

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 13-CV-1300-MSK-MJW

COLORADO OUTFITTERS ASSOCIATION, *et al.*,

Plaintiffs

v.

JOHN W. HICKENLOOPER, Governor of the State of Colorado,

Defendant.

**MOTION FOR JOINDER AND FOR LEAVE TO FILE AMENDED
COMPLAINT**

1. Pursuant to this Court's instructions in its Opinion of November 27, 2013 (#96), fifty-five Sheriffs, in their personal, individual capacities as American citizens, request joinder and leave for filing a Third Amended Complaint. FED. R. CIV. PRO. 20(a)(1).
2. The Sheriffs request that the Court consider this Motion only if the Court denies the Plaintiffs' Motion to Amend/Correct/Modify (#102). That Motion suggests that the Sheriffs had always been parties to the case in part in dual

capacities: official and personal. Therefore, that Motion requests that the Opinion and Order (#96) be modified to state that the Sheriffs are dismissed in their official capacities, and remain in the case in their individual capacities.

3. If the Court grants the Motion to Amend/Correct/Modify, the Sheriffs will immediately withdraw the instant Motion.
4. Pursuant to D.C.COLO.LCivR 7.1(a), counsel has conferred telephonically with Defendant's attorneys Matthew Grove, David Blake, and Kathleen Spalding regarding this Motion. Counsel explained that the Sheriffs would be filing this Motion, and described the contents of the proposed Third Amended Complaint. Defendant's counsel does not presently declare a position regarding this Motion, and Defendant reserves the right to oppose this Motion, following review of the proposed Third Amended Complaint.
5. Pursuant to D.C.COLO.LCivR 15.1(b), a copy of the proposed Third Amended Complaint is attached to this Motion, as an exhibit, with strike-throughs and underlines to indicate the removal or addition of text.
6. The only changes from the Second to the Third Amended Complaints are as follows:
 - a. In the caption, removal of the Sheriff's Office and County (e.g., "Sheriff of Weld County, Colorado").

- b. Replacing section III.A.1 of the Complaint in its entirety. This section describes the identities and interests of the individual Sheriff plaintiffs.
 - c. Changing the date of the Complaint.
7. Granting of this Motion for Joinder/Amendment will prejudice no party, nor will it delay the case. “Prejudice is the ‘most important [] factor in deciding a motion to amend the pleadings.’” *Mohammed v. Holder*, 2013 WL 4949282, *6 (D. Colo., 2013), quoting *Minter v. Prime Equipment Co.*, 451 F.3d 1196, 1207 (10th Cir.2006). As detailed in the Plaintiffs’ Motion to Amend/Correct/Modify, all parties have proceeded for the last half-year on the shared understanding that the Sheriffs were participating in this case in the dual capacities of official and personal.
 8. Accordingly, extensive discovery has been completed regarding the Sheriffs’ personal capacities, including depositions which have inquired in great depth about the Sheriffs’ personal firearms collections, their personal hunting and recreational target shooting, their families, and threats/violence against them and their families. Excerpts from those depositions accompany the proposed Third Amended Complaint, as Exhibit A.
 9. During the discovery phase, six Sheriffs were disclosed as possible witnesses at trial, and each of them was deposed. These six Sheriffs remain the ones who would be witnesses at trial.
 10. The Third Amended Complaint raises no new claims.

11. While the Third Amended Complaint does provide additional details about some topics, all of the topics are ones which have previously been identified in the case, and which have been topics of discovery. The Third Amended Complaint includes citations to the relevant discovery.
12. Joinder would promote judicial economy, because claims could be resolved in a single case, rather than in separate cases.
13. The Sheriffs' claims arise from the same transaction as do the claims of the other plaintiffs, namely the enactment of HB 1224 and HB 1229. FED. R. CIV. PRO. 20(a)(1)(A). The questions of law are identical, with the exception that the Sheriffs also address the scope of the law enforcement employee exemption in HB 1224. FED. R. CIV. PRO. 20(a)(1)(B).
14. The questions of fact are also nearly identical. FED. R. CIV. PRO. 20(a)(1)(B). Whatever state interests could be said to justify HB 1224 and 1229 would be the same or very similar for all plaintiffs, including the Sheriffs.
15. Likewise, the interests of the Sheriffs as individual gun owners are similar to the interests of individual gun owners who are already plaintiffs, either as named plaintiffs or as individual members of various organizations. Of course no two individuals are identical, but the interests of the Sheriffs as gun owners, in wishing to acquire, use, lend, and sell their own firearms and magazines are identical or similar to the interests of other individual gun owners.

16. Because all of the Sheriffs have already been part of the case, and thorough discovery has already taken place regarding their personal capacities, no additional discovery is necessary.

17. The proposed Third Amended Complaint has nine exhibits—designated “Exhibit A” through “Exhibit I.” Exhibits A and B are being filed separately, with a Motion For Leave To Restrict.

Respectfully submitted, this 11th day of December, 2013.

s/David B. Kopel
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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2013, I have served the foregoing pleading via the CM/ECF system for the United States District Court for the District of Colorado:

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