, a three-page federal form (ATF Form 4473) must be filled out. Some parts of the form are filled out by the customer, and some by the FFL.

FFLs are liable for errors on a Form 4473 and subject to license revocation and even federal felony charges....

[Consequently] many FFLs in Colorado, including FFL Plaintiffs, are unwilling to conduct the transfer under such conditions. Accordingly, it will be extremely difficult, if not impossible, for many Coloradans to find a FFL to conduct the transfers.

The lawsuit claims that the recent Supreme Court decisions overrule Colorado's gun laws:

Under *Heller*, the Second Amendment to the United States Constitution guarantees the right of individual citizens to keep and bear commonly-used firearms for all lawful purposes....

Under *McDonald*, the rights protected by the Second Amendment apply equally to the states, including Colorado, through the Fourteenth Amendment to the United States Constitution.

The suit then requests judicial relief:

Plaintiffs pray that this Court ... enter a declaratory judgment that the provisions of HB 1224 ... are a violation of the Second and Fourteenth Amendments ... and are therefore void....

Plaintiffs pray that this Court ... enter a declaratory judgment that HB 1229 violates the Second and Fourteenth Amendments ... and is therefore void.

Plaintiffs pray that this court ... issue preliminary and permanent injunctions enjoining Defendant John Hickenlooper and any officers, agents, and employees of the State of Colorado from administering or enforcing any provisions of HB 1224 and 1229 found to violate the United States Constitution or the Americans With Disabilities Act.



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What's notable in the lawsuit is the lack of any reference whatsoever to the rights guaranteed under Colorado's constitution, which states: "The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called into question." Nor did any media reports about the May 17 announcement refer to the "[Colorado Model](#)" — the strategy that began nearly a decade ago by four wealthy ant-gun liberals to take control of the state house, the legislature and the courts in Colorado in order to promote their extreme left-wing agenda. As noted by former Republican Senate Majority Leader John Anderson: "Colorado is being used as a test bed for a swarm offense by Democrats and liberals."

This lawsuit will be followed by [another one planned by the National Rifle Association](#) (NRA) to challenge gun control laws not only in Colorado but in Connecticut and New York as well. As the saying goes, "the first olive out of the bottle is always the hardest." This lawsuit in Colorado is the first one out of the bottle.

Photo of Colorado sheriffs at the May 17 announcement: AP Images

A graduate of Cornell University and a former investment advisor, Bob is a regular contributor to The New American magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics. He can be reached at badelmann@thenewamerican.com.



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