

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

13-cv-00291-WMS

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.

---

**DECLARATION OF WILLIAM J. TAYLOR, JR.**

WILLIAM J. TAYLOR, JR. declares under penalty of perjury that the following  
is true and correct:

1. I am an Assistant Attorney General, of counsel to Eric T. Schneiderman,  
Attorney General of the State of New York, attorney for defendants Andrew M. 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”).

2. I submit this declaration in support of the State Defendants’ motion for an Order permitting the State Defendants to file certain corrected exhibits to the Declaration of William J. Taylor, Jr., filed 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 (Docket Nos. 74-76, 78-85) -- specifically, corrected Exhibits 11, 20, 27, and 45-48.

3. Upon a recent, post-filing review all of their motion papers filed with the Court on July 21, 2013, the State Defendants discovered that there were some minor issues with respect to certain of the exhibits to the Declaration of William J. Taylor, Jr., filed 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 (Docket Nos. 74-76, 78-85). In particular, the State Defendants determined that certain exhibits were submitted without all of their pages included or were otherwise filed without being fully complete. While each of these exhibits is publicly available, including on the internet, in order to assist the Court and the parties, and make certain that the record here is clear, the State Defendants request that they be permitted to file corrected copies of these currently incomplete exhibits. Copies of these corrected exhibits that the State Defendants propose filing in this action are appended hereto.

4. More specifically:

- **Exhibit 11 (U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, *Report and Recommendation on the Importability of Certain Semiautomatic Rifles*, dated July 6, 1989):** The first page of this document was

inadvertently omitted from the filed exhibit. Corrected Exhibit 11 is a full and complete version of the document, including the previously omitted page 1.

- **Exhibit 20 (Buffalo City Code, ch. 180):** This document apparently did not convert into PDF format properly, and the currently filed exhibit is therefore illegible. Corrected Exhibit 20 is a legible version of this document.
- **Exhibit 27 (Excerpts from the New York State Assembly Debate on the SAFE Act, Jan. 15, 2013, pp. 53-54, 64-66, 124-29):** Some pages were inadvertently omitted from the filed exhibit. Corrected Exhibit 27 is a full and complete version of the excerpted document, including the previously omitted pages 53-54, 64, 66, 124-26, and 128-29.
- **Exhibit 45 (Printouts from the SAFE Act website, NYSAFEAct.com, regarding rifles that are not classified as assault weapons):** The currently filed exhibit includes a printout from the SAFE Act website containing the State Police's non-exhaustive list of rifles that are not classified as assault weapons (online at <http://www.governor.ny.gov/assets/documents/RiflesthatareNOTclassifiedasassaultweapons.pdf>). However, the current exhibit does not include a printout from the SAFE Act website containing images of rifles that are not classified as assault weapons (online at [http://www.governor.ny.gov/assets/documents/Rifles\\_imagesoriflesthatareNOTclassifiedasassaultrifles.pdf](http://www.governor.ny.gov/assets/documents/Rifles_imagesoriflesthatareNOTclassifiedasassaultrifles.pdf)), although State Defendants' motion papers clearly make reference to both. Corrected Exhibit 45 contains both the list and the images, as referred to in the motion papers.
- **Exhibit 46 (Printouts from the SAFE Act website, NYSAFEAct.com, regarding pistols that are not classified as assault weapons):** The

currently filed exhibit includes a printout from the SAFE Act website containing images of pistols that are not classified as assault weapons (online at <http://www.governor.ny.gov/assets/documents/Pistolsimagesofpistolsthatarenotclassifiedasassaultweapons.pdf>). However, the current exhibit does not include a printout from the SAFE Act website containing the State Police's non-exhaustive list of pistols that are not classified as assault weapons (online at <http://www.governor.ny.gov/assets/documents/Pistolsthatarenotclassifiedasassaultweapons.pdf>), although, again, State Defendants' motion papers clearly make reference to both. Corrected Exhibit 46 contains both the list and the images.

- **Exhibit 47 (Printouts from the SAFE Act website, NYSAFEAct.com, regarding shotguns that are not classified as assault weapons):**  
The currently filed exhibit includes a printout from the SAFE Act website containing images of shotguns that are not classified as assault weapons (online at <http://www.governor.ny.gov/assets/documents/Imagesofshotgunsthatarenotclassifiedasassaultweapons.pdf>). However, the current exhibit does not include a printout from the SAFE Act website containing the State Police's non-exhaustive list of shotguns that are not classified as assault weapons (online at [http://www.governor.ny.gov/assets/documents/Shotguns\\_thatareNOTclassifiedasassaultweapons.pdf](http://www.governor.ny.gov/assets/documents/Shotguns_thatareNOTclassifiedasassaultweapons.pdf)), although State Defendants' motion papers clearly make reference to both. Corrected Exhibit 47 contains both the list and the images.

- **Exhibit 48 (Excerpts from the New York State Assembly Debate on the SAFE Act Chapter Amendment, Mar. 28, 2013, pp. 280-85, 296-97, 342-43):** Some pages were inadvertently omitted from the filed exhibit. Corrected



Exhibit 48 is a full and complete version of the excerpted document, including the previously omitted pages 280-81, 285, 296, and 343.

5. Counsel for Defendant Gill has informed us that his client consents to this motion. Plaintiffs' counsel has informed us that Plaintiffs consent to this motion.

Counsel for Defendant Friedman has yet to appear in this action.

Dated: New York, New York  
July 16, 2013

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for the State Defendants  
s/ William J. Taylor, Jr.  
BY: William J. Taylor, Jr.  
Assistant Attorney General  
of Counsel  
120 Broadway  
New York, NY 14202  
Telephone: (212) 416-8426  
Facsimile: (212) 416-6009  
[william.taylor@ag.ny.gov](mailto:william.taylor@ag.ny.gov)

# **CORRECTED EXHIBIT**

# **11**



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

JUL 06 1989

MEMORANDUM TO: Director

FROM: Associate Director (Compliance Operations)

SUBJECT: Report and Recommendation on the  
Importability of Certain Semiautomatic Rifles

The working group has completed its evaluation of the semiautomatic rifles whose importation was suspended pending a determination as to whether these weapons are, as required by 18 U.S.C. § 925(d)(3), of a type "generally recognized as particularly suitable for or readily adaptable to sporting purposes".

Attached for your review and approval is the report and recommendation on the importability of these rifles.

*Daniel R. Black*  
Daniel Black

Attachment

Approved: *Stephen E. Higgins 7/6/89*

Disapprove: \_\_\_\_\_

**REPORT AND RECOMMENDATION OF THE ATF WORKING GROUP  
ON THE IMPORTABILITY OF CERTAIN  
SEMIAUTOMATIC RIFLES**

**SUSPENSION OF ASSAULT-TYPE RIFLE IMPORTATIONS**

On March 14, 1989, ATF announced that it was suspending, effective immediately, the importation of several makes of assault-type rifles, pending a decision as to whether these weapons meet the statutory test that they are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The announcement stated that ATF would not approve, until further notice, the importation of AKS-type weapons, Uzi carbines, FN/FAL-type weapons, FN/FNC-type weapons and Steyr Aug semiautomatic weapons. On April 5, 1989, the suspension was expanded to include all similar assault-type rifles.

For purposes of this suspension, assault-type rifles were rifles which generally met the following criteria:

- a. military appearance
- b. large magazine capacity
- c. semiautomatic version of a machinegun

Based on these criteria, ATF suspended action on pending applications and suspended outstanding permits covering certain firearms listed in Attachment 1. These included both centerfire and .22 rimfire caliber firearms. At that time, ATF indicated that the reexamination of these weapons would take approximately 90 days.

This ATF working group was established to conduct the reevaluation of the importability of these semiautomatic rifles. This report represents the findings and recommendations of the working group.

**BACKGROUND**

Section 925(d)(3) of Title 18, United States Code, as amended, provides in pertinent part that:

The Secretary shall authorize a firearm . . . to be imported or brought into the United States . . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily

adaptable to sporting purposes, excluding surplus  
military firearms. . .

This provision was originally enacted by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, and was also contained in Title I of the Gun Control Act of 1968, which amended Title IV later that year. According to the Senate Report on Title IV, this provision was intended to “curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167.

Moreover, there is legislative history which indicates that Congress intended the standard to allow the importation of traditional sporting rifles, while excluding military-type rifles. The Senate Report on the Gun Control Act observed that the importation standards “. . . are designed and intended to provide for the importation of quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms.” S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968). Significantly, the rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.<sup>1</sup>

An explanation of the effect of this section by one of the sponsors of the bill specifically stated that military firearms would not meet the “sporting purposes” test for importation. The mere fact that a military firearm may be used in a sporting event does not make it importable as a sporting firearm<sup>2</sup>.

There is a reference in the Senate Report on Title IV which notes that the importation prohibition “. . . would not interfere with the bringing in of currently produced firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes, or for personal protection.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167. However, this language is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting since firearms particularly suitable for those purposes can obviously be used for other purposes such as recreational shooting and personal protection.

The determination of a weapon’s suitability for sporting purposes “rest[s] directly with the Secretary of the Treasury.” 114 Cong. Rec. 27465 (1968) (Statement of Sen. Murphy). While the legislative history suggests that the term “sporting purposes” refers to the traditional sports of target shooting, trap and skeet shooting, and hunting, the statute itself provides no criteria beyond the “generally recognized” language of section 925(d)(3). S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2167. The Senate Report on the Gun Control Act stated:

The difficulty of defining weapons characteristics to meet this target [of eliminating importation of weapons used in crime] without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

Following enactment of the Gun Control Act in 1968, the Secretary established a Firearms Evaluation Panel to provide guidelines for implementation of the "sporting purposes" test of section 925(d)(3). This panel was composed of representatives from the military, law enforcement, and the firearms industry. The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. An evaluation sheet (ATF Form 4590) was developed thereafter by ATF and put into use for evaluating handguns pursuant to section 925(d)(3). Attachment 2.

The 1968 Firearms Evaluation Panel did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms which Congress addressed separately, long guns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Thus, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns. Until recently, all rifles and shotguns were approved for importation so long as they were not otherwise excluded by section 925(d)(3). Only rifles and shotguns covered by the National Firearms Act (NFA), 26 U.S.C. S 5845(a) (for example, machineguns and short-barreled rifles and short-barreled shotguns), and surplus military rifles and shotguns had been denied importation.

The Firearms Evaluation Panel did briefly comment on whether a model BM59 Beretta, 7.62mm NATO Caliber Sporter Version Rifle was suitable for sporting purposes. Minutes of the Firearms Advisory Panel, December 10, 1968. Attachment 3. It was the consensus of the Panel that this rifle did have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of the Beretta BM59, together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle, be authorized for importation. (The Beretta BM59 and the Cetme, the predecessor to the HK91, are two of the rifles whose importation has been suspended. The SIG-AMT is no longer being produced.) However, the Panel recommended that importation of these weapons should include the restriction that they not possess combination flash suppressors/grenade launchers.

The working group found the Panel's consideration of these rifles to be superficial and unpersuasive. The vast majority of the work of the 1968 Panel was devoted to handguns and the establishment of the factoring criteria for the importation of handguns. Indeed, we found compelling evidence that these rifles are not generally recognized as particularly suitable for sporting purposes.

The first time that ATF looked beyond the restrictions on NFA and surplus military rifles and shotguns and undertook a meaningful analysis under the "sporting purposes" test was in 1984. At that time, ATF was faced with a new breed of imported shotgun. It was clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to provide evidence of sporting purposes for the weapon, ATF was provided information that the weapon was suitable for police/combat style competitions. ATF determined that this type of competition did not constitute "sporting purposes" under the statute, and that this shotgun was not suitable for traditional sporting purposes, such as hunting, and trap and skeet shooting. Accordingly, importation was denied. Attachment 4.

Thereafter, in 1986, the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). After examination and testing of the weapon, ATF found that it was a semiautomatic version of a selective fire military-type assault shotgun. In this case, ATF determined that, due to its weight, size, bulk, designed magazine capacity, configuration, and other factors, the USAS-12 was not particularly suitable for or readily adaptable to sporting purposes. Again, ATF refused to recognize police/combat competitions as a sporting purpose under section 925(d)(3). The shotgun was reviewed on the basis of its suitability for traditional shotgun sports of hunting, and trap and skeet shooting and its importation was denied. Attachment 5. This decision was upheld by the United States District Court in Gilbert Equipment Company, Inc. v. Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989). The case is currently on appeal to the Eleventh Circuit.

These two cases involving shotguns represent ATF's first thorough examination of the suitability of certain combat-type weapons for sporting purposes. In these cases ATF adopted an interpretation of sporting as being limited to certain traditional sports and not simply any lawful activity in which the weapons might be employed.

### ANALYSIS

#### A. Defining the type of weapon under review.

As noted above, section 925(d)(3) expressly provides that the Secretary shall authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, in its explanation of section 925(d)(3), the Senate Report on the Gun Control Act stated:

This subsection gives the Secretary authority to permit the importation of ammunition and certain types of firearms--(1) those imported for scientific or research purposes or for use in competition or training under chapter 401 of title 10 of the United States Code; (2) an unserviceable firearm other than a machinegun; (3) those firearms not coming within the purview of the National Firearms Act (26 U.S.C. 5801, et seq.) and suitable for sporting purposes (in the case of surplus military weapons this type is limited to shotguns and rifles) and those taken out of the United States. (Emphasis added.)

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

In light of the statutory mandate that types of firearms be scrutinized, the working group first attempted to determine whether the semiautomatic rifles suspended from importation fall within a type of firearm.

The working group determined that the semiautomatic rifles in question are generally semiautomatic versions of true selective fire military assault rifles.<sup>3</sup> As a class or type of firearm they are often referred to as "assault rifles," "assault-type rifles," "military style rifles," or "paramilitary rifles."<sup>4</sup> Since we are only concerned with semiautomatic rifles, it is somewhat of a misnomer to refer to these weapons as "assault rifles." True assault rifles are selective fire

weapons that will fire in a fully automatic mode.<sup>5</sup> For the purposes of this paper, it was necessary to settle on one term that best describes the weapons under consideration, and we will refer to these weapons as "semiautomatic assault rifles." They represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle. The modern military assault rifle, such as the U.S. M16, German G3, Belgian FN/FAL, and Soviet AK47, is a weapon designed for killing or disabling the enemy and, as described below, has characteristics designed to accomplish this purpose.

We found that the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles.<sup>6</sup> These military features and characteristics (other than selective fire) are carried over to the semiautomatic versions of the original military rifle. These features and characteristics are as follows:

#### 1. Military Configuration.

- a. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines.<sup>7</sup> This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. In addition, some States have a limit on the magazine capacity allowed for hunting, usually 8 rounds or less.<sup>8</sup> That a firearm is designed and sold with a large capacity magazine, e.g., 20-30 rounds, is a factor to be considered in determining whether a firearm is a semiautomatic assault rifle.
- b. Folding/telescoping stocks. Many military firearms incorporate folding or telescoping stocks.<sup>9</sup> The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.
- c. Pistol grips. The vast majority of military firearms employ a well-defined pistol grip that protrudes conspicuously beneath the action of the weapon.<sup>10</sup> In most cases, the "straight line design" of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further, such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or competitive target competitions.
- d. Ability to accept a bayonet. A bayonet has distinct military purposes.<sup>11</sup> First, it has a psychological affect on the enemy. Second, it enables soldiers to fight in close quarters



with a knife attached to their rifles. We know of no traditional sporting application for a bayonet.

- e. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired fully automatic.<sup>12</sup> From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Those flash suppressors which also serve to dampen "muzzle climb" have a limited benefit in sporting uses by allowing the shooter to reacquire the target for a second shot. However, the barrel of a sporting rifle can be modified by "magna-porting" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.
  - f. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached.<sup>13</sup> The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired fully automatic. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "sling swivel mount" or simply clamp onto the firearm.
  - g. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades.<sup>14</sup> Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle either by screws or clamps. We are not aware of any particular sporting use for grenade launchers.
  - h. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness.<sup>15</sup> Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally illegal to hunt at night.
2. Whether the weapon is a semiautomatic version of a machinegun.
- The vast majority of modern military firearms are selective fire, i.e., they can shoot either fully automatic or semiautomatic. Since machineguns are prohibited from importation (except for law enforcement use) the manufacturers of such weapons have developed semiautomatic versions of these firearms.<sup>16</sup>
3. Whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

Modern military assault rifles and submachineguns are generally chambered to accept a centerfire cartridge case of 2.25 inches or less.<sup>17</sup> On the other hand, while many traditional sporting rifles will fire a cartridge of 2.25 inches or less, such firearms usually do not have the other military features outlined in Items 1a-h.

These features and characteristics are not usually found on traditional sporting firearms.<sup>18</sup> This is not to say that a particular rifle having one or more of the listed features should necessarily be classified as a semiautomatic assault rifle. Indeed, many traditional sporting firearms are . semiautomatic or have detachable magazines. Thus, the criteria must be viewed in total to determine whether the overall configuration places the rifle fairly within the semiautomatic assault rifle category.

Using these criteria, we determined that, on balance, all of the firearms on the original suspension list are properly included in the semiautomatic assault rifle category, with the exception of the .22 rimfire caliber rifles and the Valmet Hunter. While the .22 rimfire caliber rifles bear a striking resemblance to the true assault rifle, these rifles employ, by and large, conventional .22 rimfire caliber semiautomatic mechanisms.<sup>19</sup> Moreover, they are not semiautomatic versions of a machinegun and contain only a few of the other relevant characteristics. Further, the working group determined that, in general, .22 caliber rifles are generally recognized as suitable for small game hunting. The Valmet Hunter, while based on the operating mechanism of the AK47 assault rifle, has been substantially changed so that it is now akin to a traditional sporting rifle and does not properly fall within the semiautomatic assault rifle category. More specifically, its receiver has been modified and its pistol grips, bayonet, and flash suppressor have been removed. The trigger mechanism has been moved to the rear of the modified receiver to facilitate its use with a traditional sporting stock. Also, its military-style sights have been replaced with traditional sporting-style sights. See Attachment 6.

#### B. Scope of "Sporting Purposes".

The second step of our process was to determine the scope of "sporting purposes" as used in the statute. This is a critical aspect of the process. The broadest interpretation could take in virtually any lawful activity or competition which any person or groups of persons might undertake. Under this interpretation, any rifle could meet the "sporting purposes" test. A narrower interpretation which focuses on the traditional sports of hunting and organized marksmanship competition would result in a more selective importation process.<sup>20</sup>

To determine the proper interpretation, we consulted the statute itself, its legislative history, applicable case law, the work of the original Firearms Evaluation Panel, and prior interpretations by ATF. In terms of the statute itself, the structure of the importation provisions would suggest a somewhat narrow interpretation. In this regard, firearms are prohibited from importation (section 922(1)) with certain specific exceptions (section 925(d)(3)). A broad interpretation which permits virtually any firearm to be imported because someone may wish to use it in some lawful shooting activity would render the statute meaningless.

As discussed earlier, the legislative history suggests a narrow meaning and indicates that the term "sporting purposes" refers to the traditional sports of target shooting, skeet and trap shooting, and hunting. Moreover, the history discussed earlier strongly suggests that Congress intended the provision to allow the importation of traditional sporting type rifles while excluding military type rifles. There is nothing in its history to indicate that it was intended to recognize every conceivable

type of activity or competition which might employ a firearm. To the contrary, the history indicates that mere use in some competition would not make the rifle a sporting rifle.

Finally, the 1968 Firearms Evaluation Panel specifically addressed at least one informal shooting activity and determined that it was not a legitimate sporting purpose under the statute. The panel addressed what is commonly referred to as "plinking" (shooting at randomly selected targets such as bottles and cans). It was the Panel's view that "while many persons participated in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . ."

See Attachment 3.

Based on the above, the working group determined that the term "sporting purpose" should properly be given a narrow reading. It was determined that while hunting has been a recognized rifle sport for centuries, and competitive target shooting is a recognized rifle sport, the so-called activity of plinking is not a recognized sport. Moreover, we believe that reference to sporting purposes was intended also to stand in contrast to military and law enforcement applications. Consequently, the working group does not

believe that police/combat-type competitions should be treated as sporting activities. This position is supported by the court's decision in Gilbert Equipment Company, Inc., v Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989) and is consistent with prior interpretations of ATF as noted on pages 4 and 5 in discussing the Striker-12 shotgun and USAS-12 shotgun.

#### C. Suitability.

The final step in our review involved an evaluation of whether semiautomatic assault rifles are a type of rifle generally recognized as particularly suitable for or readily adaptable to the traditional sporting applications discussed above.

The criminal misuse of semiautomatic assault rifles is a matter of significant public concern and was an important factor in the decision to suspend their importation. Nevertheless, the working group did not consider criminal misuse as a factor in its analysis of the importability of this type of rifle. Instead, the working group confined its analysis to the question of whether this type of rifle meets the test provided in section 925(d)(3).

Rather than criminal misuse, our comprehensive examination of this issue focused on the legal analysis and technical assessment of these firearms discussed earlier. In addition, the working group used the information gathered under Items 1-7 outlined in the next section in determining whether this type of firearm is generally recognized as particularly suitable for sporting purposes. These items take into account technical and marketing data, expert opinions, the recommended uses of the firearms, and data on the actual uses for which the weapons are employed in this country.

In evaluating these firearms, we believe that all rifles which are fairly typed as semiautomatic assault rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability.<sup>21</sup> Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type.

This is consistent with the approach taken with respect to handguns since 1968. Although certain handguns may be used or recommended for sporting purposes, they may fall within the type of easily concealable handguns barred from importation by the administrative factoring criteria used by ATF to determine the importability of handguns. Furthermore, a pistol specifically designed for target shooting, but lacking a safety as required by the factoring criteria, would be a type of handgun prohibited from importation as not particularly suitable for sporting purposes for this reason. Finally, just as ATF allows handguns to be modified so as to meet the factoring criteria, a semiautomatic assault rifle could be modified into a sporting configuration and be importable, as was done in the case of the Valmet Hunter referred to earlier.

#### D. Evaluation of Information from Outside Sources

As part of our comprehensive analysis as to whether semiautomatic assault rifles meet the statutory criteria for importation, the following sources of information were also considered:

1. How has the weapon been advertised, marketed and categorized by the manufacturer and/or importer?
2. How has the use of the rifle been described by firearms technical writers?
3. What is the rifle's reported use by importers?
4. Do hunting guides recommend the rifle?
5. Do editors of hunting magazines recommend the rifle?
6. Is the rifle used in target shooting competitions?
7. Do State game commissions allow the use of the rifle to hunt?

Items 1-6 focus upon how the rifles are marketed, advertised, and recommended for use. Item 7 addresses the legal restrictions pertaining to the use of the weapons for sporting purposes.

The working group reviewed the advertising and marketing literature concerning each of the weapons (Item 1) and reviewed evaluations of the firearms by technical writers (Item 2). In addition, the working group solicited information from the importers of the weapons and other knowledgeable sources (Items 3-6).

Questionnaires were drafted and sent out to licensed hunting guides, State game and fish commissions, local hunting associations, competitive shooting groups, and hunting/shooting magazine editors to determine the extent to which the weapons are used for sporting purposes or recommended for such use. The working group believed that the actual uses of the weapons for sporting purposes would be a factor to be considered in determining whether this type of rifle meets the sporting purposes test.

The review of advertising and marketing literature indicates that these rifles are not generally marketed for hunting or competitive shooting. The review of the technical evaluations revealed that these rifles are not regarded as suitable for these sporting activities.<sup>22</sup>

To the extent that the technical evaluations made recommendations with respect to the use of the rifles suspended from importation, the majority recommended them for law enforcement or military use or for activities such as collecting, plinking, home and self-defense, and combat target shooting. Only 5 of over 50 evaluations reviewed contained recommendations for the use of these firearms for hunting purposes.

The importers were asked to submit information concerning the sporting uses of the semiautomatic rifles they import. Thirty-nine importers were asked to submit this information and 19 responded. In general, their comments were conclusory and stated that their weapons could be used for sporting purposes. A small number of importers, e.g., Gun South, Inc., and Heckler & Koch, Inc., provided more specific data showing the sporting uses made of their firearms by their customers.

Of 3 hunting associations to whom questionnaires were sent, 2 responded. They stated that they place no restrictions on the use of semiautomatic rifles by their members, on the minimum caliber of ammunition used to hunt large game, or on the number of rounds allowed in semiautomatic rifle magazines. However, over 1,800 hunting guides were sent questionnaires and, of these, 706 responded. Over 73 percent of those responding indicated that their patrons used either bolt or lever action rifles for hunting. Only 10 of the 706 guides indicated that their patrons had used any of the rifles whose importation had been temporarily suspended.

Of the 20 hunting/shooting editors to whom questionnaires were sent, 14 responded. Nine of the fourteen editors recommended semiautomatic rifles for use in hunting large game, including 5 who recommended use of any of the rifles subject to the temporary suspension. Eleven of the fourteen editors recommended semiautomatic rifles for target competitions, including 7 who recommended semiautomatic assault rifles for such use.

The recommendations of editors were contradictory. One editor pointed out that what made the assault rifle successful as a military weapon made the semiautomatic version totally unfit for any other use. On the other hand, another editor stated that semiautomatic rifles had certain advantages over conventional sporting rifles especially for the physically disabled and left-handed shooters. While this may be true, there appears to be no advantage to using a semiautomatic assault rifle as opposed to a semiautomatic sporting rifle.

A total of 54 competitive shooting groups were sent a questionnaire and 53 groups responded (some of the responses were from unsolicited groups). Fifty of these groups indicated that they sponsor high power rifle competition events. While none of the groups prohibited the use of the semiautomatic assault rifles in their competitions, none stated that any of the rifles covered by the temporary suspension were used in a specific event.

Finally, the information gathered under Item 7 reveals that most of these weapons could legally be used in most States for most hunting purposes.

The working group reviewed all of the information gathered under Items 1-6 and determined that while these weapons may legally be used for sporting purposes in most States, the evidence was compelling that, as a type of firearm, the semiautomatic assault rifle is not generally recognized as particularly suitable for sporting purposes. The working group found persuasive the technical and expert evaluations of these firearms which generally did not recommend them as particularly suitable for sporting purposes. The group was also impressed by the comments of the hunting guides which showed that these rifles were not widely used for hunting purposes. The comments of the hunting guides are consistent with the opinion of the technical experts who generally do not recommend the rifles for hunting purposes.

The opinions of the editors were fairly divided with respect to the sporting uses of these rifles. The importers generally recommended their own weapons for such uses. The competitive shooting groups indicated that the rifles could be used in certain shooting events. Thus, while there was some evidence that these rifles could be used for hunting and target shooting, there was no evidence of any widespread use for such purposes. The mere fact that they are not generally prohibited from use for sporting purposes does not mean that the rifles meet the test for importation.

### CONCLUSIONS

The working group has dealt with a complex issue, the resolution of which has required the group to take into account interpretations of law, technical assessments of firearms and their physical characteristics, marketing data, the assessment of data compiled from responses to questionnaires and, finally, Bureau expertise with respect to firearms. We fully recognize that particular findings as well as the results will be controversial.

From the cross section of representation within ATF, we have brought to bear our technical, legal, and administrative expertise to resolve the issues in what we believe to be a fair manner, taking into consideration all points of view. While some of the issues were difficult to resolve, in the end we believe that the ultimate conclusion is clear and compelling. These semiautomatic assault rifles were designed and intended to be particularly suitable for combat rather than sporting applications. While these weapons can be used, and indeed may be used by some, for hunting and target shooting, we believe it is clear that they are not generally recognized as particularly suitable for these purposes.

The purpose of section 925(d)(3) was to make a limited exception to the general prohibition on the importation of firearms, to preserve the sportsman's right to sporting firearms. This decision will in no way preclude the importation of true sporting firearms. It will only prevent the importation of military-style firearms which, although popular among some gun owners for collection, self-defense, combat competitions, or plinking, simply cannot be fairly characterized as sporting rifles.

Therefore, it is the finding of the working group that the semiautomatic assault rifle is not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes and that importation of these rifles should not be authorized under 18 U.S.C. § 925(d)(3).

Based on our evaluation, we recommend that the firearms listed on Attachment 7 not be authorized for importation. For the reasons discussed in this report, we recommend that the firearms listed on Attachment 8 be authorized for importation. These are the .22 rimfire caliber rifles and the Valmet Hunter which we do not believe are properly included in the category of semiautomatic assault rifles. Attachment 9 is a compilation of the responses from the questionnaires. Attachment 10 combines the criteria for identifying semiautomatic assault rifles and the items considered in assessing suitability. Attachments 11 and 12 contain the data compiled for each of the criteria listed in Attachment 10. Finally, Attachment 13 contains the source materials used in locating persons and organizations who were sent questionnaires.

### NOTES

1. Paul Wahl, ed., Gun Trader's Guide, 13th Edition, (South Hackensack, NJ. 1987), 155-162.
2. Although a firearm might be recognized as "suitable" for use in traditional sports, it would not meet the statutory criteria unless it were recognized as particularly suitable for such use. Indeed, Senator Dodd made clear that the intent of the legislation was to " [regulate] the importation of firearms by excluding surplus military handguns; and rifles and shotguns that are not truly suitable for sporting purposes." 114 Cong. Rec. 13325 (1968) (Statement of Sen. Dodd) [emphasis added].

Similarly, it is apparent that the drafters of the legislation did not intend for "sports" to include every conceivable type of activity or competition which might employ a firearm; otherwise a "sporting purpose" could be advanced for every firearm sought to be imported. For example, in response to Sen. Hansen's question concerning the meaning of "sporting purposes" in the bill which became section 925(d), Senators Dodd and Hansen engaged in the following colloquy:

Mr. HANSEN. Would the Olympic shooting competition be a "sporting purpose?"

Mr. DODD. I would think so.

Mr. HANSEN. What about trap and skeet shooting?

Mr. DODD. I would think so. I would think trap and skeet shooting would certainly be a sporting activity.

Mr. HANSEN. Would the Camp Perry national matches be considered a "sporting purpose?"

Mr. DODD. Yes: that would not [sic] fall in that arena. It should be described as a sporting purpose.

Mr. HANSEN. I understand the only difference is in the type of firearms used at Camp Perry which includes a wide variety of military types as well as commercial.

Would all of these firearms be classified as weapons constituting a "sporting purpose?"

Mr. DODD. No. I would not say so. I think when we get into that, we definitely get into military type of weapon for use in matches like these at Camp Perry; but I do not think it is generally described as a sporting weapon. It is a military weapon. I assume they have certain types of competition in which they use these military weapons as they would in an otherwise completely sporting event. I do not think that fact would change the nature of the weapon from a military to a sporting one.

Mr. HANSEN. Is it not true that military weapons are used in Olympic competition also?

Mr. DODD. I do not know. Perhaps the Senator can tell me. I am not well informed on that.

Mr. HANSEN. It is my understanding that they are. Would the Senator be inclined to modify his response if I say that is true? (27461)

Mr. DODD. It is not that I doubt the Senator's word. Here again I would have to say that if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event. I think the Senator would agree with that. I do not know how else we could describe it.

Mr. HANSEN. If I understand the Senator correctly, he said that despite the fact that a military weapon may be used in a sporting event it did not, by that action become a sporting rifle Is that correct?

Mr. DODD. That would seem right to me ..... As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons..... I think the Senator and I know what a genuine sporting gun is.

114 Cong. Rec. 27461-62 (1968).(Emphasis added.)

3. Ken Warner, ed., Gun Digest 1989, (Northbrook, IL 1988), pp. 293-300; William S. Jarrett, ed., Shooter's Bible, No. 80, (Hackensack, NJ. 1988), pp. 345-363; Edward Clinton Ezell, Small Arms of the World, (Harrisburg, Pa. 1983), p. 844; Pete Dickey, "The Military Look-Alikes," American Rifleman, (April 1980), p. 31. Also, see generally, Ian V. Hogg, ed., Jane's Infantry Weapons, 1987-88, (New York 1987); Jack Lewis, ed., The Gun Digest Book of Assault Weapons, (Northbrook, IL. 1986).
4. Art Blatt, "Tomorrow's State-of-the-Art Sporting Rifle," Guns & Ammo, (July 1981), p. 48; Jarrett, pp. 345-363; Warner, pp. 293-300.
5. Daniel D. Musgrave and Thomas B. Nelson, The World's Assault Rifles, (Virginia, 1967), p. 1.
6. See generally, Angus Laidlaw, ed., Paul Wahl's Big Gun Catalog/1, (Bogota, NJ. 1988); Musgrave and Nelson; Hogg; Jarrett; and Warner.



7. Ibid.
8. Arizona, 5 rounds; Colorado, 6 rounds; Michigan 6 rounds; New Hampshire, 5 rounds; New York, 6 rounds; North Carolina, 6 rounds; North Dakota, 8 rounds; Oregon, 5 rounds; Pennsylvania, semiautomatic rifles prohibited; Vermont, 6 rounds.
9. See generally, Hogg; Musgrave and Nelson; Ezell; Warner; Jarrett; Laidlaw; and Lewis.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Ibid.
16. Ezell, p. 844; Dickey, p. 31.
17. Musgrave and Nelson, pp. 11-29; and, see generally, Hogg; and Ezell.
18. Ezell, pp.844-866; and, see generally, Warner; Jarrett; and Laidlaw.
19. See, for example, Walter Rickell, "The Plinker's AK GunsMagazine, (July 1986) p. 21; John Lachuk, "Bantam Battle Rifles," Guns & Ammo, (January 1987), p. 37; John Lachuk, ".22 Erma Carbine," Guns & Ammo, (May 1968), p. 58; JackLewis, "Something New: The AK in Twenty-Two," Gun World, (July 1985), p. 32; Roger Combs, "A Most Unique Carbine," Gun World, (December 1985), p. 28; Garry James, "Mitchell Arms AK-22," Guns & Ammo, (November 1985), p. 72.
20. See note 2, colloquy between Senators Dodd and Hansen.
21. Ibid.
22. See generally, bibliography.

### BIBLIOGRAPHY

- "Armalite AR-180 Rifle," American Rifleman, (February 1981), 65-66.
- "Beretta AR. 70 Rifle," American Rifleman, (March 1988), 64-66.
- Blatt, Art. "Beretta M-70/Sport Rifle," Guns & Ammo, (December 1983), 64-65.
- Blatt, Art. "Tomorrow's Sporting Rifles," Guns & Ammo, (July 1981), 48-57, 78, 79.
- Bruce, Robert. "The AUG Assault System," Guns Magazine, (September 1986), 37-39, 42,43, 57-61.
- Clapp, Wiley. "Great To-Do With the Daewoo," The Gun Digest Book of Assault Weapons, (1986), 82-87.
- Combs, Roger. "A Most Unique Carbine," Gun World, (December 1985), 28-31, 47.
- Combs, Roger. "Galil 7.62mm Nato Rifle", Gun World, (October 1985), 32-36.
- Combs, Roger. "The Avtomat Kalashnikov Goes .22," The Gun Digest Book of Assault Weapons, (1986), 182-195.
- Combs, Roger. "The Uniquely Unique F-11," The Gun Digest Book of Assault Weapons, (1988), 188-195.
- "Cooking and Heckling with H & K's HK94A3," Gun World, (August 1984), 18-20.
- Davis, Russ. "Have Your AK and Shoot it, Too," Guns Magazine, (February 1987), 39, 62-64.
- Dickey, Pete. "The Military Look-Alikes," American Rifleman, (April 1980), 30-31, 76.
- Egolf, Dick. "Heckler & Koch's Super Semi-Auto," American Rifleman, (June 1985), 29-32, 65-67.
- Ezell, Edward Clinton. Small Arms of the World. Harrisburg: Stackpole Books, 1983.
- "FN FNC Rifle," American Rifleman, (January 1988), 58-60.
- Ferguson, Tom. "A Hard Look at The AR-180", The Gun Digest Book of Assault Weapons, (1986), 121-127.
- French, Howard. "H & K's 9mm Paracarbine," Guns & Ammo, (November 1983), 42-44.
- Grennell, Dean A. "The Mitchell AK-47," Gun World, (September 1986), 40-41.

"Heckler & Koch 91," American Rifleman, (October 1981), 56-58.

"Heckler & Koch Model 94 Carbine," American Rifleman, (February 1988), 46-48.

Hogg, Ian V., ed. Janes' Infantry Weapons. 1987-1988. New York: Jane's Publishing Company, 1987.

Hunnicut, Robert W. "The Bullpups Have Arrived", American Rifleman, (March 1987), 30-35, 70-71.

James, Frank W. "The Springfield Armory SAR-3, " Special Weapons and Tactics, (July 1989), 42-46.

James, Garry. "Australiana L1A1A Rifle," Guns & Ammo, (December 1987),

James, Garry. "Chinese AK-47 .223," Guns & Ammo, (August 1986), 84-86.

James, Garry. "Mitchell Arms AK-22," Guns & Ammo, (November 1985), 72-73, 97.

James, Garry. "Mitchell Heavy Barrel AK-47," Guns & Ammo, (November 1986), 83-84.

James, Garry. "PTK Chinese M-14S Rifle," American Rifleman, (July 1988), 81-82.

James, Garry. "The SAR-48 Rifle, Springfield Armory Reproduces a Classic," Guns & Ammo, (August 1985), 64-66.

Jarrett, William S., ed. Shooter's Bible. No. 80. Hackensack: Stoege Publishing Company, 1988.

Kapelsohn, Emanuel. "Steyr's Space-Age AUG," The Gun Digest Book of Assault Weapons, (1986), 45-49.

Karwan, Chuck. "The Fetching Famas," Gun World, (October 1988), 18-21, 78.

Karwan, Chuck. "The Rugged Rifles of Springfield Armory," Gun World, (March 1989), 72-76.

Karwan, Chuck. "ilalmet's Assault Family," The Gun Digest Book of Assault Weapons, (1986), 70-75.

Lachuk, John. ".22 Erma Carbine," Guns & Ammo, (May 1968), 58-60.

Lachuk, John. "Bantam Battle Rifles," Guns & Ammo, (January 1987), 36-39, 75-76.

Laidlaw, Angus, ed. Paul Wahl's Big Gun Catalog/I. Bogatao Paul Wahl Corporation, 1988.

Lewis, Jack, ed. The Gun Digest Book of Assault Weapons. Northbrook: DBI Books, Inc., 1986.

Lewis, Jack. "A Family Affair," The Gun Digest Book of Assault Weapons, (1986), 76-81.

- Lewis, Jack. "EMF's Look-Alike AP-74," The Gun Digest Book of Assault Weapons, (1986), 166-171.
- Lewis, Jack. "Something New: The AK in Twenty-Two," Gun World, (July 1985), 32-35.
- Lewis, Jack. "Springfield's S.A.R. 48," The Gun Digest Book of Assault Weapons, (1968), 88-93.
- Lewis, Jack. "The Why and How of Rimfires," The Gun Digest Book of Assault Weapons, (1986), 160-171.
- Mason, James D. "The Maadi in America," Guns Magazine, (January 1983), 33-35, 78.
- Musgrave, Daniel D. and Nelson, Thomas B. The World's Assault Rifles. Washington, DC: Goetz Company, 1967.
- O'Meara, Robert. "The Guns of Israel," Guns Magazine, (January 1989), 33-35, 51.
- Paige, Alan. "The AK-47 As A Bullpup?" Firepower, (January 1989), 48-53.
- Rees, Clair. "Valmet M71-S," Guns & Ammo, (October 1976), 86, 137.
- Rickell, Walter. "The Plinker's AK," Guns Magazine, (July 1986), 21.
- Roberts, J.B. "Bernosky Wins His Fourth," American Rifleman, (Oct. 1980), 49-51.
- Sanow, Ed. "National Match AK-47/S," Firepower, (January 1989), 66-71.
- Shults, Jim. "The Mean Machine," Gun World, (April 1982), 26-28.
- "Springfield Armory S.A.R. 48," American Rifleman, (March 1986), 57-58.
- Steele, Kevin E. "Beretta BM-59," Guns Magazine, (January 1983), 14.
- Steele, Kevin E. "Sporting Firearms Update," Guns Magazine, (February 1980), 52-55, 79, 84-85.
- "Steyr-AUG: The Terrible Toy," Gun World, (December 1984), 32-35.
- Swenson, Thomas J. "The Incredible Uzi," Guns & Ammo, (January 1982), 32-36, 76. Tappan, Mel. "Survive: Survival Rifles-Part 2," Guns & Ammo, (August 1978), 68, 96-97.
- Traister, John. "AK Rifle: Chinese AKS or Type 56S," American Rifleman, (May 1988), 50-51.
- "UZI Semi-Automatic .45 Carbine," American Rifleman, (January 1986), 59.
- "Uzi Semi-Automatic Carbine," American Rifleman, (August 1981), 55-57.

"Valmet M78 Rifle," American Rifleman, (April 1988), 64-66

Wahl, Paul, ed. Gun Trader's Guide, 13th Edition, South Hackensack: Stoeger Publishing Company, 1987.

Warner, Ken, ed. Gun Digest 1989. Northbrook: DBI Books, Inc., 1988.

Wood, J.B. "Beretta's AR70 Sporter," Guns Magazine, (March 1986), 38-39, 65-66.

Woods, Jim. "Firepower From the Far East-Daewoo," Guns Magazine, (February 1986), 28-29, 60-61.

Zwirz, Bob. "Valmet's Military Look," Gun World, (September 1988), 28-30.

**NOTE:** This information was extracted from the document titled, "**Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles**", published in a memorandum to the Director, Stephen E. Higgins from the Associate Director, Daniel R. Black and approved on July 6, 1989.

# **CORRECTED EXHIBIT 20**

City of Buffalo, NY  
Monday, July 1, 2013

## Chapter 180. FIREARMS, ARROWS AND OTHER WEAPONS

**[HISTORY: Derived from Secs. 6, 6-A, 7, 14 and 39 of Ch. IX of the Charter and Ordinances, 1974, of the City of Buffalo; amended in its entirety 5-30-2000, effective 6-12-2000. Subsequent amendments noted where applicable.]**

### GENERAL REFERENCES

Peace and good order — See Ch. 313.

Obstruction of public safety — See Ch. 345.

## Article I. Firearms and Arrows

### § 180-1. Firearms, shotguns, rifles and other dangerous weapons.

A. Purpose and intent. The City of Buffalo finds that violent crime is a serious problem in the City and firearms and other dangerous weapons are frequently used in the commission of crimes, particularly homicides and assaults. The possession of such weapons also often leads to accidental deaths and injuries. The possession and use of assault weapons and ammunition-feeding devices for criminal purposes is increasing and poses a serious danger to public safety. The use of weapons by persons under the influence of drugs and/or alcohol can readily lead to serious injury or death. The possession of weapons in public facilities and places also poses a serious danger to public safety. The possession of toy or imitation weapons which substantially duplicate actual weapons poses a danger to the person possessing the weapon and to others. In order to promote and protect the health, safety and welfare of the public, the City of Buffalo finds it necessary to place restrictions upon the possession and use of such weapons. The restrictions imposed by this section are intended to be in addition to restrictions found in state law and are not intended to conflict with state law provisions.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

#### **AMMUNITION**

Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

#### **AMMUNITION-FEEDING DEVICE**

Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with any center-fire rifle, shotgun or pistol which employs the force of the expanding gases

from a discharging cartridge to chamber a fresh round after each single pull of the trigger which, in the case of a rifle or shotgun, holds in excess of five cartridges, or in the case of a pistol holds in excess of 17 cartridges.

### **ASSAULT WEAPON**

- (1) Any center-fire rifle or shotgun which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which is loaded or capable of being loaded with a combination of more than six cartridges in the ammunition-feeding device and chamber combined. For the purposes of this section, a weapon is capable of being loaded if it is possessed by one who, at the same time, possesses:
  - (a) In the case of a rifle, a fixed or detachable ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such rifle and which has a capacity of more than five cartridges; or
  - (b) In the case of a shotgun, an ammunition-feeding device which is attached to or utilized with or capable of being attached to or utilized with such shotgun and which has a capacity of more than five cartridges.
- (2) A center-fire rifle or shotgun which employs the force of expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which has:
  - (a) A flash suppressor attached to the weapon reducing muzzle flash;
  - (b) A grenade launcher;
  - (c) A sighting device making a target visible at night;
  - (d) A barrel jacket surrounding all or a portion of the barrel, to dissipate heat therefrom; or
  - (e) A multi-burst trigger activator.
- (3) Any stockless pistol grip shotgun.
- (4) For purposes of this section, the term "assault weapon" shall not include any of the following:
  - (a) Any weapon which has been modified to render it permanently inoperable or permanently make it a device no longer defined as an "assault" weapon.
  - (b) Weapons that do not use cartridges or shells.
  - (c) Manually operated bolt-action weapons, lever-action weapons, slide-action weapons or single-shot weapons.
  - (d) Multiple-barrel weapons, revolving-cylinder weapons except shotguns, weapons that use exclusively a rotary Mannlicher-style magazine.
  - (e) Any antique firearm as defined in § 265.00 of the New York State Penal Law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States law.

### **DISPOSE OF**

To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer or otherwise dispose of.

### **DRUG**

Any substance listed in § 3306 of the Public Health Law of the State of New York.

### **DWELLING**

One or more rooms, in a building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, designed for occupancy by one family for cooking, living and sleeping purposes, as defined in Chapter 511, Zoning, of this



Code.

**FIREARM**

Any pistol or revolver, or a shotgun having one or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon, as modified, has an overall length of less than 26 inches; or a rifle having one or more barrels less than 16 inches in length or any weapon made from a rifle (whether by alteration, modification or otherwise) if such weapon, as modified, has an overall length of less than 26 inches. For purposes of this definition, the length of a barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Such definition, except as otherwise indicated, shall include both loaded and unloaded firearms, except that it shall not include any antique firearm as defined in federal or New York State law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States law.

**LOCKING DEVICE**

A design adaptation or attachable accessory that will prevent the use of the firearm, rifle or shotgun by an unauthorized user, and includes but is not limited to a trigger lock, which prevents the pulling of the trigger without the use of a key, or a combination handle, which prevents the use of the firearm, rifle or shotgun without the alignment of the combination tumblers.

**POSSESS**

Have physical possession or otherwise to exercise dominion or control over. The presence in an automobile of any firearm, rifle or shotgun which is openly visible is presumptive evidence of its possession by all persons occupying such automobile at the time such firearm, rifle or shotgun is found, except if such firearm, rifle or shotgun is found in a vehicle for hire.

**PUBLIC PLACE**

Any street, including the sidewalk portion thereof, park, playground, recreation area, cemetery or lot owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, which is generally accessible to the public, except grounds used for educational purposes.

**PUBLIC FACILITY**

Any building or facility owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, except buildings or facilities used for educational purposes.

**RIFLE**

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

**SHOTGUN**

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the

explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

- C. No person shall possess a loaded or unloaded firearm, rifle, shotgun or air gun, or a dagger, dangerous knife, dirk, razor or stiletto, in a public place or public facility in the City. This prohibition shall not apply to:
- (1) A police officer or peace officer authorized to possess the same.
  - (2) A government employee or licensed security guard authorized or required by employment or office to possess the same while acting within the scope of such employment.
  - (3) A person in the military service of the State of New York or the United States when duly authorized to possess the same.
  - (4) A person transporting a rifle or shotgun in a motor vehicle in the City in accordance with the provisions of § 11-0931, Subdivision 2, of the New York State Environmental Conservation Law, or otherwise transporting an unloaded rifle, shotgun or air gun in the City, provided that the same is completely enclosed or contained in a nontransparent carrying case and either:
    - (a) Said carrying case is locked; or
    - (b) A locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired.
  - (5) An authorized person who, for the purpose of shooting practice, possesses a weapon at an established target range in a public place other than a park or public facility.
  - (6) A person voluntarily surrendering the same in accordance with the provisions of Section 265.20 of the Penal law.
  - (7) Possession of a firearm by a person licensed to carry a firearm pursuant to § 400.00 of the Penal Law or possession or transportation by a gunsmith or dealer in firearms in accordance with a license issued by the State of New York or the United States, except that this subsection shall not apply in a park or a public facility other than a parking garage.
- D. No person shall store a firearm, rifle, shotgun or air gun in a dwelling in the City unless said firearm, rifle, shotgun or air gun is completely enclosed or contained in a nontransparent locked carrying case or in a locked gun rack, cabinet, closet or safe, or a locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired. This requirement shall not apply to a rifle, shotgun or licensed firearm carried on the body of the owner or within such close proximity of the owner that the owner can retrieve it as quickly and easily as if it were carried on the owner's body.
- E. No person shall dispose of any firearm, rifle, shotgun, air gun or ammunition in the City. This prohibition shall not apply to:

- (1) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States.
  - (2) A person disposing of the same to a gunsmith or dealer in firearms duly licensed by the State of New York or the United States.
  - (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law.
  - (4) A person disposing of a licensed firearm in accordance with law.
  - (5) Disposition by intestate or testamentary bequest.
  - (6) A person disposing of a rifle, shotgun, air gun or ammunition to a family member.
- F. No person shall possess an assault weapon or an ammunition-feeding device in the City. This prohibition shall not apply to:
- (1) A police officer or peace officer authorized to possess the same.
  - (2) A person in the military service of the State of New York or the United States when duly authorized to possess the same.
  - (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal law.
  - (4) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the City.
- G. No person shall dispose of an assault weapon or ammunition-feeding device in the City. This prohibition shall not apply to:
- (1) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law.
  - (2) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police offices or persons in the military service or for delivery outside of the City.
- H. No person shall carry a firearm, shotgun, rifle or air gun in the City while such person has 1/10 of 1% or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's blood, breath, urine or saliva.
- I. No person shall carry a firearm, shotgun, rifle or air gun in the City while in an intoxicated condition.
- J. No person shall carry a firearm, shotgun, rifle or air gun in the City while the person's ability to safely carry such weapon is impaired by the use of a drug.

K. Any person who carries a firearm, shotgun, rifle or air gun in the City shall be deemed to have given consent to a breath test and a chemical test of the person's breath, blood, urine or saliva for the purpose of determining the alcoholic or drug content of the person's blood, provided that any test is administered at the direction of a police officer having reasonable grounds therefor. A chemical test must be administered within two hours after such person has been placed under arrest for a violation of this section or any other law or ordinance involving the use or possession of a firearm, rifle, shotgun or air gun, or within two hours after a breath test indicates that alcohol has been consumed by such person. Upon the trial of any action arising out of an arrest for a violation of Subsection H, I or J of this section, the court shall admit evidence of the amount of alcohol or drugs in the blood of the person carrying the firearm, shotgun, rifle or air gun as shown by a test administered pursuant to this section. Evidence of a refusal to submit to a chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of such subsections, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and the person persisted in such refusal.

L. Discharge of weapons; permits.

(1) No person shall discharge an air gun, shotgun, rifle, assault weapon, machine gun, submachine gun or a firearm of any kind or description in the City, except police officers, peace officers, members of the military and persons holding permits as in this subsection provided.

(2) The Commissioner of Police is hereby authorized to grant permits for the discharge of shotguns at clay pigeons at any particular location or for the discharge of weapons at target ranges subject to such restrictions and conditions as the Commissioner may deem necessary. Any person holding such a permit shall obey all the restrictions and conditions contained herein.

M. Penalties for offenses. A violation of any provision of this section shall be punishable by a fine not to exceed \$1,500 or by imprisonment not to exceed 15 days, or by both such fine and imprisonment.

N. The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid, the decision of the court shall not affect or impair any of the remaining provisions of the same. It is hereby declared to be the intention of the Council that this section would have been adopted had such unconstitutional or invalid provision not been included herein. If any term or provision of this section shall be declared unconstitutional, invalid or ineffective in whole, or in part, by a court of competent jurisdiction, then to the extent that it is not unconstitutional, invalid or ineffective, such term or provision shall be in force and effect, nor shall such determination be deemed to invalidate the remaining terms or provisions thereof.

## **§ 180-2. Carrying loaded shotgun or rifle; exceptions.**

Nothing herein contained shall be construed to prohibit the possession, custody or use of said shotgun or rifle for the lawful purpose of self-defense or the defense of others.

### § 180-3. Sale and use of arrows by children.

- A. No person shall offer, sell, loan, lease or give broadhead arrows or broadhead tips, also known as "hunting arrows or tips," to any child under the age of 16 years.
- B. The unlawful use of bows and arrows or other archery devices and the unlawful possession by a child under 16 years of age of broadhead arrows or tips is hereby declared a nuisance, and said unlawfully used or possessed archery equipment shall be destroyed as a nuisance in accordance with law.

### § 180-4. Throwing of missiles prohibited; use of designated areas required.

No person shall throw stones, snowballs, missiles or other objects or shoot with or use a bow and arrow or sling or play at ball in a public place or a private place of assemblage except as to such public or private places designated for such use.

## Article II. Open Display or Carrying of Weapons in Certain Public Buildings

### § 180-5. Legislative findings.

The Common Council, in order to assure the proper protection, health, safety and welfare of persons lawfully in the public buildings of the City of Buffalo and in order to ensure the performance of essential governmental functions by City employees without threat or intimidation to such employees or others, finds it to be in the public interest to prohibit the open display or transport of any weapon in certain public buildings of the City.

### § 180-6. Definitions.

When used in this article, the following words and phrases shall have the meanings herein ascribed to them:

#### **OPENLY CARRY OR DISPLAY**

The possession or transport by any person of a weapon, as hereinafter defined, in such a manner that the weapon is visible to persons in the immediate vicinity, except where such possession or transportation is consistent with an authorized activity of function at the specific City building where such possession occurs.

#### **PERSON**

Any person, except a police officer or a peace officer.

#### **PUBLIC BUILDING**

The following buildings, structures or property owned, occupied or operated by the City of Buffalo:

- A. City Hall.
- B. City Court Building.
- C. Dunn Tire Park.

D. Johnnie B. Wiley Sports Pavilion.  
E. Kleinhans Music Hall.

**WEAPON**

A firearm, electronic dart gun, gravity knife, switchblade knife, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sandbag, shuriken, sandclub, slingshot dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any other dangerous or deadly instrument or weapon.

**§ 180-7. Prohibited acts.**

No person shall openly carry or display a weapon in any public building owned, occupied or operated by the City of Buffalo.

**§ 180-8. Surrender and return of weapon.**

No person who openly carries or displays a weapon in any public building shall refuse to surrender such weapon at the request of any police officer or peace officer. Any weapon so surrendered shall be returned to such person upon his or her departure from the public building, provided that the possession thereof is lawful.

**§ 180-9. Possession of illegal weapons.**

Nothing contained in this chapter shall be deemed to authorize the possession of any weapon, the possession of which is made unlawful by any other law, statute, ordinance or resolution.

**§ 180-10. Possession of legal weapons.**

Nothing contained in this chapter shall be deemed to prohibit the possession of any weapon otherwise lawful under the circumstances herein specified.

# **CORRECTED EXHIBIT**

***27***

**NYS ASSEMBLY**

**JANUARY 15, 2013**

MR. DIPIETRO: So then they'll turn themselves in, I guess.

MR. LENTOL: I'm sorry?

MR. DIPIETRO: So they'll have a misdemeanor so the police won't go pick them up. They'll have to turn themselves in, is that...

MR. LENTOL: Well, technically, sometimes if that weapon is being used in a crime or somebody is carrying it down the street and the cop stops them and they say, *Hey, this guy's got an illegal assault weapon*, he would be charged with an A misdemeanor, but I don't know and the State Police haven't told me that they're going to go out and look for assault weapons. The idea really here is to prevent people from doing it because, as you've suggested, there are many law-abiding citizens in this State. They don't want to break the law. They will, the law-abiding citizens that you're talking about, will register under the law because that's their duty and they understand it and I recognize that. We're not really talking about those people. We're talking about those who fail to register that we need to police and we're trying to get a handle on that by this bill.

MR. DIPIETRO: Thank you. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, Mr. DiPietro.

Ms. Schimel.

MS. SCHIMEL: Thank you, Mr. Speaker. I have a question, Mr. Lentol.



**NYS ASSEMBLY**

**JANUARY 15, 2013**

MR. LENTOL: Yes, Michelle.

MS. SCHIMEL: Yes. Will you yield?

MR. LENTOL: Yes, I will.

MS. SCHIMEL: It's not really under Penal Law, but under the Environmental Conservation Law, I just want to confirm this, that in New York State for hunting, what is the maximum number of rounds that you can use, let's say, to hunt big game? Isn't there restrictions in terms of hunting; do you know?

MR. LENTOL: Yes. In the En Con Law, it's six.

MS. SCHIMEL: Six. So, for that matter, this bill gives, if you're not hunting, another round for good measure so-to-speak. Thank you.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill.

MS. SCHIMEL: This is a historic day and I stand with the Governor and the Houses, both Houses of the New York State Legislature. We're going to pass the strongest, most comprehensive plan to ban assault weapons, high-capacity magazines, increase penalties on illegal gun possession, enacting - finally - a universal background check and strengthening databases of known violently-ill patients. We will be the first in the nation. In the aftermath of the tragedies of Newtown and Webster and far too many to even name, I am pleased to report I was on the Senate floor yesterday, it had bipartisan support.

Make no mistake about it, everyone. I repeat, make

**NYS ASSEMBLY**

**JANUARY 15, 2013**

three pulls?

MR. LENTOL: That's not a requirement in the bill.

MS. RUSSELL: Okay. Thank you. I'm just wondering, do you need to obtain a license to own or possess an assault weapon under this legislation?

MR. LENTOL: No. Just register it.

MS. RUSSELL: Okay. What about a semi-automatic weapon or a manual-action weapon? Will you need a license to own those?

MR. LENTOL: Only if it's a handgun, a Glock or some other handgun.

MS. RUSSELL: Can you also tell me what the effect would be on old guns, say collector's items of guns from --

MR. LENTOL: They're not illegal under this bill. They're allowed to be possessed, continued to allowed to be possessed.

MS. RUSSELL: And how old do they have to be in order to fall under that?

MR. LENTOL: Fifty years.

MS. RUSSELL: Fifty years. So if a gun is more than 50 years old, regardless if it falls within the definition of an assault weapon --

MR. LENTOL: Yes. Curios is the term of art used in the legislation.

MS. RUSSELL: Okay. These issues are very

**NYS ASSEMBLY**

**JANUARY 15, 2013**

important to me so thank you for taking the time to clarify these issues. I appreciate it. Thank you, Mr. Speaker, Mr. Lentol.

ACTING SPEAKER TITONE: Mr. McLaughlin.

MR. MCLAUGHLIN: Thank you, Mr. Speaker.

Will Mr. Lentol yield?

MR. LENTOL: Yes, Mr. McLaughlin.

MR. MCLAUGHLIN: Thanks, Joe. Happy birthday.

MR. LENTOL: Thank you.

MR. MCLAUGHLIN: I'm sure you wanted to spend it right here.

Couple of questions for you and sorry if they seem a little nit-picky or detailed, but we didn't get this bill until very late last night and that's what happens when things get rushed through around here, so we're kind of still digesting some of this. So a couple of questions for you. On the magazines being dropped, the magazine limit being dropped from 10 to 7.

MR. LENTOL: Yes.

MR. MCLAUGHLIN: The simple question is why? Why are we limiting law-abiding citizens' ability to defend themselves in a home invasion by 30 percent?

MR. LENTOL: I think the short answer to that bill is that if you have a magazine with only seven bullets it will limit the amount of people you could unlawfully kill.

MR. MCLAUGHLIN: Well, that's true. It also would limit the ability to defend yourself, would it not, from people

**NYS ASSEMBLY**

**JANUARY 15, 2013**

that are invading your home?

MR. LENTOL: Change the clip.

MR. MCLAUGHLIN: Change the clip. I'm sure the people who are under invasion will be we thrilled to hear that, "change the clip." We heard a Senator say that the other day on the radio, change the magazine or change the clip and call the police. That will work great in rural Albany County or up in the Adirondacks where your nearest police may be 60 miles away, so I don't think they'll be too thrilled to hear that response. But I heard you say earlier, and part of the thing that we like is that there's increased penalties for criminals to illegally use weapons. The truth is we already have penalties for illegal use of weapons, do we not?

MR. LENTOL: Yes. It raises the penalties.

MR. MCLAUGHLIN: And criminals, being what they are, don't seem to care too much about any penalty that's why they are, by definition, criminals. So, I'm just wondering why we think that this is, after 600 failed gun laws, apparently, in this State, why this is the magic elixer that is suddenly going to get criminals to pay attention to a law? Isn't it kind of a fallacy to think that and aren't we just infringing upon law-abiding citizens' rights to keep and bear arms? And I'm not sure what part of will not be or cannot or shall not be infringed is subject to debate or difficult to understand, but are we not just infringing upon the law-abiding citizen?

MR. LENTOL: No, we're not. I think you're mistaken in that this bill has a two-pronged approach. It raises the

**NYS ASSEMBLY**

**JANUARY 15, 2013**

of smart people out there and they have a lot of good ideas that we, unfortunately, didn't have an opportunity to listen to. So, I'm voting in the negative.

ACTING SPEAKER AUBRY: Thank you, Mr. Crouch.

Ms. Glick.

MS. GLICK: Thank you, Mr. Speaker. We've heard a great many comments from colleagues, most of which were very thoughtful, whether you're for or against the legislation. We always hear about the law-abiding citizen, but we make lots of restrictions, even though most people are going to follow the law, sometimes they don't. Sometimes they don't because of extreme circumstances that we can't foresee. For a long time, we didn't do anything about drunk driving because these were all law-abiding citizens. Many of them were police officers, judges, legislators and we didn't didn't do anything about that. But the carnage became so extreme and Mothers Against Drunk Driving stood up and said we have to make changes because too many people are dying.

Now, I don't know the number of weapons that are out there in comparison to the number of cars -- and we can manipulate statistics. We do that all the time in our debates. But, for example, literally, millions of people take the New York City subways every day, every day, millions of people are on the subways. So, statistically, if you take the number of people and the number of dreadful incidents where either people have been killed by subways

**NYS ASSEMBLY****JANUARY 15, 2013**

because they choose to jump in front of one or are attacked and pushed in front of one, statistically it is an incredibly small number. But, we are in discussions in New York City about how we can adjust the way in which trains arrive. Do they come in more slowly? There are things we're trying to do. So, just because we haven't done certain things in the past doesn't mean that we can't address them in the future. We had simpler times. We grew -- you know, when I grew up, every weekend, Saturday mornings, Hopalong Cassidy, the Lone Ranger, everybody had a cap gun, never thought twice about it. Now parents are a little less anxious to have their youngsters acclimated to what becomes a deadly weapon in someone's hands.

After the Virginia Tech mass murders -- and let's be clear, these aren't tragedies, these are mass murders -- we're not even referencing Virginia Tech anymore because so many other mass murders have occurred since then. But, after Virginia Tech there was an experiment that was done and they took students, because the answer was kids should be armed. The professors should be armed. So, they did a little experiment and they took young people who were somewhat familiar with weapons and they put them in a lecture hall and they were given guns that, I guess, I don't think it was laser tag, maybe it was a little paint pellet or something, and they knew that there would be an intruder. They just, of course, didn't know when. And in came an intruder, you know, a make-believe intruder with a gun and what ensued was chaos. All of the young people who thought that they were very good at handling weapons wound up, in the chaos,

**NYS ASSEMBLY**

**JANUARY 15, 2013**

shooting their classmates. Nobody actually hit the intruder, as it turns out, but they wound up hitting each other or missing the people they were sure they had hit. And it turns out that adrenaline, which is, you know, a physiological reaction to an emergency, affects your large motor muscles so you can run like hell, but it really messes up your small motor control, which is why you need highly-trained people using weapons in emergency situations and, even then, they don't always get it right.

There was an emergency on Fifth Avenue sometime in the last several months. A gentleman walked up and shot a former co-worker because he believed he had been responsible for him losing his job. The police responded quickly. They did get the perpetrator, and the perpetrator was shot dead, although he wasn't fleeing. He was standing, walking away. But he had the gun and he was walking away, but the police, in a crowded situation, wound up shooting either seven or nine other people. And those were trained police officers. So, the notion that people can, unless they're highly trained, defend themselves with automatic weapons, semi-automatic weapons, is a little bit of a fantasy. Even the most conservative Judge Scalia said that there can be reasonable restrictions imposed on gun ownership without violating the Second Amendment. And I know nobody wants to hear that. Nobody wants to hear that.

I don't think we should take people's guns away. People who -- I think they should be trained. I think they should be licensed. And if they have committed domestic violence, they should

**NYS ASSEMBLY**

**JANUARY 15, 2013**

never have a gun. Not that they got over their -- how many women have been murdered holding an order of protection because the gun that their police officer husband or ex-husband had was used to murder them and then, in many instances, to kill himself?

We deal with reality the best way we can, and it's become a more violent society. Maybe the answer is take away all the guns, give everybody a video game and then they'd have to hit you over the head with it if they wanted to kill you. But, obviously, people have a legitimate right to hunt. Many people feed their families that way. Nobody wants to take those guns away from people, but nobody is hunting with semi-automatic weapons. You do not want to have eight or nine bullets in what you hope will be your family's next meal. So -- and, you know what? Somebody mentioned explosives. Well, you know, we do kind of track large purchases of fertilizer to ensure that it is going for a legitimate use because people are now using them for, again, mass murders. We're not going to solve every problem. But I do think that not trying to control the proliferation of high-capacity magazines, my personal preference would be that people could only use them at ranges because if you're going -- if you want to use those kind of weapons, you should be doing it in a controlled environment, and maybe they get kept at the range and you check them out so that they -- so that we know that they're properly secured. You know, that's what I would do because I think that's what makes sense, but that's not what we're doing and I'm not looking to confiscate weapons. Everybody, you know, has a right. And in New



**NYS ASSEMBLY**

**JANUARY 15, 2013**

York City we restrict it because it's a very congested area. It doesn't mean that we don't have people murdering each other, but we actually haven't had major invasions in schools. And you know what? It's not just schools. How many people have had invasions in churches? Do we arm the clergy? We've had them at Bible study. So, this isn't about people who behave morally and people who have no morals and are criminals. There are people who are seemingly normal until -- my sister always says, *He was a very quiet man. He was a very quiet man until he killed his entire family at Thanksgiving*, because of these horrible situations that we hear about.

So, we're not going to solve everything, but that doesn't mean that we don't try to make some reasonable controls. People who are law-abiding, responsible gun owners will now know that they have to register and re-up their registration. There are people who don't register their cars and don't carry insurance, but does that mean we just throw up our hands and say, *Well, nobody's going to register their cars, no one's going to get insurance?* No. We believe in a civil society that people will follow reasonable rules. These are reasonable rules, and it's an attempt to protect the majority. And I don't know whether it's a majority or not that have weapons in their homes. In some places it is; in some places it certainly is not.

But I would just close by saying we try to respond to what is happening in our society today, not look back 100 years ago and say that there were no police departments, there were no people who lived anywhere near you, you were on your own. So, the Second

**NYS ASSEMBLY**

**JANUARY 15, 2013**

Amendment was you can have a gun, but that gun, you know, isn't going to be able to spray ten bullets into a small crowd in a parking lot in Arizona. And in Arizona you can carry guns, but there are places that have symbols, guns, zero, you know, with a sign with an "X" through it because they don't want you. The law allows you, but don't come in here with your firearm. So, these are reasonable restrictions. I would urge people to think about the greater good and to vote in the affirmative.

ACTING SPEAKER AUBRY: Thank you, Ms. Glick.

Ms. Tenney.

MS. TENNEY: Thank you, Mr. Speaker, and congratulations on your promotion. Mr. Lentol, I'm going to give you a break today on your birthday. So, on the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill.

MS. TENNEY: Let me echo the sentiments of my colleagues who spoke so eloquently on the Second Amendment and preserving the rights, our Second Amendment rights and our law-abiding citizens. Let me make a point of clarity in response to one of our colleagues. The Virginia Tech shooter used a handgun and had a backpack filled with ten clip -- a ten magazine clip. It took about three-and-a-half seconds to change a clip. None of that is going to be prevented by this bill that we're passing, hopefully not, but I'm afraid we will, today. So, I just want to point that out. And I would also like to speak to the problem-solving aspect discussed by one of

# **CORRECTED EXHIBIT 45**



# RIFLES THAT ARE NOT CLASSIFIED AS ASSAULT WEAPONS

*Please note this list is not exhaustive and only includes some of the most common models*



# Rifles that ARE NOT classified as assault weapons:

Browning A-Bolt

Browning A-Bolt III

Browning BAR

Browning BAR LongTrac Series

Browning BAR ShortTrac series

*(Except ShortTrac Hog Stalker Realtree Max-1)*

Browning BAR Stalker Series

Browning BL 22

Browning BLR Series

BAR Safari

Browning Semi-Auto 22

Browning T-Bolt Series

CZ 527 Varmint

David Pedersoli 1886

Henry .22

Henry Pump Octagon

Marlin 308 Series

Marlin 336C

Marlin 338 Series

Marlin 795

Marlin 1894

Marlin Model Golden 39A

Marlin X7 Series

Marlin XLR Series

Marlin XT



# Rifles that ARE NOT classified as assault weapons:

Mossberg 30-30

Mossberg 702

Remington Junior Target 521TL

Remington Keene rifle

Remington Nylon 66

Remington M1903 Springfield rifle

Remington Model 5

Remington Model 6

Remington Model 7

Remington Model 14

Remington Model 30

Remington Model 34

Remington Model 40

Remington Model 121 Fieldmaster

Remington Model 141

Remington Model 241

Remington 270

Remington 336

Remington Model 504

Remington Model 511 Scoremaster

Remington Model 512 Sportmaster

Remington Model 513

Remington Model 572 Fieldmaster



# Rifles that ARE NOT classified as assault weapons:

Remington Model 600  
Remington Model 660  
Remington Model 673  
Remington Model 700  
Remington Model 710  
Remington Model 721  
Remington Model 722  
Remington Model 725  
Remington 760  
Remington Model 770  
Remington Model 788  
Remington Model 798  
Remington Model 799

Remington 7600  
Remington Modular Sniper Rifle  
Remington XM2010 ESR  
Remington Woodmaster  
Savage 11/111 BTH Hunter Series  
Savage 11/111 FCNS Hunter Series  
Savage 12 BTCSS Varmint Series  
Savage 12 BVSS Varmint Series  
Savage 12 FCV Varmint Series  
Savage 12 FLV Varmint Series  
Savage 12 FV Varmint Series



## Rifles that ARE NOT classified as assault weapons:

Savage 12 LRPV Left Port Varmint Series

Savage VLP DBM Varmint Series

Savage 14/114 American Classic

Savage 14/114 American Classic Stainless

Savage 17 Series 93R17 BRJ

Savage 17 Series 93R17 BSEV

Savage 17 Series 93R17 BTV

Savage 17 Series 93R17 BTVLSS

Savage 17 Series 93R17 BTVS

Savage 17 Series 93R17 BVSS

Savage 17 Series 93R17 Camo

Savage 17 Series 93R17 F

Savage 17 Series 93R17 FSS

Savage 17 Series 93R17 FV

Savage 17 Series 93R17 FVSS

Savage 17 Series 93R17 GLV

Savage 17 Series 93R17 GV

Savage 17 Series 93R17 TR

Savage 17 Series 93R17 TRR-SR

Savage 25 Lightweight Varminter

Savage 25 Lightweight Varminter- T

Savage 25 Walking Varminter

Savage 64 F

Savage 64 FSS

Savage 64 G





# Rifles that ARE NOT classified as assault weapons:

Savage 93 BRJ Magnum Series  
Savage 93 BSEV Magnum Series  
Savage 93 BTVS Magnum Series  
Savage 93 F Magnum Series  
Savage 93 FSS Magnum Series  
Savage 93 FV Magnum Series  
Savage 93 FVSS Magnum Series  
Savage 93 G Magnum Series  
Savage 93 GL Magnum Series  
Savage Axis 7mm  
Savage Axis Camo  
Savage Axis SR  
Savage Axis Stainless  
Savage Axis Stainless XP  
Savage Axis XP

Savage Axis XP Camo  
Savage Axis XP Youth  
Savage Axis XP Youth Camo  
Savage Axis XP Youth Muddy Girl  
Savage Axis Youth  
Savage Mark II BRJ  
Savage Mark II BSEV  
Savage Mark II BTV  
Savage Mark II BTVLSS  
Savage MARK II BTVS  
Savage Mark II BV  
Savage MARK II Camo



## Rifles that ARE NOT classified as assault weapons:

Savage Mark II F  
Savage Mark II FSS  
Savage Mark II FV  
Savage Mark II FV-SR  
Savage Mark II FVT  
Savage Mark II G  
Savage Mark II GL  
Savage Mark II GLY  
Savage Mark II GY  
Savage Mark II TR  
Savage Mark II TRR-SR  
Savage Target Series 12 Bench Rest  
Savage Target Series 12 F Class  
Savage Target Series 12 F/TR  
Savage Target Series 12 Long Range Precision  
Savage Target Series Palma

Savage Weather Series 16/116 FCSS  
Savage Weather Series 16/116 FHSS  
Savage Weather Series 16/116 FLHSS  
Savage Weather Series 16/116 FSS  
Springfield 30-06  
Uberti 1866 Yellowboy  
Winchester Model 70  
Winchester Model 71  
Winchester Model 76  
Winchester Model 94  
Winchester Model 1873  
Winchester Model 1885  
Winchester Model 1892  
Winchester 1907



# IMAGES OF RIFLES THAT ARE NOT CLASSIFIED AS ASSAULT RIFLES



# Bolt Action Rifle

## *Not Assault*





# Bolt Action Rifle

## *Not Assault*



**CZ 527 Varmint**



**Marlin X7**



# Bolt Action Rifle

## *Not Assault*

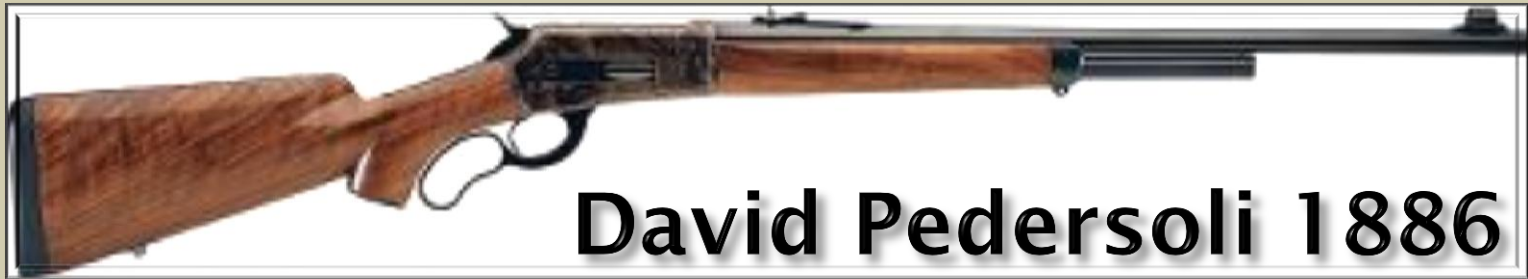


**Savage Axis**



# Lever Action Rifle

## *Not Assault*



**David Pedersoli 1886**



**Mossberg 464**





# Lever Action Rifle

## *Not Assault*







# Lever Action Rifle

## *Not Assault*



**Henry Lever Action .22**



**Marlin 336c**



# Pump Action Rifle

## *Not Assault*



**Remington 760**



# Pump Action Rifle

## Not Assault



**Henry Pump Octagon**



**Remington 7600**



# Semiautomatic Rifle

## *Not Assault*



Remington 750 Woodmaster



Browning LongTrac 300



# Semiautomatic Rifle

## *Not Assault*





# Semiautomatic Rifle

## *Not Assault*



# **CORRECTED EXHIBIT 46**



# PISTOLS THAT ARE NOT CLASSIFIED AS ASSAULT WEAPONS

*Please note this list is not exhaustive and only includes some of the most common models*





# Pistols that ARE NOT classified as assault weapons:

ATI FX45

Beretta – All Revolver Models

Beretta – 84FS

Beretta – 85FS

Beretta – 92A1

Beretta - 92FS

Beretta – 96A1

Beretta -3032 Tomcat

Beretta – BU9 Nano

Beretta – M9

Beretta – Model 21

Beretta – PX4 Storm

Beretta – PX4 Sub

Browning 1911-22 Series

Browning Buck Mark Handgun Series Only  
(Buck Mark Series Rifles are Assault Weapons)

Charter Arms Bulldog

Charter Arms Mag Pug

Charter Arms Pathfinder

Charter Arms Pitbull

Charter Arms Undercover

Charter Arms Undercoverette

Colt 70

Colt 1991

Colt Cobra

Colt Combat Elite

Colt Defender



# Pistols that ARE NOT classified as assault weapons:

Colt Gold Cup

Colt New Agent

Colt New Frontier

Colt Mustang

Colt Single Action Army

Colt Rail

Colt XSE

Dan Wesson CCO

Dan Wesson CZ

Dan Wesson ECO

Dan Wesson Guardian

Dan Wesson Pointman Nine

Dan Wesson Razorback

Dan Wesson RZ-45 Heritage

Dan Wesson Specialist

Dan Wesson Valor

Dan Wesson V-Bob

Detonics Combat Master

Detonics DTX

Detonics MTX

Detonics Nemesis

Glock Model G17

Glock Model G19

Glock Model G21

Glock Model G22

Glock Model G23



# Pistols that ARE NOT classified as assault weapons:

Glock Model G26

Glock Model G27

Glock Model G30

Glock Model G33

Glock Model G34

Glock Model G35

Glock Model G37

Glock Model G39

Heckler&Koch HK45

Heckler&Koch Mark 23

Heckler&Koch P30

Heckler&Koch P30L

Heckler&Koch P2000

Heckler&Koch P2000SK

Heckler&Koch USP

Heckler&Koch USP Compact

Heckler&Koch USP Tactical

Hi-Point C-9

Hi-Point CF-380

Hi-Point JCP 40

Hi-Point JHP 45

Kahr PM40

Kahr PM45

Kel-Tec PF-9

Kel-Tec P-11

Kel-Tec P-32



# Pistols that ARE NOT classified as assault weapons:

Kel-Tec P-3AT

Kimber Aegis II

Kimber CDP II

Kimber Covert II

Kimber Crimson Carry II

Kimber Custom Kimber Eclipse II

Kimber Gold Match

Kimber Raptor II

Kimber Solo

Kimber Super Carry

Kimber Tactical II

Kimber Team Match

Kimber Ultra Carry II

Rossi R35102

Sig Sauer P239

Sig Sauer P290

Smith & Wesson 22A

Smith & Wesson 27

Smith & Wesson 36

Smith & Wesson 41

Smith & Wesson 58

Smith & Wesson 60

Smith & Wesson 67

Smith & Wesson 317

Smith & Wesson 340PD

Smith & Wesson 351



# Pistols that ARE NOT classified as assault weapons:

Smith & Wesson 442

Smith & Wesson 460XVR

Smith & Wesson 500

Smith & Wesson 617

Smith & Wesson 625

Smith & Wesson 629

Smith & Wesson 637

Smith & Wesson 638

Smith & Wesson 642

Smith & Wesson 647

Smith & Wesson 649

Smith & Wesson 1911

Smith & Wesson Bodyguard

Smith & Wesson Governor

Smith & Wesson M&P

Smith & Wesson SD9

Smith & Wesson SD40

Springfield Armory 1911

Springfield Armory XD

Springfield Armory XDM

Sturm Ruger Bearcat

Sturm Ruger Blackhawk

Sturm Ruger

Sturm Ruger GP100

Sturm Ruger LC380

Sturm Ruger LC9



# Pistols that ARE NOT classified as assault weapons:

Sturm Ruger LCP

Taurus Tracker

Sturm Ruger LCR

Sturm Ruger P95

Sturm Ruger Redhawk

Sturm Ruger Super Redhawk

Sturm Ruger Single-Six

Sturm Ruger SP101

Sturm Ruger SR9

Sturm Ruger SR40

Sturm Ruger SR40C

Sturm Ruger SR45

Sturm Ruger SR1911

Sturm Ruger Vaquero

Taurus Model 617



# IMAGES OF PISTOLS THAT ARE NOT CONSIDERED ASSAULT WEAPONS



# Pistols Not Assault



**Ruger LCR 22 LG**



**Ruger GP 100**





# Pistols Not Assault



**Ruger Redhawk**



**Ruger Super Blackhawk**



# Pistols Not Assault



Ruger SP101



S&W 686



# Pistols Not Assault



**Charter Arms Model  
53840**



**Charter Arms Pathfinder**



# Pistols Not Assault



**Colt King Cobra**



**Rossi R35102**



# Pistols Not Assault



**Taurus Tracker**



**Taurus Model 617**



# Pistols Not Assault



**S & W Model 36**



# Pistols Not Assault



**ATI FX45**



**Beretta BU9**





# Pistols Not Assault



**Colt Series 70**





# Pistols Not Assault



**Glock 36**



**Kahr MK9**



# Pistols Not Assault



**Kahr PM40**



**Kahr PM45**



# Pistols Not Assault



**Kel Tec P32PK**

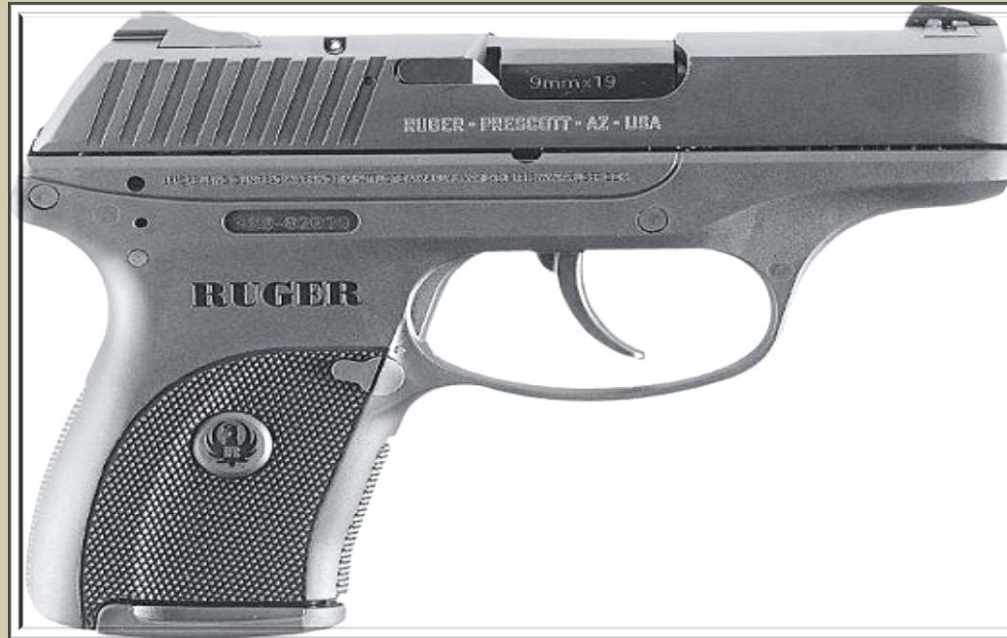


**Kimber Solo Carry**





# Pistols Not Assault



**Ruger LC9**



# Pistols Not Assault



**S&W 1911**



**Sig Sauer P239**



# Pistols Not Assault



Sig Sauer P290



Colt 380 Mustang

# **CORRECTED EXHIBIT**

# **47**



# SHOTGUNS THAT ARE NOT CLASSIFIED AS ASSAULT WEAPONS

*Please note this list is not exhaustive and only includes some of the most common models*





# Shotguns that ARE NOT classified as assault weapons:

Arsenal SGL41

Beretta – All Over and Under Models

Beretta – All Side by Side Models

Beretta 3901

Beretta AL31

Beretta Tx4 storm

Browning 625 Series

Browning A-Bolt Series

Browning BPS Series

Browning BT99 Series

Browning Citori 725 Series

Browning Cynergy Series

Browning Gold Series

Browning Maxus

Browning Silver Series

Century Arms JW 2000

Century Arms SG 1077

Charles Daly Model 306

Cimmaron 1878

CZ USA Canvasback



# Shotguns that ARE NOT classified as assault weapons:

IAC Hawk 982  
Ithaca Model 37  
Lupara Norinco JW 200  
Mossberg 500SP  
Mossberg 535  
Mossberg Silver Reserve  
Nikko 5000  
Remington Model 10  
Remington Model 870  
Remington Model 887  
Remington SPR 100

Remington SPR 310  
Ruger Red Label 26  
Saxton 12  
USSG Model MP 220  
Weatherby Athena  
Winchester Model 24  
Winchester 1200  
Winchester 1300  
Winchester SP Turkey



**IMAGES OF SHOTGUNS THAT  
ARE NOT CLASSIFIED AS  
ASSAULT WEAPONS**



# Pump Action Shotguns

## Not Assault



**Mossberg 500**



**Ithaca 37**



# Pump Action Shotguns

## *Not Assault*



**Mossberg 535**



**Winchester SXP Turkey**



# Pump Action Shotguns

## *Not Assault*



**Browning BPS 12 GA**



**Winchester 1300**



# Pump Action Shotguns

## *Not Assault*



**Browning BPS Stalker**



**IAC Hawk 982**





# Pump Action Shotguns

## *Not Assault*



**Winchester Model 12**



**Remington Model 870**





# Side by Side Shotguns Not Assault



**Century Arms SG 1077**



**USSG model MP 220**



# Side by Side Shotguns *Not Assault*



**Charles Daly Model 306**



**Winchester Model 24**



# Side by Side Shotguns *Not Assault*





# Side by Side Shotguns *Not Assault*



**Saxton 12 GA**



# Side by Side Shotgun *Not Assault*



**Century International Arms SG1090**



# Over/Under Shotguns

## *Not Assault*



**Ruger Red Label**



**Mossberg Silver Reserve**



# Over/Under Shotguns

## *Not Assault*





# Semiautomatic Shotgun

## *Not Assault*



**Beretta 3901**



**Browning Maxus**



# **CORRECTED EXHIBIT 48**

**NYS ASSEMBLY**

**MARCH 28, 2013**

everybody to consider that going into the future because if you have a bad idea let's debate it, let's discuss it and then let's have an up or down vote, like we're doing with all these amendments. But sometimes, I think what people really are concerned about in my district is not what we vote on it's what we don't vote on and there's a lot of bills out there. You can't tell me that 90 percent of the bills that we never vote on don't have some significant merit. Anyway, thanks a lot, Denny. I appreciate all you do.

MR. FARRELL: My pleasure.

ACTING SPEAKER AUBRY: Mr. McLaughlin.

MR. MCLAUGHLIN: Thank you, Mr. Speaker.

Would the Chairman yield?

ACTING SPEAKER AUBRY: Mr. Farrell, will you yield?

MR. FARRELL: Yes, I will.

MR. MCLAUGHLIN: Thank you, Denny. I want to take a few minutes here and talk about the SAFE Act. We're exempting this, correct, parts of it?

MR. FARRELL: I'm sorry?

MR. MCLAUGHLIN: We're going to exempt a part of the SAFE Act tonight.

MR. FARRELL: Suspending parts of it.

MR. MCLAUGHLIN: Suspending part of it. What do you think was the stated goal of the SAFE Act originally?

MR. FARRELL: To keep people alive; to save lives.

**NYS ASSEMBLY**

**MARCH 28, 2013**

MR. MCLAUGHLIN: So would it have not made a little more sense to -- what we're hearing right now is that we're going to -- since there is an exemption for shooters on the range, they can use ten rounds, correct?

MR. FARRELL: Yes.

MR. MCLAUGHLIN: Would it not have made more sense to make an exemption to say shooters on the range can only use seven rounds if our stated goal here is safety?

MR. FARRELL: No. On the range is different than in the street. I don't understand the question.

MR. MCLAUGHLIN: Well, I'm just saying that the stated goal was to increase safety but, yet, we're now acknowledging that we're having an exemption for shooters on the range to shoot ten, right?

MR. FARRELL: Yes.

MR. MCLAUGHLIN: So I can practice defending my family with ten rounds, but the bill now says I can -- it continues to say I can actually only defend my family for real with seven rounds, right?

MR. FARRELL: I'm sorry. I didn't...

MR. MCLAUGHLIN: Okay. What I was saying is what we are stating here again, just like in the original SAFE Act, is that you can use ten rounds at the range to practice your skills, correct?

ACTING SPEAKER AUBRY: Mr. Lentol, why do

**NYS ASSEMBLY**

**MARCH 28, 2013**

you rise?

MR. LENTOL: I just wonder if Mr. Farrell would suffer an interruption or Mr. McLaughlin would suffer an interruption and allow me to answer the question?

MR. MCLAUGHLIN: Yes, absolutely, Joe.

MR. LENTOL: If you would restate the question, I'd be happy to answer it, Mr. McLaughlin.

MR. MCLAUGHLIN: When we passed the SAFE Act 50-something days ago and we brought up then the flaws that we are addressing now, all of it was brought up by this Chamber, this side of the aisle, all of it. So originally, when we passed the bill there was the exemption -- there was no restriction on somebody shooting at a range. Ten rounds was always the limit, right?

MR. LENTOL: Yes.

MR. MCLAUGHLIN: Okay, that remains the case right now.

MR. LENTOL: Yes.

MR. MCLAUGHLIN: Right. And I believe it was you and I that had a nice spirited debate and when I said, *What would you say to somebody in their home that was under, attack*, your answer was, *Change the clip*. Even those it's a magazine, change the clip. With this amendment today none of that changes.

MR. LENTOL: I can amplify that answer and I did after you brought it up because I didn't think about it as quickly as I should have on my feet, but the very best answer to the question is if I

**NYS ASSEMBLY**

**MARCH 28, 2013**

were afraid for my safety and I owned a gun and I thought that seven rounds were not enough for the gun that I owned, I would have another gun or another gun after that. I would have two guns so to protect my family --

MR. MCLAUGHLIN: So just line the guns up.

MR. LENTOL: -- to protect my family I would do what it takes in order to protect my family and, at the same time, try to comply with the law because I know, as well as you know, the gun owners of this State -- my brother is an NRA member and he is very, very interested in what goes on in this Legislature and we have a spirited discussion all the time about this issue and I believe, I believe that most of the gun owners, if not 99 percent of the gun owners, are law-abiding citizens.

MR. MCLAUGHLIN: Well, they were until you passed this act.

LENTOL: They would want to abide by a law that was passed by this Legislature to protect the people of the State and if that meant seven rounds in a clip or a magazine or whatever you want to call it, they would abide by that ruling and if they thought it wasn't enough to protect their family they would take measures to do so.

MR. MCLAUGHLIN: They were law-abiding. They remain law-abiding.

MR. LENTOL: Yes, they do.

MR. MCLAUGHLIN: This act made them not be law-abiding if they choose to protect their family with commonly-used

**NYS ASSEMBLY**

**MARCH 28, 2013**

firearms and commonly-used magazines, but we'll be debating that in court shortly, Joe. You are seriously telling me, after the debate we previously had, where you said, *Change the clip*, even though it's a magazine, you are seriously now telling me that somebody should line the guns up and that would give them seven, seven, seven, seven, however many guns they have lined up rather than the commonly used ten round magazine?

MR. LENTOL: That's not in this bill. I was just suggesting that answer as another answer and maybe I didn't say it artfully enough. Not being a gun owner, maybe *Change the clip* was not the right thing to say. Maybe replacing the magazine. And I have seen my brother replace the magazine in his 9-millimeter and he can do it pretty quickly.

MR. MCLAUGHLIN: So can a criminal. So can a criminal.

MR. LENTOL: Absolutely.

MR. MCLAUGHLIN: So you're expecting the law-abiding citizen, rural Upstate New York, I have got Washington County, Rensselaer County, Columbia County. Washington County, Rensselaer County, Columbia County late at night, two sheriffs on duty, maybe a Trooper or two, they might be busy on a DUI call, domestic dispute, something else, but you're expecting them -- what we have been told is that -- I mean, this has just gone from bad to worse, but we have been told that you should wait for them to stop shooting and then charge them. That was one of the suggestions. The

**NYS ASSEMBLY**

**MARCH 28, 2013**

other one was --

MR. LENTOL: Not by me.

MR. MCLAUGHLIN: Not by you, no. Not by you, Joe, no but that's what we have heard. The lunacy of this thing has unraveled before our eyes - that we should wait for them to stop shooting and charge at them. Now, the bullets are traveling about 1,200 feet per second. You're going to be ducking for cover doing whatever you got to do. I mean, I know it wasn't you that said it, Joe, but it just points out the lunacy of this debate.

So let me ask you this: We were told -- why -- let me get to this one. Why are we now exempting police officers? And the reason I ask that is from day one you said it, other debaters said it, the Governor said it, the State Police Superintendent said it, the police were exempt. Were we not told that repeatedly since day one of the signing.

MR. LENTOL: Yes.

MR. MCLAUGHLIN: So were we told an untruth?

MR. LENTOL: No.

MR. MCLAUGHLIN: Not an untruth.

MR. LENTOL: No. I don't think that anyone has ever been prosecuted and no one's ever brought a case, but what I said on the floor about the police exemption, the bill-in-chief that we debated on January the 15th and I remember the date, it was January the 15th, the bill that we debated, that bill was not intended to have police officers included. It was never intended and it was pointed out,

**NYS ASSEMBLY**

**MARCH 28, 2013**

MR. GRAF: Will the Chairman yield, please?

MR. FARRELL: Surely.

MR. GRAF: Thank you, Denny. Couple questions.

Let me preface something with the SAFE Act portion of this. The reason that we're making the exceptions for the police is, I actually pointed that out in Codes and I pointed that out on the floor of the Assembly, and we knew that we had a bill that was less than perfect or that contained flaws in it and my position at that time was that we should have fixed it before we voted on it. However, this Body chose not to do that. With that said, now I'm happy with the exemption for the active duty police officers, especially on a personal note, thank you for not taking the bullets out of my daughter's gun.

MR. FARRELL: May I ask you one question while you're doing that, if I may?

MR. GRAF: Sure.

MR. FARRELL: When were you in the police force? Were you in there in '90 to '93?

MR. GRAF: I was in there in the '80s.

MR. FARRELL: So you were there when they went to the Glock?

MR. GRAF: No. I carried a .38.

MR. FARRELL: So you didn't go to the Glock?

MR. GRAF: No.

MR. FARRELL: But if you got the Glock then, how many bullets did it hold in the magazine?



**NYS ASSEMBLY**

**MARCH 28, 2013**

MR. GRAF: I believe she has 15 bullets.

MR. FARRELL: No. How much did it hold then?

Do you remember?

MR. GRAF: I don't know.

MR. FARRELL: Just to remind you --

MR. GRAF: I'm told it's 15.

MR. FARRELL: No. That's what it carried. They didn't carry those in those days. When we passed the bill that gave them the guns, what we said was they had to stay below -- they carried 9 in there at the time, instead of the 16. And you didn't go -- you didn't go up to the 16 until Giuliani became the Mayor and then he reversed it. But to point out that that magazine could be used and locked with a block that allowed it to carry a lesser amount.

MR. GRAF: Okay.

MR. FARRELL: I just thought you might have carried one of those. Okay. Your question.

MR. GRAF: No, I had a Smith & Wesson, unfortunately.

MR. FARRELL: Old-fashioned.

MR. GRAF: My problem with this is the retirees, the retired cops are not exempt here. We're not doing anything with the retired cops, right?

MR. FARRELL: Yes; we're not.

MR. GRAF: Okay. Now, I've talked to a lot of members. The New York City Police Department has what they call a

**NYS ASSEMBLY**

**MARCH 28, 2013**

world that do that. So, I wouldn't say that Hollywood specifically glorifies violence, I would say it's more glorified in, you know, the "Grand Theft Auto" and all of the discs that you can buy, especially kids can buy.

MR. MCLAUGHLIN: But not "Die Hard" and "Rambo?"

MR. LENTOL: Well, I think that's normal. Those type of movies have been produced for a long period of time now.

MR. MCLAUGHLIN: Okay. Earlier you had said that you thought the answer might be rather than to allow the people of New York ten rounds to defend themselves in rural Upstate New York, you said that the answer may be to buy another gun; is that accurate?

MR. LENTOL: No. I said that, you know, somebody who wanted to protect themselves and thought that they had, you know, difficulty in their lives where they needed the security of a weapon may want to have more than one. And they may have more than one now, for all I know.

MR. MCLAUGHLIN: Many, many people do have more than one. In Texas that's called a gun collection.

MR. LENTOL: So, I know that -- people I know who own guns have several guns.

MR. MCLAUGHLIN: Right. In Texas they call it a gun collection, in New York they call it an arsenal, so... So, they can own, right now, plenty of guns, so that's not really the issue. The issue

**NYS ASSEMBLY**

**MARCH 28, 2013**

is that when your life is in danger we really don't want them necessarily hunting around for another gun, I would say, but that would be my opinion.

All right, Joe, thank you. I appreciate the indulgence.  
Thank you.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Mr.  
McLaughlin.

MR. MCLAUGHLIN: Thank you, sir. Obviously, I think everyone in the State knows how I feel about this act. I think it's unconstitutional. I think it will be found so in the courts. Currently, there are 62 counties in New York State and over 50 of them, in an unprecedented move, have stood up and publicly opposed this bill. I don't recall in my entire time in New York that ever happening. There is a reason there is a happening out here. The people are standing up and pushing back, over 100 towns. The VA says they will not comply. Sheriffs' associations, the Association of Counties are standing up and pushing back all over the State north of Westchester. So, there is a real reason they're doing that. They're not doing that because they're slightly irritated, they're doing that because they're angry and they know what this is. It's an attack on the Second Amendment rights of people in New York State. And here's the message that I want to get out there just so that everybody in this State hears it once again: The message that this Legislature and this Administration is sending to the people of New York that live in very

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,

13-cv-00291-WMS

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.

---

**CERTIFICATE OF SERVICE**

I hereby certify that on July 16, 2013, I electronically filed the foregoing Declaration of William J. Taylor, Jr., and the exhibits thereto, with the Clerk of the District Court using its CM/ECF system and thereby serving Plaintiffs' counsel, counsel for Defendant Gill, and counsel for all *amici curiae* and proposed *amici curiae* in this action as follows:

**Brian T. Stapleton, Esq.**  
GOLDBERG SEGALLA LLP  
11 Martine Avenue, Suite 750  
White Plains, New York 10606-1934  
*Attorney for Plaintiffs*

**Stephen P. Halbrook, Esq.**  
3925 Chain Bridge Road, Suite 403  
Fairfax, Virginia 22030  
*Attorney for Plaintiffs*

**Kevin M. Kearney, Esq.**  
**Robert J. Fluskey, Jr., Esq.**  
HODGSON RUSS LLP  
The Guaranty Building, Suite 100  
140 Pearl Street  
Buffalo, New York 14202-4040  
*Attorneys for Defendant Gill*

**John G. Schmidt, Jr., Esq.**  
**Nicolas J. Rotsko, Esq.**  
PHILLIPS LYTLE LLP  
3400 HSBC Center  
Buffalo, New York 14203  
*Attorneys for National Rifle Association of America, Inc.*

**Charles J. Cooper, Esq.**  
**David H. Thompson, Esq.**  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, NW  
Washington, DC 20036  
*Attorneys for National Rifle Association of America, Inc.*

**Sheldon W. Boyce, Jr., Esq.**  
BRENNA, BRENNA & BOYCE, PLLC  
31 East Main Street, Suite 2000  
Rochester, NY 14203  
*Attorney for New York State Sheriffs' Association, Inc. et al.*

**Carl D. Michel, Esq.**  
Michel & Associates, P.C.  
180 East Ocean Boulevard, Suite 200  
Long Beach, California 90802  
*Attorney for New York State Sheriffs' Association, Inc. et al.*

**Terrence M. Connors, Esq.**  
CONNORS & VILARDO, LLP  
1000 Liberty Building  
424 Main Street  
Buffalo, New York 14202  
*Attorney for the Law Center to Prevent Gun Violence et al.*

**Alan R. Friedman, Esq.**

**Mark T. Ciani, Esq.**

KATTEN MUCHIN ROSENMAN LLP

575 Madison Avenue

New York, New York 10022

*Attorneys for the Law Center to Prevent Gun Violence et al.*

**Jonathan K. Baum, Esq.**

KATTEN MUCHIN ROSENMAN LLP

525 West Monroe Street, Suite 1900

Chicago, Illinois 60661

*Attorneys for the Law Center to Prevent Gun Violence et al.*

**Colin G. Garry, Esq.**

SIDLEY AUSTIN LLP

787 Seventh Avenue

New York, New York 10019

*Attorneys for the Brady Center to Prevent Gun Violence et al.*

**Kristin Graham Koehler, Esq.**

**James Edward Mendenhall, Esq.**

**Lisa E. Jones, Esq.**

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, DC 20005

*Attorneys for the Brady Center to Prevent Gun Violence et al.*

I further certify that I caused the foregoing to be mailed, by U.S. Mail, to the following Defendant, whose counsel has yet to enter an appearance in the case:

Lawrence Friedman

District Attorney for Genesee County

Genesee County District Attorney's Office

One West Main Street

Batavia, New York 14020

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for the State Defendants  
s/William J. Taylor, Jr.  
BY: WILLIAM J. TAYLOR, JR.  
Assistant Attorney General  
of Counsel  
120 Broadway, 24th Floor  
New York, New York 10271  
Telephone: (212) 416-8426  
[william.taylor@ag.ny.gov](mailto:william.taylor@ag.ny.gov)