

Written testimony on HB24-1292

To Make Firearms Inaccurate

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Some of the factual findings of HB24-1292 are fabrications, as will be described in Part I. The bill’s list of features that supposedly define an “assault weapon” are mostly features that improve accuracy, as will be detailed in Part II. Part III explains how local laws like HB24-1292 have already been held unconstitutional by several judges in the Tenth Circuit, appointed by Presidents Biden and Obama.

According to the Congressional Research Service, so-called “assault weapons” are used in fewer than 10% of mass shootings. Although the California legislature banned “assault weapons” in 1989, the people of California today suffer from over one mass shooting per week.

HB24-1292 prohibits firearms with certain features, such as stocks that can be adjusted to fit the user’s arm length. According to HB24-1292, these features are “designed for warfare, refined to maximize killing large numbers of people quickly and efficiently.”¹ Supposedly, the firearms are “not suitable for self defense and are not well- suited for hunting , sporting, or any purpose other than mass killing.”²

The bill itself refutes its own malicious lie. The prohibition does not apply to “a peace officer.”³ The bill’s sponsors often make a big public show of claiming to be very, very concerned about police violence. Yet their bill allows police officers to wield weapons

¹ Proposed C.R.S. § 18-12-601(1)(g).

² Proposed C.R.S. § 18-12-601(2)(a).

³ Proposed C.R.S. § 18-12-604(2)(e). Peace officers undergo more intensive background checks than do citizens who buy guns, and often have more training. But the bill is not about improving background checks or training. Because peace officers possess arms only for lawful defense of self or others, if the

“designed for warfare, refined to maximize killing large numbers of people quickly and efficiently.”

Colorado peace officers often do choose the arms that would be banned by HB24-1292. The officers are not itching to kill “large numbers of people quickly and efficiently.” Peace officers choose their arms for only one reason: lawful defense of self and others. That is why law enforcement officers choose them so often, and why law-abiding citizens do too.

Part I. The factual findings

18-12-601(1)(c) IN RECENT YEARS, AMERICANS HAVE ENDURED AN UNFATHOMABLE AVERAGE OF MORE THAN ONE MASS SHOOTING PER DAY.

This statement is based on definition used by the website Mass Shooting Tracker. As the website explains: “We define a ‘mass shooting’ as a single outburst of violence in which four or more people are shot. This is not the same as mass murder as defined by the FBI.”⁴ For example, if two people attempt to rob a liquor store, and they wound two people inside the store, and the two robbers are also wounded, that would be classified as a “mass shooting.” Whether the wounds were serious or superficial would not matter.

According to that website, in 2022 there were 753 mass shootings nationwide. In California there were 57:

Dec. 15, Nov. 24, Nov. 12 (Sacramento), Nov. 12 (Indio), Nov. 6, Oct. 30, Oct. 16, Oct. 10, Oct. 8, Oct. 7, Oct. 3, Oct. 1, Sept. 28, Sept. 27, Sept. 23, Sept. 14, Sept. 13, Sept. 3, Sept. 2, Aug. 28, Aug. 21, Aug. 11, Aug. 3, Aug. 1, July 24, July 21, July 11, July 10, July 4 (Oakland), July 4 (Sacramento), June 17, June 12, May 29, May 28, May 20, May 17, May 15, Apr. 23, Apr. 17, Apr. 15, Apr. 10, Apr. 3 (S.F.), Apr. 3 (Sacramento), Mar. 26, Mar. 22, Mar. 10, Mar. 1, Feb. 28, Feb. 19, Feb. 12, Feb. 6, Feb. 2, Jan. 29, Jan. 27, Jan. 23, Jan. 9 (Fresno), Jan. 9 (L.A.)

The California general assembly enacted the nation’s first “assault weapons” ban in 1989 and has expanded the ban many times. California has an average of more than one mass shooting per week.

bill’s claims that the firearms have no utility for lawful defense were true, there would be no reason for peace officers to possess them.

⁴ <https://massshootingtracker.site/>

18-12-601(1)(c) CONSISTENTLY, THE DEADLIEST MASS SHOOTING INCIDENTS IN THE UNITED STATES INVOLVED THE USE OF ASSAULT WEAPONS OR HIGH- CAPACITY MAGAZINES.

Mass shootings account for about 2/3 of 1% of murders in the United States. According to the Congressional Research Service, under 10% of mass shootings involve “assault weapons.” For those that take place in public, the figure is 27%.⁵

The handgun is the most common weapon used to commit mass shootings. Criminals with handguns perpetrated high-casualty shootings at Virginia Tech (58), Ft. Lauderdale (48), Killeen, Texas (45), Ft. Hood (45), and Thousand Oaks (33); the casualties approximated or exceeded attacks with “assault weapons” at Highland Park (53), El Paso (49), Sutherland Springs (45), Uvalde (38), and Parkland (34).⁶

18-12-601(1)(g) ASSAULT WEAPONS ARE UNIQUELY LETHAL BY DESIGN. THEY ENTAIL TACTICAL FEATURES DESIGNED FOR WARFARE, REFINED TO MAXIMIZE KILLING LARGE NUMBERS OF PEOPLE QUICKLY AND EFFICIENTLY.

Incorrect. Researchers led by Dr. Babak Sarani, founder and chief of the Center for Trauma and Critical Care at George Washington University Hospital, examined the relationship between the type of firearm used, wounding characteristics, and probability of death in mass shootings.⁷ They studied firearm types and autopsy reports for 232 victims from 23 mass shootings, including high-casualty shootings with “assault weapons” at Orlando and Las Vegas.

Surprisingly, the researchers found that mass shootings with handguns are more lethal than those with rifles because handguns result in more wounds per victim and more injuries to vital organs.⁸ “All of us were shocked,” Dr. Sarani said. “We came to the table with our bias that an assault weapon would be worse.”⁹

⁵ William J. Krouse & Daniel J. Richardson, *Mass Murder with Firearms: Incidents and Victims, 1999-2013*, Congressional Research Service (July 30, 2015) (9.78%, based on all mass shootings 1999–2013), <https://sgp.fas.org/crs/misc/R44126.pdf>.

⁶ See The Violence Project, *Mass Shooter Database* (vers. 8.0 January 2024), <https://www.theviolenceproject.org/mass-shooter-database/>.

⁷ Babak Sarani, et al., *Wounding Patterns Based on Firearm Type in Civilian Public Mass Shootings in the United States*, 228 *Journal of the American College of Surgeons* 228 (Mar. 2019).

⁸ *Id.* at 228-29, 232-33.

⁹ Carolyn Crist, *Handguns More Lethal Than Rifles in Mass Shootings*, Reuters (Dec. 31, 2018). Victims shot with a handgun were almost four times more likely to have three or more wounds compared to those shot with a rifle. Thus “the probability of death is higher for events involving a handgun than a rifle.” Sarani at 232. Twenty-six percent of victims shot with handguns and 16% shot

A more accurate finding would have said:

Ninety percent of mass shooters do not use ‘assault weapons.’ It is therefore unsurprising that in California, which has banned ‘assault weapons’ for over a third of a century, there is more than one mass shooting per week.

18-12-601(2)(e) BANNING ASSAULT WEAPONS LEADS TO A DROP IN MASS SHOOTINGS AND GUN MASSACRES. IN THE TEN YEARS THAT ASSAULT WEAPONS WERE LIMITED BY A FEDERAL BAN , GUN MASSACRES DROPPED DRASTICALLY, BY AT LEAST THIRTY-SEVEN PERCENT. CONVERSELY, AFTER THE FEDERAL ASSAULT WEAPON BAN EXPIRED IN 2004, GUN MASSACRES SKYROCKETED BY APPROXIMATELY ONE HUNDRED AND EIGHTY-THREE PERCENT.

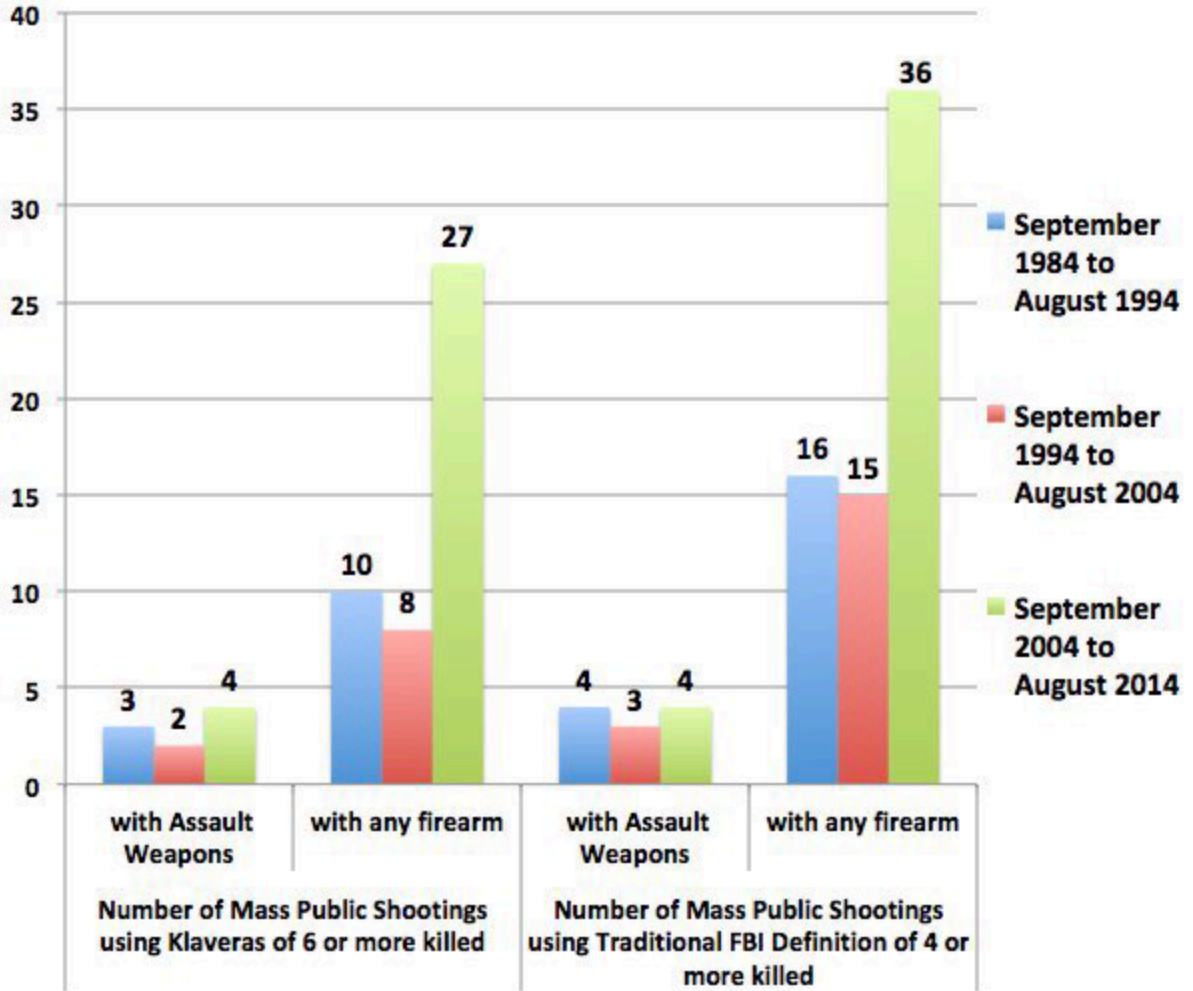
The research commissioned by the Clinton administration shows the opposite. In 1994, Congress enacted a ban with a 10-year sunset and ordered the Department of Justice to commission research on the effectiveness of the ban. President Clinton’s DOJ chose the Urban Institute, a respected left-leaning think tank. The study found no discernable reductions in any metric of crime and violence. Christopher Koper, *An Updated Assessment of the Federal Assault Weapons Ban*, Report to the National Institute of Justice (Philadelphia: Jerry Lee Center of Criminology 2004).¹⁰

Mass shootings did increase after 2004. However, almost all the increase involved guns that were *not* “assault weapons.” The graph below shows the data.

with shotguns had multiple fatal organ injuries; only 2% of those shot by a rifle had two or more fatal organ injuries. *Id.* Wounds to the brain and heart, which have the highest fatality rates, were most likely when handguns were used. *Id.* at 233. Victims shot with rifles were twice as likely to have a preventable death (if medical care were rendered in time) than those shot with other firearms. *Id.* at 231.

¹⁰ <https://www.ojp.gov/pdffiles1/nij/grants/204431.pdf>.

Changes in Number of Mass Public Shootings Before, During, and After the Federal Assault Weapons Ban (Using Mother Jones' Mass Public Shooting data)



Source: <https://twitter.com/GodwinMeter/status/1641923528915296256>.¹¹

¹¹ The word “massacres” in in the bill text comes from professor Louis Klarevas, who is a professor at the Teachers College at Columbia University. He defines “massacre” as six or more killed. Many scholars, and the FBI, define a “mass shooting” as four or more killed, not including the criminal.

Part II. Features of so-called “assault weapons”

Using a firearm safely means keeping it as steady as possible. A firearms user holds a long gun securely with two hands plus the shoulder. The better the fit, the more secure the hold.

Lawful firearms users discharge firearms when hunting, target shooting, and in lawful defense of self and others. In every situation, better accuracy is safer.

Because being suddenly attacked by a criminal is very stressful, good ergonomics for accuracy are especially important. This is all the more true for persons with relatively weak upper body strength, including many women, many elderly, and many people with disabilities.

Perversely, HB24-1292 outlaws features that improve accuracy. Anti-gun lobbies that purport to support “gun safety” are lobbying for citizens to use less accurate, less safe firearms.

Perversely, some legislators who claim to be against police brutality are sponsoring a bill for police to have weapons “designed for warfare, refined to maximize killing large numbers of people quickly and efficiently.”

HB24-1292 has nothing to do with gun safety and public safety, Instead, it is simply a big first step towards the objective of the Giffords lobby; in Ms. Giffords’ words, “No More Guns. Gone.”¹²

HB24-1292 denounces “assault weapons” for

PROVIDING EASE OF USE FOR LESS THAN EXPERT USERS.

18-12-601(1)(h).

According to the bill, persons who are “less than expert users” should not have “ease of use.” Such contempt for constitutional rights!

The sponsors are well-known for their announced dedication to “equity.” Yet their bill aims to eradicate “ease of use” in exercise of constitutional rights, for everyone except “experts.” How equitable!

¹² Philip Elliott, *No More Guns. Gone’: Why Gabby Giffords Isn’t Giving Up*, Time, Apr. 26, 2023, <https://time.com/6274979/gabby-giffords-gun-control/>.

Stated another way, when law-abiding Colorado citizens are defending themselves against violent criminal attackers, the bill sponsors want the victims to be forced to use firearms that are difficult to use.

The bill's definition of "assault weapon" focuses primarily on outlawing features that make firearms more accurate. It is hard to understand how the bill's sponsors believe that they are improving public safety by making firearms less accurate, thereby increasing the risks of stray shots that could hit a bystander.

18-12-602(2)(a) "ASSAULT WEAPON", EXCEPT AS PROVIDED IN SUBSECTION (2)(b) OF THIS SECTION, MEANS:

(I) A SEMIAUTOMATIC RIFLE THAT HAS THE CAPACITY TO ACCEPT A DETACHABLE MAGAZINE, OR THAT MAY BE READILY MODIFIED TO ACCEPT A DETACHABLE MAGAZINE , AND HAS ONE OR MORE OF THE FOLLOWING CHARACTERISTICS:

(A) A PISTOL GRIP OR THUMBHOLE STOCK;

(B) ANY FEATURE CAPABLE OF FUNCTIONING AS A PROTRUDING GRIP THAT CAN BE HELD BY THE NON-TRIGGER HAND;

(C) A FOLDING, TELESCOPING, OR DETACHABLE STOCK THAT IS OTHERWISE FOLDABLE OR ADJUSTABLE IN A MANNER THAT OPERATES TO REDUCE THE LENGTH, SIZE, OR ANY OTHER DIMENSION, OR OTHERWISE ENHANCES THE ABILITY TO CONCEAL THE WEAPON;

(D) A MUZZLE BRAKE;

(E) A FUNCTIONAL GRENADE LAUNCHER OR FLARE LAUNCHER;

(F) A SHROUD ATTACHED TO THE BARREL, OR THAT PARTIALLY OR COMPLETELY ENCIRCLES THE BARREL, ALLOWING THE BEARER TO HOLD THE FIREARM WITH THE NON- TRIGGER HAND WITHOUT BEING BURNED, BUT EXCLUDING A SLIDE THAT ENCLOSSES THE BARREL;
OR

(G) A THREADED BARREL;

In this list, items (A), (B), and (C) improve accuracy by helping the user hold the firearm more securely. This includes fitting the firearm to the user's stature, arm length, and hand size.

Item (D), the muzzle brake, reduces recoil and improves accuracy by stabilizing the barrel.¹³

Item (E), grenade launcher, does not involve any firearms available for sale to the general public, as far as I know.

The “flare launcher” ban is strange. Flares are emergency distress signals. How do the sponsors believe that they will improve public safety by making it harder for people to launch flares?

Item (F), any barrel “shroud.” On many modern firearms, the barrel is surrounded by rails that allow the attachment of optics, such as scopes, red dots, or flashlights. All of these attachments foster accuracy and safety.

Item (G), the threaded barrel, is used to attach muzzle brakes or sound suppressors. Suppressors are perfectly legal in Colorado. Buying one requires the same very lengthy process as buying a machine gun; this requires fingerprints, a months-long registration process with the federal Bureau of Alcohol, Tobacco, Firearms & Explosives, and a \$200 tax.¹⁴ Over two million suppressors are lawfully registered and owned in the United States.

Suppressors are sometimes inaccurately called “silencers.” They typically reduce a gunshot’s noise by about 15-20 decibels, which still leaves the gun four times louder than a chainsaw.¹⁵

But some ill-informed people, whose knowledge of firearms comes mainly from cinema, imagine that a gun with a “silencer” is nearly silent, and is only used by professional assassins. In real life, sound suppressors are used by lots of people who want to protect their hearing, or to reduce the noise heard by neighbors of a shooting range. Many firearms instructors choose suppressors in order to help new shooters avoid the “flinch” that many novices display because of a gun’s loudness.

¹³ The gunpowder explosion sends a sine wave of energy through the barrel, which makes the barrel wobble. A muzzle brake reduces the wobble.

¹⁴ 18 U.S.C. § 921(a)(24); 26 U.S.C. § 5845(a)(7).

¹⁵ Kopel, *The Hearing Protection Act and ‘silencers’*, Washington Post, June 20, 2017, reprinted without paywall at <https://reason.com/volokh/2017/06/19/the-hearing-protection-act-and/>. A suppressed firearm in .22 caliber, the smallest very common caliber, is quiet. Adding a suppressor to any larger caliber, which includes the firearms banned by HB12-1242, still leaves the firearm quite loud.

Part III. Case law in the Tenth Circuit

In 2022, three municipalities in Boulder County, plus the Boulder County Commissioners passed “assault weapon” laws similar to HB-1242. In all four cases, the enforcement of the bans has been halted by a preliminary court order, pending full trial.

At present, the operative order was issued by U.S. District Judge Nita K. Wang, who was appointed to the federal bench by President Biden in 2022.¹⁶ Before the cases were consolidated, orders against enforcement of the bans were issued by U.S. District Judge Charlotte Sweeney, who was appointed to the federal bench by President Biden in August 2021, and Judge Raymond Moore. Judge Moore was appointed to the federal bench by President Obama. Judge Moore’s opinion issuing a restraining order against the gun ban stated that Judge Traxler’s Fourth Circuit dissent, quoted above, was a correct statement of constitutional law under current Supreme Court precedent.¹⁷

Fourth Circuit Court of Appeals Judge William B. Traxler was appointed by President Clinton in 1998. In a 2017 case involving a Maryland ban on “assault weapons,” Judge Traxler wrote:

The majority also suggests that other features of semiautomatic rifles like the AR-15 make them devastating military weapons. But several of the features identified do not make the firearms more lethal or battle-ready, but easier to use. On the contrary, many of the “military-style” components “increase accuracy and improve ergonomics.” J.A. [Joint Appendix] 2100. A telescoping stock, for example, permits the operator to adjust the length of the stock according to his or her physical size so that the rifle can be held comfortably. J.A. 2182. Likewise, a pistol grip provides comfort, stability, and accuracy, see David B. Kopel, *Rational Basis Analysis of “Assault Weapon” Prohibition*, 20 J. Contemp. L. 381, 396 (1994)¹⁸ (“By holding the pistol grip, the shooter keeps the barrel from rising after the first shot, and thereby stays on target for a follow-up shot. The defensive application is obvious, as is the public safety advantage in preventing stray shots.”), and barrel shrouds keep the operator from burning himself or herself upon contact with the barrel.⁶ And although flash suppressors can indeed conceal a shooter’s position—which is also an advantage for someone defending his or her home at night—they serve the primary function of preventing the shooter from being blinded in low-lighting

¹⁶ *Rocky Mountain Gun Owners, et al. v. Town of Superior, City of Louisville, Colorado, City of Boulder, Colorado, and Board of County Commissioners of Boulder County*, Civil Action No. 22-cv-02680-NYW (D. Colo., Oct. 24, 2022) (Doc. 29).

¹⁷ *Rocky Mountain Gun Owners, et al. v. Town of Superior, et al.*, Civil Action No. 22-cv-01685-RM (D. Colo., July 22, 2022) (temporary restraining order, Doc. 18).

¹⁸ <https://davekopel.org/2A/LawRev/rational.htm>.

conditions. See Kopel, at 397 (“Reduced flash decreases shooter's blindness—the momentary blindness caused by the sudden flash of light from the explosion of gunpowder. The flash reduction is especially important for shooting at dawn or at dusk.”). None of these features convert a semiautomatic rifle into a weapon of war like a machinegun carried into battle by actual soldiers. It is unclear to me why features that make a firearm easier and safer to operate add to its battlefield prowess.⁷

Footnote 6: These features, the majority suggests, enable a shooter to “spray-fire” rounds everywhere. “Spray-firing” can only be accomplished with a fully automatic assault rifle like an M4 carbine; “[i]n semiautomatic mode it is possible to either aim fire or to point shoot, but it is not possible to spray fire in the manner as one would in fully automatic mode.” J.A. 2128.

Footnote 7: Nor does it appear that an AR-15-style rifle fires rounds that create a greater risk to civilians than rounds fired by a standard hunting rifle. In fact, just the opposite is true. The AR-15’s standard .223/5.56 mm ammunition is “quite anemic in penetration capability and pale[s] in destructive capacity when compared to common civilian hunting rifles....” J.A. 2095.

Kolbe v. Hogan, 849 F.3d 114, 158-59 (4th Cir. 2017) (Traxler, J., dissenting).

In the *Kolbe* case, Judge Traxler was writing for the dissent. Later, the U.S. Supreme Court vacated and remanded a successor case that had been based entirely on the *Kolbe* majority precedent. *Bianchi v. Frosh*, 858 Fed. App’x 645 (4th Cir. 2021), vacated by 142 S. Ct. 2898 (2022) (Mem.).

It is no secret that some sponsors of HB24-1242 have contempt for the United States Constitution and for the existence of the United States of America. That contempt is manifest is pushing legislation that has already been found unconstitutional in federal district courts for Colorado.

Conclusion

HB24-1292 is self-refuting. Its stated purpose is to prevent “ease of use,” making firearms use difficult for non-experts. The stated purpose is obviously unconstitutional and disdainful of lawful self-defense.

Hence, the bill’s safety clause, “for the immediate preservation of the public peace, health, or safety,” is incorrect. Getting rid of accurate firearms and forcing people to

use less accurate arms that are more difficult for non-experts to fire accurately is the opposite of public safety.

The bill falsely asserts that features which improve accuracy are “not suitable for self defense . . . or any purpose other than mass killing.” Then the bill irrationally puts those same “mass killing” weapons, “not suitable for self-defense” in the hands of Colorado peace officers.

Some of the bill’s sponsors have not been shy about public self-congratulation for their commitment to diversity and inclusion. Yet HB24-1292 is based on raw bigotry and ignorance. With reckless disregard for public safety, the bill’s only real purpose is a big step towards lobbyists’ goal of banning all guns.