

Timeline of Success

“Designed to be readily converted”

March 9. Second reading of HB 1224 on the Senate floor. Senators Cadman, Brophy, Lambert, and Lundgren repeatedly, forcefully, and at length warn that “designed to be readily converted” bans almost all magazines. Two Senators demonstrate how an extender is attached to a magazine. No proponent of the bill controverts the charges.

March 13. Independence Institute video on YouTube. Jon Caldara demonstrates the same problem, which showing how an extender is added to his Glock magazine.
<http://www.youtube.com/watch?v=dW-DzOLKEFU>

March 14. KUSA Channel 9 in Denver uses the YouTube video as the launching point for a major story about bans on under-15 magazines. The lead sponsor of HB 1224 is interviewed:

KUSA: So you're viewing this as a relatively broad interpretation of that clause; if it's capable of having its capacity increased at all above 15, it's out?

Rep. Fields: It will be illegal.

KUSA also reports that Governor Hickenlooper's staff is aware of the “designed” language, and expects Coloradoans to buy replacement magazines of the type that are available in other states (e.g., NJ, California).
<http://www.9news.com/rss/story.aspx?storyid=323800>.

March 19. Governor's office telephones Kopel to discuss HB 1224. All persons on the call are in agreement that the bill bans all magazines with removable base plates, and all rifle tube magazines with removable end caps.

March 20. Governor Hickenlooper signs HB 1224. He announces that he is requesting guidance from the Attorney General, so that the bill is interpreted narrowly. Independence Institute announces that the Sheriffs intend to file a lawsuit.

April 4. Governor Hickenlooper appears on the Mike Rosen Show. He takes the position that some but not all magazines are banned:

Well there are certain magazines that are actually...uh...designed and have uh...uh...specific holes and attachments to be...to be extended and those specific magazines...uh...where there's...uh...a...certain level of design

specifically just for extension rather than just cleaning. Uh...but that's not very many of them.

The Governor's position that is some magazines have special features for extension, and those magazines are banned. This will be the Governor's position for the next 2 1/2 months.

May 17. Press conference announcing the filing of the lawsuit. The Attorney General announces the release of the "Technical Guidance."

http://www.coloradoguncase.org/051613_technical_guidance_large_cap_magazine_ban.pdf

The Guidance says that magazines with a removable base plate are not per se illegal. Rather, the question is whether the magazine also has a feature "specifically to increase the capacity of the magazine." Exactly what this means is not specified.

Next several weeks: Negotiations about using the TG as a starting point for a stipulated injunction. Negotiations fail. Plaintiffs want to eliminate all practical effect of "designed to be readily converted." The AG, following the wishes of its client (the Governor), is unwilling to move beyond what is written in the TG.

June 10. AG moves to certify questions to the Colorado Supreme Court. AG says that "designed to be readily converted" means "magazines that are principally used with extensions or devices that increase the combined capacity to more than 15 rounds." (The same theory as Gov. Hickenlooper's April 4 remarks.)

June 12. Plaintiffs move for a preliminary injunction. They argue that the statutory language, and the Technical Guidance, are both unconstitutionally vague. To the extent that they have discernible meaning, they violate the Second Amendment.

June 24. AG files its response brief to the PI. The AG moves away from the positions of the previous 3 months; AG now says that removable base plates have nothing to do with "designed to be readily converted." Rather, "readily converted" refers to how easily a limiter can be removed. Yet the AG claims that the new view is consistent with the old Technical Guidance.

July 9. On the eve of the PI hearing, plaintiffs send the AG the quote from their June 24 brief about base plates. They ask the AG to agree that those words be used for an injunction about "designed to be readily converted." The AG obtains consent from the Governor, and agrees.

"Designed to be readily converted" is now solved. We have moved from banning 100% of magazines with removable base plates (Rep. Fields and Governor, March 14-19), to banning some magazines with removable base plates (Governor and AG,

April 4-June 12) to banning 0% of magazines with removable base plates (rhetorical concession in June 24 brief, turned into a legal concession on July 9).

July 10. After Judge Krieger informs counsel that she believes that she does not have the power to enter a stipulated injunction (because of standing issues), the AG issues new Technical Guidance, containing the revised language. Plaintiffs agree to withdraw their motion for a preliminary injunction. The new Guidance states that magazines with removable base plates can be altered to hold more than 15 rounds. **“Unless so altered, they are not prohibited.”**

http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2013/07/10/7_10_13_cdps_technical_guidance_2.pdf

“Continuous possession”

March 9 & 12. On the Senate floor (2d reading, 3d reading), Senators raise objections to the “continuous possession” issue for grandfathered owners.

March 19. Governor’s office telephones Kopel to discuss HB 1224. All parties agree that the bill prohibits a husband who owns a magazine from allowing his wife to use the magazine for self-defense when he is out of town.

March 20. Governor Hickenlooper’s signing statement asks the Attorney General to supply guidance, to interpret the clause narrowly, so that magazines can be repaired, or shared at a target range.

May 17. The Attorney General’s Technical Guidance says that a grandfathered owner may let someone else hold the magazine, if and only if the owner remains in the “continual physical presence” of the person holding the magazine.

June 10. AG motion for certification to the Colorado Supreme Court. AG moves to a new standard: “Continuous possession” is not interrupted “when the owner allows another person to temporarily hold, use, or share it for lawful purposes.” AG claims this is the same as what the Technical Guidance says.

June 12. Plaintiffs’ motion for a preliminary injunction (PI). Plaintiffs argue that the Technical Guidance version of “continuous possession” is a flagrant violation of the Second Amendment: it prohibits leaving a magazine overnight for repair with a gunsmith; it prohibits allowing a family member to use the magazine for lawful self-defense in the home unless the magazine owner is present.

June 24. Defendant’s response brief to the PI motion. New standard is announced for “continuous possession”: it is alright if the owner “remains in the physical presence of the magazine, **or** ensures that the magazine is secured while the

individual is absent.” (emphasis added). This is claimed to be what the TG says. (When in fact the TG *requires* “physical presence.”)

June 27. Plaintiffs’ response brief says that the June 24 rule is nice, but it’s not what the Technical Guidance says. Besides that, it doesn’t solve the problem for Sheriffs; even under the new June 24 rule Sheriffs are still forbidden from returning a stolen magazine to its owner.

July 9. In a telephone call building on the “designed” stipulation, AG offers to make a partial concession on “continuous possession.” Plaintiffs reject the offer, but agree that it would be helpful for the court if the AG wrote up its proposed concession, so that the PI hearing could focus on the areas of disagreement.

The AG responds several hours later by offering the plaintiffs everything they wanted: **“Continuous possession’ is lost only by a voluntary relinquishment of dominion and control.”** Plaintiffs accept the offer. [“Dominion” is legal term for the full rights of ownership, including the right to sell the property. So if X lends a magazine to Y for 3 months, and Y does not have the right to sell the magazine, then X has maintained continuous “dominion,” and therefore has maintained “continuous possession.”]

The AG writes up the proposed stipulation in a form which leaves the AG room to claim that the AG is merely providing some extra clarity to what the original Technical Guidance had always said. Plaintiffs accept this. When an adversary is ready to give you what you wanted, it would be foolish to ruin the deal by preventing the adversary from saving face.

July 10. Same court result as with “designed.” The court refuses to issue a preliminary injunction. The AG publishes the new language as a second round of Technical Guidance.

Bottom line: “designed to be readily converted” and “continuous possession” now have little if any legal effect. The practical result is about the same as if those words had never been included in HB 1224. Plaintiffs have achieved what they sought in the motion for a preliminary injunction.

Of course the 2d Technical Guidance can be withdrawn at any time by a future Attorney General. But a preliminary injunction itself would only have lasted until the end of the trial on the merits, later this year. Like a preliminary injunction, the 2d Technical Guidance solves the problems that plaintiffs wanted solved, in the interim until the trial on the merits.

The various briefs and motions cited in this Timeline are available at coloradoguncase.org.