

# APPENDIX

## TABLE OF APPENDICES

### Appendix A

Opinion of the United States Court of Appeals for the Tenth Circuit, <i>Caldara v. City of Boulder</i> , No. 18-1421 (April 10, 2020) .....	App-1
---	-------

### Appendix B

Order of the United States Court of Appeals for the Tenth Circuit Denying Petition for Rehearing En Banc, <i>Caldara v. City of Boulder</i> , No. 18-1421 (June 11, 2020) .....	App-18
---	--------

### Appendix C

Opinion and Order of the United States District Court for the District of Colorado, <i>Caldara v. City of Boulder</i> , No. 18-cv-01211 (Sept. 17, 2018).....	App-20
---	--------

Courtroom Minutes regarding <i>Pullman</i> briefing of the United States District Court for the District of Colorado, <i>Caldara v. City of Boulder</i> , No. 18-cv-01211 (Aug. 15, 2018) .....	App-36
---	--------

### Appendix D

Constitutional and Statutory Provisions Involved	
U.S. CONST. Amend. II.....	App-39
U.S. CONST. Amend. V .....	App-39
U.S. CONST. Amend. XIV .....	App-39
C.R.S. § 18-12-301 .....	App-40
C.R.S. § 29-11.7-101 .....	App-41
C.R.S. § 29-11.7-102 .....	App-42
C.R.S. § 29-11.7-103 .....	App-43

Appendix E

Ordinance 8245 - City Council of the City of  
Boulder..... App-47

Ordinance 8259 - City Council of the City of  
Boulder..... App-67

*Appendix A*

**PUBLISH**

**UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT**

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JON C. CALDARA;  
BOULDER RIFLE CLUB,  
INC.; GENERAL  
COMMERCE, LLC; TYLER  
FAYE; MARK RINGER,

Plaintiffs - Appellants,

v.

CITY OF BOULDER; JANE  
S. BRAUTIGAM, in her  
official capacity as City  
Manager of the City of  
Boulder; GREGORY TESTA,  
in his official capacity as  
Chief of Police of the City of  
Boulder; and JOHN DOES 1-  
10,

Defendants - Appellees,

AARON BROCKETT, in his  
official capacity as Mayor Pro  
Tem of the City of Boulder;  
CYNTHIA A. CARLISLE, in  
her official capacity as  
Boulder City Council  
Member; JILL ADLER  
GRANO, in her official

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No. 18-1421

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capacity as Boulder City Council Member; and JOHN DOES 1-10; SUZANNE JONES, in her official capacity of Mayor of the City of Boulder; LISA MORZEL, in her official capacity of Boulder City Council Member; MIRABAI KUK NAGLE, in her official capacity as Boulder City Council Member; SAMUEL P. WEAVER, in his official capacity as Boulder City Council Member; ROBERT YATES, in his official capacity as Boulder City Council Member; MARY D. YOUNG, in her official capacity as Boulder City Council Member,

Defendants.

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**Appeal from the United States District Court  
for the District of Colorado  
(D.C. No. 18-cv-1211-MSK-MEH)**

**[Filed: April 10, 2020]**

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Cody J. Wisniewski, Mountain States Legal Foundation (Zhonette M. Brown, Mountain States Legal Foundation, with him on the briefs), Lakewood, Colorado, for Plaintiffs- Appellants.

Robert Reeves Anderson, Arnold & Porter Kaye Scholer, Denver, Colorado (Timothy R. MacDonald, Evan M. Rothstein, and Patrick B. Hall, Arnold & Porter Kaye Scholer, Denver, Colorado; and Thomas A. Carr and Luis A. Toro, Boulder City Attorney's Office, Boulder, Colorado, with him on the brief), for Defendants-Appellees.

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Before **HARTZ, SEYMOUR,** and **MATHESON,**  
Circuit Judges.

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**SEYMOUR,** Circuit Judge.

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Plaintiffs are citizens of the City of Boulder and entities with various interests in the sale or possession of firearms within the city. They filed suit against the City of Boulder and several of its officials, alleging that Boulder City Ordinances 8245 and 8259 violate the U.S. Constitution, the Colorado State Constitution, and Colorado state statutes, Colo. Rev. Stat. §§ 29-11.7-102 & 103. The district court abstained and stayed the proceedings pending resolution of the state law preemption question in state court. *Caldera v. City of Boulder*, 341 F. Supp. 3d 1241 (D. Colo. 2018). Plaintiffs appeal, and we affirm.

I.

On May 15, 2018, the Boulder City Council unanimously passed Ordinance 8245 (“the

ordinance”),<sup>1</sup> which amended the Boulder Revised Code to prohibit the sale or possession of “assault weapons”<sup>2</sup> and large- capacity ammunition magazines within the City of Boulder. The ordinance

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<sup>1</sup> Subsequent to passing Ordinance 8245, the City of Boulder enacted Ordinance 8259 on June 19, 2018, which amends and clarifies some of the provisions of Ordinance 8245. The district court found that Ordinance 8259 did not “fundamentally change the thrust of the prior Ordinance” and plaintiffs do not appeal that finding. *Caldera v. City of Boulder*, 341 F. Supp. 3d 1241, 1242 (D. Colo. 2018). All references to “the ordinance” are to Ordinance 8245 with the 8259 changes included.

<sup>2</sup> The ordinance provides the following definition for “assault weapon”:

(a) All semi-automatic center-fire rifles that have the capacity to accept a detachable magazine and that have any of the following characteristics:

- (1) A pistol grip or thumbhole stock.;
- (2) A folding or telescoping stock; or
- (3) Any protruding grip or other device to allow the weapon to be stabilized with the non-trigger hand.

(b) All semi-automatic center-fire pistols that have any of the following characteristics:

- (1) Have the capacity to accept a magazine other than in the pistol grip; or
- (2) Have a secondary protruding grip or other device to allow the weapon to be stabilized with the non-trigger hand.

(c) All semi-automatic shotguns that have any of the following characteristics:

- (1) A pistol grip or thumbhole stock;
- (2) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
- (3) A folding telescoping stock;
- (4) A fixed magazine capacity in excess of 5 rounds; or
- (5) The capacity to accept a detachable magazine.

(d) Any firearm which has been modified to be operable

also raises the legal age for possession of firearms from eighteen to twenty-one. The City of Boulder is a home-rule municipality under the Colorado Constitution, which grants Boulder the authority to pass ordinances in “local and municipal matters” that supersede “any law of the state in conflict therewith.” Colo. Const. art. XX, § 6. Boulder passed the ordinance pursuant to its home-rule authority under the Colorado Constitution.

Plaintiffs filed this lawsuit challenging the ordinance under Colorado state law and the U.S. Constitution. They contend the ordinance is preempted by Colo. Rev. Stat. §§ 29-11.7-102 & 103. Section 29-11.7-102 limits the information that local governments may retain about guns and gun owners. Section 29-11.7-103 provides that “[a] local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law.” Plaintiffs also contend the ordinance violates the First, Second, Fifth, and Fourteen Amendments to the U.S. Constitution, as well as provisions of the Colorado Constitution.

Shortly after plaintiffs filed this action, other individuals and entities filed suit in state court in Boulder County challenging this same ordinance.

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as an assault weapon as defined herein.

(e) Any part or combination of parts designed or intended to convert a firearm into an assault weapon, including any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person. Aplt. App. at 45.

*Chambers v. City of Boulder*, No. 2018-CV-30581 (Colo. D. Ct., Boulder Cty. filed June 14, 2018) (Complaint at 1). Because of the uncertain state law issue in this case, the district court here decided to abstain under the Supreme Court's precedent in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The district court stayed federal proceedings pending a determination by the Colorado state court as to whether the ordinance is preempted by Colorado statutes §§ 29-11.7-102 & 103. Plaintiffs appeal the district court's determination.

## II.

Plaintiffs argue that the district court erred in abstaining under *Pullman*. The *Pullman* doctrine is a “narrow exception” to the federal courts’ general duty to decide cases and “is used only in exceptional circumstances.” *Kan. Judicial Review v. Stout*, 519 F.3d 1107, 1119 (10th Cir. 2008) (citation omitted). The policy underlying *Pullman* abstention is that federal courts should avoid “premature constitutional adjudication,” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 306 (1979) (citation omitted), and the risk of rendering advisory opinions, *Moore v. Sims*, 442 U.S. 415, 428 (1979) (“[T]he *Pullman* concern [is] that a federal court will be forced to interpret state law without the benefit of state-court consideration and . . . render[ ] the federal-court decision advisory and the litigation underlying it meaningless.”) (citation omitted). *Pullman* avoids “federal-court error in deciding state-law questions antecedent to federal constitutional issues,” by allowing for parties to adjudicate disputes involving “unsettled state-law issues” in state courts. *Arizonans for Official English v. Arizona*, 520 U.S.

43, 76 (1997).

In reviewing the district court's decision to abstain under *Pullman*, we first “review de novo whether the requirements for *Pullman* abstention have been met.” *Kan. Judicial Review*, 519 F.3d at 1114–15 (citation omitted). This is so because “[t]he question of the clarity of state law is essentially legal in nature.” *Vinyard v. King*, 655 F.2d 1016, 1019 (10th Cir. 1981) (citation omitted).

If we determine that the requirements for abstention under *Pullman* are met, we then review for abuse of discretion the district court's decision to abstain. *See Harman v. Forssenius*, 380 U.S. 528, 534 (1965) (“In applying the doctrine of abstention, a federal district court is vested with discretion to decline to exercise or to postpone the exercise of its jurisdiction in deference to state court resolution of underlying issues of state law.”) (citation omitted); *see also Vinyard*, 655 F.2d at 1018 (“[If] the particular case falls within the ambit of *Pullman* . . . , [the court] must then make a discretionary determination . . . as to whether abstention is in fact appropriate.”) (citation omitted). Abuse of discretion occurs “only when [the district court] makes a clear error of judgment, exceeds the bounds of permissible choice, or when its decision is arbitrary, capricious or whimsical, or results in a manifestly unreasonable judgment.” *Liberty Mut. Fire Ins. Co. v. Woolman*, 913 F.3d 977, 990 (10th Cir. 2019) (internal quotation marks and citation omitted). We apply these principles to plaintiffs' claims on appeal.

A.

Plaintiffs contend the requirements for *Pullman* abstention are not satisfied. We have recognized three requirements that must be met to justify abstention under *Pullman*:

(1) an uncertain issue of state law underlies the federal constitutional claim; (2) the state issues are amenable to interpretation and such an interpretation obviates the need for or substantially narrows the scope of the constitutional claim; and (3) an incorrect decision of state law by the district court would hinder important state law policies.

*Lehman v. City of Louisville*, 967 F.2d 1474, 1478 (10th Cir. 1992) (citation omitted).

A complex issue of state law underlies the federal constitutional claims in this case. Both sides agree that the Boulder City Ordinance conflicts with Colorado statutes §§ 29-11.7-102 & 103. As the district court recognized, however, the statutes “rub[] up against Art. XX, Section 6 of the Colorado constitution,” which grants municipalities regulatory authority over the General Assembly in matters of local and municipal concern (referred to as the “home rule” provision). *Caldera*, 341 F. Supp. 3d at 1244. In a home-rule jurisdiction where “a home rule ordinance . . . and a state statute conflict with respect to a local matter, the home rule provision supersedes the conflicting state provision.” *City & Cty. of Denver v. State*, 788 P.2d 764, 767 (Colo. 1990) (citation omitted). On the other hand, municipal ordinances that deal with matters of statewide concern and conflict with state law are preempted,

unless otherwise authorized by the constitution or state statute. *Id.* Finally, in “matters of mixed local and state concern, a charter or ordinance provision of a home rule municipality may coexist with a state statute as long as there is no conflict, but in the event of a conflict the state statute supersedes the conflicting [ordinance] provision.” *Id.*

The determinative issue therefore is whether the challenged provisions of the Boulder City Ordinance regulate matters of purely local or statewide concern, or a mix of both. That issue implicates state, not federal law, and is uncertain under Colorado law. The question, as far as we are aware, has been addressed only one time by Colorado state courts, *see City & Cty. of Denver v. State*, No. 03-CV-3809, 2004 WL 5212983 (Colo. D. Ct., Denver Cty. Nov. 5, 2004). There, the City of Denver had in place several ordinances restricting the sale and use of firearms in Denver city limits. *Id.* at \*1. The City sought a declaratory judgment that the ordinances were not preempted by recently passed state statutes that “identif[ied] control of firearms as a state interest,”<sup>3</sup> or alternatively that the Colorado statutes were unconstitutional under the home rule amendment to the extent that they preempt local laws. *Id.* The district court considered each provision individually to determine whether the provision regulated matters of “purely local, purely state or mixed concern,” and concluded that several provisions

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<sup>3</sup> The statutes at issue in *City and County of Denver* were also Colo. Rev. Stat. §§ 29-11.7-102 & 103.

related to matters of purely local concern. *Id.* at \*2, \*15–17. The State appealed the decision to the Colorado Supreme Court, which split evenly on the issue of whether the ordinances were preempted, thereby affirming the decision of the Denver District Court.<sup>4</sup> *State v. City & Cty. of Denver*, 139 P.3d 635, 636 (Colo. 2006) (3-3 decision, J. Eid not participating).

Plaintiffs maintain that the first *Pullman* factor is not satisfied because the Colorado district court decision in *City & Cty. of Denver* provides certainty in addressing the issue.<sup>5</sup> They contend that “trial court interpretations . . . constitute a ruling on a question of state law that is binding on [the Court].” *City of Houston v. Hill*, 482 U.S. 451, 470 (1987) (quotation marks and citation omitted). In *Hill*, the plaintiff filed a civil rights action after he was arrested several times for violating a city ordinance that proscribed “interrupt[ing] any policeman in the execution of his duty” and he was subsequently acquitted. *Id.* at 454–55. The district court held that the ordinance had not been unconstitutionally applied. When the Court of Appeals declined to

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<sup>4</sup> Colorado Appellate Rule 35(b) provides that “[w]hen the supreme court acting en banc is equally divided in an opinion, the judgment being appealed will stand affirmed.”

<sup>5</sup> Plaintiffs also assert that the district court should not have engaged in the *Pullman* analysis without a more thorough factual record in order “to determine the extent of the issues in the case and to frame which issues, if any, require abstention.” Aplt. Rep. Br. at 34. We are not persuaded that *Pullman* requires the district court to engage in the examination of state law that it has determined to leave to the state courts. Further, the factual record before the district court was sufficient to establish which issues required abstention in this case and the extent of those issues.

abstain and held en banc that the statute was overbroad, *Hill v. City of Houston*, 789 F.2d 1103, 1113 (5th Cir. 1986), the city appealed. The Supreme Court denied abstention under *Pullman* based upon the fact that the Houston Municipal Courts had applied the city ordinance on numerous occasions. *Hill*, 482 U.S. at 469–70. The Court held that the ordinance was overbroad. *Id.* at 467.

Unlike in *Hill*, however, the Colorado Supreme Court previously had occasion to review the issue on appeal here and split evenly in response. *See City & Cty. of Denver*, 139 P.3d at 636. In these circumstances, we agree with the district court that “it is hard to conceive of a more potent way of demonstrating” uncertainty under *Pullman* than “the state’s highest court split[ting] evenly on a question of law.” *Caldera*, 341 F. Supp. 3d at 1245.

The state law issue in this case is not only uncertain but also potentially decisive. The second *Pullman* factor presents “the pivotal question in determining whether abstention is appropriate”: is the statute “fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question.” *Hill*, 482 U.S. at 468 (quotation marks and citation omitted). The answer here is clearly yes: if the state court were to conclude that the Colorado statutes preempt the Boulder ordinance, there would be no need for us to resolve the federal constitutional questions. Plaintiffs do not allege any impediment to bringing their preemption claim in state court. Even if the state court does not hold that each provision of the ordinance is preempted by the statute, its potential determination that some of the provisions are preempted would substantially narrow the scope of the constitutional

analysis in federal court. Thus, the second *Pullman* factor is satisfied in this case and weighs in favor of abstention.

The third *Pullman* factor is also satisfied because the case implicates state rights and a decision by this court would risk intrusion into important state functions. In making this determination, we afford deference to the district court's assessment. As we recognized in *Vinyard*;

The appraisal of whether an erroneous federal court determination of state law would have a disruptive effect on state policies is more discretionary in character than the determination of the clarity of state law, and greater deference will be generally accorded to a district court's appraisal if it is adequately explained.

655 F.2d at 1020 (quotation marks and citation omitted).

The Supreme Court has found the third *Pullman* factor to be satisfied where "the dispute in its broad reach involves a question as to whether a city has trespassed on the domain of a State." *City of Chicago v. Fieldcrest Dairies*, 316 U.S. 168, 172 (1942). In *Fieldcrest Dairies*, milk sellers sued after being denied a permit to sell milk in paper cartons due to a city ordinance which required that milk products sold in quantities less than one gallon be "delivered in standard milk bottles." *Id.* at 169. Subsequently, Illinois passed the Illinois Milk Pasteurization Plant Law, which regulated single service and paper milk containers and "reserve[d] to cities, villages and incorporated towns the power to regulate the distribution . . . of pasteurized milk" so long as the

regulation did not violate the act. *Id.* at 170 (internal quotation marks omitted). The Seventh Circuit held that the ordinance's prohibition of single-service containers was void as it violated the public policy of the state expressed in the statute and suggested in dictum that the ordinance was unconstitutional. *Fieldcrest Dairies v. City of Chicago*, 122 F.2d 132, 139 (7th Cir. 1941). The Supreme Court reversed on the ground that *Pullman* abstention was required. *Fieldcrest Dairies*, 316 U.S. at 171. The Court reasoned that "Illinois has the final say as to the meaning of the ordinance in question" as well as "the final word on the alleged conflict between the ordinance and the state Act." *Id.* at 171–72. The Court determined that the constitutional issue raised "may not survive the litigation in the state courts" and explained that the wisdom in abstention is that it "avoid[s] the waste of a tentative decision and any needless friction with state policies." *Id.* at 172, 173 (quotation marks and citation omitted). As in *Fieldcrest Dairies*, there is a concern in the present case as to "the appropriate relationship between federal and state authorities functioning as a harmonious whole." *Id.* at 172–73. Indeed, the district court rightly determined that federalism interests are salient in this case. *Caldera*, 341 F. Supp. 3d at 1246.

The deciding court in the present case must balance two competing state policy choices. First, the state legislature has expressed a strong interest in uniform firearm regulation. *See* Colo. Rev. Stat. § 29-11.7-101 (explaining that "[i]nconsistency among local governments of laws regulating the possession and ownership of firearms results in persons being treated differently under the law solely on the basis

of where they reside”). On the other hand, the Colorado Constitution grants regulatory power to municipalities under the home rule provision. See Colo. Const. art. XX., § 6. We agree with the district court that an “incorrect prediction” as to “the correct interpretation of C.R.S. § 29.11.7-103 and Art. XX, Section 6 of the Colorado constitution will necessarily disrupt an important state interest” in decisively balancing these state policies. *Caldera*, 341 F. Supp. 3d at 1246. Thus, all three *Pullman* factors are satisfied and weigh in favor of abstention in this case.

## B.

Because we have determined that all *Pullman* factors are present, we now review the district court’s abstention determination for abuse of discretion. See *Harman*, 380 U.S. at 534; see also *Vinyard*, 655 F. 2d at 1018. The decision whether to abstain is a “discretionary exercise of a court’s equity powers.” *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964). The consideration of “the nature of the constitutional deprivation alleged and the probable consequences of abstaining” are part of the assessment in determining whether to abstain under *Pullman*. *Harman*, 380 U.S. at 537. In deciding whether to abstain, a court considers “the delays inherent in the abstention process and the danger that valuable federal rights might be lost in the absence of expeditious adjudication in the federal court.” *Harris Cty. Comm’rs Court v. Moore*, 420 U.S. 77, 83 (1975).

Plaintiffs argue abstention in this case is improper because it chills the exercise of their fundamental constitutional right to keep and bear

arms.<sup>6</sup> But the Supreme Court has not recognized a categorical rule against abstention in cases involving constitutional rights. *See Moore v. Sims*, 442 U.S. 415, 434–35 (1979) (ordering abstention in a child-welfare case involving due process rights); *see also Reetz v. Bonzannich*, 397 U.S. 82 (1970) (requiring abstention despite Fourteenth Amendment challenge). Moreover, consideration of the nature of the right and the chilling effect of abstention is a secondary assessment to determining whether the *Pullman* requirements are met. *See Harman*, 380 U.S. at 535–37 (assessing the nature of the right and the consequences of abstaining only after determining that the statute was “clear and unambiguous” and therefore did not meet the requirements of *Pullman*).<sup>7</sup> Plaintiffs also argue that abstention causes a lengthy delay before the constitutional issues are adjudicated and, as a result, they will be deprived of their Second Amendment rights for an extended period. We have recognized that certification is preferable to abstention as a means of avoiding delay. *Kan. Judicial Review*, 519

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<sup>6</sup> For the first time at oral argument, plaintiffs also argued that abstention was inappropriate because they are seeking damages under 42 U.S.C. § 1983. Because “issues may not be raised for the first time at oral argument,” we do not consider this argument. *Dodds v. Richardson*, 614 F.3d 1185, 1208 (10th Cir. 2010).

<sup>7</sup> Notably, in each Supreme Court case cited by plaintiffs to support their chilling argument, the Court determined that at least one of the *Pullman* factors was not satisfied. *See Hill*, 482 U.S. at 471 (concluding that the “ordinance is neither ambiguous nor obviously susceptible of a limiting

F.3d at 1119. The district court provided the parties with the option to certify the state law questions to the Colorado Supreme Court, but the parties were unable to reach an agreement to pursue that path. *Caldera*, 341 F. Supp. 3d at 1248. Moreover, the Supreme Court has “regularly ordered abstention” when a case is “pending in state court that will likely resolve the state-law questions underlying the federal claim.” *Moore*, 420 U.S. at 83. Because there is a case involving substantially identical issues<sup>8</sup> pending in state court, the concern as to delay is

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construction”); *Zwickler v. Koota*, 389 U.S. 241, 249 (1967) (“[W]e have here no question of a construction of [the statute] that would avoid or modify the constitutional question.”) (quotation marks omitted); *Dombrowski v. Pfister*, 380 U.S. 479, 490–91 (1965) because “the conduct charged in the indictments is not within the reach of an acceptable limiting construction” of the statute, and statutes were invoked in bad faith to discourage civil rights activities); *Harman*, 380 U.S. at 536 (stating that no “provision in the legislation . . . leaves reasonable room for a construction by the [state] courts which might avoid in whole or in part the necessity for federal constitutional adjudication, or at least materially change the nature of the problem”) (citation omitted); and *Baggett*, 377 U.S. at 375–78 (denying abstention on the grounds that there was not an uncertain issue of state law that “turn[s] upon a choice between one or several alternative meanings of a state statute” but rather “an indefinite number” of interpretations and therefore, a construction of the statute by the state court would not avoid or alter the constitutional issue).

<sup>8</sup> The *Chambers* lawsuit raises only state law challenges to the ordinance and does not include the federal constitutional challenges included in this case.

mitigated. *See Chambers v. City of Boulder*, No. 2018-CV-30581 (Colo. D. Ct, Boulder Cty. filed June 14, 2018).

Accordingly, we hold that the district court properly abstained as “appropriate regard for the rightful independence of state governments reemphasize[s] that it is a wise and permissible policy for the federal chancellor to stay his hand in absence of an authoritative and controlling determination by the state tribunals.” *Fieldcrest Dairies*, 316 U.S. at 172 (quotation marks and citation omitted).

We AFFIRM.

*Appendix B*

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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JON C. CALDARA, et al.,	No. 18-1421
Plaintiffs - Appellants,	(D.C. No. 1:18-CV-
v.	1211-MSK-MEH)
CITY OF BOULDER, et al.,	(D. Colo.)
Defendants - Appellees,	
AARON BROCKETT, in his official capacity as Mayor Pro Tem of the City of Boulder, et al.,	
Defendants.	

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**ORDER**

**[Filed: June 11, 2020]**

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Before **HARTZ, SEYMOUR**, and **MATHESON**,  
Circuit Judges.

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Appellants' petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court  
CHRISTOPHER M. WOLPERT, Clerk

*Appendix C*

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Chief Judge Marcia S. Krieger**

**Civil Action No. 18-cv-01211-MSK-NYW**

**JON C. CALDERA,  
BOULDER RIFLE CLUB, INC., GENERAL  
COMMERCE, LLC, TYLER FAYE, and  
MARK RINGER,**

**Plaintiffs,**

**v.**

**CITY OF BOULDER, and  
John Does 1-10,**

**Defendants.**

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**OPINION AND ORDER OF ABSTENTION  
PURSUANT TO *PULLMAN***

**[Filed: Sept. 17, 2018]**

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**THIS MATTER** comes before the Court pursuant to the Court's discussion with the parties during a hearing on August 15, 2018 (**# 46**), and the parties' supplemental briefing on the issue of *Pullman* abstention (**# 48, 49**).

**FACTS**

For purposes of this Order, the pertinent facts of this case are straightforward and undisputed. On May 15, 2018, the City of Boulder adopted Ordinance 8245. That Ordinance amended the Boulder Revised Code to prohibit, within the City of Boulder, the sale or possession of “assault weapons” (defined generally as semi-automatic rifles, pistols, and shotguns having certain specific characteristics) and large-capacity ammunition magazines (defined generally as magazines with a capacity of more than 10 rounds, 15 for pistols), among other things. The Ordinance provided that individuals in possession of such weapons or magazines as of the passage of the Ordinance could choose to retain those items by providing certain information about the items to the Boulder Police Department, undergoing a background check, and obtaining a “certificate” to be kept with the weapon or magazine.<sup>1</sup>

The Plaintiffs – citizens of the City of Boulder and entities with various interests in the sale or possession of weapons within Boulder – commenced this action challenging the Ordinances. Their Amended Complaint (# 41) asserts a total of 39 claims, although the bulk of those claims are a core group of seven distinct claims, asserted by each of the five Plaintiffs: (i) a claim that the Ordinances violate the Second

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<sup>1</sup> On June 18, 2019, the City passed Ordinance 8259, which amended Ordinance 8245 in certain respects, but which did not fundamentally change the thrust of the prior Ordinance.

Amendment to the United States Constitution; (ii) a claim that Ordinances violate the Due Process Clause of the Constitution (apparently a substantive due process claim, as it contends that the Ordinance lacks “any legitimate government objective”); (iii) a claim that the Ordinances violate the Takings Clause of the 5<sup>th</sup> Amendment to the U.S. Constitution, in that the Ordinances “force [the Plaintiffs] to surrender [their] lawfully acquired and lawfully owned property . . . without any government compensation”; (iv) a claim that the Ordinances violate the First Amendment to the Constitution, in that they compel the Plaintiffs “to speak to the Boulder Police Department and provide information about banned, but currently exempted, firearms”; (v) a claim asserting a violation of the Privileges and Immunities Clause of the 14<sup>th</sup> Amendment to the Constitution, in that the Ordinance deprives them of the rights secured by the Second Amendment; (vi) a claim that the Ordinances violate Article 2, § 13 of the Colorado Constitution, which guarantees citizens the right to keep and bear arms; and (vii) a claim that the Ordinances violate Article 2, § 3 of the Colorado Constitution, which guarantees citizens the right “of enjoying and defending their lives and liberties,” in that the Ordinance deprives them of their right of self-defense. In addition, to these core claims (and certain additional claims asserted by certain specific Plaintiffs), two claims by unspecified Plaintiffs seek a declaratory judgment that the Ordinance violates home rule provisions found in

C.R.S. § 29-11.7-102 and -103.<sup>2</sup>

The Plaintiffs sought a preliminary injunction (# 4) against enforcement of the Ordinance, and on August 15, 2018, this Court conducted a non-evidentiary hearing to address that request. Among the issues raised by the Court at that hearing was the question of whether it was appropriate for the Court to abstain, on *Pullman* grounds, from hearing the constitutional challenges to the Ordinances until the Plaintiffs' claims under C.R.S. § 29-11.7-103 were resolved. The Court invited the parties to brief the issue of the appropriateness of *Pullman* abstention, and the parties did so (# 48, 49).

### ANALYSIS

The doctrine of abstention that has become known as the *Pullman* abstention has its origins in the U.S. Supreme Court's decision in *Railroad Comm'n. of Texas v. Pullman Co.*, 312 U.S. 496 (1941). There, a Texas regulation prohibited passenger railroads from operating trains without a conductor, a regulation that implicated the railroads' ability to employ black persons as sleeper car attendants. The railroads and certain black employees sued the state railroad commission, arguing that the regulation violated both Texas state

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<sup>2</sup> C.R.S. § 29-11.7-102(1) prohibits local governments from "maintaining a list or other form of record or database of" firearms ownership or transfers.

C.R.S. § 29-11.7-103 provides that local government "may not enact an ordinance . . . that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law."

law and the Equal Protection and Due Process clauses of the U.S. Constitution. A trial court enjoined enforcement of the regulation, and the state appealed to the U.S. Supreme Court. The Court conceded that the plaintiffs “tendered a substantial constitutional issue,” but noted that it “touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open.” 312 U.S. at 498. It observed that “[s]uch constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy,” and explained that, in addressing the question of whether the regulation violated Texas state law, the federal courts could offer only “a forecast rather than a determination” of how state law might apply. The last word, it explained, “belongs neither to us nor the district court, but to the supreme court of Texas.” The Court observed that “[t]he reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court,” and suggested that federal courts should endeavor to “avoid the waste of a tentative decision as well as the friction of a premature constitutional adjudication.” Noting that the state courts provided “easy and ample means for determining” the state law issue, the Court declared that the federal court “should exercise its wise discretion by staying its hands” as to the constitutional question and remanded the action back to the district court to “retain the bill” – essentially stay the case – “pending a determination of proceedings, to be brought with reasonable promptness, in the state court.” *Id.* at 498-502.

*Pullman* abstention is founded on the notion that federal courts should avoid “premature constitutional adjudication.” *Babbitt v. United Farm Workers Natl. Union*, 442 U.S. 289, 306 (1979). The danger is that a federal court may render “a constitutional adjudication [ ] predicated on a reading of the [state] statute that is not binding on state courts and may be discredited at any time, thus essentially rendering the federal court decision advisory and the litigation underlying it meaningless.” *Moore v. Sims*, 442 U.S. 415, 428 (1979). Thus, *Pullman* abstention is appropriate when three elements are present: (i) an uncertain issue of state law underlies the federal constitutional claim; (ii) the state issues are amenable to interpretation and such an interpretation would obviate the need for or substantially narrow the scope of the constitutional claim; and (iii) an incorrect decision of state law by the federal court would hinder important state law policies. *Kansas Judicial Review v. Stout*, 519 F.3d 1107, 1118-19 (10<sup>th</sup> Cir. 2008).

**A. Are the predicate elements for abstention are present?**

Turning first to the existence of “an uncertain issue of state law,” the issue is framed by the Plaintiffs’ Thirty Ninth Cause of Action. It seeks a declaration that the Boulder Ordinances violate a Colorado State Statute - C.R.S. § 29-11.7-103. Such statute provides that “a local government may not enact an ordinance. . . that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or

federal law.”<sup>3</sup> It would appear that the Ordinances violate the statute because at least some firearms covered by the Ordinances can be legally-possessed under Colorado and/or federal law.

But C.R.S. § 29-11.7-103 does not exist in a vacuum. It rubs up against Art. XX, Section 6 of the Colorado constitution, which provides generally that municipalities are given the authority to pass laws affecting “local and municipal matters” which “supersede . . . any law of the state in conflict therewith” (sometimes referred to as a “home rule” provision). If the regulation of firearms is a “local and municipal matter,” then Art. XX, Section 6 would require that C.R.S. § 29-11.7-103 yield to that local interest. Thus, the question of whether the Ordinances are barred by C.R.S. § 29-11.7-103, or whether that statute yields to Boulder’s home rule authority turns significantly on the question of whether the regulation of firearms within the city is a “local and municipal matter” or a matter of statewide concern.

The answer to that question is decidedly uncertain and certainly an issue of state, not federal law. As far as this Court is aware, the state courts have squarely considered that question only once. In *City and County of Denver v. State of Colorado*, 2004 WL 5212983 (Colo. Dist. Ct., Denver County Nov. 5,

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<sup>3</sup> The Plaintiffs argue that, because C.R.S. § 29-11.7-103 encompasses weapons legally possessed under “federal law,” “the underlying state law explicitly implicates a question of federal law” and thus falls outside of *Pullman* consideration entirely. For the reasons set forth herein, that argument is without merit.

2004), the City of Denver had passed several municipal ordinances governing the sale or use of firearm within the city limits. Citing the recently-enacted C.R.S. § 29-11.7-103 (sometimes referred to by the courts as “Senate Bill 25”), the State sued, seeking a declaration that Denver’s ordinances were preempted; in response, Denver argued that the ordinances addressed local matters within the scope of Denver’s home rule rights. Ultimately, the Denver District Court found that several of Denver’s ordinances (including a prohibition on the sale of “assault weapons”) were properly considered matters of uniquely local concern, trumping C.R.S. § 29-11.7-103’s prohibition. The state appealed that ruling to the Colorado Supreme Court, but the Supreme Court split evenly on the issue, with three justices voting to affirm the Denver District Court, three justices voting to reverse, and one justice not participating. *State of Colorado v. City and County of Denver*, 139 P.3d 635 (Colo. 2006). By operation of Colorado Appellate Rule 35(e), the even split by the Supreme Court resulted in the affirmance of the Denver District Court’s ruling.

There can be little argument that, where the state’s highest court splits evenly on a question of law, that legal question is “uncertain”; indeed, it is hard to conceive of a more potent way of demonstrating such uncertainty. The Plaintiffs here argue that the application of C.R.S. § 29-11.7-103 is not uncertain because “the plain language of” that statute “is clear and unambiguous,” as are the principles for determining whether matters fall within the Colorado constitution’s “home rule” provisions, such this Court “need only look to the state statutes in question . . . and apply them to the

case at hand.” But *City and County of Denver* clearly belies the Plaintiffs’ contention that the state law determinations to be made here are straightforward and obvious. Surely, they were not straightforward and obvious to the Colorado Supreme Court in 2006, and although the Colorado state courts have spoken generally on the subject of home rule in the interim, the Plaintiffs point to no subsequent decisions that have revisited – much less conclusively resolved -- the particular question of whether municipal firearms regulations constitute matters of local or statewide concern. Thus, the first element of *Pullman* abstention – an uncertain question of state law – is present here.

The second element considers whether the state issue is ripe for review and whether its resolution would obviate the need for a determination of federal constitutionality is also satisfied. The state law issue is ripe, as the Plaintiffs have asserted it as one of their causes of action here. There is no apparent impediment to the Plaintiffs litigating the applicability of C.R.S. § 29-11.7- 103 to the Ordinances herein in the state courts, or at least the Plaintiffs have not identified any such impediment (except perhaps time, which the Court addresses below). Likewise, it is clear that if the state courts were to conclude that the Ordinances are preempted by C.R.S. § 29-11.7- 103, such determination would nullify the Ordinances and eliminate entirely the need for a determination of whether the Ordinances offend the U.S. Constitution. Thus, the second element of *Pullman* abstention is present as well.

Finally, the third element examines whether an incorrect prediction of state law by this Court would hinder important state policies. Both sides of the

state law issue implicate important state rights: on the one hand, the state's interest in the uniform enforcement of firearms laws is a matter of substantial state interest, as reflected by the legislative declaration found in C.R.S. § 29-11.7-101. On the other hand, the principles of municipal home rule enshrined in the Colorado constitution reflect important state interests as well, given the state's intention to confer upon municipalities the same powers possessed by the state legislature itself, at least as to matters of local concern. *City and County of Denver v. State of Colorado*, 788 P.2d 764, 767 (Colo. 1990). Thus, any incorrect prediction by this Court about the correct interpretation of C.R.S. § 29-11.7-103 and Art. XX, Section 6 of the Colorado constitution will necessarily disrupt an important state interest.

Accordingly, the Court finds that all the predicate elements necessary for *Pullman* abstention are present here.<sup>4</sup>

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<sup>4</sup> Occasionally, the Supreme Court makes a passing reference to abstention only being appropriate in "special circumstances." *Baggett v. Bullitt*, 377 U.S. 360, 376 (1964). At least one such circumstance is "the susceptibility of a state statute to a construction by the state courts that would avoid or modify the constitutional question." *Zwickler v. Koota*, 389 U.S. 241, 248- 49 (1967). To the extent that "special circumstances" are an additional element that must be present for *Pullman* abstention to be appropriate, for the reasons set forth above, this Court finds that this special circumstance is present here.

**B. Should this Court abstain from hearing this matter?**

Having determined that all the predicate elements for *Pullman* abstention are present, the only remaining question is whether the Court should abstain. Abstention is a discretionary exercise of the Court's equity powers, to be applied only in special circumstances. *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964). The Plaintiffs offer two arguments as to why abstention would be inappropriate: (i) because the Ordinances implicate fundamental rights under the U.S. Constitution; and (ii) because abstention would needlessly delay consideration of the substantial federal questions raised by the Plaintiffs' claims.

1. Nature of the right at issue

The Supreme Court has stated that “abstention is inappropriate for cases where statutes are justifiably attacked on their face as abridging free expression.”<sup>5</sup> *City of Houston v. Hill*, 482 U.S. 451, 467 (1987), quoting *Dombrowski v. Pfister*, 380 U.S.

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<sup>5</sup> But see *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 509-10 (1985) (O'Connor, J., concurring) (“the Court of Appeals asserted that *Pullman* abstention should almost never apply where a state statute is challenged on First Amendment grounds because the constitutional guarantee of free expression is, quite properly, always an area of particular federal concern. This Court has never endorsed such a proposition. On the contrary, even in cases involving First Amendment challenges to a state statute, abstention may be required to avoid unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication.”) (internal quotes and citations omitted).

479, 489 (1965). The Plaintiffs assert that Second Amendment rights should enjoy the same protection as First Amendment free expression rights, and thus this Court should categorically refuse to abstain in this case.

Putting aside the difficulty in attempting to compare and contrast the relative importance of constitutional rights and the absence of any cited legal authority for the proposition advanced by the Plaintiffs, this Court observes, as does Justice Powell's concurring opinion in *Hill*, 482 U.S. at 476 n. 4, that the reasons why free expression cases are particularly ill-suited for abstention has less to do with their categorical label and more to do with the interplay of federal and state law interests in such cases. Each of the cases that the Plaintiffs here cite in support of their argument, including *Zwickler v. Koota*, 389 U.S. 241 (1967), *Dombrowski*, and others such as *Hill* and *Baggett v. Bullitt*, 377 U.S. 360 (1964), involve individuals challenging state statutes restricting free expression as being vague or overbroad in violation of the First Amendment. In none of these cases did the Supreme Court simply declare that "because free expression rights are implicated, abstention is inappropriate." Rather, a close reading of all those cases reveals that common reasons why the Supreme Court found *Pullman* abstention to be inappropriate. In these cases, (particularly with regard to vagueness challenges), the Court found that was no likelihood of a single, conclusive determination of state law that would eliminate the need for a federal constitutional analysis – that the state courts would only be able to render a string of sequential rulings in piecemeal fashion that might resolve the constitutional

question if viewed in aggregation. *See e.g. Zwickler*, 389 U.S. at 397 (“appellee concedes that state court construction cannot narrow its allegedly indiscriminate cast and render unnecessary a decision of appellant's constitutional challenge”); *Baggett*, 377 U.S. at 378 (“It is fictional to believe that anything less than extensive adjudications, under the impact of a variety of factual situations, would bring the oath within the bounds of permissible constitutional certainty”). The Court also found in some cases that there was no meaningful state law question presented. *Dombrowski*, 380 U.S. at 490 (law enforcement “invoked. . . criminal process [against the appellant] without any hope of ultimate success [ ] only to discourage appellant’s civil rights activities,” and in such circumstances, “the interpretation ultimately put on the statutes by the state courts is irrelevant”); *Hill*, 482 U.S. at 471 (“here, there is no uncertain question of state law whose resolution might affect the pending federal claim”).

Neither of these situations is present here. The question of whether the Ordinances regulate matters of local concern (such that they are a permissible exercise of Boulder’s home rule rights), or whether they regulate matters of general statewide concern (such that they are impermissible under C.R.S. § 29-11.7-103), is concrete, ripe, capable of conclusive resolution in a single state court lawsuit, and, if resolved against Boulder, will entirely dispositive of the claims herein without requiring any adjudication of the federal constitutional issues. Thus, the factors that sometimes lead the Supreme Court to assert that free expression cases generally are not suitable for *Pullman* abstention are not present here.

## 2. Delay

Of course, the crux of the Plaintiffs' argument that abstention would burden their fundamental rights is based on the assumption that resolving the state law issue in state court will interpose a lengthy delay before this Court might thereafter reach the federal constitutional issues, and that throughout that time, the Plaintiffs will suffer an ongoing intrusion into their Second Amendment rights. The Court understands and appreciates this argument, but finds it unavailing. The notion that individuals will continue to suffer an ongoing alleged deprivation of constitutional rights is, unfortunate as it may be, baked into the concept of abstention. The Supreme Court's rulings make clear that, as between the risk of individual constitutional deprivations and the risk of premature constitutional adjudication, the Court should defer to the latter over the former.

Nevertheless, the Supreme Court is troubled by that problem and has recently offered at least one possible approach in mitigation. In *Expressions Hair Design v. Schniderman*, 137 S.Ct. 1144, 1156 (2017), it explained that "abstention is a blunt instrument" that "sends the plaintiff to state court" and "entails a full round of litigation in the state court system before any resumption of proceedings in federal court." *Expressions* offered, as an alternative, the possibility that the federal court could certify the state law question directly to the state's supreme court, "reducing the delay, cutting the cost, and increasing the assurance of gaining an authoritative response." *Id.* Colorado permits this Court to certify a question directly to the Supreme Court if: (i) the question of state law would be determinative of the case, and (ii) it appears that there is no controlling

precedent from the Colorado Supreme Court on the issue. Colo. App. R. 21.1(a). Both criteria are met here, and, as the Court informed the parties at the hearing in this matter, it would offer to make such a certification, subject to the parties stipulating to all the facts pertinent to the issue. Colo. App. R. 21.1(c)(2).

For whatever reasons, the parties were unable to come to an agreement regarding certification of the state law issue to the Colorado Supreme Court. That failure to agree, although unfortunate, is not a basis to otherwise alter the Court's conclusion that abstention is warranted here.

### **CONCLUSION**

For the foregoing reasons, the Court finds that it is appropriate to exercise *Pullman* abstention in this action, deferring the consideration of the Plaintiffs' federal constitutional claims until the state court can conclusively resolve the question of whether the Ordinances are preempted by C.R.S. § 29-11.7-103. The Court accepts the Plaintiffs' suggestion that a stay of this action, rather than dismissal, is an appropriate way to effectuate the abstention, and the Court therefore stays this action in its entirety. However, because of the unknown time frame in which the state court can be expected to finally resolve the question, it is impractical to leave this case open indefinitely. Accordingly, the Clerk of the Court shall administratively close this case, subject to any party moving to reopen it upon a showing that the state courts have fully resolved the state law issue herein.

Dated this 17th day of September, 2018.

**BY THE COURT:**

/s/ Marcia S. Krieger  
Marcia S. Krieger  
Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLORADO  
CHIEF JUDGE MARCIA S. KRIEGER**

Courtroom Deputy: Patricia Glover

Court Reporter: Terri Lindblom

Date: August 15, 2018

Civil Action No. 18-cv-01211-MSK-MEH

Parties:

JON C. CALDERA,  
BOULDER RIFLE CLUB,  
INC., GENERAL  
COMMERCE, LLC, TYLER  
FAYE, and MARK RINGER,

Plaintiffs,

v.

CITY OF BOULDER,  
JANE S. BRAUTIGAM,  
GREGORY TESTA,  
SUZANNE JONES,  
AARON BROCKETT,  
CYNTHIA A. CARLISLE,  
LISA MORZEL, MIRABAI  
KUK NAGLE, SAMUEL P.  
WEAVER,

Defendants.

Counsel Appearing:

Sean Smith  
Cody Wisniewski

Evan Rothstein  
Patrick Hall  
Timothy Macdonald  
Luis Toro

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**COURTROOM MINUTES**

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HEARING: Law and Motion

**10:01 a.m. Court in session.**

The Court addresses the matters set forth in its Order (**Doc. #37**) and other issues. Statements from counsel Wisniewski and Macdonald on the issues at hand.

**ORDER:** Plaintiff's will file a supplemental response to the Motion to Dismiss (**Doc. #35**) by **August 29, 2018**.

The Court addresses how to proceed with the case. Argument.

**ORDER:** The parties will brief the issue as to whether the *Pullman* abstention should be applied in this case by **August 22, 2018**. If the parties decide during this time period they want to certify the question to the Colorado Supreme Court on the fast track, it must be done by agreement and stipulate to all relevant facts that pertain to the home rule challenge. The parties may respond with seven days (**August 22, 2018**) that they have entered into that agreement, and then a stipulation as to all relevant facts and a statement as to the question to be presented to the Colorado Supreme Court should be filed seven days thereafter, by **August 29, 2018**.

**ORDER:** All claims against Boulder City Council members are dismissed as duplicative of the claim brought against the City of Boulder. The caption will read plaintiffs v The City of Boulder, Jane Brautigam, Gregory Testa and John Does 1 through 10. All of the remaining individuals will be deleted from the caption.

**10:55 a.m. Court in recess.**

**Total Time: 54 minutes.**

**Hearing concluded.**

*Appendix D*

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED**

**U.S. CONST. Amend. II**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**U.S. CONST. Amend. V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**U.S. CONST. Amend. XIV**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**C.R.S. § 18-12-301**

18-12-301. Definitions

As used in this part 3, unless the context otherwise requires:

(1) "Bureau" means the Colorado bureau of investigation created and existing pursuant to section 24-33.5-401, C.R.S.

(2) (a) "Large-capacity magazine" means:

(I) A fixed or detachable magazine, box, drum, feed strip, or similar device capable of accepting, or that is designed to be readily converted to accept, more than fifteen rounds of ammunition;

(II) A fixed, tubular shotgun magazine that holds more than twenty-eight inches of shotgun shells, including any extension device that is attached to the magazine and holds additional shotgun shells; or

(III) A nontubular, detachable magazine, box, drum, feed strip, or similar device that is capable of accepting more than eight shotgun shells when combined with a fixed magazine.

(b) "Large-capacity magazine" does not mean:

(I) A feeding device that has been permanently altered so that it cannot accommodate more than fifteen rounds of

ammunition;

(II) An attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition; or

(III) A tubular magazine that is contained in a lever-action firearm.

**C.R.S. § 29-11.7-101**

- (1) The general assembly hereby finds that:
  - (a) Section 3 of article II of the state constitution, the article referred to as the state bill of rights, declares that all persons have certain inalienable rights, which include the right to defend their lives and liberties;
  - (b) Section 13 of article II of the state constitution protects the fundamental right of a person to keep and bear arms and implements section 3 of article II of the state constitution;
  - (c) The general assembly recognizes a duty to protect and defend the fundamental civil rights set forth in paragraphs (a) and (b) of this subsection (1);
  - (d) There exists a widespread inconsistency among jurisdictions within the state with regard to firearms regulations;
  - (e) This inconsistency among local government laws regulating lawful firearm possession and ownership has extraterritorial impact on state citizens and the general public by subjecting them to criminal and civil penalties in some jurisdictions for conduct wholly lawful in other jurisdictions;

(f) Inconsistency among local governments of laws regulating the possession and ownership of firearms results in persons being treated differently under the law solely on the basis of where they reside, and a person's residence in a particular county or city or city and county is not a rational classification when it is the basis for denial of equal treatment under the law;

(g) This inconsistency places citizens in the position of not knowing when they may be violating the local laws and therefore being unable to avoid violating the law and becoming subject to criminal and other penalties.

(2) Based on the findings specified in subsection (1) of this section, the general assembly concludes that:

(a) The regulation of firearms is a matter of statewide concern;

(b) It is necessary to provide statewide laws concerning the possession and ownership of a firearm to ensure that law-abiding persons are not unfairly placed in the position of unknowingly committing crimes involving firearms.

**C.R.S. § 29-11.7-102**

(1) A local government, including a law enforcement agency, shall not maintain a list or other form of record or database of:

(a) Persons who purchase or exchange firearms or who leave firearms for repair or sale on consignment;

(b) Persons who transfer firearms, unless the

persons are federally licensed firearms dealers;

(c) The descriptions, including serial numbers, of firearms purchased, transferred, exchanged, or left for repair or sale on consignment.

**C.R.S. § 29-11.7-103**

A local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law. Any such ordinance, regulation, or other law enacted by a local government prior to March 18, 2003, is void and unenforceable.

*Appendix E*

ORDINANCE 8245

AN ORDINANCE AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C.1981, TO BAN THE SALE AND POSSESSION OF ASSAULT WEAPONS, LARGE-CAPACITY MAGAZINES AND MULTI-BURST TRIGGER ACTIVATORS, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, FINDS AND RECITES THE FOLLOWING:

A. The City of Boulder is an urban, densely populated city, with a population density similar to that of Denver, Colorado. With a population of 682,545 in 155 square miles, Denver has a density of 4,213 residents per square mile. Boulder's population of 108,707 resides in 25.8 square miles with a population density of 4,031 residents per square mile.

B. There has been a significant increase in mass shootings over the last two decades. Mass shootings occur most often at in public places and at schools and involve assault weapons.

C. Boulder is home to the main campus of the University of Colorado, with an enrollment of 33,246 students and the campus of Naropa University, with 932 students enrolled. In addition, Boulder is home to Boulder Valley School District elementary, middle and high schools, with 14,357 students enrolled. In

addition, the city is home to private schools with approximately 1,500 students. Boulder's estimated population is 108,707. Boulder has one of the highest ratios of students per capita in the country. Students are disproportionately victims of mass shootings. Thus, the presence of a large number of students in the city of Boulder creates a higher than normal level of risk for the community.

D. Assault weapons are semi-automatic firearms designed with military features to

E. Large capacity ammunition magazines (generally defined as magazines capable of holding more than 10 rounds) are feeding devices that and may hold as many as 100 rounds of ammunition.

F. Multi-Burst Trigger activators are devices that effectively increase the rate at which a weapon can be fired.

G. Assault weapons and/or large capacity ammunition magazines have been the tools of choice in many mass shootings of innocent civilians, including those described below:

1. Parkland, Florida, February 14, 2018: a shooter killed 17 and wounded 17 at Marjory Stoneman Douglas High School with an AR-15-style assault rifle.
2. Sutherland Springs, Texas, November 5, 2017: a shooter killed 26 and wounded 20 at the First Baptist Church with a Ruger AR-556 assault rifle.
3. Las Vegas, Nevada, October 1, 2017: a shooter killed 59 and wounded 527 armed with 23 guns, including both AR-15s and AK-47s as

well as at least one gun modified with a bump stock. The following weapons were found inside of the killer's hotel room:

- a. Colt M4 Carbine AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- b. Noveske N4 AR-15 .223/5.56 with a bump stock, vertical fore grip and 40 round magazine.
- c. LWRC M61C AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- d. POF USA P-308 AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
- e. Christensen Arms CA-15 AR-15 .223 Wylde with a bump stock, vertical fore grip and 100 round magazine.
- f. POF USA P-15 P AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- g. Colt Competition AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- h. Smith & Wesson 342 AirLite .38 caliber revolver with 4 cartridges and 1 expended cartridge case.
- i. LWRC M61C AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- j. FNH FM15 AR-10 .308/7.62 with a bipod, scope and 25 round magazine .

App-47

- k. Daniel Defense DD5V1 AR-10 .308/7.62 with a bipod, scope and 25 round magazine.
- l. FNH FN15 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- m. POF USA PIS AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- n. Colt M4 Carbine AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- o. Daniel Defense M4A1 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- p. LMT Def. 2000 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- q. Daniel Defense DDM4V1 1 AR-15 .223/5.56 with a bump stock, vertical fore grip. No magazine. EOTech optic.
- r. Sig Sauer SIG716 AR-10 .308/7.62 with a bipod, red dot optic and 25 round magazine.
- s. Daniel Defense DD5V1 AR-10 .308/7.62 with a bipod and scope. No magazine.
- t. FNH FN15 AR-15 .223/5.56 with a bump stock, vertical fore grip and 100 round magazine.
- u. Ruger American .308 caliber bolt

action rifle with scope.

v. LMT LM308MWS AR-10 .308/7.62 with a bipod and red dot scope. No magazine.

w. Ruger SR0762 AR-10 .308/7.62 with a bipod, scope and round magazine.

x. LMT LM308MWS AR-10 With a bipod, scope and 25 round magazine.

4. Orlando, Florida, June 12, 2016: a shooter killed 49 and wounded 58 at the Pulse Nightclub with an AR-15-style assault rifle and a Glock 17 9mm handgun.

5. San Bernardino, California, December 2, 2015: two shooters killed 14 and wounded 22 using a DPMS AR-15-style assault rifle and a Smith and Wesson M&P 15.

6. Newtown, Connecticut, December 14, 2012: a shooter killed 26 and wounded 2 at Sandy Hook Elementary School with an AR-15-style assault rifle. The killer murdered his mother with a .22 caliber rimfire rifle. He also had a Glock 10mm and a Sig Sauer 9mm.

7. Aurora, Colorado, July 20, 2012: a shooter killed 12 and wounded 58 armed with a Smith & Wesson M&P15 assault rifle and 100-round ammunition magazines and a 23 Remington 870 pump shotgun. He also had a Glock 22 .40 caliber pistol.

8. Carson City, Nevada, September 6, 2011: a shooter killed 4 and wounded 7 armed with a Norinco Mak 90, that had been altered from a semi-automatic assault weapon to a fully-automatic machine gun.

9. Washington D.C. area, October 2002: shooters killed 10 and wounded 3 during a 3-week rampage armed with a Bushmaster XM-15 assault rifle.

10. Columbine, Colorado, April 20, 1999: shooters killed 13 and wounded 21 at Columbine High School armed with a TEC-9 assault pistol and several large capacity ammunition magazines. The killers also had two shotguns.

11. San Francisco, California, July 1, 1993: a shooter killed 8 and wounded 6 armed with TEC-9 assault pistols and 40- and 50-round ammunition magazines. The suspect used a Hell-Fire trigger, which is a type of multi-burst trigger activator.

H. The City Council intends a narrow ban that respects the constitutionally guaranteed right to bear arms.

I. Americans constitute 4.4 percent of the global population and own 42 percent of the world's guns.

J. Worldwide a country's rate of gun ownership correlates with the occurrence of mass shootings.

K. This ordinance is a reasonable exercise of the city's police powers to restrict access to weapons that are of the type used in mass shootings and that are designed to kill large numbers of people quickly.

L. Because of Boulder's dense population and high concentration of students the council believes that it is necessary for the public safety

to adopt this ordinance.

M. Boulder hosts a large number of public events creating crowds that are uniquely vulnerable to mass shooters.

N. This ordinance will impact only a small percentage of the weapons possessed by Boulder residents.

BE IT ORDAINED BY THE CITY COUNCIL  
OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 5-1-1, "Definitions, " B.R.C. 1981, is amended to delete the definition of "Illegal weapon." ~~*Illegal weapon means a blackjack, gas gun, metallic knuckles, gravity knife or switchblade knife.*~~

Section 2. Section 5-8-2, "Definitions," B.R.C. 1981, is amended to read as follows:

**5-8-2. - Definitions.**

The following terms used in this chapter have the following meanings unless the context clearly requires otherwise:

*About the person* means sufficiently close to the person to be readily accessible for immediate use.

*Assault weapon* means:

(a) ~~A all semi-automatic firearms—center-fire rifles that have the capacity to accept a detachable magazine and that have~~ with any of the following characteristics:

(1a) A ~~pistol grip or thumbhole stock semiautomatic action rifles with a detachable~~

magazine With a capacity of twenty one or more rounds.

(2b) All semiautomatic shotguns 1.with a folding or telescoping stock or a magazine capacity of more than six rounds or both: or

(3e) Any protruding grip or other device to allow the weapon to be stabilized with the non-trigger hand. All semiautomatic pistols that are modifications of rifles having the same make, caliber, and action design but a short barrel or modifications of automatic'.Weapons originally designed to accept magazines with a capacity of twenty one or more rounds.

(b) All semi-automatic center-fire pistols that have any of the following characteristics:

(1) Have the capacity to accept a magazine other than in the pistol grip: or

(2) Have a secondary protruding grip or other device to allow the weapon to be stabilized with the non-trigger hand.

(c) All semi-automatic shotguns that have any of the following characteristics:

(1) A pistol grip or thumbhole stock:

(2) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand:

(3) A folding or telescoping stock:

(4) A fixed magazine capacity in excess of 5 rounds: or

(5) The capacity to accept a detachable

magazine.

(d) Any firearm which has been modified to be operable as an assault weapon as defined herein.

(e) Any part or combination of parts designed or intended to convert a firearm into an assault weapon, including ~~a detachable magazine with a capacity of twenty one or more rounds, or~~ any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person.

*Constructive knowledge* means knowledge of facts or circumstances sufficient to cause a reasonable person to be aware of the fact in question.

*Illegal weapon* means an assault weapon, large-capacity magazine, multi-burst trigger activator, blackjack, gas gun, metallic knuckles, gravity knife or switchblade knife.

*Large-capacity magazine* means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

(a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(b) A 22-caliber tube rim-fire ammunition feeding device.

(c) A tubular magazine that is contained in a lever-action firearm.

(d) A pistol magazine designed to fit into a

pistol grip that has a capacity to hold no more than 15 rounds.

*Locked container* means a secure container which is enclosed on all sides and locked by a padlock, key lock, combination lock, or similar device.

*Minor* means a person under eighteen twenty-one years of age.

*Multi-Burst Trigger Activator* means:

(a) A device that attaches to a firearm to allow the firearm to discharge two or more shots in a burst when the device is activated; or

(b) A manual or power-driven trigger-activating device that, when attached to a firearm increases the rate of fire of that firearm.

*Pistol Grip* means a grip that protrudes conspicuously beneath the action of the weapon and that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.

*Provide* means to give, lend, sell, or otherwise place in an unsecured location where a minor or other unauthorized or incompetent person could foreseeably gain access to a firearm.

*Semi-automatic* means a firearm that fires a single round for each pull of the trigger and automatically chambers a new round immediately after a round is fired.

Section 3. Section 5-8-10, "Possession of Illegal Weapons," B.R.C. 1981, is amended to read as

follows:

**5-8-10. - Possession and Sale of Illegal Weapons.**

(a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.

(b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge required for violation of this section.

(c) Nothing in this section shall be construed to forbid any person:

(1) Holding a Federal Firearms License issued by the United States Government from possession of any firearm authorized pursuant to such license;

(2) From possessing a weapon for which the United States Government has issued a stamp or permit pursuant to the National Firearms Act;

(3) From possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law;  
or

(4) Selling an illegal weapon to a person identified in Section 5-8-25. "Exemptions from this Chapter." B.R.C. 1981.

(d) Nothing in this section shall be deemed to apply to any firearm that has been modified either to render it permanently inoperable or to permanently make it not an assault weapon.

(e) Nothing in this section shall be deemed to restrict a person's ability to travel with a weapon in a private automobile or other private

means of conveyance for hunting or for lawful protection of a person's or another's person or property while traveling into, through, or within, the City of Boulder, regardless of the number of times the person stops in the City of Boulder.

Section 4. Section 5-8-21, "Open Carriage of Firearms in Carrying Cases Required," B.R.C. 1981, is amended to read as follows:

**5-8-21. - Open Carriage of Firearms in Carrying Cases Required.**

Any person carrying a firearm off of the person's property or outside of the person's business or vehicle shall carry the firearm in a carrying case. The carrying case must be recognizable as a gun carrying case by a reasonable person. A plain-shaped case must be clearly marked to be deemed recognizable under this standard. A holster satisfies the requirement of a carrying case for a pistol. The carrying case must be openly carried and must not be concealed on or about the person. This section shall not apply to individuals who have a permit to carry a concealed weapon issued pursuant to state law, unless the weapon being carried is an assault weapon.

Section 5. Section 5-8-22, "Defenses," B.R.C. 1981, is amended to read as follows:

**5-8-22. - Defenses.**

(a) It is an affirmative defense to a charge of violating sections 5-8-3, "Discharge of Firearms," 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," 5-8-5, "Negligently Shooting Bow or Slingshot," 5-8-6,

"Aiming Weapon at Another," 5-8-7, "Flourishing Deadly Weapon in Alarming Manner," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the defendant was:

(1) Reasonably engaged in lawful self-defense under the statutes of the State of Colorado; or

(2) Reasonably exercising the right to keep and bear arms in defense of the defendant's or another's home, person and property or in aid of the civil power when legally thereto summoned.

(b) It is a specific defense to a charge of violating sections 5-8-3, "Discharge of Firearms," 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the events occurred in an area designated as a target range by the city manager under section 5-8-26, "City Manager May Designate Target Ranges," B.R.C. 1981, for the type of weapon involved. It is a specific defense to a charge of violating section 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," B.R.C. 1981, by possession that the defendant was going directly to or returning directly from such a target range.

(c) It is an affirmative defense to a charge of violating sections 5-8-8, "Possession of Loaded Firearms," 5-8-9, "Carrying a Concealed Weapon," and 5-8-11, "Possessing Firearm While Intoxicated," B.R.C. 1981, that the defendant was:

(1) In the defendant's own dwelling or place of business or on property owned or under the defendant's control at the time; or

(2) In a private automobile or other private means of conveyance at the time and was carrying the weapon for lawful protection of the defendant's or another's person or property while traveling; or

(3) Charged ,with carrying a knife that was a hunting or fishing knife carried by the defendant for sport use.

(d) It is a specific defense to a charge of violating sections 5-8-8, "Possession of Loaded Firearms," and 5-8-9, "Carrying a Concealed Weapon," B.R.C. 1981, that the defendant was carrying the weapon pursuant to a concealed weapons permit valid under the statutes of the State of Colorado.

(e) It is a specific defense to a charge of violating sections 5-8-3, "Discharge of Firearms," and 5-8-8, "Possession of Loaded Firearms," B.R.C. 1981, that the loaded gas or mechanically operated gun was possessed or discharged in a building with the permission of the property owner and the projectile did not leave the building.

(f) It is a specific defense to a charge of violating section 5-8-10, "Possession of Illegal Weapons," B.R.C. 1981 ;

(1) That the person had a valid permit for such weapon pursuant to federal law at the time of the offense-: or

(2) That the illegal weapon was an assault weapon accompanied by a certificate issued by the Boulder Police Department.

(g) It is a specific defense to a charge of violating section 5-8-4, "Possessing and Discharging Firearm or Bow in Park or Open Space," B.R.C. 1981, that the firearm, as or mechanically operated gun, bow, slingshot or crossbow possessed by the person was being transported in a motor vehicle. This defense does not apply to a charge of violation involving discharge of a missile.

Section 6. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

**5-8-25. - Exemptions from Chapter.**

The following individuals are exempt from the provisions of this Chapter:

(a) Nothing in this chapter shall be construed to forbid Any officer of the United States including but not limited to federal agents and United States -Marshals, any sheriffs, constables and their deputies; any regular or ex-officio police officer; any other peace officers; or members of the United States Armed Forces, Colorado National Guard or Reserve Officer Training Corps from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties; or

(b) Any person authorized to carry a concealed weapon under the Federal Law Enforcement

Officers Safety Act.

Section 7. A new Section 5-8-28, "Assault Weapons," B.R.C. 1981, is added to read as follows, and remaining sections in Chapter 5-8 are renumbered:

**5-8-28. - Assault Weapons.**

(a) Any person who, prior to June 15, 2018, was legally in possession of an assault weapon large capacity magazine shall have until December 31, 2018 to do any of the following without being subject to prosecution:

- (1) Remove the assault weapon or large capacity magazine from the City of Boulder;
- (2) Render the assault weapon permanently inoperable;
- (3) Surrender the assault weapon or large capacity magazine to the Boulder Police Department for destruction; or
- (4) If eligible, obtain a certificate for the assault weapon as provided in subsection.

(b) Any person who, prior to June 15, 2018, was legally in possession of multi-burst trigger activator shall have until July 15, 2018 to do any of the following without being subject to prosecution:

- (1) Remove the multi-burst trigger activator from the City of Boulder; or
- (2) Surrender the multi-burst trigger activator to the Boulder Police Department for destruction.

(c) Any person seeking to certify an assault

weapon that he or she legally possessed prior to June 15, 2018 must comply with the following requirements:

- (1) Submit to a background check conducted by the appropriate law enforcement agency to confirm that he or she is not prohibited to possess a firearm pursuant to 18 U.S.C. § 922 or C.R.S § 18-12-108;
- (2) Unless the person is currently prohibited by law from possessing a firearm, prior to December 31, 2018 apply for a certificate for the assault weapon from the Boulder Police Department;
- (3) Safely and securely store the assault weapon pursuant to the regulations adopted by the appropriate law enforcement agency;
- (4) Possess the assault weapon only on property owned or immediately controlled by the person, or while on the premises of a licensed gunsmith for the purpose of lawful repair, or while engaged in the legal use of the assault weapon at a duly licensed firing range, or while traveling to or from these locations, provided that the assault weapon is stored unloaded in a locked container during transport. The term "locked container" does not include the utility compartment, glove compartment, or trunk of a motor vehicle; and
- (5) Report the loss or theft of a certified assault weapon to the appropriate law enforcement agency within 48 hours of the time the discovery was made or should have

been made.

(d) If a certified assault weapon is used in the commission of a crime, the owner shall be civilly liable for any damages resulting from that crime. The liability imposed by this subsection shall not apply if the assault weapon was stolen and the certified owner reported the theft of the firearm to law enforcement within 48 hours of the time the discovery was made or should have been made.

(e) Certified assault weapons may not be purchased, sold or transferred in the City of Boulder, except for transfer to a licensed gunsmith for the purpose of lawful repair, or transfer to the appropriate law enforcement agency for the purpose of surrendering the assault weapon for destruction.

(f) Persons acquiring an assault weapon by inheritance, bequest, or succession shall, within 90 days of acquiring title, do one of the following:

(1) Modify the assault weapon to render it permanently inoperable;

(2) Surrender the assault weapon to the Boulder Police Department for destruction;

(3) Transfer the assault weapon to a firearms dealer who is properly licensed under federal, state and local laws; or

(5) Permanently remove the assault weapon from the City of Boulder.

(g) The owner of a certified assault weapon may not possess in the City of Boulder any assault weapons purchased after June 15, 2018.

(h) The city manager shall charge a fee for each certificate sufficient to cover the costs of administering the certificate program.

(i) The city manager shall issue to qualified applicants two original copies of each certificate issued. The City of Boulder shall not maintain any records of certificates issued. The person receiving the certificate shall keep one copy with the weapon certified and the second copy in a secure place to replace the certificate maintained with the weapon.

Section 8. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 9. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST  
READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 5<sup>th</sup> day of April, 2018

/s/ Suzanna Jones  
Suzanne Jones  
Mayor

Attest:

/s/ Lynnette Beck  
Lynnette Beck  
City Clerk

READ ON SECOND READING AND  
AMENDED this 1<sup>st</sup> day of May, 2018

/s/ Suzanna Jones  
Suzanne Jones  
Mayor

Attest:

/s/ Lynnette Beck  
Lynnette Beck  
City Clerk

READ ON THIRD READING, PASSED  
AND ADOPTED this 15<sup>th</sup> day of May, 2018.

/s/ Suzanna Jones  
Suzanne Jones  
Mayor

Attest:

/s/ Lynnette Beck  
Lynnette Beck  
City Clerk

ORDINANCE 8259

AN ORDINANCE AMENDING CHAPTER 5, "GENERAL OFFENSES," B.R.C. 1981, TO DELETE A PROVISION EXEMPTING CERTAIN HANDGUN MAGAZINES AND TO CLARIFY THE CERTIFICATION PROCESS FOR ASSAULT WEAPONS AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 5-8-10, "Possession and Sale of Illegal Weapons," B.R.C. 1981, is amended to read as follows:

**5-8-10.- Possession and Sale of Illegal Weapons.**

(a) No person shall knowingly possess or sell or otherwise transfer an illegal weapon.

(b) The defendant's knowledge that the weapon was illegal is not an aspect of knowledge required for violation of this section.

(c) Nothing in this section shall be construed to forbid any person:

(1) Holding a Federal Firearms License issued by the United States Government from possession of any firearm authorized pursuant to such license;

(2) From possessing a weapon for which the United States Government has issued a stamp or permit pursuant to the National Firearms Act;

~~(3) From possessing a handgun magazine so long as the possession of the handgun and magazine are in compliance with state law; or~~

(34) Selling an illegal weapon to a person identified in Section 5-8-25, "Exemptions from this Chapter," B.R.C. 1981.

(d) Nothing in this section shall be deemed to apply to any firearm that has been modified either to render it permanently inoperable or to permanently make it not an assault weapon.

(e) Nothing in this section shall be deemed to restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting, ~~or~~ for lawful protection of a person's or another's person or property or for competition. while traveling into, though, or within, the City of Boulder, regardless of the number of times the person stops in the City of Boulder.

Section 2. Section 5-8-25, "Exemptions from Chapter," B.R.C. 1981, is amended to read as follows:

**5-8-25. - Exemptions from Chapter.**

~~The following individuals are exempt from the provisions of this Chapter:~~

(a) Nothing in this chapter shall be construed to forbid the following persons from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties: Any officer of the United States, including but not limited to federal agents and

- (1) United States Marshals, any sheriffs, constables and their deputies;
- (2) any regular or ex-officio police officer;
- (3) any other peace officers; or
- (4) of the United States Armed Forces, Colorado National Guard or Reserve Officer Training Corps from having in their possession, displaying, concealing or discharging such weapons as are necessary in the authorized and proper performance of their official duties; or

(b) Any person authorized to carry a concealed weapon under the Federal Law, Enforcement Officers Safety Act.

Section 3. Section 5-8-28, "Assault Weapons," B.R.C. 1981, is amended to read as follows:

**5-8-28. - Assault Weapons.**

(a) Any person who, prior to June 15, 2018, was legally in possession of an assault weapon or large capacity magazine shall have until December 31, 2018 to do any of the following without being subject to prosecution:

- (1) Remove the assault weapon or large capacity magazine from the City of Boulder;
- (2) Render the assault weapon permanently inoperable;
- (3) Surrender the assault weapon or large capacity magazine to the Boulder Police Department for destruction; or
- (4) If eligible, obtain a certificate for the assault weapon as provided in subsection (c).

(b) Any person who, prior to June 15, 2018, was legally in possession of multi-burst trigger activator shall have until July 15, 2018 to do any of the following without being subject to prosecution:

(1) Remove the multi-burst trigger activator from the City of Boulder; or

(2) Surrender the multi-burst trigger activator to the Boulder Police Department for destruction.

(c) Any person seeking to certify an assault weapon that he or she legally possessed prior to June 15, 2018 must comply with the following requirements:

(1) Submit to a background check conducted by the appropriate law enforcement agency to confirm that he or she is not prohibited to possess a firearm pursuant to 18 U.S.C. § 922 or C.R.S § 18-12-108;

(2) ~~Unless the person is currently prohibited by law from possessing a firearm,~~ prior to December 31, 2018 apply for a certificate for the assault weapon from the Boulder Police Department;

(3) ~~No person prohibited by state or federal law from possessing a firearm shall be issued a certificate.~~

(d) Any person issued a certificate shall:

(31) Safely and securely store the assault weapon pursuant to the regulations adopted by the appropriate law enforcement agency;

(42) Possess the assault weapon only on property owned or immediately controlled by

the person, or while on the premises of a licensed gunsmith for the purpose of lawful repair, or while engaged in the legal use of the assault weapon at a duly licensed firing range, or while traveling to or from these locations, provided that the assault weapon is stored unloaded in a locked container during transport. The term "locked container" does not include the utility compartment, glove compartment, or trunk of a motor vehicle; and

(53) Report the loss or theft of a certified assault weapon to the appropriate law enforcement agency within 48 hours of the time the discovery was made or should have been made.

(de) If a certified assault weapon is used in the commission of a crime, the owner shall be civilly liable for any damages resulting from that crime. The liability imposed by this subsection shall not apply if the assault weapon was stolen and the certified owner reported the theft of the firearm to law enforcement within 48 hours of the time the discovery was made or should have been made.

(ef) Certified assault weapons may not be purchased, sold or transferred in the City of Boulder, except for transfer to a licensed gunsmith for the purpose of lawful repair, or transfer to the appropriate law enforcement agency for the purpose of surrendering the assault weapon for destruction.

(fg) Persons acquiring an assault weapon by inheritance, bequest, or succession shall, within

90 days of acquiring title, do one of the following:

- (1) Modify the assault weapon to render it permanently inoperable;
- (2) Surrender the assault weapon to the Boulder Police Department for destruction;
- (3) Transfer the assault weapon to a firearms dealer who is properly licensed under federal, state and local laws; or
- (4) Permanently remove the assault weapon from the City of Boulder.

(g) The owner of a certified assault weapon may not possess in the City of Boulder any assault weapons purchased after June 15, 2018.

(h) The city manager shall charge a fee for each certificate sufficient to cover the costs of administering the certificate program.

(i) The city manager shall issue to qualified applicants two original copies of each certificate issued. The City of Boulder shall not maintain any records of certificates issued. The person receiving the certificate shall keep one copy with the weapon certified and the second copy in a secure place to replace the certificate maintained with the weapon.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 5. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for

public inspection and acquisition.

INTRODUCED, READ ON FIRST READING,  
AND ORDERED PUBLISHED BY TITLE ONLY this  
5<sup>th</sup> day of June 2018.

/s/ Suzanna Jones  
Suzanne Jones  
Mayor

Attest:

/s/ Lynnette Beck  
Lynnette Beck  
City Clerk

READ ON SECOND READING, PASSED  
AND ADOPTED this 19<sup>th</sup> day of June 2018.

/s/ Suzanna Jones

Suzanne Jones

Mayor

Attest:

/s/ Lynnette Beck

Lynnette Beck

City Clerk