

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NEW YORK STATE RIFLE AND PISTOL
ASSOCIATION, INC.; WESTCHESTER
COUNTY FIREARMS OWNERS
ASSOCIATION, INC.; SPORTSMEN'S
ASSOCIATION FOR FIREARMS EDUCATION,
INC.; NEW YORK STATE AMATEUR
TRAPSHOOTING ASSOCIATION, INC.;
BEDELL CUSTOM; BEIKIRCH AMMUNITION
CORPORATION; BLUELINE TACTICAL &
POLICE SUPPLY, LLC; BATAVIA MARINE &
SPORTING SUPPLY; WILLIAM NOJAY,
THOMAS GALVIN, and ROGER HORVATH,

Plaintiffs,

-v.-

ANDREW M. CUOMO, Governor of the State of
New York; ERIC T. SCHNEIDERMAN, Attorney
General of the State of New York; JOSEPH A.
D'AMICO, Superintendent of the New York State
Police; LAWRENCE FRIEDMAN, District
Attorney for Genesee County; and GERALD J.
GILL, Chief of Police for the Town of Lancaster,
New York,

Defendants.

13-cv-00291-WMS

DECLARATION OF WILLIAM J. TAYLOR, JR.

WILLIAM J. TAYLOR, JR., an attorney duly admitted to practice before this Court,
declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Assistant Attorney General in the office of ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York, attorney for defendants Andrew Cuomo, Governor
of the State of New York; Eric T. Schneiderman, Attorney General of the State of New York;

and Joseph A. D'Amico, Superintendent of the New York State Police (collectively, the "State Defendants") in the above-captioned action.

2. I submit this declaration in support of the State Defendants' Cross-Motion to Dismiss and/or for Summary Judgment and in Opposition to the Plaintiffs' Motion for a Preliminary Injunction, for the limited purpose of providing the Court with true and accurate copies of the following documents contained in the annexed Appendix, and referenced in the accompanying Memorandum of Law in Opposition to Plaintiffs' Motion for a Preliminary Injunction and in Support of State Defendants' Motion to Dismiss and/or for Summary Judgment, dated June 21, 2013, State Defendants' Statement of Undisputed Material Facts in Support of State Defendants' Motion for Summary Judgment, submitted herewith in support of the State Defendants' motion:

Exhibit	Exhibit Description
1	Amended Complaint, <i>New York State Rifle and Pistol Association, Inc. v. Cuomo</i> , Case No. 13-cv-00291 (W.D.N.Y.), ECF No. 17 (" Am. Cmpl. ")
2	Law Center to Prevent Gun Violence, <i>Introduction to Gun Violence Statistics</i> , Nov. 18, 2012 (" LCPGV Statistics ")
3	United States Centers for Disease Control, <i>2005-2010 United States Homicide Firearm Deaths and Rates per 100,000</i> (" CDC 2005-2010 ")
4	United States Centers for Disease Control, <i>2010 United States Firearm Deaths and Rates per 100,000</i> (" CDC 2010 ")
5	Governor's Program Bill, 2013, <i>Memorandum in Support of the Secure Ammunition and Firearms Enforcement Act</i> , 2013 N.Y. Laws, ch. 1 (the "SAFE Act") (" 2013 Governor's Mem. ")
6	New York State Assembly <i>Memorandum in Support of the SAFE Act</i> (" 2013 Assembly Memo ")
7	New York State Senate <i>Introducer's Memorandum in Support of the SAFE Act</i> , 2013 (" 2013 Senate Mem. ")

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8	Violent Crime Control and Law Enforcement Act of 1994 (“ federal assault weapons ban ”), Public Law 103-22-Sept. 13, 1994,
9	House of Representatives Committee on the Judiciary Report 103-489, Public Safety and Recreational Firearms Use Protection Act, May 2, 1994 (“ Judiciary Comm. Report ”)
10	United States Bureau of Alcohol, Tobacco and Firearms (“ATF”), Firearms and Explosives Industry Division, <i>Study on the Importability of Certain Shotguns</i> , January 2011 (“ 2011 ATF Study ”)
11	ATF, <i>Report and Recommendation on the Importability of Certain Semiautomatic Rifles</i> , July 6, 1989 (“ 1989 ATF Study ”)
12	ATF, <i>Study on the Sporting Suitability of Modified Semiautomatic Rifles</i> , April 1998 (“ 1998 AFT Study ”)
13	Laws of New York, Chapter 189, Text (“ 2000 Assault Weapons Ban ”)
14	Governor’s <i>Program Bill Memorandum</i> , 2000 Assault Weapons Ban (“ 2000 Governor’s Mem. ”)
15	New York State Senate Introducer’s Memorandum in Support, 2000 Assault Weapons Ban (“ 2000 Senate Mem. ”)
16	New York Assembly Debate Excerpt, pp 161-168, June 23, 2000 (“ 6/23/2000 Assembly Debate ”)
17	New York Senate Debate Excerpt, pp. 6137-6152, June 22, 2000 (“ 6/22/2000 Senate Debate ”)
18	<i>Governor Proposes Five Point Plan to Combat Gun Violence</i> , Mar. 15, 2000 (“ Gov. 2000 Press Release ”)
19	ATF, <i>Report on the Importability of Certain Shotguns</i> , July 2, 2012 (“ 2012 ATF Study ”)
20	City of Buffalo, Chapter 180. Firearms, Arrows and Other Weapons (“ Buffalo Ordinance ”)
21	City of Rochester, Chapter 47.Dangerous Articles (“ Rochester Ordinance ”)
22	City of Albany, Chapter 193. Firearms and Ammunition (“ Albany Ordinance ”)
23	New York City Administrative Code, §§ 10.301, 10.303.1, 10.305, 10.306

Exhibit	Exhibit Description
24	Laws of New York, 2013, Chapter 1 (“ SAFE Act ”)
25	Governor’s Press Release, <i>Governor Cuomo Signs NY SAFE Act in Rochester</i> , January 16, 2013
26	New York State Assault Weapon Registration Form (“ Reg. Form ”)
27	New York State Assembly Debate Excerpt, pp. 65, 127, January 15, 2013 (“ Assembly Debate 1/15/13 ”)
28	Prepared Testimony by Laurence H. Tribe, Carl M. Loeb University Professor and Professor of Constitutional Law, Harvard Law School, <i>Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment</i> , Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights. February 12, 2003, (“ 2013 Tribe Testimony ”)
29	Testimony of Brian J. Siebel, Senior Attorney, Brady Center to Prevent Gun Violence, before the Council of the District of Columbia, Oct. 1, 2008, Exhibit to Appellees’ Statutory Addendum, <i>Heller v. District of Columbia</i> , 10-7036 (“ Brady Center Testimony ”)
30	<i>The Return of the Assault Rifle; High-Powered Weapons Seem to be Regaining Their Deadly Role in WNY Crime and Violence</i> , The Buffalo News, Nov. 21, 2010, Lou Michel. (“ Buffalo News ”)
31	<i>Assault Weapons: Mass Produced Mayhem</i> , Brady Center to Prevent Gun Violence, October 2008 (“ 2008 Brady Report ”)
32	<i>Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003</i> , Christopher S. Koper, July 2004 (“ Koper 2004 ”)
33	<i>Banning Assault Weapons – A Legal Primer for State and Local Action</i> , Legal Community Against Violence, April 2004 (“ LCAV 2004 Primer ”)
34	<i>America’s Experience with the Federal Assault Weapons Ban, 1994-2004, Key Findings and Implications</i> , Christopher S. Koper (chapter in <i>Reducing Gun Violence in America: Informing Policy with Evidence and Analysis</i>) (“ Koper 2013 ”)
35	<i>Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994: Final Report</i> . The Urban Institute, March 13, 1997 (“ Koper 1997 ”)

Exhibit	Exhibit Description
36	Statement of Professors of Constitutional Law: The Second Amendment and the Constitutionality of the Proposed Gun Violence Prevention Legislation, January 3, 2013 (“ Professors’ Statement ”)
37	“ <i>Officer Down</i> ”: <i>Assault Weapons and the War on Law Enforcement</i> , Violence Policy Center, May 2003 (“ VPC 2003 ”)
38	<i>More Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines</i> , Mother Jones, Feb. 27, 2013, Follman, Aronson, Lee (“MJ 2/27/13”), available at http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein
39	<i>Analysis of Recent Mass Shootings, January 2009 – January 2013</i> , Mayors Against Illegal Guns (“ Mayors Analysis ”)
40	ATF, <i>Assault Weapons Profile</i> , April 1994 (“ ATF AW Profile ”)
41	Declaration of Mark Overstreet, <i>Heller v. District of Columbia</i> , 10-7036 (D.C. Cir.), ECF No. 23-7 (“ Overstreet Heller II Decl. ”)
42	<i>Firearm Justifiable Homicides and Non-Fatal Self-Defense Gun Use: An Analysis of Federal Bureau of Investigation and National Crime Victimization Survey Data</i> , Violence Policy Center, 2013 (“ VPC 2013 Self-Defense ”)
43	<i>Private Guns, Public Health</i> , David Hemenway (U. Mich. Press 2007) (“ Hemenway 2007 ”)
44	The Gun Debate’s New Mythical Number: How Many Defensive Uses Per Year? Philip J. Cook; Jens Ludwig; David Hemenway, <i>Journal of Policy Analysis and Management</i> , Vol. 16, No. 3, Special Issue: The New Public Management in New Zealand and beyond. (Summer, 1997) (“ Hemenway, Cook 1997 ”)
45	Images of Rifles that are Not Classified as Assault Weapons (“ Non-AW Rifles ”)
46	Images of Pistols that are Not Classified as Assault Weapons (“ Non-AW Pistols ”)
47	Images of Shotguns that are Not Classified as Assault Weapons (“ Non-AW Shotguns ”)
48	New York Assembly Debate Excerpts, pp. 282-284, 297, 342, Mar. 28, 2013, (“ 3/28/13 Assembly Debate ”)
49	<i>The Police Department’s 9-Millimeter Revolution</i> , The New York Times, Feb. 15, 1999, Raymond W. Kelly (“ NYT Opinion 1999 ”)

Exhibit	Exhibit Description
50	Brief for Professional Historians and Law Professors Saul Cornell, Paul Finkelman, Stanley N. Katz, and David T. Kong As <i>Amici Curiae</i> in Support of Appellees, <i>Heller v. District of Columbia</i> , 10-7036 (D.C. Cir.), ECF No. 1266982 (“ Heller Historians Brief ”)
51	<i>On Target: The Impact of the 1994 Federal Assault Weapon Act</i> , Brady Center to Prevent Gun Violence, March 2004 (“ Brady 2004 Impact Study ”)
52	New York State Assembly Debate Excerpt, pp. 13-14, 18-19, May 24, 2005 (“ 5/24/05 Assembly Debate ”)
53	New York State Assembly Debate Excerpt, pp. 62-72, Jan. 9, 2006 (“ 1/9/06 Assembly Debate ”)
54	<i>United States of Assault Weapons, Gunmakers Evading the Federal Assault Weapons Ban</i> , Violence Policy Center, July 2004 (“ VPC July 2004 U.S. of AW ”)
55	<i>A Further Examination of Data Contained in the Study On Target Regarding Effects of the 1994 Federal Assault Weapons Ban</i> , Violence Policy Center, April 2004 (“ VPC 2004 Further Exam. of On Target ”)
56	<i>In Virginia, high-yield clip seizures rise</i> , Washington Post, Jan. 23, 2011 (“ WaPo 1/23/11 ”), available at http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html
57	<i>High-capacity magazines saw drop during ban, data indicate</i> , Washington Post, Jan. 13, 2013, available at http://articles.washingtonpost.com/2013-01-10/news/36272948_1_magazines-and-assault-weapons-33-round-magazine-high-capacity-magazines
58	<u>Collected Articles</u> : <i>Heroes of the Tuscon Shooting: “Something Had to be Done,”</i> ABC News, Jan. 10, 2011; <i>Texas Capitol Gunman Was Reloading When Troopers Tackled Him</i> , 10KWTX, Jan. 22, 2010; <i>Church Gunman Brought 76 Shells and Expected to Use Them</i> , ABC News, July 28, 2008; <i>Shootings in a Schoolhouse: The Hero; A Wounded Teenager</i> , NY Times May 23, 1998; <i>Death on the L.I.R.R.: The Rampage; Gunman on a Train Aisle Passes Out Death</i> , NY Times Dec. 9, 1993.
59	Testimony of Chief Jim Johnson, Baltimore County, Maryland, Chair, National Law Enforcement Partnership to Prevent Gun Violence, Senate Judiciary Committee Hearing, Jan. 30, 2013 (“ Baltimore Police Chief Testimony ”)
60	Excerpts from Amended Complaint New York State Rifle and Pistol Association, Inc. v. City of New York, 13-2115 (S.D.N.Y)

Exhibit	Exhibit Description
61	Images from SAFE Act website, Pictures of Rifles – Banned Features (“ Banned Rifles ”)
62	Images from SAFE Act website, Pictures of Shotguns – Banned Features (“ Banned Shotguns ”)
63	Images from SAFE Act website, Pictures of Pistols – Banned Features (“ Banned Pistols ”)
64	<i>The Criminal Purchase of Firearm Ammunition</i> , Injury Prevention, 2006 (“ Criminal Purchase ”)
65	Images from SAFE Act website, Listing of Rifles that Are Classified as Assault Weapons (“ AW Rifles ”)
66	Images from SAFE Act website, Listing of Shotguns that Are Classified as Assault Weapons (“ AW Shotguns ”)
67	Images from SAFE Act website, Listing of Pistols that Are Classified as Assault Weapons (“ AW Pistols ”)
68	Bureau of Justice Statistics, <i>Selected Findings: Guns Used in Crime</i> , July 1995 (“ Guns in Crime BJS 1995 ”)
69	SAFE Act Amendment
70	<i>Statement of Professors of Constitutional Law: The Second Amendment and the Constitutionality of the Proposed Gun Violence Prevention Legislation</i> , January 3, 2013 (“ Professors’ Statement ”)

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in New York, New York, this 21st day of June, 2013.

Dated: New York, New York
June 21, 2013

/s/ William J. Taylor, Jr.
William J. Taylor, Jr.

[ORAL ARGUMENT NOT YET SCHEDULED]

CASE NO. 10-7036

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DICK ANTHONY HELLER, ABSALOM JORDAN,
WILLIAM CARTER, AND MARK SNYDER

APPELLANTS,

V.

THE DISTRICT OF COLUMBIA AND
ADRIAN M. FENTY, MAYOR, DISTRICT OF COLUMBIA,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**BRIEF FOR PROFESSIONAL HISTORIANS AND LAW PROFESSORS
SAUL CORNELL, PAUL FINKELMAN, STANLEY N. KATZ, AND
DAVID T. KONIG AS *AMICI CURIAE* IN SUPPORT OF APPELLEES**

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Dated: September 20, 2010

Attorney for Amici Curiae

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1)(A), the undersigned counsel of record certifies as follows:

(A) **Parties and Amici.** To *amici*'s knowledge, all parties, intervenors, and *amici* appearing in this court are listed in the Brief for Appellees, other than the professional historians and law professors filing this brief as *amici curiae* in support of Appellees.

(B) **Ruling Under Review.** References to the ruling at issue appear in the Brief for Appellants.

(C) **Related Cases.** References to related cases appear in the Brief for Appellants.

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*Authorities upon which we chiefly rely are marked with asterisks.

INTERESTS OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT

Amici are Saul Cornell, Professor of History at Fordham University; Paul Finkelman, Professor of Law and Public Policy at Albany Law School; Stanley N. Katz, Lecturer with Rank of Professor in Public and International Affairs at Princeton University; and David T. Konig, Professor of History and Professor of Law at Washington University. *Amici* have taught courses and published scholarship on the Second Amendment and legal and constitutional history, and file this brief in support of appellees. As set forth below, there is ample historical precedent for the type of reasonable gun regulations enacted by the District of Columbia at issue in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *District of Columbia v. Heller*, the Court observed that “the right secured by the Second Amendment is not unlimited,” and that “nothing in our opinion should be taken to cast doubt on” the validity of various historical regulations of gun use. 128 S. Ct. 2783, 2816-17 (2008). It identified some of these historical regulations, such as laws prohibiting “the possession of firearms” by certain types of persons, laws “imposing conditions and qualifications” on gun sales, and noted “the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Id.*

The regulations at issue here fall within the tradition of historical gun use regulations identified in *Heller*. The use of registration requirements to regulate firearms has been a consistent and common historical practice in the United States. For example, early laws regulating the militias, which at the time comprised “the body of all citizens capable of military service,” required regular weapons inspections and registration with the States. Early registration laws often extended even more broadly, as several states conditioned the ownership of firearms on the swearing of an oath of loyalty and also required the recordation of related information. And states and cities continued to use registration requirements into the twentieth century by enacting laws designed to control the new dangers arising from the use of handguns in densely populated urban centers.

State and local governments have also exercised their police powers throughout our nation’s history to limit and ban the use of particularly dangerous weapons and ammunition. At or near the time of the founding, governments regulated the storage of gunpowder in order to protect against fires and accidental shootings. By the early nineteenth century, governments placed many limitations on the use and carrying of certain classes of concealable weapons, which were perceived to pose unique dangers to the citizenry. And state legislatures continued to enact broad restrictions on the possession of dangerous weapons in the years

following adoption of the Fourteenth Amendment. All of these restrictions (if challenged at all) have by and large been upheld by the courts.

ARGUMENT

I. STATES AND MUNICIPALITIES HAVE LONG IMPOSED REQUIREMENTS AKIN TO THE DISTRICT'S REGISTRATION REGULATIONS, AND THESE REQUIREMENTS HAVE BEEN UNDERSTOOD TO BE CONSISTENT WITH THE RIGHT TO BEAR ARMS.

From the nation's founding until today, states have used registration requirements to regulate the possession of firearms. During the founding period, these state and local laws included registration and training requirements, as well as requirements that persons eligible for militia service subject their personal firearms to regular inspection. Several states even conditioned the exercise of gun rights on individual registration with local governments and the swearing of an oath of loyalty to the State. Governments also continued to use registration schemes throughout the nineteenth and twentieth centuries to protect the public safety, most recently as a tool to control new dangers arising from the use of handguns in densely populated urban centers.

A. States in the Early Republic Regularly Conditioned the Right to Bear Arms on Registration, Training, and Reporting with the Authorities.

1. Registration requirements and similar laws date back to the militia-related origins of the Second Amendment. In the early Republic, militias were crucial to the nation's defense, and were responsible for "repelling invasions and

suppressing insurrections.” *District of Columbia v. Heller*, 128 S. Ct. 2783, 2800 (2008). Thus, the Second Amendment states that a “well regulated Militia” is “*necessary to the security of a free State.*” U.S. Const. amend. II (emphasis added). As with the individual right to bear arms, the State militias were “assumed by Article I [and the Bill of Rights] already to be *in existence*” at the time of ratification. *See Heller*, 128 S. Ct. at 2800. Early militias did not consist merely of persons with specialized training or weaponry. Rather, “the conception of the militia at the time of the Second Amendment’s ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty.” *Id.* at 2817.¹ Accordingly, during the founding era, most States enacted militia laws regulating large portions of the population deemed eligible for service. *See, e.g.*, 1776 Mass. Acts at 15-22; 1778 N.Y. Laws at 62-71; Act of Mar. 20, 1780, ch. CLXVII, 1780 Pa. Laws 347; Act of Feb. 5, 1782, 1782 Del. Laws 3; Act of Mar. 26, 1784, 1784 S.C. Acts 68; Act of May 8, 1792, 1792 Conn. Pub. Acts 440.

State militia laws generally required that all persons eligible for service submit to training and registration with appropriate authorities, and also required

¹ In New York, for example, the militia consisted of “every able bodied male person Indians and slaves excepted residing within [the] State from sixteen years of age to fifty.” Act of Apr. 3, 1778, ch. 33, 1778 N.Y. Laws 62, 62. In Massachusetts, the militia was divided into different groups, but generally included any “able-bodied Male Persons . . . from sixteen Years old to fifty.” Act of July 19, 1776, ch. I, § 1, 1776 Mass. Acts 15, 15.

those same individuals to submit their arms for inspection. *See* Saul Cornell & Nathan DeNino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 *Fordham L. Rev.* 497, 508-10 (2004). For example, in South Carolina the Governor could order regimental musters at least once a year, and individual companies could be mustered every two months. *See* 1784 S.C. Acts at 68. In New York, members were required to attend a regimental parade in April and November of every year. *See* 1778 N.Y. Laws at 65. During these parades, the “the arms, ammunition and accoutrements of each man [were] examined, and the defaulters . . . noted.” *Id.* Also noted were the names of those who failed to attend altogether. Individuals who either failed to attend, or whose arms failed inspection, were fined, and the names of those absent were sent to the governor or brigadier general for appropriate disciplinary action. *Id.* Similarly, in Massachusetts, the clerk of each company was required biannually to make “an exact List of [each man in the] Company, and of each Man’s Equipments.” 1776 Mass. Acts at 18. These lists were sent on to the company’s and the regiment’s commanding officers. *Id.* In addition, those who neglected their duties, either by failing to muster or by neglecting their firearms, faced steep fines. *Id.* at 19.

George Washington similarly expressed his understanding that the nation’s security demanded that its citizens submit to regular inspection of their firearms. Thus, Washington stated that the federal militia ought to be “regularly Mustered

and trained, and to have their Arms and Accoutrements inspected at certain appointed times, not less than once or twice in the course of every [year].” George Washington, Sentiments on a Peace Establishment (May 2, 1783), *in* 3 The Founders’ Constitution 129 (Philip B. Kurland & Ralph Lerner eds., 1987).

The Supreme Court explained in *Heller* that the Framers codified the right to bear arms in the Second Amendment with the aim of protecting and preserving militias as they existed at the time of the founding—including the laws and regulations described above, which were necessary to the militias’ continued existence. *See* 128 S. Ct. at 2801. Accordingly, these laws and regulations, which included requirements that gun-owners regularly assemble for weapons training, submit their firearms for inspection, and identify themselves to the state, would have been understood to be consistent with (and indeed supportive of) the right to bear arms in the early Republic.

2. States in the early Republic also enacted loyalty statutes requiring all males over a certain age to identify themselves and swear allegiance to state and local authorities, or else to be disarmed. These loyalty statutes effectively conditioned the very possession of firearms in the general population on registration and other requirements more burdensome than those at issue in this case.

Virginia, for instance, enacted a law requiring citizens to take a recorded loyalty oath or face disarmament. The law stated that “allegiance and protection are reciprocal, and those who will not bear the former are not entitled to the benefits of the latter,” and accordingly conditioned the possession of arms by “all free born male inhabitants . . . above the age of sixteen years” on the taking of an “oath or affirmation before some one of the justices of the peace of the county, city, or borough, where they shall respectively inhabit.” Act of May 5, 1777, ch. III, 1777 Va. Acts 8. Additionally, the justices of the peace were directed to “make a tour of the county, and tender the oath . . . to every free born male person above the age of sixteen,” to *record* the name and information of oath-takers, and to “cause . . . recusants to be disarmed.” *Id.*

Similar requirements were enforced in states that, as the Supreme Court concluded, had adopted provisions “analog[ous] to the Federal Second Amendment” in their constitutions prior to the ratification of the Bill of Rights. *Heller*, 128 S.Ct. at 2802-03. Pennsylvania’s 1776 Constitution, for example, guaranteed “[t]hat the people have a right to bear arms for the defence of themselves and the state.” Pa. Decl. of Rights § XIII (1776), in 5 *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* 3081, 3083 (Francis N. Thorpe ed., 1909); *Heller*, 128 S. Ct. at 2802. One year after the ratification of its Constitution, the Pennsylvania government passed the Test Acts,

which required each male white inhabitant above the age of eighteen years to *register* his name with the local justice of the peace and take a loyalty oath before the State or else “be disarmed by the lieutenant or sublieutenants of the City or County [where he inhabits].” *See* Act of June 13, 1777, ch. 21, 1777 Pa. Laws 61, 62-63.

Similarly, Massachusetts required that “every Male Person above sixteen Years of Age . . . who shall neglect or refuse to subscribe a printed or written [loyalty oath] . . . shall be disarmed, and have taken from him . . . all such Arms, Ammunition and Warlike Implements, as by the strictest Search can be found in his Possession or belonging to him.” Act of Mar. 14, 1776, ch. VII, 1776 Mass. Acts 31, 32; *c.f. Heller*, 128 S. Ct. at 2803. A related provision authorized state officials to search a non-compliant person’s home for any weapons, and to seize those weapons upon evidence that he violated the registration and oath requirements. 1776 Mass. Acts at 32-33.

B. States Have Continued to Use Registration for the Sale, Transfer, or Possession of Firearms to Protect the Public Safety

State and local governments continued to use registration to protect the public safety into the twentieth century, primarily as a tool to address new dangers arising from firearms becoming cheaper, deadlier, and more readily available in more densely populated urban centers.

The expanding economy in the nineteenth century increased the availability of pistols and other weapons used for personal self-defense. See Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* 137 (2006). Major cities, including Boston, Philadelphia, New Orleans, and New York began to issue revolvers to their police forces for the first time. See, e.g., Roger Lane, *Policing the City: Boston, 1822-1885* (1967); Dennis Rousey, *Policing the Southern City: New Orleans, 1805-1889* (1996). The growth of urban centers was also bringing more people of more varied backgrounds closer together than ever before. This combination of urbanization and the increased availability of firearms brought new dangers, and gun-related homicide rates steadily increased. See *Revolver Killings Fast Increasing; Legislative Measure to be Urged for Curbing the Sale of Firearms*, *New York Times*, Jan. 30, 1911.

States and localities once again turned to registration and licensing requirements to address these public safety concerns. An assassination attempt on New York's Mayor William J. Gaynor in 1910, for example, led the state to consider its first major gun reform, which included significant licensing and registration requirements. See Cornell, *A Well Regulated Militia*, *supra*, at 197. The legislation, which was signed into law on May 29, 1911, required the issuance of a license by the local government for the possession of a pistol, revolver, or other concealable firearm. See Act of May 25, 1911, ch. 195, § 1, 1911 N.Y. Laws

442, 443. It also directed sellers to record the “date of sale, name, age, occupation and residence of every purchaser of such a pistol, revolver or other firearm, together with the calib[er], make, model, manufacturer’s number or other mark of identification on such pistol, revolver or other firearm.” *Id.* § 2, 1911 N.Y. Laws at 444.

Many other states enacted similar licensing and registration requirements during this period. Although the details of these varied, as a general matter they required individuals to provide detailed information to, and obtain permission from, a government official in order to bear arms. In addition, some states required inspection of weapons and obtaining particular licenses. For example:

- In California, any person selling, leasing, or transferring a firearm of the type which could be concealed was required to “keep a register” containing information about the sale and the purchaser, and the seller and the purchaser were directed to sign a form with the information and submit it to government officials. Act of May 4, 1917, ch.145, § 7, 1917 Cal. Laws 221, 222-23.
- Connecticut made it a crime for any person to “carry . . . any pistol [or] revolver . . . unless such person shall have been granted a written permit issued and signed by the mayor or chief of police of a city, warden of a borough, or the first selectman of a town, authorizing such person to carry such weapon or instrument within such city, borough or town.” Act of Apr. 10, 1917, ch. 129, 1917 Conn. Laws 98, 98.
- Georgia made it “unlawful for any person to have or carry about his person, in any county in the State of Georgia, any pistol or revolver without first taking out a license from the Ordinary of the respective counties in which the party resides.” Act of Aug. 12, 1910, No. 432, § 1, 1910 Ga. Laws 134, 134. A public official was directed to “keep a record of the name of the person taking out such license, the name of the maker of the fire-arm to be

carried, and the caliber and number of the same.” *Id.* § 2, 1910 Ga. Laws at 135.

- A Nevada law made it “unlawful for any person . . . to wear, carry or have concealed upon his person, in any town any . . . pistol . . . or other dangerous weapon, without first obtaining permission from the Board of County Commissioners.” Act of Mar. 17, 1903, ch. CXIV, § 1, 1903 Nev. Laws 208, 208-09.
- A New Hampshire law provided that “[t]he selectmen of towns or the mayor or the chief of police of cities may, upon the application of any person issue a license to such person to carry a loaded pistol or revolver in this State, if it appears that the applicant is a suitable person to be so licensed.” Act of Apr. 6, 1909, ch. 114, § 3, 1909 N.H. Laws 451, 451-52.
- Oregon law stated that “[n]o person shall carry in any city, town or municipal corporation of this State any pistol, revolver or other firearm . . . of a size which may be concealed upon his or her person, without a license or permit therefor, issued to him or her [by the local government] . . . ” Act of Feb. 21, 1917, ch. 377, § 1, 1917 Or. Laws 804.
- In West Virginia, it was a misdemeanor to “carry about [one’s] person any revolver or other pistol,” but a license could be obtained by publishing in a newspaper notice of intent to acquire a license, and making a showing to a circuit court judge that the applicant was of good moral character and had cause for carrying a weapon. Act of Apr. 23, 1925, ch. 95, 1925 W.V. Laws 389, 389-90.
- Hawaii also generally prohibited carrying a pistol or revolver outside the home without a license. Small Arms Act, Act 206, 1927 Haw. Laws 209. Licenses were issued by “[t]he judge of a court of record or the sheriff of a county, or city and county . . . if it appears that the applicant has good reason to fear an injury to his person or property, or has any other proper reason for carrying a pistol or revolver, and that he is a suitable person to be so licensed.” *Id.* § 7, 1927 Haw. Laws at 210.
- Michigan enacted a law that required “any person within this State who owns weapons or has in his possession a pistol” to “present such weapon for safety inspection to the commissioner or chief of police A certificate of inspection shall thereupon be issued . . . [and] mailed to the commissioner of public safety and filed and indexed by him and kept as a permanent official

record for a period of six years.” Act of June 2, 1927, No. 372, § 9, 1927 Mich. Laws 887, 891.

For these reasons, it has been common practice for jurisdictions across the United States to condition the right to bear arms on an individual’s willingness to provide information to government officials and register his or her firearms.

II. STATES AND MUNICIPALITIES HAVE LONG BANNED DANGEROUS WEAPONS, AND COURTS HAVE UPHELD THESE REGULATIONS AS CONSISTENT WITH THE RIGHT TO BEAR ARMS.

Since the Founding, states and municipalities have possessed broad “police power” to enact safety regulations protecting the public. *See* William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* 53-54 (1996). Jurisdictions have exercised their police powers to regulate arms in many ways, including, as explained above, with laws akin to the registration requirements challenged here. But one constant has been that governments have repeatedly banned weapons that the community views to be particularly dangerous in that jurisdiction. That was the case with gunpowder in cities in the eighteenth century, with certain types of knives and handguns in nineteenth-century states and towns, and with certain types of semi-automatic weapons and ammunition in more recent years. And courts have repeatedly upheld these types of bans of dangerous weapons against constitutional challenges.

A. States and Cities Have Historically Outlawed Dangerous Weapons.

1. In one early form of regulation, several states regulated the storage of gunpowder in order to protect against the accidental discharge of a weapon during a fire, in some instances effectively banning the possession of loaded weapons in the home.² As Chief Justice Marshall observed, “[t]he power to direct the removal of gunpowder is a branch of the police power, which unquestionably remains, and ought to remain, with the States.” *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419, 443 (1827). He explained that “[t]he removal or destruction of infectious or unsound articles is, undoubtedly, an exercise of that power.” *Id.* at 444.

Shortly thereafter, other states, including Ohio, Tennessee, and Virginia, enacted laws regulating the discharge of guns, particularly in potentially crowded public places like the town square.³ Since the Founding, then, states and local

² See, e.g., Act of June 26, 1792, ch. 10, 1792 Mass. Acts 208; Act of Apr. 13, 1784, ch. 28, 1784 N.Y. Laws 627; Act of Dec. 6, 1783, ch. 1059, 11 Pa. Stat. 209; see also *Heller*, 128 S. Ct. at 2819 (stating that the Massachusetts law would have been construed to permit self-defense and, “[i]n any case, we would not stake our interpretation of the Second Amendment upon a single law, in effect in a single city”); *id.* at 2849 (Breyer, J., dissenting) (describing various laws regulating gunpowder). Antebellum courts repeatedly upheld such regulations. See, e.g., *Foote v. Fire Dep’t of New York*, 5 Hill 99, 101 (N.Y. Sup. Ct. 1843) (“The statute is a mere police regulation—an act to prevent a nuisance to the city”); *Williams v. City Council*, 4 Ga. 509, 512 (1848).

³ See, e.g., Act of Feb. 17, 1831, ch. 834, § 6, in 3 *The Statutes of Ohio and of the Northwestern Territory* 1740 (Salmon P. Chase ed., 1835); Act of Dec. 3, 1825, ch. 292, § 3, 1825 Tenn. Priv. Acts 306; Act of Jan. 30, 1847, ch. 79, 1846-1847 Va. Acts 67; Act of Feb. 4, 1806, ch. 94, 1805-1806 Va. Acts 51.

governments have regulated arms when necessary to protect citizens from such threats to public safety as fires and accidental shootings.

2. In the early part of the nineteenth century, the states were confronted with an additional problem concerning firearms. In the years since the colonial era, weapons had grown smaller and cheaper, and the practice of traveling with concealed weapons, such as handguns and knives, had become both common and dangerous. *See* Cornell, *A Well-Regulated Militia, supra*, at 137-40. Perceiving a threat to their citizens' safety, many state legislatures responded to this new danger by enacting laws prohibiting the carrying of concealed weapons. *See id.* at 140. Kentucky passed the first of these in 1813, prohibiting the wearing of a "pocket pistol, dirk, large knife, or sword in a cane, concealed as a weapon," with a narrow exception for "when traveling on a journey." Act of Feb. 13, 1813, ch. 89, 1813 Ky. Acts 100, *in* Cramer, *supra*, at 143-44. Louisiana passed a similar ban the same year. Other states soon followed suit.⁴

Several states went further in response to this new threat, deciding not only to outlaw the carrying of concealed weapons, but to proscribe entire classes of concealable weapons, which by their nature posed threats to public safety. In 1837, for example, Alabama imposed a tax on the sale or giving of Bowie Knives

⁴ See statutes from Alabama, Virginia, Arkansas, and Indiana, *in* Clayton E. Cramer, *Concealed Weapon Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform* 145-46, 150-52 (1999), and from Ohio, Act of Mar. 18, 1859, 1859 Ohio Laws 56.

or Arkansas Tooth-picks. *See* Act of June 30, 1837, 1837 Ala. Acts 11, *in Cramer, supra*, at 146. The following year, Tennessee altogether banned the wearing, sale, or giving of the same weapons. *See* Act of Jan. 27, 1838, ch. CXXXVII, 1837-1838 Tenn. Pub. Acts 200, *in Cramer, supra*, at 148-49; *see also* Cornell, *A Well-Regulated Militia, supra*, at 142 (describing the Alabama and Tennessee statutes as “more robust” than earlier statutes by “effectively moving from regulation to prohibition of certain classes of weapons”). The Founders understood the protections of the Second Amendment to apply to these edged weapons, as they were typically associated with the militia. *See* Saul Cornell, *The Original Meaning of Original Understanding: A Neo-Blackstonian Critique*, 67 Md. L. Rev. 150, 157 n.42 (2007). It was therefore generally recognized in the period before the Civil War that American governments could react to threats to the public safety through reasonable regulation of the right to bear arms, including outlawing certain classes of particularly dangerous weapons.

3. States continued to enact broad restrictions on the possession of weapons in the years following the Civil War. These regulations were more pervasive than those enacted during the antebellum period. Even when new state constitutions contained a right to bear arms not expressly subject to legislative regulation,⁵

⁵ *See* Ala. Const. of 1868, art. I, § 28; Ark. Const. of 1868, art. I, § 5; Del. Const. of 1897, art. I, § 20; Or. Const. of 1857, art. I, § 27; Pa. Const. of 1874, art. I, § 21;

legislatures still regulated firearms.⁶ Several even imposed outright bans on handguns.

The most common regulations of the period were concealed-weapons laws. At least fifteen states prohibited the carrying of concealed pistols and deadly weapons, some explicitly covering all firearms or all weapons.⁷ Although three of these statutes created exceptions for travelers, persons on their own premises, or those with a legitimate fear of attack,⁸ the majority contained no such exceptions.

But concealed-weapons laws were not the only legislative prerogative exercised at the time. At least four states banned the possession of all non-military handguns. Tennessee criminalized carrying, “publicly or privately, any . . . belt or pocket pistol, revolver, or any kind of pistol, except the army or navy pistol, usually used in warfare, which shall be carried openly in the hand.” 1879 Tenn.

S.C. Const. of 1868, art. I § 28; S.D. Const. of 1889, art. VI, § 24; Wash. Const. of 1889, art. I, § 24; Wyo. Const. of 1889, art. I, § 24.

⁶ See Act of Apr. 1, 1881, 1881 Ark. Acts 191; Act of Feb. 18, 1885, ch. 8, § 1–4, 1885 Or. Laws 33; 1880 S.C. Acts 448, § 1; S.D. Terr. Pen. Code § 455 (1877); Wash. Code § 929 (1881); 1876 Wyo. Laws ch. 52, § 1.

⁷ See Act of Apr. 1, 1881, 1881 Ark. Acts 191; Colo. Rev. Stat. § 149, at 229 (1881); Fla. Act of Feb. 12, 1885, ch. 3620, § 1; Ill. Act of Apr. 16, 1881; Ky. Gen. Stat., ch. 29, § 1 (1880); Neb. Cons. Stat. § 5604 (1893); 1879 N.C. Sess. Laws, ch. 127; N.D. Pen. Code § 457 (1895); Act of Feb. 18, 1885, ch. 8, §§ 1–4, 1885 Or. Laws 33; 1880 S.C. Acts 448, § 1; S.D. Terr. Pen. Code § 457 (1877); Tex. Act of Apr. 12, 1871; 1869–1870 Va. Acts 510; Wash. Code § 929 (1881); W. Va. Code ch. 148, § 7 (1870).

⁸ See Neb. Cons. Stat. § 5604 (1893); 1879 N.C. Sess. Laws, ch. 127; 1880 S.C. Acts 448, § 1.

Pub. Acts, ch. 186. The only persons exempted from the statute were military personnel and those performing specified law enforcement functions. *Id.* Perhaps most pertinent here, the Tennessee Supreme Court construed the act to apply even “upon one’s own farm or premises, or in fact in *any place.*” *Dycus v. State*, 74 Tenn. 584, 585 (1880) (emphasis added); *see also Barton v. State*, 66 Tenn. 105, 105-06 (1874).

Tennessee was not alone in such regulation. Wyoming likewise forbade anyone from “bear[ing] upon his person, concealed or openly, any fire-arm or other deadly weapon, within the limits of any city, town or village.” 1876 Wyo. Laws ch. 52, § 1. Arkansas and Texas enacted similar bans. *See* Act of Apr. 1, 1881, No. 96, 1881 Ark. Acts 191; Tex. Act of Apr. 12, 1871. States also outlawed the sale of non-military pistols,⁹ or prohibited specific weapons elected officials determined were public dangers.¹⁰

Municipalities likewise enacted their own regulations. Dodge City, Kansas, for example, banned the carrying of pistols and other dangerous weapons in response to violence accompanying western cattle drives. *See* Dodge City, Kan., Ordinance No. 16, § XI (Sept. 22, 1876); Robert R. Dykstra, *The Cattle Towns* 121-22 (1968).

⁹ *See* Ark. Act of Apr. 1, 1881; 1879 Tenn. Pub. Acts, ch. 96.

¹⁰ *See* Fla. Act of Aug. 8, 1868; Ill. Act of Apr. 16, 1881; 1850 Mass. Laws, ch. 194, § 2; N.D. Pen. Code § 457 (1895); S.D. Terr. Pen. Code § 455 (1877).

B. Courts Have Historically Upheld Restrictions On Dangerous Weapons

1. In the early Republic, state courts repeatedly upheld arms-regulating statutes against constitutional attack, even when the pertinent state constitution explicitly protected the right to bear arms. *See, e.g., Day v. State*, 37 Tenn. 496, 499 (1857); *Aymette v. State*, 21 Tenn. 154, 159-61 (1840) (right to keep weapons is unqualified, but right to bear arms for purposes other than the common defense can be regulated); *State v. Buzzard*, 4 Ark. 18, 21 (1842); *State v. Chandler*, 5 La. Ann. 489, 489-90 (1850) (upholding a ban on concealed weapons that was “absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons”); *State v. Jumel*, 13 La. Ann. 399, 400 (1858) (upholding a concealed-weapons law because it only banned a “*particular mode* of bearing arms which is found dangerous to the peace of society”); *State v. Reid*, 1 Ala. 612, 616-17 (1840) (holding that it was permissible for the state to regulate weapons “merely to promote personal security” by prohibiting the wearing of weapons “in such a manner as is calculated to exert an unhappy influence upon the moral feelings of the wearer, by making him less regardful of the personal security of others”). Courts thus recognized that states and localities had authority to exercise their police powers to regulate weapons deemed particularly dangerous.

Against this backdrop, there are two major outliers. The first is *Bliss v. Commonwealth*, 12 Ky. 90, 91, 93 (1822), in which the Kentucky Supreme Court declared Kentucky's concealed-weapons ban in conflict with its Constitution. As commentators in the era of the Fourteenth Amendment recognized, *Bliss* is properly understood as the exception, not the rule, in judicial decisions involving challenges to gun-safety regulations. See 2 Joel Prentiss Bishop, *Commentaries on the Criminal Law* § 125, at 75-76 (4th ed. 1868). And, indeed, it was so anomalous that the legislature responded by amending the state constitution to allow a concealed-weapons ban. See Ky. Const. of 1850, art. XIII, § 25.

The second outlier is *Nunn v. State*, in which the Georgia Supreme Court used broad language in upholding a constitutional challenge against part of a Georgia law banning the open carry of a horseman's pistol. *Nunn v. State*, 1 Ga. 243, 251 (1846). The same court, however, upheld the portion of the law which prohibited the carry of "certain weapons secretly." And the Georgia Supreme Court has since taken a narrow reading of *Nunn*, stating on two separate occasions that "evidently [*Nunn*] was never intended to hold that men, women, and children had some inherent right to keep and carry arms or weapons of every description, which could not be infringed by the legislature, unless as a result of the constitutional provision under consideration." *Strickland v. State*, 137 Ga. 1, 8 (1911); *Carson v. State*, 241 Ga. 622, 627-28 (1978). Indeed, the Georgia

Supreme Court later cited *Nunn* in *upholding* a 1910 law that prohibited any person from carrying a revolver without a license. *Strickland*, 137 Ga. at 8.

Similarly, the vast majority of state and local laws regulating or outlawing dangerous arms were upheld as paradigmatic examples of the exercise of police power. “The acknowledged police power of a State extends often to the destruction of property. A nuisance may be abated. Every thing prejudicial to the health or morals of a city may be removed.” *Thurlow v. Massachusetts (The License Cases)*, 46 U.S. (5 How.) 504, 589-91 (1847) (McLean, J., dissenting). This power, Justice McLean explained, is “essential to self-preservation, and exists, necessarily, in every organized community. It is, indeed, the law of nature, and is possessed by man in his individual capacity. He may resist that which does him harm, whether he be assailed by an assassin, or approached by poison.” *Id.* at 589. Thus, for example, in light of the “explosive nature of gunpowder, a city may exclude it” as an “act[] of self-preservation.” *Id.* For “[i]ndividuals in the enjoyment of their own rights must be careful not to injure the rights of others.” *Id.*

2. In the wake of the Civil War and adoption of the Fourteenth Amendment, courts continued to recognize state legislative authority to regulate dangerous weapons, including handguns. The Tennessee Supreme Court’s *Andrews v. State* decision is illustrative. 50 Tenn. 165, 171 (1871). The plaintiffs there challenged

a statute forbidding any person to “publicly or privately carry any . . . pocket pistol . . . or revolver,” Tenn. Act of June 11, 1870, asserting “that it is in violation of, and repugnant to” the Second Amendment of the U.S. Constitution and Tennessee’s constitution. 50 Tenn. at 171. The court interpreted the statute to “amount[] to a prohibition to keep and use such weapon for *any and all purposes*.” *Id.* at 187 (emphasis added). Although the court held that the federal Constitution did not limit the state legislature, *id.* at 175, it interpreted the state right-to-bear-arms provision *in pari materia* with the Second Amendment, *id.* at 177. Nevertheless, this right did not extend to “every thing that may be useful for offense or defense.” *Id.* at 179. Weapons such as the pocket pistol and revolver could be prohibited *altogether*. *Id.* Even the use of weapons such as “the rifle . . . , the shot gun, the musket, and repeater,” could “be subordinated to such regulations and limitations as are or may be authorized by the law of the land, passed to subserve the general good.” *Id.* at 179-80; *see also State v. Wilburn*, 66 Tenn. 57, 59-60 (1872).

Similarly, the Arkansas Supreme Court upheld that state’s prohibition on carrying pistols. *See Fife v. State*, 31 Ark. 455 (1876). Tracking the reasoning of *Andrews*, the Arkansas Supreme Court upheld that State’s prohibition as a lawful “exercise of the police power of the State without any infringement of the constitutional right” to bear arms. *Id.* at 461. So, too, the Texas Supreme Court

upheld a conviction for carrying an unloaded pistol for the purpose of getting it repaired, and concluded that such carrying is not “in any way protected either under the State or Federal Constitution.” *English v. State*, 35 Tex. 473, 473, 478 (1871).

Courts in Georgia, West Virginia, and Oklahoma followed suit. *See Hill v. State*, 53 Ga. 472, 474 (1874); *State v. Workman*, 35 W. Va. 367, 373 (1891); *Ex parte Thomas*, 97 P. 260, 262 (Okla. 1908). In the Georgia case, the author of the Court’s opinion noted that he was “at a loss to follow the line of thought that extends the guarantee”—in the state Constitution of the “right of the people to keep and bear arms”—“to the right to carry pistols, dirks, Bowie-knives, and those other weapons of like character, which, as all admit, are the greatest nuisances of our day.” *Hill*, 53 Ga. at 474.

C. Leading Treatises Recognized States’ and Cities’ Authority to Regulate Arms to Protect the Public Safety.

Major legal treatises, including those from the earliest periods of American history cement the conclusion that governments were widely understood to have broad authority to regulate and ban dangerous weapons. In *Heller*, the Supreme Court cited John Norton Pomeroy’s treatise as representative of “post-Civil War 19th-century sources” commenting on the right to bear arms. 128 S. Ct. at 2812. As the Court noted, Pomeroy observed that while “[t]he object of” the Second Amendment “is to secure a well-armed militia,” “a militia would be useless unless

the citizens were enabled to exercise themselves in the use of warlike weapons,” and so the government “is forbidden by any law or proceeding to invade or destroy the right to keep and bear arms.” John Norton Pomeroy, *An Introduction to the Constitutional Law of the United States* 152 (1868). The very next sentence in Pomeroy’s treatise is: “But all such provisions, all such guarantees, must be construed with reference to their intent and design. This constitutional inhibition is certainly not violated by laws forbidding persons to carry dangerous or concealed weapons, or laws forbidding the accumulation of quantities of arms with the design to use them in a riotous or seditious manner.” *Id.* at 152-53.

One early commentator on the right to bear arms similarly observed that the “right in the people to keep and bear arms, although secured by . . . the constitution, is held in subjection to the public safety and welfare.” Joel Tiffany, *A Treatise on Government, and Constitutional Law* 394 (1867). Even where there is a right to bear arms, “the peace of society and the safety of peaceable citizens plead loudly for protection against the evils which result from permitting other citizens to go armed with dangerous weapons.” *The Right to Keep and Bear Arms for Public and Private Defence*, 1 Cent. L.J. 259, 287 (Hon. John F. Dillon & Seymour D. Thompson, eds., 1874). And so the law must “strike some sort of balance between these apparently conflicting rights.” *Id.*

In his authoritative survey of police power, published in 1904, Ernst Freund reviewed nineteenth-century weapons regulations to conclude that the constitutional guarantees of the Second Amendment and similar state constitutional provisions had “not prevented the very general enactment of statutes forbidding the carrying of concealed weapons, and the *possession or use of certain deadly weapons.*” Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* 90-91 (1904) (emphasis added). He deemed this a classic illustration of the more general principle whereby “constitutional rights must if possible be so interpreted as not to conflict with the requirements of peace, order and security.” *Id.* at 91.

CONCLUSION

For the foregoing reasons this Court should affirm the decision below.

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Dated: September 20, 2010 *Attorney for Amici Curiae*

CERTIFICATE OF COMPLIANCE WITH RULE 29(d)

In accordance with D.C. Circuit Rule 29(d), the undersigned certifies that the accompanying brief is necessary. *Amici* are Professional Historians and Law Professors who have taught courses and published scholarship on the Second Amendment and legal and constitutional history. The Supreme Court in *Heller v. District of Columbia*, 128 S. Ct. 2783 (2008), looked to historical gun regulations in determining the Second Amendment's application to current gun laws. *Amici* are not aware of any other brief in this case that describes in detail the history of registration requirements and regulations of dangerous weapons dating back to the early Republic.

Dated: September 20, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2010, I caused a true and accurate copy of the Brief for Professional Historians and Law Professors Saul Cornell, Paul Finkelman, Stanley N. Katz, and David T. Konig as *Amici Curiae* in Support of Appellees to be served upon the following counsel for the parties via the Court's ECF system:

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make his own assault weapon.

Finally, we have also added someone who lawfully owns an assault weapon but makes it inoperable by April 1, 2006 it is exempt from prosecution.

MR. CROUCH: Would the sponsor yield to some questions, please?

MR. LAVELLE: Yes, I will, Mr. Speaker.

ACTING SPEAKER LAFAYETTE: The sponsor yields.

MR. CROUCH: Thank you, Mr. Lavelle.

It appears to me in reading the bill that you've changed a couple of things that prior to your legislation the definition of assault weapon would mean any semiautomatic, or pump action rifle, or shotgun, or pistol possessing two or more of the following characteristics and then they're listed in the previous legislation, am I correct in that assumption that you've changed it to now that they only have to possess one characteristic?

MR. LAVELLE: Yes, that is correct.

MR. CROUCH: Is there a reason for that, that change, having just one characteristic?

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MR. LAVELLE: Well, I would think it's more or less to tighten it up, because, basically, when the law was passed some weapons were mildly adjusted, et cetera, so that we really are not removing enough, so that basically, we felt that with these three characteristics we have listed that any one of the three would suffice to make it something I would like to ban.

MR. CROUCH: Are you aware that by that change you're including a vast number of firearms presently legal, used by legal hunters across the State in their hunting activities?

MR. LAVELLE: Well, the existing firearms are grandfathered.

MR. CROUCH: Only if you render them inactive and --

MR. LAVELLE: Or you register them with the ballistics, with the State Police.

MR. CROUCH: Why would you want to include so many firearms across the State that are presently just used as hunting implements by legal hunters, favored by a good many hunters across the State when they're not used in a malicious manner for assault?

MR. LAVELLE: Well, I think that they're

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a larger magazine, am I correct in that understanding?

MR. LAVELLE: That's right. More than 10 rounds of ammunition.

MR. CROUCH: So, any pistol, basically, that's got a magazine in the handle that you could, theoretically, put out albeit an illegal one, but the fact it could accept another magazine, you're creating it as an assault weapon now, am I correct in that assumption?

MR. LAVELLE: That is correct. I would think that the reason for that would be that you're basically enabling that gun to fire a lot more rounds very rapidly.

MR. CROUCH: Well, would it be consistent that it's an assault weapon once the magazine is installed for the purpose of using a lot of ammunition at that time, the person might be in violation if he were to install the larger magazine rather than just a possession of a pistol that could accept the magazine, which every pistol that's out there can accept a larger magazine. Are you aware that you're making every pistol basically, an assault weapon, at that point?

MR. LAVELLE: Well, you know, as I indicated prior, as a matter of fact, when the Federal Assault Weapons Ban was

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passed, manufacturers basically made little changes so that they could get around the law. Now, maybe if we do this, they may make changes so that it would be within the law, and if you're saying that the existing weapons have the capability whether they have the extra cartridge or not, the point is, that they have the ability, well, maybe weapons will be manufactured in the future that will not have that capability.

MR. CROUCH: In the first part of your legislation you talked about guns designed to allow rapid and accurate spray firing.

MR. LAVELLE: Yes.

MR. CROUCH: How do you, I guess, I find that kind of like, an oxymoron, there's no way that you can rapid and accurately hang on to a gun and spray fire. How did you come up with that definition?

MR. LAVELLE: I would think that like the rapid firing would be basically, with every pull of the finger would result in a bullet going through the gun, so therefore, that's where the rapid, accurately, is basically, I happen to think that the assault weapons are designed to basically make them more accurate. So, I happen to

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(The Clerk announced the results.)

The bill is passed.

The same page, Rules Report No. 6, the Clerk will read.

THE CLERK: Bill No. 2466-A, Rules Report No. 6, Lavelle, Koon, Lafayette, Cook. An act to amend the Penal Law and the General Business Law, in relation to banning the possession, sale or manufacture of assault weapons and to repeal Subdivision 22 of Section 265 .00 of the Penal Law relating thereto.

ACTING SPEAKER LAFAYETTE: An explanation is requested. Please, there is too much noise the Chamber. You asked for an explanation. Mr. Lavelle will be happy to give it to you, but please listen to the explanation.

MR. LAVELLE: This bill, basically, repeals the existing definition of an assault weapon in New York and adds a new definition of the assault weapon to the Penal Law. It adds exemption to prosecution for such crimes including possession of an assault weapon, legally possessed prior to January 1st, 2007, if it has been added to the automated electronic database established by Section 396 (ff) of the General Business Law.

Additionally, we have also added three new subdivisions that define the three assault weapon enhancement features, detachable magazine, muzzle break and muzzle compensator. We now have included sale or possession of part kits which were not included under present law, so that a person cannot

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make his own assault weapon.

Additionally, we have added that the Superintendent of the State Police designate specific weapons identified by make, model and manufacturer's name to be within the definition of an assault weapon, if the Superintendent determines that such weapons are particularly suitable for military and not sporting purposes. A list of assault weapons as determined by the Superintendent of State Police shall be made available on a regular basis to the general public.

Finally, we have also added someone who lawfully owns an assault weapon but makes it inoperable by April 1st, 2007, is exempt from prosecution.

ACTING SPEAKER LAFAYETTE: Mr. Manning.

MR. MANNING: Thank you very much, Mr.

Speaker. Will the sponsor yield for a couple of questions?

MR. LAVELLE: Yes, I will.

ACTING SPEAKER LAFAYETTE: The gentleman yields.

MR. MANNING: Happy New Year, Mr. Lavelle.

MR. LAVELLE: Happy New Year, Pat.

MR. MANNING: Seeing that we have changed the definition of what an assault weapon is within this bill, maybe you can explain to me why this change is -- why you are defining assault weapon as such. The New York State Legislature, and I quote from your bill, finds that a semi-automatic assault weapons are military-style guns, designed to allow rapid and accurate spray firing

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for the quick and efficient killing of humans. The shooter can simply point, as opposed to carefully aim, the weapon to quickly spray a wide area with a hail of bullets. Why are we defining it as such?

MR. LAVELLE: Well, basically, we feel that it has to be defined that way because the manufacturers, you know, when we make a definition in law, we have found that the gun manufacturers find loopholes to modify weapons and, in such a way, to get around the exact definition that we gave.

So, we do believe that these weapons that we are defining, that we have identified, are basically weapons that are -- intended to kill humans.

MR. MANNING: Well, I would agree that any firearm has the ability to kill a human, a mammal; however, under the definition that you are giving, and we will get to -- and I see what you are saying about the -- about gun manufacturers needing -- needing to define it as such because gun manufacturers are finding ways around the bill which reminds me of the time that I had a debate with one of your predecessors who had this bill, and we said, "This is exactly what would happen," that they would just go around the bill because you cannot legislate these kind of firearms, they will just change them or make adjustments to them. We are now defining this as, again, a military-style gun designed to allow rapid and accurate spray firing for the quick and efficient killing of humans quickly and allowing for the quick spray of a wide area with a hail of bullets. Do you find this would be an accurate definition of the firearms that you're looking to

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ban in New York State?

MR. LAVELLE: I believe that it is, yes.

MR. MANNING: Well, I have to severely disagree.

Anyone who knows and understands any of these firearms and the use of these firearms and how they are used and how they work would understand that these are all semi-automatic firearms. They do not shoot in sprays, they shoot in single shots, as long as there is the finger on the trigger and there is ammunition in the, you know, in the gun itself, it shoots bang, bang, bang, bang.

The definition that you are using here is quite flawed. It talks about quickly spraying. That would be an automatic firearm. That would be an assault weapon as defined by the Federal government and New York State, which is already dealt within law. Do you think that the wide spray of bullets should be banned in New York State.

MR. LAVELLE: Well, first of all, your definition of, you know, the trigger has to be pulled once for each bullet and the bang, bang, bang, I don't think, is truly accurate of what can be done with such a weapon. It can go bang, bang, bang, bang, bang, bang, bang, bang, as quickly as I can move my finger.

MR. MANNING: Or like that?

MR. LAVELLE: Yes.

MR. MANNING: Well, you know, are you basing that on any knowledge or what the woman is trying to point out to you up there? I mean, is there -- because my definition, you know, we can

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-- minus my -- the hesitation between bangs, my definition of assault weapon is New York State's definition of assault weapon. You're now making -- you're now defining assault weapon and the way an assault weapon works to a host of semi-automatic firearms, which do not work in that fashion. I am not -- really, I am not parsing words, you are now saying it has a rapid and a rapid and accurate spray, which you really can't have a rapid accurate spray of bullets, that is just bad writing, but a rapid and accurate spraying of bullets in a wide area, which is -- which a semi-automatic firearm does not do.

MR. LAVELLE: Well, current law does define semi-automatic weapons as an assault weapon, current State law.

MR. MANNING: No, no, no, it does not. The automatic firearm or, in essence, a machine gun, which has been banned in New York State and also been under Federal regulation since 1934 is those military-style that you see in the movie that sprays everyone, which are, as you can see, they are used by gang, you know, gang bangers and drug dealers, they are already illegal but they are used. That is already illegal. These are firearms that have hesitation as they are being used, not this spray trying to shoot everybody in sight or everything in sight. That is already banned in New York State.

And, as you said, when we started this, we are trying to define them in a new way in order to get around the gun manufacturers and their changes. I don't know if we will ever be able to do that, Mr. Lavelle. If we will ever be able to incorporate them all,

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but that is probably why, I will assume, that we are going to one characteristic versus the two characteristics because, again, changes are made and firearms are easily taken out of the definition of assault weapons under our definition. We are now just saying that we are going to find that these weapons do this thing in spraying bullets, therefore, even though they don't, therefore, they are assault weapons and they are going to be banned, and you name these firearms that do not spray bullets, that do not act in that fashion. It is just an inaccurate term. It is very poor writing. I know you didn't write it. I am not saying that you are not passionate about trying to get these, you know, so-called "assault weapons" off the street. But, what we are looking to pass right now would not even hold muster in a court of law. It is -- they are defined wrong. It is a very bad writing of a bill.

Do you think that we could find another way to define what semi-automatic, what you are calling, assault weapons , do you think we could find another way to define them, other than in a way that they do not work - that they do not function, I should say?

MR. LAVELLE: No, I mean, could we -- possibly we could, but I do not necessarily agree with you. I happen to think that the definition does describe what we are addressing. It does.

MR. MANNING: Okay. We will agree to disagree. Why are we moving to change from, and I said, I assume, but let me get you on the record, why are we changing that -- the definition of, at least, two specifically-prescribed characteristics down to a list of only one of these specifically-prescribed characteristics to be considered an

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assault weapon in New York State under this bill?

MR. LAVELLE: And you are correct, we are doing it because of, you know, the loopholes that were found. We find that we need to tighten it and, therefore, any one of these characteristics that would be added to the weapon would change the definition to an assault weapon.

MR. MANNING: However, once we do that and bring it down to, and I think there were some colleagues here who decided during that vote for legislation that I felt was flawed and several others did, but those who did vote for the original assault weapon ban felt that, at least, two characteristics defined the firearm in such a way that it could be considered, and would not go into the realm of including hunting rifles and shotguns and, actually, Olympic-style pistols and guns like that. Once now that we have moved to one characteristic to be called an assault weapon, we are adding a whole new group of firearms in there, including these -- a whole list of guns, handguns, excuse me, in that, as well. Is there any concern that you have had that legally-owned and used hunting rifles and shotguns would now be redefined as assault weapons?

MR. LAVELLE: I would think that there would be that possibility, but legally-owned, such legally-owned weapons, can be grandfathered.

MR. MANNING: Well, I mean, they could if it was in your bill and if you think that, I think you have to be pretty darn sure if you are going to take away the rights of New Yorkers of

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whether or not they can own a legally-fired rifle, pistol or shotgun. If you want to grandfather that, I think you should put grandfathering in it or we should not just think. We should be sure about those items.

MR. LAVELLE: We do have that in there.

MR. MANNING: Well, I daresay that those firearms would have to be rendered useless, turned into the police --

MR. LAVELLE: Or registered with the --

MR. MANNING: -- or destroyed in some fashion.

MR. LAVELLE: No, or registered with the State Police ballistic database; that is the only requirement, and I don't think that is too onerous.

MR. MANNING: The issue of those two police officers who were brought up, the undercover officers --

MR. LAVELLE: Yes.

MR. MANNING: As it says, "Was brutally murdered while attempting to purchase an illegal Tech-9, semi-auto, what were they killed with?"

MR. LAVELLE: I do not know what the weapon was they were killed with, but it was not assault weapon. They were not killed with an assault weapon. But what their job was, what they were doing that night, was arranging the purchase of assault weapons.

MR. MANNING: Right, absolutely, and they died heroes and what they were doing is trying to get illegal guns off the street.

MR. LAVELLE: That's right.

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MR. MANNING: Sadly, it is used, as other cases in here were used, and I won't take more of my colleagues' time on a case-by-case basis on the cases that you're using here to try to justify why we should be taking law-abiding gun owners' firearms from them, but in that case, just for the record, so you should know, as the author of the bill, it was a .44 caliber handgun. So, they were shot dead, both police officers, by .44 that was illegally obtained which is not affected by this bill at all.

MR. LAVELLE: That is true.

MR. MANNING: They can still use a .44. Okay. I thank the sponsor.

Mr. Speaker on the bill.

ACTING SPEAKER LAFAYETTE: Mr. Manning on the bill.

MR. MANNING: Thank you very much.

I think we heard it from my colleague, the concern that many of us have and, as my leader said, that we will never oppose good legislation and we will never oppose good ideas or criticize the compassion and passion of others who feel strongly about this issue, but we will vigorously oppose bad legislation. The idea that the sponsor understands that, as I said, legal hunting rifles and shotguns and legal handguns might be declared assault weapons under this bill and deemed illegal, that that would be, in essence, what would happen, he believes, he thought, and, therefore, we could deal with, I believe, it was his quote, with grandfathering, is not an area I want to

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go in.

I think, again, the comments that we made on the floor of this Legislature a few years ago stand. You are not going to deal with this scourge of guns used in an illegal fashion by just banning names and banning characteristics because gun manufacturers will just make changes, they will adjust in any way they need to adjust, in order to be able to sell these firearms in a different but legal way. To add in long-standing hunting rifles and shotguns is not the way to go about business. It is about to put away the scourge of illegal handguns and rifles and shotguns and assault weapons and, however you want to define them. Again, assault weapons really is an auto, and it is not a semi-auto but put those who use those in a criminal activity behind bars for good. I know it makes a great press release in an election year; it does not make good law.

In this bill, this will be the first time that it will include handguns such as the Olympic-style pistol that is used in the Olympics, but a "Saturday night special" is okay and still, is still outside this bill. The 16-time national champion in Olympic shooting, Rob Letham, his guns would be banned, but junk guns that are used on the streets of our major cities are still okay under this. Again, the .44 caliber that was used to kill the police officers is not even included in this. I would say that was a true assault weapon.

I will finish up.

My biggest fear with this, the dealer bill that we are about to see and other bills like that, the Gander Mountains, the Bass

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Pros in our areas in the State, that means a lot of revenue and a lot of job creation. We can kiss them goodbye if we continue to do this because we will, effectively, kill legal sport hunting in this State for good if bills like this continue to be put up.

Thank you very much. I will be voting in the negative.

ACTING SPEAKER LAFAYETTE: Read the last section.

THE CLERK: This act shall take effect on the first day of January, 2007, next succeeding the date on which it shall have become a law.

ACTING SPEAKER LAFAYETTE: Record the vote.

(The Clerk recorded the vote.)

Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 4, Rules Report No. 7, the Clerk will read.

THE CLERK: Bill No. 2837, Rules Report No. 7, Koon, Tokasz, John, Destito, Ramos, Dinowitz, Hooper, Eddington, Zebrowski. An act to amend the Penal Law, in relation to the possession of armor-piercing, frangible or devastator ammunition.

ACTING SPEAKER LAFAYETTE: An explanation has been requested, Mr. Koon.

MR. KOON: Thank you, Mr. Speaker.



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Correction Appended

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HEADLINE: In Virginia, high-yield clip seizures rise

BYLINE: David S. Fallis;James V. Grimaldi

BODY:

The number of guns with high-capacity magazines seized by Virginia police dropped during a decade-long federal prohibition on assault weapons, but the rate has rebounded sharply since the ban was lifted in late 2004, according to a Washington Post analysis.

More than 15,000 guns equipped with high-capacity magazines - defined under the lapsed federal law as holding 11 or more bullets - have been seized by Virginia police in a wide range of investigations since 1993, the data show.

The role of high-capacity magazines in gun crime was thrust into the national spotlight two weeks ago when 22-year-old Jared Lee Loughner allegedly opened fire with a semiautomatic handgun outside a Tucson grocery store, killing six and wounding 13, including Rep. Gabrielle Giffords (D-Ariz.). Authorities say Loughner used a legally purchased 9mm Glock 19 handgun with a 31-round clip and was tackled while changing magazines.

Of the seized Virginia weapons, 2,000 had magazines with a capacity of 30 or more bullets. Some states, including California and Maryland, still limit magazine capacity to 10 rounds.

Last year in Virginia, guns with high-capacity magazines amounted to 22 percent of the weapons recovered and reported by police. In 2004, when the ban expired, the rate had reached a low of 10 percent. In each year since then, the rate has gone up.

"Maybe the federal ban was finally starting to make a dent in the market by the time it ended," said Christopher Koper, head of research at the Police Executive Research Forum, who studied the assault weapons ban for the National Institute of Justice, the research arm of the Justice Department.

Congress is considering legislation to reinstitute the assault weapon ban's prohibition on high-capacity magazines, a measure strongly opposed by gun rights advocates.

In Virginia, high-yield clip seizures rise The Washington Post January 23, 2011 Sunday Correction Appended

The analysis of the Virginia records, obtained under the state's public information law, provides a rare window into the firepower of guns used in crimes. The Bureau of Alcohol, Tobacco, Firearms and Explosives, which traces guns for local police agencies and regulates the firearms industry, does not track magazine sizes. Academic researchers said they were unaware of any other comprehensive study of firearms magazines.

The pattern in Virginia "may be a pivotal piece of evidence" that the assault weapons ban eventually had an impact on the proliferation of high-capacity magazines on the streets, said Garen Wintemute, head of the Violence Prevention Research Program at the University of California at Davis.

"Many people, me included, were skeptical about the chances that the magazine ban would make a difference back in 1994," Wintemute said. "But what I am seeing here is that after a few years' lag time the prevalence of high-capacity magazines was declining. The increase since the ban's repeal is quite striking."

Guns with high-capacity magazines have appeared in Virginia crimes ranging from the mundane to the murderous. The Post found that 200 guns with high-capacity magazines figured in Virginia homicides, including these incidents:

In Richmond in 2003, Michael Antoine Wilson, 21, used his semiautomatic rifle with its 30-round magazine to shoot his 17-year-old girlfriend to death in front of children and relatives. Then he went to a nearby convenience store, killed two workers and stole a van before turning the gun on himself.

In Roanoke in 2004, Marcus Jerome Nance, 22, used his legally purchased 9mm Glock 17 handgun with a high-capacity magazine to spray 33 bullets into a crowd that had gathered outside a Roanoke gas station after a night-club closing, killing one and wounding two.

In Newport News last year, Antonio Johnson, 34, began shooting at police during a traffic stop with a 9mm semi-automatic handgun outfitted with a 15-round magazine. "Subject shot police officer and then killed himself with weapon," state records say.

In the Arizona shootings, Loughner allegedly used a Glock 19 that he had legally purchased at a Tucson sporting goods store in November. The gun's capacity allowed Loughner to squeeze off more than 30 shots without reloading, authorities said.

The federal assault weapons ban from late 1994 through late 2004 prohibited the manufacturing of magazines capable of holding more than 10 rounds. But the act permitted the sale of magazines manufactured before the ban.

The federal prohibition was spurred by a mass killing in 1989 in Stockton, Calif., where Patrick Edward Purdy, 24, a mentally unbalanced drug addict, fired 110 shots from an AK-47 into a schoolyard, killing five children and wounding 29 others and a teacher. He used a 75-round rotary clip and a 35-round banana clip, one of four he was carrying.

Rep. Carolyn McCarthy (N.Y.) and 57 other Democrats proposed legislation last week to ban the sale or transfer of high-capacity magazines, no matter when they were manufactured. McCarthy's husband and five others were killed in 1993 on the Long Island Rail Road by a gunman armed with a semiautomatic pistol and four 15-round magazines. He fired 30 shots before being subdued while changing magazines.

The bill's prospects are considered slim in the Republican-controlled House. In the Senate, the National Rifle Association says it has a solid 50-senator pro-gun block that could delay any legislation.

The NRA has announced its opposition to proposals that limit magazine capacity.

"These magazines are standard equipment for self-defense handguns and other firearms owned by tens of millions of Americans," according to a statement on its politics Web page, and in a letter circulating to members of Congress. "Law-abiding private citizens choose them for many reasons, including the same reason police officers do: to improve their odds in defensive situations."

The firearms industry also opposes the proposal. "The tragedy in Tucson was not about firearms, ammunition or magazine capacity," said Ted Novin, a spokesman for the National Shooting Sports Foundation, a gun industry group. "It was about the actions of a madman. Period."

The analysis by The Post is possible because of a little-known database of guns seized in Virginia. The database, called the Criminal Firearms Clearinghouse, has information on more than 100,000 firearms recovered by more than 200 local police departments since 1993. A federal law in 2003, known as the Tiahrt Amendment after the congressman who sponsored it, banned the release of federal data on guns recovered in crimes.

In Virginia, high-yield clip seizures rise The Washington Post January 23, 2011 Sunday Correction Appended

Last year, The Post mined the database to pierce the secrecy imposed by Congress on federal gun-tracing records. The analysis found that a fraction of licensed dealers in Virginia sell most of guns later seized by police. The vast majority of the guns in the database were confiscated because of illegal-possession charges. But thousands were swept up in the wake of assaults, robberies and shootings.

Two months before the ban expired in September 2004, Marcus Nance bought an extended magazine and a 9mm Glock 17 handgun at a Roanoke gun store. Three nights later, down the street from the store, Nance opened fire on a crowded parking lot after arguing and fighting with people in the crowd.

A police officer called to investigate a disturbance heard shots and saw Nance holding a gun at arm's length and firing "randomly into the mass of people" before shooting several rounds into the air.

A police car's dashboard camera recorded the jackhammer sound of gunfire. In a car parked nearby, police found a Glock gun box and two boxes of ammunition, one of them partially empty.

Police went to the gun shop and confirmed that Nance had bought the handgun (\$555), a laser sight (\$380) and two extended magazines (\$135), paying cash in an entirely legal transaction. Police noted: "The magazines in question were manufactured before 1994 and not considered prohibited."

Nance, who said he had been attacked by members of the crowd and shot in self-defense, was convicted of second-degree murder and is in prison.

Koper's 108-page 2004 study for the National Institute of Justice found the ban on assault weapons had mixed results.

"Assault weapons were rarely used in gun crimes even before the ban," he said in the report. But he also concluded that the prohibition on high-capacity magazines might have affected public safety, because such magazines allow shooters to inflict more damage.

"Tentatively I was able to show that guns associated with large-capacity magazines tended to be associated with more serious crimes, more serious outcomes," he said.

Some gun rights activists argue that a ban on high-capacity magazines would violate the Second Amendment right to bear arms. One prominent gun rights activist who takes a less absolute position is Robert A. Levy, chairman of the Cato Institute. He is also the lawyer who brought the case that overturned D.C.'s handgun ban.

But Levy said the government would need to prove that such a ban was effective.

"The burden is on the government, not on the individual to show that the regulation isn't unduly intrusive," Levy said.

Colin Goddard, a lobbyist for the Brady Campaign to Prevent Gun Violence and a victim of the 2007 Virginia Tech shootings, said the high-capacity ban could save lives. The Virginia Tech shooter, Seung Hui Cho, used several 15-round magazines to fire 174 shots and kill 32 people in the worst gun-related mass murder by an individual in U.S. history.

"When you double and triple the amount of the clip size, you don't double or triple the number of deer you kill, you double and triple the amount of innocent people who are killed in shootings like this," said Goddard, 25, who was shot four times by Cho.

Bradley A. Buckles, ATF director from 1999 to 2004, said bureau officials advised Congress to focus on high-capacity magazines, which were "completely unregulated" and had almost no sporting purpose.

"The whole thing with magazine capacity came out of ATF," Buckles said. "It wasn't so much guns, but it was firepower. What made them more deadly than a hunting rifle was the fact that you could have a 20-round, 30-round clip, when most hunting rifles wouldn't have more than five rounds."

Buckles said lawmakers should have extended the ban on high-capacity magazines in 2004. Banning them now, he said, just puts everyone back at square one.

"There are so many millions of them out there, it probably wouldn't make any immediate difference over the course of 20 years," Buckles said. "It is not a short-term solution to anything."

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In Virginia, high-yield clip seizures rise The Washington Post January 23, 2011 Sunday Correction Appended

grimaldij@washpost.com

Research editor Alice Crites contributed to this report.

CORRECTION-DATE: January 24, 2011

CORRECTION:

A Jan. 23 Page One article about guns seized by police in Virginia misstated Maryland's limit on the capacity of gun magazines. Maryland law limits magazines to 20 bullets, not 10.

LOAD-DATE: January 23, 2011



3 of 6 DOCUMENTS

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January 13, 2013 Sunday 8:13 PM EST

SECTION: A section; Pg. A04

LENGTH: 1381 words

HEADLINE: High-capacity magazines saw drop during ban, data indicate

BYLINE: David S. Fallis

BODY:

During the 10-year federal ban on assault weapons, the percentage of firearms equipped with high-capacity magazines seized by police agencies in Virginia dropped, only to rise sharply once the restrictions were lifted in 2004, according to an analysis by The Washington Post.

The White House is leading a push to reinstate a national ban on large-capacity magazines and assault weapons after a gunman armed with an AR-15 and 30-round magazines killed 20 children and seven adults in Connecticut. Vice President Biden has been holding advisory meetings to hammer out a course of action that will address the issue of the larger magazines, which under the lapsed federal ban were those that held 11 or more rounds of ammunition.

In Virginia, The Post found that the rate at which police recovered firearms with high-capacity magazines - mostly handguns and, to a smaller extent, rifles - began to drop around 1998, four years into the ban. It hit a low of 9 percent of the total number of guns recovered the year the ban expired, 2004.

The next year, the rate began to climb and continued to rise in subsequent years, reaching 20 percent in 2010, according to the analysis of a little-known Virginia database of guns recovered by police. In the period The Post studied, police in Virginia recovered more than 100,000 firearms, more than 14,000 of which had high-capacity magazines.

Researchers see impact

To some researchers, the snapshot in Virginia suggests that the federal ban may have started to curb the widespread availability of the larger magazines.

"I was skeptical that the ban would be effective, and I was wrong," said Garen Wintemute, head of the Violence Prevention Research Program at the University of California at Davis School of Medicine. The database analysis offers "about as clear an example as we could ask for of evidence that the ban was working."

The analysis is based on an examination of the Criminal Firearms Clearinghouse, a database obtained from state police under Virginia's public information law. The data, which were first studied by The Post in 2011, offer a rare glimpse into the size of the magazines of guns seized during criminal investigations. The Bureau of Alcohol, Tobacco, Firearms and Explosives, which traces guns and regulates the industry, tracks details about the guns seized after crimes but not the magazine size.

High-capacity magazines saw drop during ban, data indicate Washingtonpost.com January 13, 2013 Sunday 8:13 PM EST

The initial Post analysis was prompted by a mass shooting in Tucson. Jared Lee Loughner - armed with a legally purchased 9mm semiautomatic handgun and a 33-round magazine - opened fire outside a grocery store, killing six people and wounding 13, including Rep. Gabrielle Giffords (D-Ariz.).

In the following two years, a succession of mass shootings has occurred, including several in which the gunmen reportedly had high-capacity magazines.

At the Dec. 14 shooting in Newtown, Conn., the gunman was reported to have been armed with two handguns, an AR-15 rifle and numerous 30-round magazines. He killed himself at the scene. The guns were legally purchased by his mother.

The federal ban that expired in 2004 prohibited the manufacture of magazines capable of holding more than 10 rounds. But the law permitted the sale of magazines manufactured before the ban. By some estimates, 25 million of the large-capacity magazines were still on the market in 1995.

Many semiautomatic rifles and semiautomatic handguns accept magazines of various sizes. Larger magazines increase a gun's firepower, enabling more shots before reloading.

The Virginia database analyzed by The Post lists about three-quarters of guns recovered by police, missing the rest because some agencies failed to report their recoveries to the state. The database contains details about more than 100,000 guns recovered by 200 police departments in a wide range of investigations from 1993 through August 2010, when The Post last obtained it.

In recent weeks, The Post conducted additional analysis into the type of guns confiscated with large-capacity magazines. The guns included Glock and TEC-9 handguns and Bushmaster rifles. Most had magazines ranging from 11 to 30 rounds.

Of 14,478 guns equipped with large-capacity magazines that were confiscated by police, more than 87 percent - 12,664 - were classified as semiautomatic pistols. The remainder were mostly semiautomatic rifles.

The Post also identified and excluded from the counts more than 1,000 .22-caliber rifles with large-capacity tubular magazines, which were not subject to the ban.

In Virginia, handguns outfitted with large-capacity magazines saw the biggest fluctuation during and after the ban.

In 1997, three years into the ban, police across the state reported seizing 944 handguns with large-capacity magazines. In 2004, the year the ban ended, they confiscated 452. In 2009, the last full year for which data were available, the number had rebounded to 986 handguns, analysis showed.

Of these, the single biggest group were handguns equipped with 15-round magazines, accounting overall for 4,270 firearms over the 18 years.

Effect hard to measure

Nationwide, researchers who studied the federal ban had difficulty determining its effect, in part because weapons and magazines manufactured before the ban could still be sold and in part because most criminals do not use assault weapons.

Christopher Koper, who studied the ban's effect for the National Institute of Justice, the research arm of the Justice Department, noted in a 2004 report that the "success in reducing criminal use of the banned guns and magazines has been mixed."

He found that gun crimes involving assault weapons declined between 17 and 72 percent in the six cities covered in the study - Anchorage, Baltimore, Boston, Miami, Milwaukee and St. Louis. But he said he found no decline in crimes committed with other guns with large-capacity magazines, most likely "due to the immense stock of exempted pre-ban magazines."

Koper's study tracked guns through 2003. He said that The Post's findings, which looked at magazine capacity of guns recovered in Virginia before and after 2003, suggests that "maybe the federal ban was finally starting to make a dent in the market by the time it ended."

Koper, now an associate professor of criminology at George Mason University, also noted the ban on high-capacity magazines might improve public safety because larger magazines enable shooters to inflict more damage.

High-capacity magazines saw drop during ban, data indicate Washingtonpost.com January 13, 2013 Sunday 8:13 PM EST

The use of high-capacity magazines is a contentious point in the gun debate.

"Anyone who's thought seriously about armed self-defense knows why honest Americans - private citizens and police alike - choose magazines that hold more than 10 rounds. Quite simply, they improve good people's odds in defensive situations," Chris W. Cox, the executive director of the National Rifle Association's legislative institute wrote in a piece posted online. He called the ban a "dismal failure."

The federal prohibition on high-capacity magazines and assault weapons was spurred in part by the 1989 mass killing in Stockton, Calif. Patrick Edward Purdy, a mentally unbalanced drug addict, fired 110 rounds from an AK-47 into a schoolyard, killing five children and wounding 29 others and a teacher. Purdy used a 75-round drum magazine and a 35-round banana clip, one of four he carried.

Some states still limit magazine size. Maryland limits the size to 20 rounds; California limits it to 10. Connecticut, the location of Sandy Hook Elementary School, does not.

After Giffords's shooting, Rep. Carolyn McCarthy (N.Y.) and other Democrats proposed legislation to ban the sale or transfer of high-capacity magazines. McCarthy's husband and five others were killed in 1993 on the Long Island Rail Road by a gunman armed with a semiautomatic pistol and four 15-round magazines. He fired 30 shots before being subdued as he swapped magazines.

In the wake of the Newtown shooting, President Obama and lawmakers urged that a ban on assault weapons and high-capacity magazines be made permanent.

The NRA and the National Shooting Sports Foundation, a gun industry group, have historically opposed any restrictions on magazine capacity. The NRA did not respond to requests for comment, and the sports foundation declined to comment.

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LOAD-DATE: January 13, 2013

Heroes of Tucson Shooting: 'Something Had to Be Done'

By JESSICA HOPPER, KEVIN DOLAK and LAUREN SHER

Jan. 10, 2011—

abcnews.go.com

Retired Army Colonel Helped Subdue Gunman, Bullet Grazed the Back of His Head

A 74-year-old retired Army colonel decided to tackle the Tucson gunman after watching him .

"Something had to be done," Bill Badger said today on " ."

Badger wasn't the only one who risked his life to stop the carnage. One man clobbered on the back of the head with a folding chair. A 61-year-old woman wrestled a fresh magazine away from Loughner as he tried to reload.

Others jumped on him and held him down, ripping the gun from his hands.

Six people were killed in Saturday's shooting rampage at the Tucson, Ariz., grocery store, and Rep. was left fighting for her life.

Badger was waiting in line to meet Giffords at the "Congress on Your Corner" event when he heard gun shots.

"I turned and dropped to the ground, and I felt a sting in the back of the head, and that's where he shot me, in the back of the head. I knew I'd been hit," Badger said.

Badger, who was treated for the injury at the University Medical Center and released, is among those who've been hailed as heroes for subduing and stopping further carnage after a shooting that left .

"[Loughner] was standing right in front of me. He took about a half a step to my left and some individual there took one of the folding chairs ... and hit him on the back of the head, and I was able to grab him," Badger said.

Together, Badger and another man pushed the suspected shooter to the ground.

Woman Stopped Tucson Shooter From Reloading

Patricia Maisch, 61, was in the back of the line, waiting to greet and take a photo with Giffords. When she heard gun shots, she hit the ground.

"I'm waiting to be shot because the lady next to me had been shot," Maisch said. "At the same time, someone says, 'Get the magazine.'"

Loughner allegedly used a legally purchased Glock 19-9 mm gun with an extended magazine to carry out the shootings.

Maisch grabbed the second magazine that Loughner was attempting to load into the gun.

Badger then helped tackle Loughner. Badger and Roger Salzgeber, who was reportedly standing with his wife, third in line to meet with Giffords, sat on the gunman while Maisch held his ankles down.

"When we pushed him to the ground, there was no struggle and no fight," Badger said. "I had this guy by the throat ... in a chokehold."

Salzgeber isn't ready to comment on his role in stopping the gunman, saying that he's still "dealing with it all."

Joseph Zamudio was at a nearby Walgreens when he heard the ring of gunshots.

"I heard the gunshots and came running," Zamudio said on "GMA."

Zamudio helped restrain Loughner by hanging onto his legs.

Another individual grabbed the gun from Loughner, Badger said.

911 Call Detail Tucson Rampage

As Badger was tackling the man spraying bullets at innocent bystanders, Badger's wife was frantically calling 911, seeking information about her husband.

"My husband just called me and told me he was shot. He was going to the Gabrielle Gifford event, and I don't know where he is," Badger told 911. "He called me and then the phone went dead."

Badger's 911 call was one of several that even left operators losing their composure.

"Oh my God," exclaimed a 911 operator who got the first report of the carnage.

Badger was among those struggling, according to Maisch. When she noticed the blood coming from the back of his head, she asked Zimude to hold down the shooter while she went to get paper towels and made a compress.

Maisch was thankful for the heroic actions of Badger and others at the scene.

"He saved my life," she told "GMA."

"Those two gentlemen saved my life."

Pima County Sheriff Clarence Dupnik lauded the actions of Maisch and others that he said likely saved dozens of lives.

"We could have had 31 more people shot," Dupnik said.

One of Congresswoman Giffords' interns, 20-year-old Daniel Hernandez, has been credited with helping keep Giffords alive after she was shot in the head.

"When I heard gunshots, my first instinct was to head toward the congresswoman to make sure that she was okay," Hernandez told Amanpour. "Once I saw that she was down and there were more than one victim, I went ahead and started doing the limited triage that I could with what I had."

Hernandez held Giffords, applying pressure to her wound. He used smocks from the grocery store as a bandage.

"The congresswoman was alert. She was able to hold my hand when I asked her if she could hear me," Hernandez said. "I wasn't able to get any words from her. She may have been trying, but because of the way that I was having to hold her it was a lot easier to just 'if you can hear me Gabby just grab my hand to let me know that you're okay.'"

Giffords remains in critical condition in a medically induced coma with part of her skull removed to ease pressure on her brain.

Loughner has been charged with multiple counts of murder and attempted murder. He will make his first court appearance later today.

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Texas Capitol Gunman Was Reloading When Troopers Tackled Him

AUSTIN (January 22, 2010)--A man who fired several shots Thursday outside the Texas Capitol was trying to reload his weapon when Department of Public Safety troopers confronted him and tackled him to the ground, according to court records.

Fausto Cardenas remained in Travis County's jail Friday, charged with deadly conduct.

His bond was set at \$250,000.

An arrest affidavit filed Friday describes the shooting incident, which happened on the south steps of the Capitol.



State Trooper Husain Roussel spotted Cardenas outside the Capitol after hearing shots ring out, the affidavit said.

He saw Cardenas "reloading a magazine" and noticed a pistol in his waistband and empty shell casings where Cardenas was standing, the affidavit said.

State troopers tackled Cardenas, 24, and arrested him.

No one was injured in the shooting, which briefly shut down the Capitol.

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Church Gunman Brought 76 Shells and Expected to Use Them

By *MARK MOONEY*
July 28, 2008—

abcnews.go.com

Church Shooter Expected to Kill Until He Was Killed

The gunman who yesterday shot up a Tennessee church that embraced gays and other liberal causes left behind a long letter fuming that he couldn't find a job and expressing a profound "hatred for the liberal movement," police said today.

Jim D. Adkisson, 58, ranted that "liberals and gays" taking jobs had prevented him from finding work. He wrote that he expected to keep shooting parishioners until the police showed up and killed him, Knoxville, Tenn., Police Chief Sterling Owen told a news conference.

Owen said police recovered 76 shotgun shells after Adkisson allegedly opened fired in the sanctuary of the Tennessee Valley Unitarian Universalist Church. Three shells had been fired before church members tackled Adkisson, but two people were killed and five more wounded by the blasts before he was wrestled to the floor.

The angry gunman invaded the Knoxville church on Sunday and began blasting away as more than 200 parishioners were packed inside to watch a children's performance of the musical "Annie."

Adkisson was tackled by church members when he paused to reload while terrified church members ducked beneath pews or ran screaming from the church.

Investigating as a 'Hate Crime'

Adkisson, an out-of-work mechanical engineer, left a four-page letter in his car in the church parking lot in which he railed against liberals and the fact that he had been unable to get a job since 2006. Owen said Adkisson was also angry that his food stamps were about to be reduced or eliminated.

"It appears what brought him to this horrible event was his lack of being able to obtain a job, frustration over that and his hatred for the liberal movement," Owen said.

The chief later added, "He did express that frustration that the liberal movement was getting more jobs and he was being kept out of the loop because of his age" and because he wasn't liberal.

"It appears he did choose that church intentionally," Owen said, possibly after it had received some publicity for its advocacy of liberal causes. "We're certainly investigating it as a hate crime."

Owen said Adkisson had been preparing for his assault on the church "for a week or so."

But his anger had apparently been boiling over for a while. "I'm sure this is something that has been building for a long time," Owen said.

Held on Murder Charges

Parishioner Barbara Kemper told the Associated Press that Adkisson said some "hateful things" before he started shooting, but Owen would only say that the gunman spouted something that "wasn't very complimentary." Despite the presence of the children, Owen said, "There was an indication he was not targeting the children." No children were injured in the barrage.

Because many parents in the church was believed to be filming the show, police are looking for video evidence of the rampage.

Owen said he believed that Adkisson was a former member of the Army's 101st Airborne Division and that he

purchased the shotgun from a pawn shop. His only previous brushes with the law were a pair of driving under the influence charges.

The alleged gunman told police that "he had no next of kin and no family," Owen said.

Adkisson has been charged with first-degree murder and was being held on \$1 million bail under "close observation," Knox County Sheriff's Office spokeswoman Martha Dolley said.

Hero Loses Life

The Tennessee Valley Unitarian Universalist Church promotes progressive social work, including advocacy of women and gay rights. The Knoxville congregation also has provided sanctuary for political refugees, fed the homeless and founded a chapter of the American Civil Liberties Union, according to its Web site.

Karen Massey, a neighbor to Adkisson, told the Knoxville News Sentinel about a lengthy conversation she had with Adkisson a few years ago in which she told him her daughter had just graduated from a Bible college. She said she was surprised by his reaction when she told him she was a Christian.

"He almost turned angry," she told the newspaper. "He seemed to get angry at that. He said that everything in the Bible contradicts itself if you read it." She also said Adkisson spoke frequently about his parents, who "made him go to church all his life. ... He acted like he was forced to do that."

The shooting instantly created heroes inside the crowded church.

Greg McKendry, 60, died as he attempted to block the gunfire. Kemper described the burly McKendry as "a refrigerator with a head." She said McKendry "stood in the front of the gunman and took the blast to protect the rest of us."

Church members said one of the people who tackled the gunman was John Bohstedt, who played "Daddy Warbucks" in the performance.

A second victim was identified as Linda Kraeger, 61. She died at a hospital hours later. Five of the wounded remained hospitalized.

The Associated Press and Reuters contributed to this report

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The New York Times

Education

SHOOTINGS IN A SCHOOLHOUSE: THE HERO; Wounded Teen-Ager Is Called a Hero

By JERE LONGMAN
Published: May 23, 1998

On Thursday, his 17th birthday, Jacob Ryker was sitting with friends in the school cafeteria, waiting for classes to begin, when a boy in a trench coat walked in and began shooting.

The first shots were mistaken for firecrackers, a prank someone must have been pulling because of student election day at Thurston High School. But Jacob's girlfriend, Jennifer Alldredge, was shot in the upper body. Jacob yelled, "Gun!" and stood up, but a bullet from a .22-caliber semiautomatic rifle pierced his right lung, sending him tumbling backward over a cafeteria bench.

"He knew he had to tackle the guy or other people would be killed," said Jacob's mother, Linda Ryker, who is a school bus driver. "He told me, 'He had been shooting people, and I wasn't going to let him shoot again.'"

Students and law enforcement officials say Jacob performed a heroic act, getting to his feet even though he had been wounded, subduing the gunman -- identified by the police as 15-year-old Kipland P. Kinkel -- and containing an attack that could have been much worse. Two students were killed and 23 were injured in the shooting.

"They started with 300 or 400 kids in that cafeteria," said Mark Clark, a local minister and volunteer with the Springfield Fire Department who had rushed to Thurston High. "It was jampacked, and if the boy had continued shooting, there is no way those kids could have gotten out of there fast enough. He could have killed or hurt double or triple the number that he did."

At 6-foot-4 and 185 pounds, with close-cropped hair and a rawboned build, Jacob Ryker, a junior, had joined the wrestling team this year. Gary Bowden, who coaches wrestling and teaches social studies at Thurston High, said that Jacob never backed down from a challenge.

"This was perfectly consistent with his character, thinking about other people instead of himself," Mr. Bowden said. "He was angry that his girlfriend got shot. It was just like Jake to go after him. He wouldn't have been afraid."

The gunman walked up to a student who was lying on the floor, placed the rifle to her head and attempted to fire three times, but nothing happened, said Joshua Ryker, Jacob's 14-year-old brother.

As the gunman began to reload and other panicked students dived for cover, Jacob untangled his foot from the bench and charged 10 to 15 feet toward the boy with the rifle. Jacob knocked the gunman to the floor, his brother and other students said.

"I saw him run up and jump on the guy, and the gun fell from his hands," said Dee Strother, 18, a Thurston senior. "Jake started pounding him."

The Ryker brothers, like many others in rural Oregon, are familiar with guns. They often go hunting and target shooting with their father, Robert, a Navy diver, and their uncle, Jake Meyer.

"He heard a click, and he knew the rifle was out of ammo," Robert Ryker said, "and he knew it was time to get the gun away."

Jacob struggled with the gunman, who pulled out a 9-millimeter handgun, Mr. Ryker said. Jacob grabbed at the gun as it was pointed toward his face and it discharged, striking the knuckle on his left index finger, his father said.

Several other boys then joined in to subdue the gunman, including Joshua; two brothers, 18-year-old Doug Ure and 15-year-old David Ure, and another student, Adam Walberger. The other boys were not injured.

As the boys waited for teachers and the police to arrive, Joshua said, the gunman said to them, "Just shoot me, shoot me now."

Jacob was listed in serious condition at Sacred Heart Medical Center in nearby Eugene.

Joshua's father, a National Rifle Association member, said that Jacob had a .30-06 and Joshua had a .22-caliber rifle but that his boys were not allowed to fire their weapons unless an adult was present.

"I'm proud of my sons and the other boys," Mr. Ryker said. "I don't know about this hero business. All the boys did what they had to do to survive. They all did the right thing. When they had a chance to jump in, they did."

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The New York Times

Archives

DEATH ON THE L.I.R.R.: The Rampage; Gunman in a Train Aisle Passes Out Death

By FRANCIS X. CLINES
Published: December 09, 1993

When the gunman emptied his first clip into passengers at the rear of the car and stopped to reload, Kevin Zaleskie, crouching in panic a few seats farther along, realized he had one small chance to flee before aim was taken at him as the stalker worked the aisle, shooting to the right, then to the left, as methodical as if he were taking tickets.

"I got up to run, but the aisle was jammed with someone," Mr. Zaleskie, a financial analyst for I.B.M., said today, recalling what he thought would be the violent ending of his life amid the most banal routine of commuting home. "I didn't think I was going to get out. I was very panicky. I ducked back down in the seat. The guy was moving in my direction, shooting again." A Ticket and a Gun

The rampage by the gunman aboard the 5:33 evening commuter train from Pennsylvania Station had moved Mr. Zaleskie and 80 other passengers in the third car from the easiest of lulling habits to an instantaneous scramble of terror and fear.

A man intent on murder who carefully paid for his ticket back in New York City was firing methodically with a 9-millimeter pistol, a hallmark of modern America's pathology of violence and fear. In three minutes of gunfire, he reduced the defenseless commuters in the third car to casualties on a one-sided battlefield.

As the gunman was finally brought to ground, tackled by one brave passenger and pinned by two others as he sought to reload his pistol for a third 15-shot rampage, David Farrell joined a reinforcement group that came from hiding to grab his legs and arms. "We held on and the gunman said, 'Oh God, what did I do? What did I do? I deserve whatever I get.' "

One of the men who subdued him could be heard commanding again and again from within the bloody scrimmage: "Stay where you are. Shut up. Shut up. Shut up."

Passengers farther away in the train would not discover the carnage until well after the gunman was subdued and the first of his 25 victims limped or were carried onto the Long Island Rail Road platform. One passenger, William A. Warshowsky, had scrambled for his life from the gunman's approach, leaped with a crowd into the darkness from the stopped train and ran all the way home, finally checking his body for wounds and celebrating his survival intact.

Another passenger, Margaret Richards, was amazed even beyond the bloodied windows and three victims she saw slumped tightly together with head wounds, when she saw the gunman handcuffed later in a patrol car. "He was very calm. No emotions showing. Everything fine, you know, 'dum-de-dum,' " she related, songlike. "And then someone came over from all the blood of the train and lost it and began shouting, 'How can he be sitting there so calm after everything he did?'"

In the moment after the gunman had been subdued, Mr. Zaleskie had turned in his mind from the next likely victim to someone of immeasurable good fortune. In a minute, he was taking off his necktie and began making a tourniquet for a woman bleeding nearby, delivered from the terrifying stalker.

"The guy kept coming down the aisle with the gun," Mr. Zaleskie related of the height of the carnage. "And I just put my briefcase in front of my face and hunched down with two other people in the seat," he said, describing something close to fearful resignation. "He walked past, still shooting. And I didn't feel any bullets," the passenger continued in a very tight, very grateful monotone of recollection and survival.

At this point, more than a score of passengers were already cast about the car, wounded and bleeding, and the gunman tended his pistol, the second 15-shot clip exhausted.

"So he's reloading again and he was certainly going to keep shooting," Mr. Zaleskie recalled. "But someone yells, 'Grab him!'"

That was when one passenger tackled the gunman in the center of the car before he could get off another round and two more men piled onto him. The killer was pinned in a seat in the blood- and gore-smearred third car of the train, which had come to a stop at the Merillon Avenue station, panic spreading in all directions.

"A horror," said Mr. Zaleskie of the scene inside the car, suddenly quiet after the outrageous siege. "An absolute horror, and lying around in the aisles and in the seats, you see these people you never quite got to know across years of commuting," he said, his tone tinged with wonder. "Faces you recognize each day, but don't really know. And this horror has happened to them."

At the front of the car, Mr. Warshowsky had got up to wait by the door as the train approached the station when he heard the pop of the 9-millimeter gunfire and mistook it for something harmless, caps or fireworks. "A woman yelled, 'He's got a gun! He's shooting people!'" the passenger recalled, saying he was instantly moving in an adrenal blur, jumping down into a seat to hide as the bullets sprayed about the car.

"I heard 15 shots," said the 26-year-old purchasing department worker at The New York Times. "The gunman was pressing the trigger every half second or so. Going side to side shooting people. Not rapid fire, but pressing the trigger steadily -- pop, pop, pop. When he stopped to reload I made a run for the next car. We were trampling each other. I thought the guy was right at my back," said the New York City native, in his second year of suburban life.

In the next car, the second in the 12-car train, some passengers, unaware of the killing going on next door, seemed annoyed at the unruly

influx. "Be calm," one shouted at Mr. Warshowsky, who joined a crowd that manually forced open a door as the train pulled into the station. He burst forth to freedom.

The gunman had moved backward down the aisle, suddenly, briefly, facing each victim as or after he fired. The gunman was identified by the police today as Colin Ferguson, a 35-year-old native of the island of Jamaica who authorities said was a rage-filled individual from a furnished room in Brooklyn.

Police officials reported that the suspect was carrying scraps of angry notes cast in racist tones but directed across a spectrum of institutions and ethnic groups, including whites, Asians and black officials police said he characterized in his angry jottings as corrupt and racist. None of his victims was black, and police officials, who described his siege as methodical and inclusive, were unable to say whether there were other black passengers aboard the train.

"This was the work of a deranged, maniacal person who for a variety of reasons decided to explode," said Chief Joseph Flynn of the Long Island Rail Road police.

When Mr. Warshowsky began fleeing, he saw a conductor peer into the bloody third car from the second, spot the gunman and make an about-face. The railroad defended the crew's performance, saying the engineer, informed of the shooting, thought it best not to open the doors immediately because two of the cars were not at the platform. A conductor finally managed to climb from a train window and open some doors from outside so the panicky throng could flee.

As the gunman had moved in vicious pathology down the aisle, one passenger heard a man suddenly shout, "I have seven kids. Please don't kill me." His fate was unknown.

Police detectives said it appeared that the gunman had been planning his foray for more than a week. In the aftermath, it was his relentlessness that was most often recalled with lingering fear.

In the fourth car, Lorraine Oltadel's first notion of something going wrong aboard the 5:33 was the sudden shout, "He is coming with a gun!"

She did not immediately comprehend the warning but looked into the third car and saw the full threat, gun in hand, leveling passengers. "There he was. He was coming."

Then came a pause free of gunfire. A man shouted, "I think he has run out of bullets." But then, Ms. Oltadel recalled, someone screamed anew in the train: "He's coming again."

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**TESTIMONY FOR
CHIEF JIM JOHNSON, BALTIMORE COUNTY, MARYLAND
CHAIR, NATIONAL LAW ENFORCEMENT PARTNERSHIP
TO PREVENT GUN VIOLENCE
Senate Judiciary Committee Hearing
Wednesday, January 30, 2013**

Mr. Chairman, Ranking Member, and Members of the Committee, I want to thank you for the opportunity to testify today. I am here on behalf of the National Law Enforcement Partnership to Prevent Gun Violence, an alliance of the nation's law enforcement leadership organizations concerned about the unacceptable level of gun violence in the United States.

The Partnership, founded in 2010, includes: the Commission on Accreditation of Law Enforcement Agencies; Hispanic American Police Command Officers Association; International Association of Campus Law Enforcement Administrators; International Association of Chiefs of Police; Major Cities Chiefs Association; National Association of Women Law Enforcement Executives; National Organization of Black Law Enforcement Executives; Police Executive Research Forum; and the Police Foundation.

We mourn those lost to gun violence, including the 20 children in Newtown, along with the six brave adults whose lives were cut short by a deranged individual armed with firepower originally designed for combat, not for gunning down innocent members of our communities.

More than 30 homicides occur in America each day. Two-thousand children, ages 18 and under, die of firearm-related deaths in the U.S. every year. In 2011, for the first time in 14 years, firearms were the leading cause of death for police officers killed in the line of duty. In just the two-week period after the Newtown massacre, six police officers were killed and 10 injured in 12 separate shootings.

In a one-week period in 2011, the Police Executive Research Forum (PERF) found that gun crime in six cities cost more than \$38 million, and in the year 2010 cost the entire country more than \$57 billion.

We urgently need Congress to address the rising epidemic of gun violence. Law enforcement leaders support the President's comprehensive approach, which includes enhancing safety at educational institutions and addressing mental health issues. But on behalf of my colleagues across the nation, I am here today to tell you that we are long overdue in strengthening our nation's gun laws. Doing so must be a priority for Congress.

The organizations in the National Law Enforcement Partnership to Prevent Gun Violence are united in urgently calling on Congress to:

- Require background checks for *all* firearm purchasers;
- Ensure that prohibited purchaser records in the National Instant Criminal Background Check System (NICS), are up-to-date and accurate; and
- Limit high capacity ammunition feeding devices to ten rounds.

Seven of our nine groups, including the largest organizations among us, also support a ban on

assault weapons and Senator Feinstein's legislation.

Federal law prohibits dangerous individuals, such as convicted felons and those with mental health disqualifiers, from possessing firearms. While background checks are required for purchases through federally licensed gun dealers, no check is required for private sales, such as those through Internet postings, print ads or gun shows.

From November 2011 to November 2012, an estimated 6.6 million firearm transactions occurred without a background check. Up to 40 percent of firearm transactions occur through private individuals rather than licensed gun dealers. Allowing 40 percent of those acquiring guns to bypass background checks is like allowing 40 percent of airline passengers to board a plane without going through airport security.

Last October, in Brookfield, Wisconsin, seven women were shot by a prohibited purchaser who was under a domestic violence restraining order. The shooter answered an online ad and was able to buy a gun without a background check. Had the sale required a check, this tragedy could have been prevented.

Background checks work. They stopped nearly 2 million prohibited purchases between 1994 and 2009. We already have a national background check system in place. Therefore, extending background checks to *all* firearm purchasers can easily be implemented – and should be, without delay.

States can't do it alone. Interstate firearms trafficking is a serious problem that must be addressed federally. The problem is rampant: According to the ATF, in 2009, 30 percent of guns recovered at crime scenes had crossed state lines.

Submissions to NICS must be improved, especially mental health and drug abuse records. The 2007 massacre at Virginia Tech is a tragic example of a prohibited purchaser slipping between the cracks due to incomplete NICS records.

The ban on assault weapons and high-capacity ammunition magazines must be reinstated. Like assault weapons, high-capacity magazines are not used for hunting, do not belong in our homes and wreak havoc in our communities. Banning these magazines will reduce the number of bullets a shooter can use before having to reload. Reloading can provide a window of time in which to take down a shooter, as we saw in Tucson.

In 1998, four years after the assault weapons and high-capacity ammunition magazine ban was enacted, the percentage of firearms with large-capacity magazines recovered by Virginia police decreased and continued to drop until it hit a low of 9 percent in 2004, the year the ban expired. It hit a high of 20 percent in 2010, according to a Washington Post analysis.

After the 1994 law expired, 37 percent of police agencies saw increases in criminals' use of assault weapons, according to a 2010 PERF survey.

I have been in law enforcement for nearly 35 years, and have seen an explosion in firepower since the assault weapons ban expired. It is common to find many shell casings at crime scenes these days, as victims are being riddled with multiple gunshots.

The common-sense measures we are calling for will not infringe on Second Amendment rights,

but will ensure that we keep guns out of dangerous hands and excessive firepower out of our communities.

Generations of Americans, including our youngest ones, are depending on you to ensure they will grow up and fulfill their roles in the great human experience. None of us can fail them. I urge you to follow the will of the American public and stand with law enforcement to enact these common-sense public safety measures.

Thank you.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK STATE RIFLE)
& PISTOL ASSOCIATION, ROMOLO)
COLANTONE, EFRAIN ALVAREZ, and)
JOSE ANTHONY IRIZARRY,)

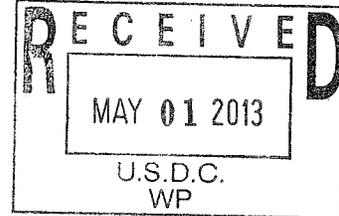
Case Number: 1:13-cv-2115-RWS

Plaintiffs,)

**AMENDED
COMPLAINT**

-against-)

THE CITY OF NEW YORK,)
THE NEW YORK CITY POLICE,)
DEPARTMENT LICENSE DIVISION,)



Defendants,)

AMENDED COMPLAINT

COME NOW the Plaintiffs, THE NEW YORK STATE RIFLE & PISTOL ASSOCIATION, ROMOLO COLANTONE, EFRAIN ALVAREZ and JOSE ANTHONY IRIZARRY, by and through their undersigned counsel, and complain of the Defendants as follows:

THE PARTIES

1. Plaintiff Romolo Colantone is a natural person and a citizen of the United States residing in Staten Island, New York. Mr. Colantone is the holder of a Premises Residence firearms license issued by the City of New York.

2. Plaintiff Efrain Alvarez is a natural person and a citizen of the United States residing in Bronx County, New York. Mr. Alvarez is the holder of a Premises Residence firearms license issued by the City of New York. Mr. Alvarez also holds non-resident firearm permits issued by the states of New Hampshire, Connecticut, Florida, Virginia, and Utah.

3. Plaintiff Jose Anthony ("Tony") Irizarry is a natural person and a citizen of the United States residing in Bronx County, New York. Mr. Irizarry is the holder of a Premises

competitions because the enforcement of 38 RCNY § 5-23 by the New York City Police Department made his attendance illegal.

25. As a direct and proximate result, Efrain Alvarez and Tony Irizarry did not attend the Old Bridge or Simsbury competitions. Mr. Alvarez and Mr. Irizarry have refrained from attending any shooting events that take place outside the City of New York since June of 2012, for fear of the revocation of their Premises Residence licenses, and also for fear of arrest, criminal prosecution, and imprisonment.

About the Benefits of Shooting Sports & the Frequency of Shooting Competitions

26. Familiarity with firearms, and proficiency in their use, are a pre-requisite to the safe and responsible use of firearms for private and public self-defense, and the defense of one's home.

27. Proficiency with firearms promotes public safety. Gun owners trained in and familiar with the operations of their guns are less likely to be involved in accidental shootings, and more likely to successfully use their firearms in self-defense in case of need.

28. Recreational and competitive sport shooting are traditional uses of firearms in the United States. Recreational and competitive sport shooting events promote, foster and further individual proficiency in and familiarity with the safe and responsible use of firearms.

29. The promotion of civilian marksmanship has been a priority of the federal government throughout American history, beginning with the Second Militia Act of 1792 and continuing through today with the modern implementation of the Civilian Marksmanship Program through the federally-charted Corporation for the Promotion of Rifle Practice and Firearms Safety, 36 U.S.C. § 4701, et seq.

30. Target shooting builds understanding and respect for firearms, and teaches patience, discipline, and hand-eye coordination skills. Shooting sports and hunting are rated among the safest

forms of recreation. Some 40 million people of all ages safely participate in these activities across the United States each year.

31. Gun ranges, and recreational and competitive shooting events open to the public exist in every American state.

32. The sport of competitive target shooting is defined in large part by travel. It is the nature and tradition of shooting competitions for a match or championship to be “hosted” by a range or gun club, and to be attended by numerous competitors from within the region.

33. There are hundreds of indoor and outdoor competitive shooting events held across the United States each year. In the Northeast, some of these include the Crossman Northeast Field Target Championships (held in Bloomfield, NY); the Schutzenfest Sporting Clays and Top Shot Competition (held each year in North Tonawanda, NY); the SCTP Mid-Atlantic Regional Olympic Trap Championships (held each year in Dalmatia, PA); and the World Class Steel Regional Championships (held each year in either Roslyn, NY or Old Bridge, NJ).

34. Defendant City of New York recognizes the value of firearms training and proficiency, as evidenced by 38 RCNY § 5-23(a)(3)’s stated purpose of maintaining “proficiency with the handgun.” In addition, 38 RCNY § 5-22(14) (captioned “licensee responsibilities”) states that “the licensee should endeavor to engage in periodic handgun practice at an authorized small arms range/shooting club.” Id.

35. Despite the fundamental importance of training and practice as a pre-requisite to the safe and responsible use of a firearm, only one (1) shooting range that is open to the public exists within the borders of New York City: the West Side Pistol & Rifle Range (“WSPRR”) located at 20 West 20th Street in Manhattan. New visitors to the WSPRR are required to schedule appointments

PRAYER FOR RELIEF

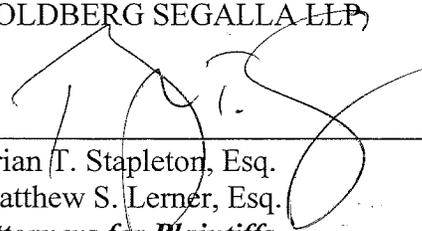
Plaintiffs request that judgment be entered in their favor and against the Defendants as follows:

1. An order preliminarily and permanently enjoining the Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing 38 RCNY § 5-23's prohibition from traveling beyond the borders of the City of New York to attend at a gun range, shooting competition, or to use a lawfully possessed and licensed firearm for the purposes of defending one's home, person, and/or property;
2. Attorney's fees and costs pursuant to 42 U.S.C. § 1988;
3. Declaratory relief consistent with the injunction;
4. Costs of suit; and
5. Any other such further relief as the Court deems just and proper.

Dated: New York, New York
May 1, 2013

GOLDBERG SEGALLA LLP

By: _____


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