



Here Are All The Problems With California’s Expert Witness Testimony In Gun Ban Case

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Eventually, the Supreme Court may hear one or more challenges to Democrat-state laws that ban rifles Americans most commonly acquire for legitimate purposes, including self- and collective defense. *Rupp v. Bonta*, which challenges California’s ban, is moving as we speak, and its outcome may depend on which veterans of the United States Marine Corps the federal judge handling the case believes.

The Ninth Circuit has remanded the case to Judge Josephine Staton, of the U.S. District Court for the Central District of California (Western Division), for consideration in light of the Supreme Court’s ruling, in *New York State Rifle & Pistol Association v. Bruen* (2022), that firearm-related restrictions are unconstitutional if they’re inconsistent with the nation’s history and tradition of restrictions, an argument made by then-Judge (now Supreme Court Justice) Brett Kavanaugh in his dissent in *Heller v. District of Columbia* (2011).

If Judge Staton follows *Bruen*, she will overturn California’s ban. It’s simple. The ban focuses mostly on semi-automatic rifles that use detachable ammunition magazines. Such firearms have existed for more than a century. The Remington Model 8, primarily intended for hunting but also used for battle (two were used by law enforcement officers in the famous ambush of Bonnie and Clyde) was introduced in 1905. Americans own countless M1 Carbines, introduced in 1942.

The most commonly owned rifle of the type today — the AR-15 — was introduced in 1963. But California, the first state to impose a ban, did not do so until 1989, only eight other states have done so since, and these nine states account for only one-third of the U.S. population.

Congress imposed a ban, of a sort, from 1994 to 2004, but it was far less restrictive than California’s ban, in that it allowed “banned” firearms to be made in slightly modified form, such as shown below. Six months after the “ban” took effect, in a CBS “60 Minutes” segment titled “What Assault Weapons Ban?” reporter Leslie Stahl noted that “assault weapons are still ... sold by the thousands,” and called 1994 “the best year for the sales of assault weapons ever.”



An AR-15 made to comply with the federal “ban” of 1994-2004. Notably, more than 738,000 AR-15s were made during the “ban” in this configuration—with a “pistol grip,” a feature anti-gun activists now characterize as a threat to civilization, as global warming activists do fossil fuel.

Photo provided by author.

California’s ban will also fail if Judge Staton follows the guidance of the Supreme Court in two other cases. In *United States v. Miller* (1939), the court indicated that the right to keep and bear arms includes weapons that can be used to “contribute to the common defense.” And in *District of Columbia v. Heller* (2008), the court opined that *Miller* also recognized the right to “weapons ... in common use.” Since 1990 alone, Americans have acquired an estimated 24,446,000 AR-15s and other semi-automatic rifles that use detachable ammunition magazines and are otherwise of the same style and configuration.

However, as David Kopel, of the Independence Institute and Cato Institute, pointed out recently, five U.S. Courts of Appeals have ignored or mischaracterized those Supreme Court decisions, and upheld “assault weapon” bans on the basis of anti-gun activists’ false characterizations of the guns’ rates of fire and power.

Supporters of California's ban are hoping for the same result when Judge Staton reconsiders *Rupp*. To that end, California enlisted retired Marine Corps Col. Craig Tucker, who's associated with Michael Bloomberg's anti-gun activist group, Everytown, to provide testimony, in which he contends that AR-15s are almost identical to M16 and M4 rifles used by the military for defensive purposes, but, despite this similarity, are not useful for defensive purposes in the hands of the American people.

I critiqued Tucker's testimony here. But some things beg for more attention. He claimed to have carried an M4 in Iraq, but said the rifle is designed to use .223 Remington ammunition, when it's instead designed to use 5.56x45mm ammunition. He claimed that a standard combat load in the military is 120 rounds and four magazines, when it's 210 rounds and seven magazines. He claimed an M4 has a "folding stock," when it instead has a telescoping stock, the length of which can be adjusted to the user.

Tucker also implied that the M4 is used by only helicopter, tank, and Bradley Fighting Vehicle crews, when it's instead the standard-issue rifle for the entire U.S. Army. He made several nonsensical claims that the M4's grip, which an AR-15 also has, improves marksmanship, but his resume includes no marksmanship instructor certifications. And in a second filing with the court, he disparaged the testimony of Buford Boone, who for 15 years served as the supervisory special agent of the FBI's Ballistic Research Facility, and who is recognized as a world-class expert in his field.

So, I spoke to two Marine Corps veteran friends of many years, of whose experience I'm certain, and one of them introduced me to another Marine, whose credentials are also unassailable. The three are:

Chief Warrant Officer 5 Jeffrey L. Eby – 28 years in the Marines, 11 as a Marine Gunner. Combat veteran in Iraq. Officer-in-Charge of the USMC Small Arms Instructor Course, which developed the USMC Combat Marksmanship Program.

Chief Warrant Officer 5 Mike Musselman – Infantryman for 25 years of his 30 years with the Corps. Marine Gunner and Infantry Weapons Officer. Three combat deployments to Iraq, one to Afghanistan.



CWO5 Musselman (third from left) and CWO5 Eby (fourth from left) in Sadr City, Iraq, after 57 days of continuous combat. Used with permission.

Staff Sergeant Jack Leuba – Infantry Rifleman, Marksmanship and Small Arms Weapons Instructor, combat veteran in Iraq and Afghanistan, Staff Non-Commissioned Officer-in-Charge and Chief Instructor, USMC Small Arms Weapons Instructor School.



Staff Sgt. Leuba (right). Used with permission.

These Marines' responses to Tucker's claims are below.

Rate of Fire

By way of background, in 1989, when "assault weapon" legislation was introduced in California and Congress, the media began trying to trick the American people into thinking that semi-automatic rifles were machine guns used by the military.

This video shows CBS, in 1989, broadcasting footage of government personnel firing machine guns in a story about legislation to ban semi-automatic rifles, followed by NBC doing the same thing in 1993, before the Senate voted on "assault weapon" legislation introduced by Dianne Feinstein, D-Calif., and again in 1994, before the House of Representatives voted on the same legislation.

In 2003, after more than a decade of complaints about the media's machine gun lie, an anti-gun activist group claimed that semi-automatic rifles are *more* useful than automatic rifles in combat.

Tucker: "The only difference [between an AR-15 and a military M4] is the AR-15 cannot fire on full-auto," "a picayune difference," and "semiautomatic rifles [are] more lethal and most useful in combat settings."

CWO5 Musselman: "The difference between semi-automatics and fully-automatics is significant and often decisive. The military is replacing the M16 and M4 with rifles of a newer design, and the newer rifles are capable of fully-automatic fire."

Note: The military doesn't use AR-15s or other rifles California considers an "assault weapon."

Tucker: "Changing [30-round] magazines during intense combat is the most important individual skill taught to Marines."

Staff Sgt. Leuba: "False. The most important rifle skill taught to Marines is hitting the target. The USMC Combat Marksmanship Program allocates hundreds of hours of training specific to that, with barely a handful allocated to tasks such as reloading."

Tucker: "[T]he pistol grip allows the rifleman to pull the rifle into her (sic) shoulder with each shot" and "functions as a hand rest to reduce hand/finger fatigue during long combat engagements."

Staff Sgt. Leuba: "To the contrary, hooking the thumb of the firing hand over a traditional stock [see the photo below] provides for less fatigue when keeping the hand near the controls and trigger."



The author shoulders an M1 one-handed. An M1 weighs much more than an AR-15, is front-heavy, and does not have an AR-15 type “pistol grip,” which Tucker claims is necessary to achieve aim. Photo provided by author.

Tucker: “Absent any pistol grip, a semi-automatic rifle would be difficult to operate when fired rapidly, as the rifle barrel would seesaw up and down with each shot fired in succession.”

CWO5 Musselman: “No. It’s a matter of physics. When the rifle is fired, it imparts upward movement of the barrel. It’s the forward hand, not the hand on the pistol grip, that controls that impulse.” [This video](#) illustrates Musselman’s point.

Power of the Bullets

Tucker: “AR-15 and M4 ... [ammunition] is capable of severing the upper body from the lower body, or decapitation.”

Not according to an NBC News report in 2008, which stated “M855 rounds continue to be a weak spot in the American arsenal. They are not lethal enough to bring down an enemy decisively, and that puts troops at risk, according to Associated Press interviews. ... Fired at short range, the M855 round is prone to pass through a body like a needle through fabric.”

Staff Sgt. Leuba: “Standard ballistics gelatin tests prove that 5.56x45mm NATO projectiles are not capable of ‘severing the upper body from the lower body, or decapitation.’”

CWO5 Musselman: “In my combat experience, I never saw a 5.56mm projectile cause the damage Col. Tucker claims.”

CWO5 Eby: “The Marine Corps abandoned the M16/M4 ammunition used in Afghanistan and Iraq, due in part to its failure to perform against enemy personnel in short-range combat engagements.”

Note: Ammunition for AR-15s is the lowest-powered among the 13 most popular centerfire rifle cartridges in America.

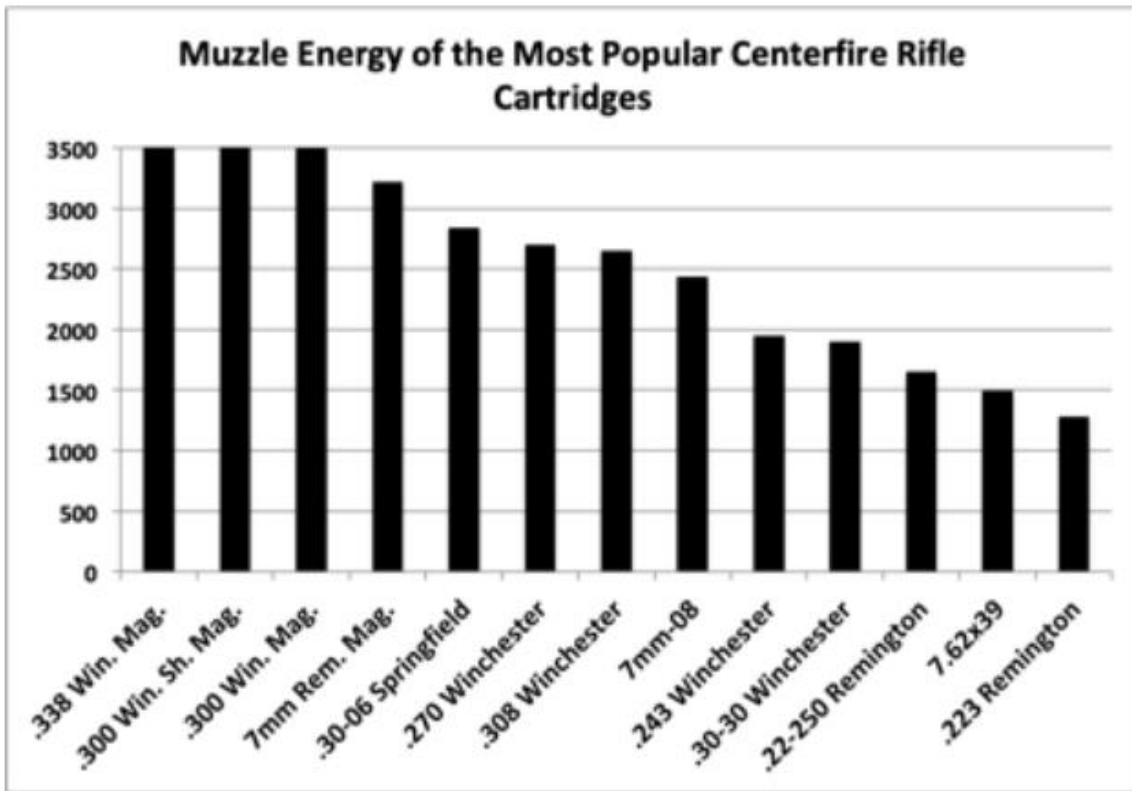


Chart provided by author.

Also, bullets used in 5.56 and .223 cartridges are tiny and only slightly heavier than a dime.



Photo by author.

Finally, Tucker repeatedly insisted that AR-15s, their magazines, and some of their other features are “not needed” for self-defense. American gun owners appear to disagree, and gun owner opinion was a factor the Supreme Court considered decisive in overturning Washington, D.C.’s handgun ban in *Heller*.

Something approaching 100 percent of Americans who attend defensive rifle classes or who participate in defensive-skills-based rifle marksmanship competitions do so with AR-15s or other semi-automatic rifles that use detachable ammunition magazines and that have “pistol grips.” Polls repeatedly find that Americans acquire guns primarily for defense, and government data indicate that Americans acquire several million AR-15s every year, in addition to other firearms that California prohibits as “assault weapons.”

I’ll close with a final observation by Staff Sgt. Leuba:

Tucker’s most egregious errors are his claims that M4s and AR-15s are not useful for individual self-defense. As a graduate of the USMC Close Quarters Battle Course, with significant experience in military operations in urban terrain and enclosed spaces, I can attest that not only is the M4 (and, therefore, an AR-15) a suitable firearm for use in compressed spaces, it is preferred. It gives a defender—military or private citizen—a greater ability to end a threat at close-range, without endangering others in close proximity.

