



TRAVERSING THE INTERSECTION OF PREVENTING MASS GUN VIOLENCE AND PRESERVING THE RIGHT TO BEAR ARMS: COLORADO SUPREME COURT UPHOLDS STATE BAN ON LARGE-CAPACITY MAGAZINES.

ROCKY MOUNTAIN GUN OWNERS V. POLIS, 467 P.3D 314 (COLO. 2020).

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TABLE OF CONTENTS

I. INTRODUCTION 1574
II. STATEMENT OF THE CASE 1575
III. BACKGROUND 1578
A. Article II, Section 13's Fundamental Right Status Remains Undetermined 1579
B. The Varying Standards in Reviewing Legislation Regarding the Right to Bear Arms 1581
C. Calls for Action to End Mass Shootings 1586
IV. COURT'S ANALYSIS 1588
A. The Plaintiffs Relied Solely on a State Constitutional Claim 1588
B. House Bill 13-1224 Upheld to Be a Reasonable Exercise of the State's Police Power 1589
C. House Bill 13-1224 Does Not Unnecessarily Burden the Core of Article II, Section 13 1591
V. AUTHOR'S ANALYSIS 1593

* J.D., Rutgers Law School, May 2022. I would like to thank my dad, Charles Williams, for teaching me the values of commitment and hard work, and for always inspiring me. Additionally, I am thankful for my grandfather, Frank Bains, for being a shining example as a human and for being my hero, idol, and best friend through life. Finally, this Comment is dedicated to my wife, Maggie. She is my strength and without her love and support none of this would be possible. The graphic and emotional association with gun violence and the increasing polarization in our country makes these types of conversations hard. My hope is that this Comment serves as a piece of that conversation and that our nation can come together to eradicate the issue of mass gun violence.

A.	<i>Legislative Intent Versus Potential Emerging Outcomes</i> ..	1593
B.	<i>Public Opinion and Gun Policies</i>	1596
C.	<i>The State of Gun Legislation Affecting Article II, Section 13</i>	1597
VI.	CONCLUSION.....	1600

I. INTRODUCTION

In 2020, the Colorado Supreme Court settled a controversial state issue that had been circling the courts for seven years: whether the Colorado legislature's ban on the possession and manufacturing of large capacity magazines was constitutional under Colorado's constitution.¹ The unanimous decision of *Rocky Mountain Gun Owners v. Polis* upheld Colorado House Bill 13-1224, which was passed in 2013, holding that the bill's limit of magazine capacity to no more than fifteen rounds did not violate Colorado's state provision of the right to bear arms in defense of home, person, or property.² The court, following its precedent in *Robertson v. City of Denver*, used a reasonable exercise test to conclude that this legislation was an appropriate use of the State's police power, and that the bill had a legitimate government interest in promoting the public health, safety, and welfare.³ The court further rejected the petitioners' claim that the language of the bill would effectually outlaw the vast majority of magazines owned by Colorado gun owners.⁴

This Comment will first discuss the facts of *Rocky Mountain Gun Owners* and trace its winding path through the Colorado court system. Next, it will give a background of Colorado's court rulings regarding gun control legislation and how it affected this case. Then it will consider the test used by the court in its decision and how the plaintiffs' failure to bring a federal claim in this case impacted its outcome. Furthermore, this Comment will examine the political, policy, and practical effects that this legislation and ruling have had in influencing society and whether it achieves the ultimate goal: reducing the number of innocent lives lost to senseless acts of gun violence, especially to mass shootings.⁵

1. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66 ¶¶ 2–4, 467 P.3d 314, 317.

2. *Id.* ¶ 62, 467 P.3d at 329.

3. *Id.* ¶¶ 60–61, 467 P.3d at 329.

4. *Id.* ¶¶ 3–4, 467 P.3d at 317.

5. *See id.* ¶¶ 63–64, 467 P.3d at 329. The intent of the Colorado legislature in limiting the magazine capacity to fifteen rounds primarily revolved around the idea that, in a mass shooting situation, the gunman would have to reload more because of the reduced magazine round count. *Id.* Therefore, with a more frequent and earlier need to reload, this pause in firing would allow those caught in the gunfire to escape or subdue the perpetrator. *Id.* The

II. STATEMENT OF THE CASE

Early on the morning of July 20, 2012, the nation was rocked by yet another instance of a gunman indiscriminately opening fire into a public crowd of people.⁶ James Holmes entered through a side exit of an Aurora movie theater armed with a shotgun, handgun, and semi-automatic rifle, and killed twelve people and left fifty-eight others wounded.⁷ This unimaginable tragedy was heartbreakingly reminiscent of another Colorado mass shooting that occurred over thirteen years earlier and only a few dozen miles away in Columbine, Colorado. The Columbine High School Massacre involved two students, armed with two shotguns, a nine-millimeter carbine, and a nine-millimeter pistol, who killed thirteen of their fellow classmates in what was at the time the deadliest school shooting in this nation's history.⁸ In the aftermath of the Aurora movie theater massacre, the Colorado legislature began the process of enacting legislation aimed at reducing the number of victims in a potential mass shooting scenario by imposing restrictions on large capacity magazines within the state.⁹

The Colorado General Assembly responded with what is commonly known as House Bill 13-1224, which took effect on July 1, 2013.¹⁰ House Bill 13-1224 prohibited the sale, transfer, and possession of large capacity magazines as defined by the statute.¹¹ The Colorado legislature labeled a large capacity magazine as “[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

logic follows that earlier reload actions equal a greater opportunity for potential victims to evade the scene, thus saving lives. *Id.*

6. Jennifer Brown, *12 Shot Dead, 58 Wounded in Aurora Movie Theater During Batman Premier*, DENVER POST (July 20, 2012, 3:30 PM), <https://www.denverpost.com/2012/07/20/12-shot-dead-58-wounded-in-aurora-movie-theater-during-batman-premier/>.

7. *Id.*

8. *Columbine Shooting*, HISTORY (May 25, 2022), <https://www.history.com/topics/1990s/columbine-high-school-shootings>. Some statistics do not consider the University of Texas shooting committed by Charles Whitman in 1966 to be a “school shooting.” It is worth noting that twelve people were killed in this atrocity, including the gunman’s wife and mother. See United Press International, *Sniper in Texas U. Tower Kills 12, Hits 33; Wife, Mother Also Slain; Police Kill Him*, N.Y. TIMES (Aug. 2, 1966), <https://www.nytimes.com/1966/08/02/archives/sniper-in-texas-u-tower-kills-12-hits-33-wife-mother-also-slain.html>.

9. Scott Keyes, *How Colorado Has Tightened its Gun Laws Since the Aurora Shooting*, GUARDIAN (July 25, 2015, 8:54 AM), <https://www.theguardian.com/us-news/2015/jul/25/colorado-gun-control-laws-aurora-shooting>.

10. See *id.*; COLO. REV. STAT. § 18-12-301 (2022).

11. § 18-12-302(1)(a) (“Except as otherwise provided in this section, on and after July 1, 2013, a person who sells, transfers, or possesses a large-capacity magazine commits a class 2 misdemeanor.”).

ammunition.”¹² Essentially, this new legislation served to ban the possession and manufacturing of magazines that could accept more than fifteen rounds unless the magazine could be shown to have been continuously owned prior to July 1, 2013.¹³ Local sheriffs and gun rights advocates from around the country weighed in on what they perceived as an infringement on their constitutional rights to bear arms and self-defense.¹⁴

Not long after the bill’s passage, local non-profit gun rights advocacy group Rocky Mountain Gun Owners, among others, filed a lawsuit challenging the constitutionality of House Bill 13-1224 under article II, section 13 of the Colorado Constitution, deciding not to pursue a Federal Second Amendment claim.¹⁵ The plaintiffs claimed the language of the bill would serve to eliminate the vast majority of magazines possessed by Colorado gun owners.¹⁶ Specifically, plaintiffs took issue with the language in House Bill 13-1224 which defined a large capacity magazine as a device that includes “[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.”¹⁷ The plaintiffs argued this definition broadly encompassed a majority of magazines because many magazines are capable of their base pads being removed or altered to allow the magazine to receive more than the limited fifteen rounds.¹⁸ Additionally, plaintiffs contended that the arbitrary nature of House Bill 13-1224 was an unreasonable exercise of the State’s police power.¹⁹

The trial court initially granted the Governor’s motion to dismiss the claims brought by Rocky Mountain Gun Owners, concluding that the plaintiffs failed to state a claim that House Bill 13-1224 was not a reasonable exercise of the State’s police power.²⁰ Plaintiffs appealed, and the Colorado Court of Appeals reversed the trial court’s dismissal in a 2-1 ruling.²¹ The appellate division established that the plaintiffs’ claims alleging that the magazine restriction violated their article II, section 13

12. *Id.* § 18-12-301(2)(a)(I).

13. *Id.* § 18-12-302(1)(a).

14. See Kurtis Lee, *County Sheriffs of Colorado Releases Memo in Opposition of New Gun Law*, DENVER POST (Apr. 30, 2016, 4:38 AM), <https://www.denverpost.com/2013/01/29/county-sheriffs-of-colorado-releases-memo-in-opposition-of-new-gun-law/>.

15. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶¶ 3–4, 467 P.3d 314, 317.

16. *Id.* ¶ 13, 467 P.3d at 317.

17. § 18-12-301(2)(a)(I) (emphasis added); *Rocky Mountain Gun Owners*, 2020 CO 66 ¶¶ 3–4, 467 P.3d at 317.

18. *Rocky Mountain Gun Owners*, 2020 CO 66 ¶ 65, 467 P.3d at 329–30.

19. *Id.* ¶ 31, 467 P.3d at 323.

20. *Id.* ¶¶ 8–10, 467 P.3d at 319.

21. *Id.* ¶ 11, 467 P.3d at 319.

right to bear arms required a factual inquiry into the reasonableness of the regulation.²² Determining that the trial court erred in dismissing plaintiffs' case as a matter of law, the appellate division remanded the case back to the trial court so that the plaintiffs could test their assertions "through the crucible of factfinding."²³

The trial court conducted a week-long bench trial which ultimately reached the conclusion that House Bill 13-1224 was constitutional because it was directly related to the fundamental government interest of protecting lives.²⁴ The court looked at the relationship between large capacity magazines and mass shootings and their use in producing enormous casualties, such as in Aurora.²⁵ The trial court also considered the purpose of the magazine capacity restriction in a practical light, reasoning that lower magazine capacity resulted in the sooner need for a gunman to reload.²⁶ This reload period creates a pause necessary for potential victims to seek safety and possibly saves their lives. The trial court also rejected the plaintiffs' assertion that a fifteen round limit would restrict Coloradoans ability to defend themselves, reasoning that the means to fire more than fifteen rounds without reloading is not a necessary requirement of legitimate self-defense.²⁷ Finally, the court concluded that House Bill 13-1224 was a reasonable exercise of the State's police power and rejected the plaintiffs' claim that the bill would work to ban essentially all magazines in Colorado.²⁸ The court differentiated the plaintiffs' assertion by distinguishing the purpose of the bill—outlawing magazines that are *designed* to be modified, as opposed to the plaintiffs' fear of magazines being banned because there is a *possibility* to modify them to accept more than fifteen rounds.²⁹

The plaintiffs again appealed to the Colorado Court of Appeals, however, this time the appellate division ruled unanimously to affirm the trial court's decision.³⁰ The appellate division rejected the plaintiffs' argument that the trial court should have used a higher level of scrutiny than the precedent set forth in *Robertson v. City of Denver*³¹ and rejected plaintiffs' suggestion that House Bill 13-1224 be examined within the

22. *Rocky Mountain Gun Owners v. Hickenlooper*, 2016 COA 45, ¶¶ 29–30, 371 P.3d 768, 775.

23. *Id.* ¶¶ 29–30, ¶ 48, 371 P.3d at 775, 778.

24. *Rocky Mountain Gun Owners*, 2020 CO 66 ¶¶ 14–18, 467 P.3d at 320–21.

25. *Id.* ¶¶ 15–16, 467 P.3d at 320.

26. *Id.* ¶ 16, 467 P.3d at 319.

27. *Id.* ¶ 19, 467 P.3d at 321.

28. *Id.* ¶ 20, 467 P.3d at 321.

29. *Id.* ¶ 20, 467 P.3d at 321.

30. *Id.* ¶ 23, 467 P.3d at 321; *Rocky Mountain Gun Owners v. Hickenlooper*, 2018 COA 149, ¶ 1, 472 P.3d 10, 12.

31. 874 P.2d 325 (Colo. 1994) (en banc).

historical context of article II, section 13 of the Colorado Constitution.³² The appellate division also affirmed the legislature's meaning of the term "designed" in its definition of large capacity magazines and concluded that the fifteen round limitation was not a burden on a person's right to bear arms in self-defense.³³ The appellate division expressly concluded that House Bill 13-1224 was a reasonable exercise of the State's police power that avoided "sweeping constitutionally protected activities within their reach."³⁴ Plaintiffs filed a writ of certiorari to the Colorado Supreme Court, which was granted to determine the issue of whether House Bill 13-1224 infringed upon the article II, section 13 provision of the right to bear arms under the Colorado Constitution.³⁵

The Colorado Supreme Court, in a unanimous decision, dealt a crushing defeat to the years-long challenge brought by gun rights advocates and upheld the constitutionality of House Bill 13-1224.³⁶ The court formed its opinion on three grounds: (1) its analysis was narrowed as solely a state constitutional claim since plaintiffs never challenged House Bill 13-1224 under a federal constitutional claim; (2) the court reaffirmed *Robertson's* reasonable exercise test for reviewing article II, section 13 challenges; and (3) the court, using *Robertson*, similarly concluded that House Bill 13-1224 was an appropriate use of the State's police power.³⁷ In doing so, the court rejected the plaintiffs' claims that the regulation inhibited Coloradoans' right to bear arms in self-defense and dismissed the notion that the statutory language provided a broad overreach that would encompass all magazines with a removable base pad.³⁸

III. BACKGROUND

Because the petitioners did not raise a claim under the United States Constitution and did not invoke decisions by the United States Supreme Court, the interpretation of the Second Amendment was not at issue in this case. Therefore, Colorado constitutional jurisprudence, legislative intent, and case history is extremely important in understanding the Colorado Supreme Court's reasoning in its analysis of House Bill 13-1224 and its relationship with the state provision of the right to bear arms. It is vital to comprehend the winding case law of Colorado with respect to

32. *Hickenlooper*, 2018 COA 149 ¶¶ 14–18, ¶ 42, 472 P.3d at 14–15, 18.

33. *Id.* ¶¶ 34–35, 472 P.3d at 17.

34. *Id.* ¶ 37, 472 P.3d at 17.

35. *Rocky Mountain Gun Owners*, 2020 CO 66 ¶ 29, 467 P.3d at 322.

36. *Id.* ¶ 31, 467 P.3d at 323.

37. *Id.* ¶ 31, 467 P.3d at 323.

38. *Id.* ¶ 31, 467 P.3d at 323.

article II, section 13, its restriction on the State's police power, and the levels of scrutiny used in evaluating article II, section 13 jurisprudence.

A. *Article II, Section 13's Fundamental Right Status Remains Undetermined*

Article II, section 13—Colorado's provision regarding the right to bear arms—has been the subject of hotly contested debate surrounding its status as to whether it is a fundamental right. The Colorado Supreme Court has balked at deciding to label article II, section 13 as a fundamental right, instead concluding that the right may be regulated by the State under a reasonable exercise of its police power.³⁹ A series of cases were referenced to support the *Robertson* court in this assessment, supplanting its stance that as a reviewing court, it is not to determine the nature of the right to bear arms, but rather to judge whether a relevant law is a reasonable exercise of the State's police power.⁴⁰

People v. Nakamura was an early Colorado case involving article II, section 13 in which unnaturalized foreign-born residents were prohibited from owning firearms by law.⁴¹ The legislation at issue justified this prohibition of gun ownership to foreign-born Coloradoans to preserve wild game for its citizens.⁴² The *Nakamura* court struck down the law and though it extended the right under article II, section 13 to unnaturalized residents, it did not weigh in on the question of it being a fundamental right.⁴³ Though the court did state that “[t]he police power of a state cannot transcend the fundamental law, and cannot be exercised in such manner as to work a practical abrogation of its provisions.”⁴⁴

Over three decades later, the Colorado Supreme Court took up *Lakewood v. Pillow* and subsequently rejected an ordinance as being overly broad because its gun control prohibitions could not be “reasonably classified” under the State's police power.⁴⁵ Though seemingly holding that this ordinance would not survive the reasonable exercise test, the court again did not determine whether article II, section 13 was a

39. *Robertson v. City of Denver*, 874 P.2d 325, 329 (Colo. 1994) (en banc).

40. *Id.* at 328–29.

41. *People v. Nakamura*, 62 P.2d 246, 246–47 (Colo. 1936) (en banc).

42. *See id.*

43. *Id.* at 247.

44. *Id.* (citing *Smith v. Farr*, 104 P. 401, 406 (Colo. 1909)).

45. *Lakewood v. Pillow*, 501 P.2d 744, 745 (Colo. 1972) (en banc). The ordinance in *Lakewood v. Pillow* essentially imposed a limitation to personal possession of firearms to one's home. *Id.*

fundamental right.⁴⁶ The Colorado Supreme Court in *People v. Blue* upheld a statute prohibiting persons who committed certain violent acts from possessing a firearm, once again refusing to settle the question of whether article II, section 13 is a fundamental right.⁴⁷ The court in *Blue*, however, did establish that the right to bear arms is not an absolute right in its analysis of whether the statute was a legitimate use of the State's police power.⁴⁸

The court in *People v. Ford* rejected a "flat prohibition" on the right of felons to possess firearms, however.⁴⁹ Though the court acknowledged the constitutional requirement to possess a firearm in defense of one's home, person, and property, the fundamental status of article II, section 13 remained in question.⁵⁰ Finally, the court in *People v. Garcia* reenforced the notion that the article II, section 13 right to bear arms is not absolute and is subject to reasonable limitations by the State's exercise of its police powers.⁵¹ Unsurprisingly, the court did not find it necessary to conclude whether this right was a fundamental one, instead weighing the State's reasonable exercise of its police power of the law at issue.⁵²

With all of that said, the famous example of a Colorado court determining the fundamental nature of article II, section 13 is *Trinen v. City of Denver*. In *Trinen*, the Colorado Court of Appeals interpreted the opinion in *Robertson* by finding that the right to bear arms is not a fundamental right.⁵³ This reading of *Robertson* was unequivocally denounced by the court in *Rocky Mountain Gun Owners*.⁵⁴ Furthermore, the *Rocky Mountain Gun Owners* court rejected *Trinen's* analysis that legislation which implicates a non-fundamental right must be evaluated under the standards of a rational basis test to find a relationship to a legitimate government interest.⁵⁵ In its disagreement with *Trinen*, the Colorado Supreme Court, for the time being, has solidified the basis that a reviewing court need not determine whether article II, section 13 is a

46. *Id.* ("Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.")

47. *People v. Blue*, 544 P.2d 385, 390–91 (Colo. 1975) (en banc).

48. *Id.* at 391.

49. *People v. Ford*, 568 P.2d 26, 28 (Colo. 1977) (en banc).

50. *Id.*

51. *People v. Garcia*, 595 P.2d 228, 230 (Colo. 1979) (en banc).

52. *See id.* The issue upheld in *Garcia* dealt with the constitutionality of regulating the possession of firearms by individuals who were under the influence of drugs or alcohol. *Id.* at 228.

53. *Trinen v. City of Denver*, 53 P.3d 754, 757 (Colo. App. 2002).

54. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66 ¶ 51, 467 P.3d 314, 327.

55. *Id.* ¶¶ 51–52, 467 P.3d at 327.

fundamental right, rather seeking to resolve whether the law is a reasonable exercise of the State's police power.⁵⁶

B. The Varying Standards in Reviewing Legislation Regarding the Right to Bear Arms

Although petitioners did not explicitly raise a Federal Second Amendment claim, cases such as *District of Columbia v. Heller* and *McDonald v. City of Chicago* were referenced frequently enough to warrant a discussion pertaining to their impact (or lack thereof) on the case at hand. To summarize, *Heller* was a landmark Supreme Court decision that affirmed the unconstitutionality of a D.C. ban on handguns.⁵⁷ Two years later, the Supreme Court again heard a major Second Amendment case, concluding that the Second Amendment right was “among those fundamental rights necessary to our system of ordered liberty.”⁵⁸ The Court in *McDonald* further held that “the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*.”⁵⁹ The right cemented in *Heller* established that the Second Amendment protected a person's ability to possess a handgun in their home for purposes of self-defense as an individual right.⁶⁰ More broadly discussed in *McDonald*, “a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States.”⁶¹

Both *Heller* and *McDonald* point to the observation that self-defense is the fundamental component of the Second Amendment. *McDonald* reinforces the notion that self-defense is a basic right,⁶² and *Heller* stands for the belief that the “inherent right of self-defense has been central to the Second Amendment right.”⁶³ However, the rights enshrined in the Second Amendment are not without limits.⁶⁴ The late-Justice Scalia referenced nineteenth century commentators in his opinion in *Heller* that this right did not extend to carrying any weapon in any manner for whatever purpose.⁶⁵ Justice Scalia continued to emphasize that

56. *Id.* ¶ 50, 467 P.3d at 327 (citing *Robertson v. City of Denver*, 874 P.2d 325, 329 (Colo. 1994) (en banc)).

57. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

58. *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010).

59. *Id.* at 791.

60. *Heller*, 554 U.S. at 622, 636.

61. *McDonald*, 561 U.S. at 791.

62. *Id.* at 767.

63. *Heller*, 554 U.S. at 628.

64. *Id.* at 626.

65. *Id.*

restrictions on the right to bear arms and self-defense widened to prevent individuals such as “felons and the mentally ill” from possessing firearms, and he even acknowledged the laws disallowing firearms in places such as government buildings and schools.⁶⁶

Though federal constitutional interpretation is not at issue here, it is important to glean from the complications that ascended from decisions such as in *Heller* and *McDonald*, specifically, what level of scrutiny should be applied in evaluating laws affecting a person’s right to bear arms? Much debate has stemmed from how courts should weigh legislation that seeks to implement gun control measures. Even before the *Heller* decision was issued there was much confusion as to the proper standard of review in determining guaranteed rights under the Second Amendment. Former Attorney General John Ashcroft adopted the standard set forth in *United States v. Emerson*,⁶⁷ which seemed muddled in its analysis of forming an appropriate standard.⁶⁸ The majority in *Emerson* stated that while the Second Amendment protects individual rights to keep and bear arms, this does not preclude restrictions that are narrowly tailored specific exceptions in particular cases.⁶⁹ However, in the same breath, the court in *Emerson* instructed that these restrictions must be “reasonable and not inconsistent with the right” to keep and bear arms.⁷⁰ This confusion in referring to both heightened and deferential scrutiny highlights the difficulty in properly attributing the appropriate standard of review to instances concerning the right to bear arms.⁷¹

The United States Constitution is often perceived as setting the floor for protections to persons alleging infringements of their individual state rights. However, it has been supported by the Court that state courts are not required to interpret their state’s constitution in a parallel fashion to the United States Constitution. While state courts must not interfere with the validity of federal effect on state action, it is considered a fundamental role of state courts to interpret their own constitutions free from influence of the Supreme Court.⁷²

Furthermore, the Colorado Supreme Court has expounded on this understanding by proclaiming that it is the “final arbiter” of the Colorado

66. *Id.* at 626–27.

67. See Brief for the United States in Opposition at 20–21, *Emerson v. United States*, 536 U.S. 907 (2002) (No. 01-8780), <http://www.usdoj.gov/osg/briefs/2001/0responses/2001-8780.resp.pdf>.

68. *United States v. Emerson*, 270 F.3d 203, 261 (5th Cir. 2001).

69. *Id.*

70. *Id.* (emphasis added).

71. See generally Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683, 685–86 (2007).

72. *Minnesota v. Nat’l Tea Co.*, 309 U.S. 551, 557 (1940).

Constitution's meaning, and it is "within its power to determine that the state constitution places restrictions on legislative action even greater than those imposed by the Federal Constitution."⁷³ Colorado has established precedent for engaging in its own separate analysis of state constitutional questions in the context of specific state constitutional provisions.⁷⁴ Moreover, even where the federal provision and the state provision are similar, the responsibility of conducting an independent analysis of state principles is not invalidated.⁷⁵ However, though the Colorado Supreme Court does not require itself to be bound to federal precedent, it still acknowledges the reasoning of Supreme Court decisions when evaluating issues of Colorado constitutional provisions relevant to the case at bar.⁷⁶

The idea of "New Judicial Federalism" leans on the reliance that a state court interprets its own state constitution "to provide *more* protection[s] than . . . [that of] the [F]ederal Constitution."⁷⁷ The United States Constitution is binding on the states, and while states can interpret their own state constitution to provide rights below the federal minimum standard, "the [federal] minimum standards must still be enforced" because states cannot interpret the Federal Constitution to provide less rights than the Supreme Court has determined it provides.⁷⁸ States may follow a "lockstep" interpretation of its own constitutional provisions to mirror that of federal equivalents.⁷⁹ The Colorado Supreme Court in *Rocky Mountain Gun Owners* admittedly did not follow this approach.⁸⁰ However, the relevant federal provision—the Second Amendment—has not been interpreted by the Supreme Court in determining the constitutionality of magazine capacity restrictions,⁸¹ but

73. *Curious Theatre Co. v. Colo. Dep't of Pub. Health & Env't*, 220 P.3d 544, 551 (Colo. 2009) (en banc).

74. *People v. Young*, 814 P.2d 834, 842 (Colo. 1991) (en banc).

75. *Id.*

76. *Id.* at 843.

77. ROBERT F. WILLIAMS, *THE LAW OF AMERICAN STATE CONSTITUTIONS*, 113–14 (2009).

78. *Id.* at 114.

79. *Id.* at 129.

80. *See Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 36, 467 P.3d 314, 324 ("When interpreting our own constitution, we do not stand on the federal floor; we are in our own house.").

81. *See N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242, 254 (2d Cir. 2015) ("Neither *Heller* nor *McDonald* . . . delineated the precise scope of the Second Amendment or the standards by which lower courts should assess the constitutionality of firearms restrictions [such as high-capacity magazine bans]."), *cert. denied sub nom. Shew v. Malloy*, 579 U.S. 917 (2016); *see also N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S.Ct. 2111, 2157 (2022) (Alito, J., concurring) ("Nor does [the Court's holding] decide anything about the kinds of weapons that people may possess. Nor have we disturbed anything that we said in

there are federal cases being bounced around that could certainly have an effect on this in the very near future.

For example, in 2020, the Ninth Circuit Court of Appeals struck down a California ban on magazines containing more than ten rounds.⁸² Applying strict scrutiny, the Ninth Circuit held in a 2-1 decision that the restrictions were unconstitutional and infringed on a “fundamental right to self-defense” provided by the Second Amendment.⁸³ The Attorney General of California appealed this decision, it was vacated, and the case was ordered to be reheard *en banc*.⁸⁴ On rehearing, the Ninth Circuit came down on the opposite side of the issue as it did before,—still applying strict scrutiny—the court held that the magazine “limitation interfere[d] only minimally with the core right of self-defense, as there is no evidence that anyone has ever been unable to defend his or her home and family due to the lack of a large-capacity magazine.”⁸⁵ In response, the plaintiffs petitioned the Supreme Court of the United States for review in which the Supreme Court granted certiorari, vacated the Ninth Circuit’s new holding, and then the Supreme Court remanded the case for further consideration by the Ninth Circuit in light of the Supreme Court’s recent holding in *New York State Rifle & Pistol Association, Inc. v. Bruen*.⁸⁶ The new decision has yet to be determined.

If this Ninth Circuit case or another similar case reaches the docket for full consideration by the Supreme Court, it could have significant effects on state gun control laws, especially with respect to magazine capacity restrictions.⁸⁷ The Supreme Court, given its current ideological

Heller or *McDonald v. City of Chicago*, about restrictions that may be imposed on the possession . . . of guns.” (citation omitted)).

82. *Duncan v. Becerra*, 970 F.3d 1133, 1140, 1168–69 (9th Cir. 2020), *reh’g en banc granted and vacated*, 988 F.3d 1209 (9th Cir. 2021), *rev’d en banc sub nom. Duncan v. Bonta*, 19 F.4th 1087, 1096, *cert. granted and vacated*, 142 S.Ct. 2895 (2022).

83. *Id.* at 1152, 1169.

84. *Duncan v. Becerra*, 988 F.3d 1209, 1210 (9th Cir. 2021), *rev’d en banc sub nom. Duncan v. Bonta*, 19 F.4th 1087, 1096.

85. *Duncan v. Bonta*, 19 F.4th 1087, 1096 (9th Cir. 2021) (en banc), *cert. granted and vacated*, No. 21-1194, 2022 WL 2347579 (U.S. June 30, 2022).

86. *Duncan v. Bonta*, No. 21-1194, 2022 WL 2347579 (U.S. June 30, 2022). On August 2, 2022, the Ninth Circuit ordered: “the parties . . . to file supplemental briefs [about] the effect of *Bruen* on this appeal, including whether the en banc panel should remand this case to the district court for further proceedings.” *Duncan v. Bonta*, No. 19-55376, 2022 U.S. App. LEXIS 21320 (9th Cir. Aug. 2, 2022).

87. See Mark Chesnut, *California Magazine Ban Heads Back to Court*, NAT’L RIFLE ASS’N (Mar. 1, 2021), <https://www.americas1stfreedom.org/articles/2021/3/1/california-magazine-ban-heads-back-to-court> (“[*Duncan v. Becerra*] could eventually find its way to the U.S. Supreme Court, where, if past records are a good indication, pro-gun justices outnumber those who are unfriendly to the Second Amendment.”).

makeup,⁸⁸ could determine certain magazine restrictions to be a prohibited burden on the core of Second Amendment rights. In the past, the Supreme Court has been reluctant to hear such cases,⁸⁹ but in light of *New York State Rifle & Pistol Association, Inc. v. Bruen*, and the pending remand of *Duncan v. Bonta* in the Ninth Circuit, it is likely that the issue—whether the right to bear arms encompasses large-capacity magazines is protected by the Federal Constitution—may soon be decided by the Supreme Court. This would have a direct effect going forward in challenging gun control legislation, not according to the interpretation of that state’s constitutional grounds, as plaintiffs did in *Rocky Mountain Gun Owners*, but by invoking federal interpretational doctrine to fight off state legislation that does not provide the minimum standard of protection ensured by the Second Amendment.⁹⁰

As mentioned, Colorado does not proclaim article II, section 13 to be a fundamental right. The Colorado Supreme Court has enacted a “reasonable exercise test” to evaluate legislation impacting article II, section 13 to determine whether the law serves a legitimate government interest under the State’s police power and whether article II, section 13 substantially constrains the regulation.⁹¹ In this context, the state courts have deepened their analyses separate from a rational basis review, instead requiring a “reasonable” relationship between the intent of the legislation and the means by which it seeks to accomplish it.⁹² Colorado is not alone in this approach when it comes to regulating its citizens’ constitutional right to bear arms. The Colorado Supreme Court pointed

88. See Robert J. Spitzer, *Gun Accessories and the Second Amendment: Assault Weapons, Magazines, and Silencers*, 83 LAW & CONTEMP. PROBS., 231, 246 (2020) (noting “a now more conservative and potentially gun friendly Supreme Court majority”).

89. See *Rogers v. Grewal*, 140 S.Ct. 1865, 1875 (2020) (Thomas, J., dissenting) (chastising the Court’s alleged “decade-long failure to protect the Second Amendment”), *denying cert. to Rogers v. Att’y Gen. of N.J.*, No. 18-2366, 2018 WL 10808705 (3d Cir. Sept. 21, 2018); see also *Silvester v. Becerra*, 138 S.Ct. 945, 945, 951–52 (2018) (Thomas, J., dissenting) (alleging the Court treats the Second Amendment as a “constitutional orphan” evinced by the Court’s “continued inaction” and “refusal to hear Second Amendment cases”), *denying cert. to Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016); Gary O’Leary, *U.S. Supreme Court Passes on Hearing Second Amendment Cases*, NAT’L RIFLE ASS’N (June 16, 2020), <https://www.americas1stfreedom.org/articles/2020/6/16/us-supreme-court-passes-on-hearing-second-amendment-cases> (“The U.S. Supreme Court passed on hearing [ten] Second Amendment cases [in 2020].”).

90. See WILLIAMS, *supra* note 77, at 114, 123–24.

91. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 31, ¶ 61, 467 P.3d 314, 323, 329.

92. *Id.* ¶ 50, 467 P.3d at 327 (quoting *Robertson v. City of Denver*, 874 P.2d 325, 328 (Colo. 1994) (en banc)).

to a multitude of other jurisdictions in explaining its test for article II, section 13 matters.⁹³

The reasonable exercise test not only “stands as an independent, substantive limitation on otherwise rational government action” against the right to bear arms in defense of home, person, and property, but also to ensure the legislation at issue is appropriate under the police power to promote the public health, safety, and welfare.⁹⁴ House Bill 13-1224 was enacted to address the concerns around mass shootings and limit the number of rounds that could be fired consecutively without having to reload.⁹⁵ This legislation grew out of the immediate aftermath of the Aurora shootings but there had been steady calls for legislation such as this for years prior.

C. *Calls for Action to End Mass Shootings*

Mass shootings are arguably the most disturbing atrocities to occur throughout this country, and they occur too often. It has been all too common for Americans to wake up to another mass shooting headline on the news. Depending on the definition of a mass shooting, it is calculated there has been anywhere from 355 in a single year to roughly the same number over a period of fifteen years.⁹⁶ No matter the criteria, even the low estimate is considerably heartbreaking.

The weapons, ammunition, and magazines used in these mass shooting events have been the central topic around this conversation. Semi-automatic rifles, sometimes referred to as “assault rifles,” are the primary fixation when addressing the issue of mass shootings. According to a study by Dr. James Fox, semi-automatic rifles were used in approximately twenty-five percent of mass shootings from 1982 to 2012.⁹⁷ The same study repeats a statistic confirmed by Mayors Against Illegal Guns, that fourteen out of ninety-three mass shootings from January

93. See *Robertson*, 874 P.2d at 329–30; see also, e.g., *Rabbitt v. Leonard*, 413 A.2d 489, 492–93 (Conn. Super. Ct. 1979) (determining *whether an exercise of the State’s police power is reasonable* is the test used when a challenged statute involves the right to bear arms); see also *Carson v. State*, 247 S.E.2d 68, 72 (Ga. 1978) (establishing the question of *whether the regulation is a legitimate and reasonable exercise of the State’s police power* was central to foreign rulings on the right to keep and bear arms (citing *Strickland v. State*, 72 S.E. 260, 263 (Ga. 1911)).

94. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶ 61, 467 P.3d at 329.

95. *Id.* ¶¶ 16–18, 467 P.3d at 320–21.

96. Callum Borchers, *The Squishy Definition of ‘Mass Shooting’ Complicates Media Coverage*, WASH. POST (Oct. 4, 2017, 7:30 AM), <https://www.washingtonpost.com/news/the-fix/wp/2017/10/04/the-squishy-definition-of-mass-shooting-complicates-media-coverage/>.

97. James Alan Fox & Monica J. DeLateur, *Mass Shootings in America: Moving Beyond Newtown*, 18 HOMICIDE STUD. 125, 136 tbl.3 (2014).

2009, through September 2013, involved an “assault weapon” or high-capacity magazine.⁹⁸ The study even addressed a relevant issue in *Rocky Mountain Gun Owners*; it suggested that: “limiting the size of ammunition clips would at least compel a gunman to pause to reload or switch weapons, potentially giving others a brief window of opportunity to escape”⁹⁹

States have taken up legislation to limit the round capacity of magazines in response to such mass carnage.¹⁰⁰ Events like the one in Carson City, Nevada, where a gunman fired through multiple thirty round magazines, in a mere eighty-five seconds, killing four and injuring fourteen people, have sparked national conversation around restricting magazine capacity.¹⁰¹ Nevada also suffered one of the deadliest mass shootings in our nation’s history where fifty-eight concertgoers were killed and hundreds more were wounded by a single gunman in Las Vegas.¹⁰² Hundreds of expended casings were found at the scene, along with scores of weapons and large capacity magazines, some containing one hundred rounds of ammunition.¹⁰³ James Holmes entered the Aurora movie theater that night armed with both forty round and one-hundred round magazines, but thankfully a weapons malfunction prevented the potential for further loss of life.¹⁰⁴ Mass shootings involving large capacity magazines leading up to the passage of House Bill 13-1224, including Aurora,¹⁰⁵ Sandy Hook,¹⁰⁶ and Fort Hood,¹⁰⁷ undoubtedly

98. *Id.* at 137.

99. *Id.*

100. Kimberly Kindy et al., *State Gun-Control Laws Surge After High-Profile Mass Shootings*, WASH. POST (June 14, 2022, 6:00 AM), <https://www.washingtonpost.com/politics/2022/06/14/state-gun-control-buffalo-ualde-legislation/>.

101. Martha Bellisle, *IHOP Shooting One Year Later: 85 Seconds that Changed Carson City*, RENO GAZETTE J. (Apr. 5, 2014, 8:36 PM), <https://www.rgj.com/story/news/2014/04/05/ihop-shooting-one-year-later-85-seconds-that-changed-carson-city/6675929/>.

102. Julie Turkewitz & Jennifer Medina, *Las Vegas Police Release Final Report on Massacre, With Still No Idea of Motive*, N.Y. TIMES (Aug. 3, 2018), <https://www.nytimes.com/2018/08/03/us/las-vegas-shooting-final-report.html>.

103. LAS VEGAS METRO. POLICE DEP’T, FORCE INVESTIGATION TEAM REPORT 7 (Jan. 18, 2018), https://www.lvmpd.com/en-us/Documents/1_October_FIT_Report_01-18-2018_Footnoted.pdf.

104. Matt Pearce, *Gun’s Magazine Shaped the Pace of Colorado Theater Massacre*, L.A. TIMES (July 22, 2012, 12:00 AM), <https://www.latimes.com/nation/la-xpm-2012-jul-22-lana-nn-theater-shooting-magazine-20120722-story.html>.

105. *See id.*

106. *See* Matt Ferner, *Adam Lanza, Sandy Hook Shooter, Used High-Capacity Magazines from Colorado’s Magpul Industries*, HUFFPOST (Nov. 26, 2013, 2:46 PM), https://www.huffpost.com/entry/adam-lanza-sandy-hook-magazines-magpul_n_4344175.

107. *See* Charley Keyes, *Fort Hood Witness Says He Feared There Were More Gunmen*, CNN (Oct. 20, 2010, 6:10 PM), <https://www.cnn.com/2010/CRIME/10/20/texas.fort.hood.shootings/index.html?hpt=T1>.

influenced the minds of the legislators, gun control advocates, and the courts.¹⁰⁸

IV. COURT'S ANALYSIS

The Colorado Supreme Court affirmed the constitutionality of House Bill 13-1224, declaring the legislature's efforts to curb mass shootings by limiting magazine capacity was a reasonable exercise of the State's police power that did not impede the right to bear arms in defense of home, person, and property as protected by article II, section 13 of the Colorado Constitution.¹⁰⁹ The court considered the backdrop of the legislature's intent of mitigating the effects of a mass shooting, the issues raised concerning the language of the bill including whether it was too broad, and whether this legislation survived Colorado's constitutional muster in achieving its aim.¹¹⁰

A. *The Plaintiffs Relied Solely on a State Constitutional Claim*

The court acknowledged the Second Amendment applies to Colorado's laws and that no such state legislation may act in contravention of it.¹¹¹ However, plaintiffs did not challenge House Bill 13-1224 under a Federal Second Amendment claim, instead deciding to argue the bill operated in violation of the Colorado Constitution.¹¹² Though plaintiffs' complaint was absent any federal challenge, they still argued that cases such as *Heller* and *McDonald* bestowed a fundamental right to bear arms.¹¹³ Plaintiffs further asserted that, since Colorado must afford more protection to article II, section 13 than that guaranteed by the Second Amendment, the court was obligated to abandon its precedent set in *Robertson*.¹¹⁴ The court brushed aside plaintiffs' argument reasoning—though its constitutional interpretation requires a separate level of protection than the Second Amendment—that it was under no obligation to interpret Colorado's right to bear arms as a fundamental right as settled in *Heller* because the court was “free to interpret their own state constitution[] as they wish[ed].”¹¹⁵

108. See Kindy et al., *supra* note 100.

109. Rocky Mountain Gun Owners v. Polis, 2020 CO 66, ¶ 78, 467 P.3d 314, 332.

110. *Id.* ¶¶ 65–78, 467 P.3d at 329–32.

111. *Id.* ¶ 5, 467 P.3d at 317.

112. *Id.* ¶ 5, 467 P.3d at 317–18.

113. See *id.* ¶ 11, 467 P.3d at 319.

114. *Id.* ¶¶ 11–13, 467 P.3d at 319–20.

115. *Id.* ¶ 34, 467 P.3d at 324.

The court reminded plaintiffs that, though the Constitution sets the “floor” for protecting individual liberties, it is for those who allege a state has infringed on such liberties, something plaintiffs did not do.¹¹⁶ Moreover, the court held that since plaintiffs proceeded under an article II, section 13 challenge, that decisions in *Heller* and *McDonald* did not control the court’s analysis of its own constitutional provision.¹¹⁷ The court even proclaimed that when it is deciding matters involving its own constitution that it does “not stand on the federal floor” but rather it operates “in [its] own house.”¹¹⁸ By not raising a federal claim, plaintiffs forfeited their ability to challenge House Bill 13-1224’s magazine restriction through the lens of *Heller* and *McDonald*.¹¹⁹ Even if plaintiffs did raise a federal claim, the court noted there was no test established in either *Heller* or *McDonald* for analyzing challenges to the right to bear arms under the United States Constitution.¹²⁰ The court followed Colorado precedent for evaluating legislation that may conflict with article II, section 13 for determining whether the government action was a reasonable exercise of the State’s police power.¹²¹

B. House Bill 13-1224 Upheld to Be a Reasonable Exercise of the State’s Police Power

Plaintiffs primarily argued two constitutional claims: (1) that the regulation of fifteen or fewer rounds in a magazine was an unreasonable restriction on Colorado’s right to bear arms; and (2) that House Bill 13-1224 worked to serve as a broad ban on all magazines that could potentially be altered to store more than fifteen rounds.¹²² The court first examined the plaintiffs’ claim that House Bill 13-1224 was not a reasonable exercise of the State’s police power.

Plaintiffs pointed to the Colorado Supreme Court decision in *City of Lakewood v. Pillow* explaining that the standard of reasonableness serves to invalidate a regulation if it “sweep[s] unnecessarily broadly.”¹²³ The court evaluated the function of the reasonableness test and stated the test requires the legislation affecting article II, section 13 to have an

116. *See id.* ¶¶ 34–35, 467 P.3d at 323–24.

117. *Id.* ¶¶ 35–36, 467 P.3d at 324.

118. *Id.* ¶ 36, 467 P.3d at 324.

119. *See id.* ¶¶ 35–36, 467 P.3d at 324.

120. *Id.* ¶ 46, 467 P.3d at 326.

121. *Id.* ¶¶ 46–52, 467 P.3d at 326–27.

122. *Id.* ¶¶ 60–70, 467 P.3d at 329–30.

123. Plaintiffs’ Closing Brief at 17, *Rocky Mountain Gun Owners v. Hickenlooper*, No. 2013CV33879 (D. Colo. May 26, 2017) (quoting *City of Lakewood v. Pillow*, 501 P.2d 744, 745 (Colo. 1972) (en banc)).

actual legitimate purpose within the police power.¹²⁴ The reasonable exercise test may not permit restrictions to essentially deny the right to bear arms by virtue of being “so arbitrary or onerous.”¹²⁵ Though the court acknowledged the constraints of article II, section 13 on relevant government action, the court also stated that the reasonable exercise test “may burden the right to bear arms” so long as the essence of the right is protected.¹²⁶

The court acknowledged that restrictions essentially prohibiting the possession and use of a firearm by an unnaturalized foreign-born resident was an unreasonable exercise of the police power.¹²⁷ Conversely, the court upheld regulations preventing violent felons from possessing weapons or restrictions against narrow classes of weapons as reasonable under the police power to promote the health, safety, and welfare of Colorado citizens.¹²⁸ The court then looked to the findings of the trial court, agreeing that the purpose of House Bill 13-1224 was to minimize the number of victims in a mass shooting event, and also affirmed that this objective was clearly within the State’s police power.¹²⁹ The court held that there was a legitimate relationship between the restrictions on large capacity magazines and the interest in curbing the effects of mass shootings.¹³⁰ Pointing to the use of large capacity magazines in some of the most devastating moments and loss of life in this nation’s history, the court concluded that restrictions on possessing or transferring magazines containing over fifteen rounds was a reasonable action.¹³¹ Convinced by the evidence showing that lives could be saved by an earlier opportunity to escape due to a gunman needing to reload, plaintiffs’ claim that House Bill 13-1224 was an unreasonable exercise of the State’s police power was rejected.¹³²

124. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶¶ 54–55, 467 P.3d at 327–28.

125. *Id.* ¶ 56, 467 P.3d at 328.

126. *Id.* ¶ 56, 467 P.3d at 328.

127. *Id.* ¶¶ 57–58, 467 P.3d at 328; *see also* *People v. Nakamura*, 62 P.2d 246, 247 (Colo. 1936) (en banc).

128. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶¶ 59–60, 467 P.3d at 328–29; *see also* *People v. Blue*, 544 P.2d 385, 387 (Colo. 1975) (en banc); *Robertson v. City of Denver*, 874 P.2d 325, 333 (Colo. 1994) (en banc).

129. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶¶ 62–63, 467 P.3d at 329.

130. *Id.* ¶ 64, 467 P.3d at 329.

131. *Id.* ¶ 64, 467 P.3d at 329.

132. *Id.* ¶ 64, 467 P.3d at 329.

C. *House Bill 13-1224 Does Not Unnecessarily Burden the Core of Article II, Section 13*

Plaintiffs positioned a central piece of their challenge to House Bill 13-1224 around the interpretation of what is a large capacity magazine. The direct language from House Bill 13-1224 defines a large capacity magazine as: “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.”¹³³

Plaintiffs took issue with the meaning of “designed to be . . . converted” and argued this definition would sweep up nearly all of the magazines owned in Colorado.¹³⁴ This stems from the fact that a huge number of magazines have removable base pads and removing it allows for a modification to store additional rounds in the magazine.¹³⁵ This simple alteration was demonstrated to only take seconds, with no prior expertise, and with simple tools.¹³⁶ If the plaintiffs’ interpretation of House Bill 13-1224’s large capacity magazine definition were accurate, they feared this would essentially outlaw semi-automatic firearms in Colorado.¹³⁷

The court rejected the plaintiffs’ reading of the statute by distinguishing the plaintiffs’ over-reading of the text with the legislature’s intent.¹³⁸ The court explained that had the legislature meant to include all magazines that were “capable” of being converted to hold more than fifteen rounds, it would have done so.¹³⁹ Additionally, the court analyzed the definition of the words “designed” and “capable,” concluding that the differentiating nature between the two terms is whether it is the intent or purpose of the magazine to hold more than fifteen rounds.¹⁴⁰ The court also pointed out that the primary function of a removable base pad is not to modify a magazine’s round capacity, but to “facilitate cleaning, maintenance, and repair” of the magazine.¹⁴¹ The court

133. COLO. REV. STAT. § 18-12-301(2)(a)(I) (2022) (emphasis added).

134. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶ 65, 467 P.3d at 329–30.

135. *Id.* ¶ 65, 467 P.3d at 330.

136. Plaintiffs’ Closing Brief, *supra* note 123, at 10–11 (stating that plaintiffs’ witness converted a magazine to hold more than fifteen rounds in a matter of seconds using tools such as a common punch and a butter knife).

137. *Id.*

138. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶¶ 65–72, 467 P.3d at 330–31.

139. *Id.* ¶ 68, 467 P.3d at 330.

140. *Id.* ¶ 70, 467 P.3d at 330.

141. *Id.* ¶ 20, 467 P.3d at 321. The plaintiffs’ expert witness testified that a design goal of the magazine’s removable base pad was to expand magazine capacity and not just for maintenance purposes. *Id.* ¶ 75 n.14, 467 P.3d at 331 n.14.

The trial court in this case chose not to view this testimony as credible. *Id.*

concluded that “designed to be readily converted to accept” was objectively understood to mean the magazine was created with the intention of being modified to accept more than fifteen rounds.¹⁴² Ultimately, plaintiffs’ interpretation was rejected by the court.¹⁴³

The court then turned its attention to whether House Bill 13-1224 substantially hindered the right to bear arms under article II, section 13. The court held that the restrictions placed on possessing and transferring large capacity magazines were not an infringement on rights secured under article II, section 13.¹⁴⁴ The court looked to its decision in *Robertson* where a ban on “assault weapons” was upheld because, among other reasons, there were “hundreds of alternative ways in which citizens may exercise the right to bear arms in self-defense.”¹⁴⁵ Similar to its analysis in *Robertson*, the court explained that the regulations imposed on large capacity magazines were not onerous because there remained thousands of types of firearms with removable magazine base pads available for Coloradoans to use in defense of their home, person, and property.¹⁴⁶ Furthermore, the statute’s grandfather clause allowed magazine owners to continue to possess their large capacity magazines so long as they were owned before July 1, 2013.¹⁴⁷ The court quoted *Robertson* in a reminder that the “right to bear arms is not an unlimited right and is subject to reasonable regulation.”¹⁴⁸ The court concluded that House Bill 13-1224 did not interfere with the article II, section 13 right to bear arms, its magazine capacity regulation was a reasonable exercise of the police power, and it served a legitimate government purpose in limiting the devastation caused in mass shootings.¹⁴⁹

The court heavily weighed the factors of the burden of restricting gun rights with the action to address high profile mass shootings.¹⁵⁰ Smaller magazine size was not found to reach the threshold of infringing upon the rights of Coloradoans to defend themselves and their property, at least not to the extent that it was significantly burdened by a reasonable exercise of the police power.¹⁵¹ The court did not need to address the possible federal challenge to House Bill 13-1224, but it pointed out that many states have upheld ten round magazine capacity limits through

142. *Id.* ¶ 75, 467 P.3d at 331.

143. *Id.* ¶ 75, 467 P.3d at 331.

144. *Id.* ¶ 76, 467 P.3d at 331.

145. *Robertson v. City of Denver*, 874 P.2d 325, 333 (Colo. 1994) (en banc).

146. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶ 77, 467 P.3d at 331.

147. *Id.* ¶ 77, 467 P.3d at 331 (citing COLO. REV. STAT. § 18-12-302(2)(a)).

148. *Id.* ¶ 78, 467 P.3d at 332 (quoting *Robertson*, 874 P.2d at 329).

149. *Id.* ¶¶ 62–78, 467 P.3d at 329–32.

150. *See id.* ¶¶ 65–78, 467 P.3d at 329–32.

151. *Id.* ¶ 79, 467 P.3d at 332.

intermediate scrutiny under the Second Amendment.¹⁵² This example of the court's approach of "horizontal federalism" highlights the impact of how other states' gun control restrictions can affect similar laws around the country.¹⁵³ In the end, the court concluded that House Bill 13-1224 was a reasonable exercise of the police power against article II, section 13 and that it did not invalidate the right to bear arms and self-defense under the Colorado Constitution.¹⁵⁴

V. AUTHOR'S ANALYSIS

A. *Legislative Intent Versus Potential Emerging Outcomes*

A fundamental question is whether the purpose and intent of the Colorado legislature in passing House Bill 13-1224 will be served in reducing mass shootings or even gun deaths in general. Will this legislation prevent would-be mass shooters from possessing large capacity magazines, resulting in less carnage, or will it only serve to restrict law abiding gun owners from owning these magazines? This invokes the age-old rhetoric of "criminals don't follow the law," inferring any restrictions on firearms or magazines would be primarily affecting the vast majority of lawful gun owners, while those who never intended to follow House Bill 13-1224 in the first place will still break the law.¹⁵⁵ Is there some truth to this? Should this even be a deterrent in attempting to pass firearm regulations? This line of reasoning clearly has not prevented laws from being passed on drug use or speed limits. However, there is a stark difference in talking about legislation that affects specifically mentioned state and federal constitutional rights.

It can be objectively reasoned that House Bill 13-1224 will reduce mass shootings by examining the effects of the Violent Crime Control and Law Enforcement Act of 1994. Specifically, the subsection containing the Public Safety and Recreational Firearms Use Protection Act, commonly known as the Federal Assault Weapons Ban, which restricted the use of a number of semi-automatic firearms and "assault weapons" as well as

152. *Id.* ¶ 78 n.15, 467 P.3d at 332 n.15 (noting decisions by the First, Second, Third, and D.C. Circuits upholding ten-round limits).

153. Williams, *supra* note 77, at 352 (discussing that state courts, when examining state constitutional issues, look at how other states have interpreted their own similar constitutional provisions).

154. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶ 79, 467 P.3d at 332.

155. See generally National Rifle Association, Institute for Legal Action, *Study Reinforces What We Already Know: Criminals Don't Follow the Law*, NAT'L RIFLE ASS'N (Jun. 28, 2019), <https://www.nrila.org/articles/20190628/study-reinforces-what-we-already-know-criminals-don-t-follow-the-law>.

the ability to “transfer or possess a large capacity ammunition feeding device.”¹⁵⁶ The legislation defined a large capacity ammunition feeding device as “a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition.”¹⁵⁷ In the ten years this ban was in effect, Dr. Charles DiMaggio stated in a study that mass shootings dropped by 70% from 1994 to 2004.¹⁵⁸ However, there has been little evidence showing that restrictions on large capacity magazines have reduced the total number of firearm homicides in general.¹⁵⁹ A 2019 report by Michael Siegel and Claire Boine concluded that legislation aimed at universal background checks, discretionary conceal carry permit laws, and prohibiting violent offenders from possessing firearms would reduce gun violence significantly.¹⁶⁰ They found that large capacity magazine bans, among other commonly seen restrictions, did not have any visible impact on overall firearm homicides, even during the years the Federal Assault Weapons Ban was in effect.¹⁶¹ Additionally, during the years of the Federal Assault Weapons Ban, the tragic Columbine school shooting occurred.

The intention of reducing the possibility of having mass shootings in this country is a just cause. Restricting magazine capacity clearly seeks to do this and, along with other regulations, seemingly did this during the years of the Federal Assault Weapons Ban. However, mass shootings make up roughly 0.2% of all firearm deaths in the United States.¹⁶² Accounting for the statistic that restrictions on magazine capacity and “assault weapons” have reduced mass shootings by 70%, this would

156. Public Safety and Recreational Firearms Use Protection Act, H.R. 4296, 103d Cong. § 4(a)(1) (expired 2004).

157. *Id.* at § 4(b).

158. Charles DiMaggio et al., *Changes in US Mass Shooting Deaths Associated with the 1994-2004 Federal Assault Weapons Ban: Analysis of Open-Source Data*, 86 J. TRAUMA & ACUTE CARE SURGERY 11, 11 (2019), https://journals.lww.com/jtrauma/Abstract/2019/01000/Changes_in_US_mass_shooting_deaths_associated_with.2.aspx.

159. See MICHAEL SIEGEL & CLAIRE BOINE, ROCKEFELLER INST. GOV'T, WHAT ARE THE MOST EFFECTIVE POLICIES IN REDUCING GUN HOMICIDES? 9, 18 (2019), <https://rockinst.org/wp-content/uploads/2019/08/8-13-19-Firearm-Laws-Homicide-Brief.pdf>.

160. *Id.* at 4, 9.

161. *Id.* at 18; see also CHRISTOPHER KOPER ET AL., UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN: IMPACTS ON GUN MARKETS AND GUN VIOLENCE, 1994-2003 at 6 (2004), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/updated-assessment-federal-assault-weapons-ban-impacts-gun-markets>. Of the 39,740 firearm deaths in the United States in 2018, 24,432 (61%) were due to suicide, 13,958 (35%) were a result of homicide, and 0.2% were attributed to mass shootings. *Facts and Figures*, UC DAVIS HEALTH, <https://health.ucdavis.edu/what-you-can-do/facts.html> (last visited Sept. 18, 2022).

162. UC DAVIS HEALTH, *supra* note 161.

roughly drop the total number of gun deaths by approximately 0.1%. Just taking into consideration the effect on mass shootings, these policies potentially lowered gun deaths by around fifty people, depending on the metrics used to determine what constitutes a mass shooting.¹⁶³ This is not to minimize saving fifty lives, but simply to put the consequences into context.

Neither the legislators, nor the Colorado Supreme Court, viewed House Bill 13-1224 as legislation that sought to curb firearm deaths or homicides, but rather as a measure to specifically address the number of people killed in mass shooting events.¹⁶⁴ The court's decisions throughout this case rejected the plaintiffs' assertion that bans on large capacity magazines do little, if anything, to reduce gun homicide and crime rates.¹⁶⁵ Although, the Colorado Supreme Court's decision in *Robertson* upheld legislation restricting the use of "assault weapons" as a legitimate use of the State's police power because of the bill's intent of preventing crime and gun deaths.¹⁶⁶

Will House Bill 13-1224 act to accomplish either of these admirable intentions? Due to the "grandfather clause" in the bill, large capacity magazines continuously owned since before the enactment of House Bill 13-1224 are still legal to possess.¹⁶⁷ This leaves an unknown number of magazines with the capacity to hold more than fifteen rounds in the hands of Coloradoans, perhaps leading to an underground enterprise of transferring large capacity magazines among citizens, including to criminals. What is even more apparent is that, as discussed, magazines are easily modifiable to allow for the storage of more than fifteen rounds.¹⁶⁸ Additionally, House Bill 13-1224 has not persuaded several gun store owners in Colorado to avoid exploiting what they see as a "loophole" in the bill, by selling parts to assemble a large capacity magazine, as opposed to selling the now banned magazines whole.¹⁶⁹ Additionally, there is always the threat of large capacity magazines being

163. By using the sum data provided by UC Davis and incorporating Charles DiMaggio's study—which found a 70% reduction in gun deaths from 1994 to 2004—the calculated number of total gun deaths reduced due to weapons and magazine restrictions comes out to be around 0.1% or less. That would account for about fifty out of the total 39,740 deaths from firearms.

164. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 18, 467 P.3d 314, 320–21.

165. *Id.* ¶ 18, 467 P.3d at 320.

166. *Robertson v. City of Denver*, 874 P.2d 325, 332 (Colo. 1994) (en banc).

167. COLO. REV. STAT. § 18-12-302(2)(a) (2022).

168. *See supra* Part IV.

169. *See* 9News, *RAW: Gun Shops Explain How They Get Around Law to Sell Large-Capacity Gun Magazines*, YOUTUBE (Nov. 11, 2019), <https://www.youtube.com/watch?v=V74qPbHIGAU>.

trafficked into Colorado from neighboring states.¹⁷⁰ These are relevant factors that seek to undermine the objectives sought by the Colorado legislature. Though history has shown that measures tackling “assault weapons” or large capacity magazines may reduce mass shooting deaths, they generally have not made the overall population any significant amount safer.¹⁷¹ However, it is evident that the Colorado courts and legislature did not intend House Bill 13-1224 to “reduc[e] overall gun violence or gun deaths.”¹⁷²

B. Public Opinion and Gun Policies

The Colorado Supreme Court, as well as the Colorado legislature, clearly had the intention of ensuring public safety, in part, by reducing the number of mass shootings in the state.¹⁷³ Undoubtedly, the American people view mass shootings as a problem that needs addressing. However, there is much division, not only among Republicans and Democrats, but also between gun owners and non-gun owners about how to confront this issue.¹⁷⁴ According to a Pew Research report, 67% of those surveyed favored a ban on “high-capacity magazines,” with a 51% agreeance among Republicans and 81% percent among Democrats.¹⁷⁵ However, Republicans who own a gun reported only 35% being in favor of high capacity magazine bans, while their gun-owning Democrat counterparts registered in at 62% being in favor.¹⁷⁶

Values and knowledge regarding firearms obviously play a major role in society’s perception of prioritizing gun control. It is fair to say that media portrayal of mass shootings and gun control initiatives also heavily factor into the public’s calculation.¹⁷⁷ Without question, mass shootings have been a constant reoccurrence on our news cycles,

170. See Gregor Aisch & Josh Keller, *How Gun Traffickers Get Around State Gun Laws*, N.Y. TIMES (Nov. 13, 2015), <https://www.nytimes.com/interactive/2015/11/12/us/gun-traffickers-smuggling-state-gun-laws.html> (discussing the common occurrence of firearms being brought in from out-of-state to circumvent specific state gun restrictions).

171. Adam Lankford, *Public Mass Shooters and Firearms: A Cross-National Study of 171 Countries*, 31 VIOLENCE AND VICTIMS 187, 190 (2016).

172. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶ 18, 467 P.3d at 320.

173. *Id.* ¶ 63, 467 P.3d at 329 (“[I]t can hardly be argued that seeking to reduce the lethality of mass shootings and to contain their rippling, traumatic effects does not relate to the public health, safety, or welfare.”).

174. PEW RSCH. CTR., GUN POLICY REMAINS DIVISIVE, BUT SEVERAL PROPOSALS STILL DRAW BIPARTISAN SUPPORT 4–5 (2018), <https://www.pewresearch.org/politics/2018/10/18/gun-policy-remains-divisive-but-several-proposals-still-draw-bipartisan-support/>.

175. *Id.* at 1.

176. *Id.* at 4.

177. See Nicole Smith Dahmen et al., *Covering Mass Shootings: Journalists’ Perceptions of Coverage and Factors Influencing Attitudes*, 11 JOURNALISM PRAC. 456, 456 (2017).

primarily because one-third of all mass shootings in the world happen in the United States.¹⁷⁸ President Barack Obama famously characterized society as having become “numb” to the unfortunately common occurrences of mass shootings.¹⁷⁹ Though mass shootings contribute to a small fraction of nationwide gun deaths, they make up some of the most publicized events in media coverage.¹⁸⁰ Coverage of the Columbine school shooting was closely followed by 68% of the public in 1999, undoubtedly influencing public opinion on gun legislation.¹⁸¹ Media coverage of Columbine served to be a “turning point” in how society and the greater public opinion perceives mass shootings in their daily lives, viewing such events as a national crisis.¹⁸² Moreover, the fifteen most news producing mass shootings account for nearly 70% of all articles written about mass shootings, resulting in a small number of these events controlling the coverage of these horrific atrocities.¹⁸³

However, these mass shooting events are exactly that: horrific and worthy of immense news coverage. It is easy to see how public opinion is formed by seeing these stories continuously played out on television screens, on the internet, and on social media. Naturally, viewers, journalists, and politicians look to the tools that are used in these widely covered mass shooting events. State legislatures have sought to restrict semi-automatic rifles and large capacity magazines in the aftermath of mass shootings.¹⁸⁴ With a majority of society in favor of banning large capacity magazines, this has seemed like a popular initiative to push, but what is the boundary where reasonable regulations meet infringement on the individual right to bear arms?

C. *The State of Gun Legislation Affecting Article II, Section 13*

The Colorado Supreme Court seemed to approve of the trial and appellate division findings that there was no evidence of anyone in

178. *Id.*; see also Lankford, *supra* note 171, at 190.

179. President Barack Obama, *Statement by the President on the Shootings at Umpqua Community College, Roseburg, Oregon*, THE WHITE HOUSE (Oct. 1, 2015, 6:22 PM), <https://obamawhitehouse.archives.gov/the-press-office/2015/10/01/statement-president-shootings-umpqua-community-college-roseburg-Oregon>.

180. Richard Cordova, *Public Mass Shootings Impact on the Public's Firearm Carrying Habits: Evidence of a Moral Panic 5* (May 2018) (M.S. thesis, Arizona State University), <https://hdl.handle.net/2286/R.I.49230>.

181. Thomas Birkland & Regina Lawrence, *Media Framing and Policy Change After Columbine*, 52 AM. BEHAV. SCIENTIST 1405, 1405 (2009).

182. Cordova, *supra* note 180, at 11–12.

183. Jason R. Silva & Joel Alfredo Capellan, *The Media's Coverage of Mass Public Shootings in America: Fifty Years of Newsworthiness*, 43 INT'L J. OF COMPAR. & APPLIED CRIM. JUST. 77, 86 (2018).

184. See *supra* Part IV.

Colorado ever having to fire more than three rounds in self-defense.¹⁸⁵ Was this persuasive in determining that a fifteen round magazine limit did not burden Coloradoans right to bear arms in self-defense? Would a ten round limit have survived the reasonable exercise test? Would a five round limit have survived? The court was very deferential to the legislative intent of House Bill 13-1224 in capping magazine capacity to fifteen rounds in order to reduce instances of mass shootings. However, the reasonable exercise test looks similar to rational basis review with respect to having the plaintiffs bear the burden of proving the legislation is unconstitutional.¹⁸⁶

The court went out of its way to distance its article II, section 13 reasonable exercise test from rational basis review.¹⁸⁷ It stated the clear distinction that the reasonable exercise test must require an actual, legitimate government purpose, not just a conceivable one.¹⁸⁸ Furthermore, the court clarified the test must allow for the core of the right to bear arms to remain unburdened and that government restrictions cannot be so arbitrary that they nullify the right.¹⁸⁹ However, it is arguable that these round limitations are arbitrary. The court did not weigh in on what magazine restrictions would be so arbitrary or ambiguous that they would serve to nullify Coloradoans' right to bear arms. When would such reasonable regulations begin to be considered infringements? Nothing is preventing lawmakers from further limiting rounds to ten—other states have been successful in doing so.¹⁹⁰

Would the Colorado Supreme Court uphold legislation that seeks to ban magazine-fed rifles altogether? In the wake of the March 22, 2021, Boulder mass shooting at King Soopers, Governor Polis signed legislation that would allow cities and local governments the ability to pass stricter gun laws than the state.¹⁹¹ The City of Boulder recently enacted ordinances which, among other actions, “ban[s] the sale and possession of assault weapons [and] large-capacity magazines” in the city.¹⁹² A state-

185. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 4, ¶ 27, 467 P.3d 414, 317, 322.

186. *See id.* ¶ 12, ¶ 15, 467 P.3d at 319–20.

187. *Id.* ¶¶ 51–61, 467 P.3d at 327–29.

188. *Id.* ¶ 61, 467 P.3d at 329.

189. *Id.* ¶ 56, 467 P.3d at 328.

190. *See e.g.*, CONN. GEN. STAT. § 53-202 (2022); N.J. STAT. ANN. § 2C:39-3(j)(2) (West 2022); MD. CODE ANN. CRIM. LAW § 4-305(b) (West 2022).

191. Bente Birkeland, *Polis Signs Three New Gun Safety Laws Inspired by the Boulder Shooting*, CPR NEWS (Apr. 29, 2021, 3:05 PM), <https://www.cpr.org/2021/04/29/three-gun-reform-bills-filed-in-response-to-boulder-shooting>.

192. *Boulder Ordinance Coversheet*, CITY OF BOULDER (June 7, 2022), <https://boulder.novusagenda.com/agendapublic/CoverSheet.aspx?ItemID=4570&MeetingID=716>;

wide ban on “assault weapons” in Colorado is not currently likely, but depending on the political landscape moving forward, it remains foreseeable that Colorado will pass greater restrictions on firearms.¹⁹³ If Colorado ultimately passes broad legislation banning magazine-fed weapons, then magazine round capacity largely becomes a moot point. The court was adamant that the reasonable exercise test protects against the nullification of article II, section 13,¹⁹⁴ but it is not clear what the court would consider as crossing the threshold of nullification.

This reasonable exercise test originating from *Robertson* does not seem to provide adequate protection to Colorado’s constitutional right to bear arms. Colorado courts have not been shy about hearing a diverse set of article II, section 13 related issues, however, they have rejected, or at least failed to acknowledge, this right to bear arms as a fundamental right.¹⁹⁵ Though it was quickly reversed, the trial court in *Robertson* held that article II, section 13 was a fundamental right and determined Denver’s ban on “assault weapons” to be unconstitutional by reviewing its ordinance under strict scrutiny.¹⁹⁶ The Colorado Supreme Court eventually overturned the trial court’s decision, rejecting the use of strict scrutiny, and sending the fundamental right status of article II, section 13 back into the abyss.¹⁹⁷ Absent any change in direction of the Colorado Supreme Court’s article II, section 13 analysis, gun rights advocates may not find much success litigating under relevant state constitutional claims.

Whether the reasonable exercise test resembles more closely rational basis review’s extreme deference to legislation, or intermediate scrutiny’s substantial and reasonable relation of that legislation to an important government interest, it has become increasingly apparent that Colorado may not be the best venue for gun rights activists to fight gun control legislation. The plaintiffs’ decision not to bring a Federal Second Amendment claim may partly have been due to the makeup of the

see Lanie Lee Cook, *What’s in Boulder’s New Gun Laws?*, FOX31 (June 8, 2022, 7:22 PM), <https://kdvr.com/news/local/boulder-assault-weapon-ban-gun-law-raise-age/>.

193. Marshall Zelinger, *Why a Ban on Assault Weapons Isn’t Under Consideration in Colorado*, 9NEWS (May 25, 2022, 9:09 PM), <https://www.9news.com/article/news/local/next/ban-assault-weapons-not-under-consideration-colorado/73-87061b23-acfe-4b6a-81c9-f04f0f168f09>; see also Bente Birkeland, *Colorado Assault-Style Weapons Ban Doesn’t Look Likely*, NPR (Apr. 10, 2021, 11:58 AM), <https://www.npr.org/2021/04/10/986072074/colorado-assault-style-weapons-ban-doesnt-look-likely>.

194. *Rocky Mountain Gun Owners*, 2020 CO 66 at ¶¶ 27–28, 467 P.3d 314, 322.

195. *Id.* ¶¶ 49–51, 467 P.3d at 326–27.

196. *Robertson v. City of Denver*, 874 P.2d 325, 326 (Colo. 1994) (en banc).

197. *Id.* at 333–31.

Supreme Court at the time of the initiation of this case.¹⁹⁸ In hindsight, it may have been a far more beneficial avenue for the plaintiffs in striking down House Bill 13-1224. However, Federal Second Amendment jurisprudence has not historically created a clear framework for the type of scrutiny required to gauge firearm legislation.¹⁹⁹ Though cases such as *Heller* and *McDonald* have muddied the level of scrutiny question, there is little doubt that the Second Amendment has been cemented as being an “individual right” and a “fundamental principle of American liberty.”²⁰⁰ It is not certain that the plaintiffs in this case would have been successful in fending off large capacity magazine restrictions, but they would have had added recourse by way of the federal courts following defeat in the Colorado state courts. However, in 2015, the Second Circuit Court of Appeals upheld New York and Connecticut’s ten round restriction on large capacity magazines under a test of intermediate scrutiny.²⁰¹ The Supreme Court opted not to take up this case following the Court of Appeal’s decision.²⁰² However, the Supreme Court recently decided “that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home,” when the Court struck down a New York law which required a showing of a proper cause in order for someone to carry a concealed weapon.²⁰³ Perhaps the now heavily right-leaning Court would be more willing to hear a case such as this one, but gun rights advocates would still face an uphill battle to get there as it is clear the Court has generally been reluctant to embrace broadening questions involving the scope of the right to bear arms.

VI. CONCLUSION

Rocky Mountain Gun Owners v. Polis not only limited magazine capacity to fifteen rounds in Colorado, but also limited the constraints article II, section 13 has on the State’s police power.²⁰⁴ Potentially, it has

198. Marshall Zelinger, *Colorado’s Ban on Large-Capacity Gun Magazines Ruled Constitutional*, 9NEWS (July 2, 2020, 8:02 PM), <https://www.9news.com/article/news/local/next/colorados-ban-on-large-capacity-gun-magazines-found-constitutional/73-5e3fd331-e275-4773-8285-85ac96f1603c>.

199. Lawrence Rosenthal & Joyce Lee Malcolm, *McDonald v. Chicago: Which Standard of Scrutiny Should Apply to Gun Control Laws?*, 105 NW. UNIV. L. REV. 437, 438–39 (2011).

200. *Id.* at 450.

201. N.Y. State Rifle & Pistol Ass’n v. Cuomo, 804 F.3d 242, 263–64 (2d Cir. 2015), *cert. denied sub nom.* Shew v. Malloy, 579 U.S. 917 (2016).

202. Shew v. Malloy, 579 U.S. 917 (2016), *denying cert. to* N.Y. State Rifle & Pistol Ass’n v. Cuomo, 804 F.3d 242 (2d Cir. 2015).

203. N.Y. State Rifle & Pistol Ass’n v. Bruen, 142 S.Ct. 2111, 2122 (2022).

204. *See supra* Part V.

opened the door for more restrictive gun legislation in Colorado with unknown boundaries of where these future regulations may cross into burdening the state citizen's constitutional right to bear arms. Preventing mass shootings, reducing the number of gun deaths in this country, and ensuring a safer environment for its citizens, are inherent government interests and worthy of generating intense debate to solve these problems. It has been shown that large capacity magazines are commonly used in some of the deadliest mass shootings and there have been movements among the states to address this.²⁰⁵

It is not clear whether House Bill 13-1224 will accomplish its objective of reducing mass gun violence. If the history and data surrounding the Federal Assault Weapons Ban shows anything, it can be predicted that House Bill 13-1224 may reduce the number of those killed by mass shootings but will likely not affect the total number of lives lost to gun violence. As mentioned, the mass shooting at King Soopers in Boulder occurred within one year of *Rocky Mountain Gun Owners* being decided, roughly eight years after the passage of House Bill 13-1224. Furthermore, it is also unclear how Colorado will continue to navigate what is a reasonable exercise of the State's police power. Gun rights advocates such as Rocky Mountain Gun Owners have continued to push back against what it sees as infringements on the constitutional right to bear arms. On the horizon may be a challenge to one of Colorado's newest regulations regarding "red flag laws," which seeks to reduce shootings and suicides by attempting to forcefully remove firearms from people who may pose a risk to themselves or others.²⁰⁶ With the signing of the Bipartisan Safer Communities Act, which incentivizes states to pass red flag laws and expands background checks,²⁰⁷ it is clear firearms-related policy is not leaving the legislative or judicial scenes anytime soon.

There will likely be new opportunities for the Colorado Supreme Court to build on the limitations of article II, section 13 constraints on otherwise reasonable government legislation. However, if the standards and tests set forth in *Rocky Mountain Gun Owners* and *Robertson* persist, and the fundamental status of the right to bear arms remains in question, state constitutional claims seeking to invalidate Colorado

205. See *Large Capacity Magazines: Hardware & Ammunition*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/> (last visited Sept. 18, 2022).

206. Saja Hindi, *Denver District Court Judge Dismisses Lawsuit on Colorado Red Flag Gun Law*, DENVER POST (May 19, 2020, 10:30 PM), <https://www.denverpost.com/2020/05/19/colorado-red-flag-gun-law-lawsuit-dismissed/>.

207. Trevor Hunnicutt, *Biden Signs Gun Safety Bill into Law, Takes Swipe at Supreme Court*, REUTERS (June 27, 2022, 9:15 AM), <https://www.reuters.com/world/us/biden-signs-bipartisan-gun-safety-bill-into-law-2022-06-25/>.

1602 *RUTGERS UNIVERSITY LAW REVIEW*[Vol. 74:1573

legislation targeting gun violence and mass shootings will presumably fail. Furthermore, much focus may soon be directed at the Supreme Court to see if it will have the opportunity to hear cases focusing on the constitutionality of restrictions on possessing large capacity magazines.²⁰⁸

208. Michael Ruiz, *California's Liberal Ninth Circuit to Tackle Gun Rights, Mull Reinstating High-Capacity Magazine Ban*, FOX NEWS (Feb. 26, 2021, 8:19 PM), <https://www.foxnews.com/politics/california-ninth-circuit-high-capacity-magazine-ban>.