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United States Court of Appeals
for the
Second Circuit

WILLIAM NOJAY, THOMAS GALVIN, ROGER HORVATH, BATAVIA MARINE & SPORTING SUPPLY, 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,

Plaintiffs-Appellants-Cross-Appellees,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JOINT APPENDIX
Volume 8 of 9 (Pages A-1937 to A-2229)

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Public Mass Shootings in the United States: Selected Implications for Federal Public Health and Safety Policy

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CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

This report focuses on mass shootings and selected implications they have for federal policy in the areas of public health and safety. While such crimes most directly impact particular citizens in very specific communities, addressing these violent episodes involves officials at all levels of government and professionals from numerous disciplines.

This report does not discuss gun control and does not systematically address the broader issue of gun violence. Also, it is not intended as an exhaustive review of federal programs addressing the issue of mass shootings.

Defining Public Mass Shooting

Policy makers may confront numerous questions about shootings such as the December 2012 incident at Sandy Hook Elementary School in Newtown, CT, that claimed 27 lives (not including the shooter). Foremost, what are the parameters of this threat? How should it be defined?

There is no broadly agreed-to, specific conceptualization of this issue, so this report uses its own definition for *public mass shootings*. These are incidents occurring in relatively public places, involving four or more deaths—not including the shooter(s)—and gunmen who select victims somewhat indiscriminately. The violence in these cases is not a means to an end—the gunmen do not pursue criminal profit or kill in the name of terrorist ideologies, for example.

One Measure of the Death Toll Exacted by Public Mass Shootings. Applying this understanding of the issue, the Congressional Research Service (CRS) has identified 78 public mass shootings that have occurred in the United States since 1983. This suggests the scale of this threat and is intended as a thorough review of the phenomenon but should not be characterized as exhaustive or definitive. According to CRS estimates, over the last three decades public mass shootings have claimed 547 lives and led to an additional 476 injured victims. Significantly, while tragic and shocking, public mass shootings account for few of the murders or non-negligent homicides related to firearms that occur annually in the United States.

Policymaking Challenges in Public Health and Safety

Aside from trying to develop a sense of this phenomenon's scope, policy makers may face other challenges when addressing this topic. To help describe some of the health and safety issues public mass shootings pose, this report discusses selected policy in three areas: *law enforcement*, *public health*, and *education*. While mass shootings may occur in a number of settings, the education realm is one that has received particular attention from policy makers, officials, and the public alike—at least since the 1999 shooting at Columbine High School in Littleton, CO. The tragedy at Sandy Hook Elementary has renewed such concerns for many.

In the areas of law enforcement, public health, and education, this report discusses some key efforts to *prevent* mass shootings as well as efforts geared toward *preparedness* and *response*. Policy measures that deal with *recovery* are also discussed within the context of education and public health initiatives.

Policy Effectiveness and Outlay of Resources. Many of the policymaking challenges regarding public mass shootings boil down to two interrelated matters: (1) a need to determine the effectiveness of existing programs and (2) figuring out where to disburse limited resources.

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Public Mass Shootings in the United States: Selected Policy Implications

Finally, baseline metrics related to this problem are often unclear or unavailable. This lack of clarity starts with identifying the number of shootings themselves, since no broadly agreed-to definition exists. Several questions flow from this issue. How many people have such incidents victimized? How much does prevention of, preparedness for, and response to such incidents cost the federal government? What measurements can be used to determine the effectiveness of such programs?

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Public Mass Shootings in the United States: Selected Policy Implications

Shooting incidents such as the one at Sandy Hook Elementary School in December 2012 and the one at an Aurora, CO, movie theater in July 2012 have focused attention on federal policy issues in the law enforcement, public health, and education arenas, among others. The Congressional Research Service (CRS) has identified 78 public mass shootings that have occurred in the United States since 1983. These shootings have claimed almost 550 lives according to CRS estimates.²

How does the death toll tied to public mass shootings compare with figures related to the preeminent threat that federal law enforcement has confronted in the last decade? CRS estimates that since the terrible events of September 11, 2001 (9/11), Al-Qaeda-inspired homegrown terrorists have killed 14 people in two incidents in the United States.³ Since 9/11, according to CRS estimates, 281 people have died in 38 public mass shootings.⁴ Arguably, the comparatively low death toll associated with Al Qaeda-inspired incidents at least partly results from a large-scale federal focus on homeland security and counterterrorism efforts.

President Obama's Plan to Reduce Gun Violence

On January 16, 2012, President Obama announced a slate of proposals aimed at reducing gun violence—not just public mass shootings, the topic of this report—in the United States.¹ The proposals focus on four areas:

- Closing background check loopholes,
- Banning military-style assault weapons and high-capacity magazines,
- Making schools safer, and
- Increasing access to mental health services.

Some of the President's proposals, such as encouraging better information sharing among and between states and federal agencies and providing incentives for police departments to use existing grants to hire school resource officers, can be addressed through executive actions. Other proposals, such as reinstating the assault weapons ban and providing funding for a range of mental health programs and services, require action by Congress. The President's proposals touch on a number of issues that public mass shootings raise for federal safety and public health policy.

It is important to caution the reader that, while tragic and shocking, public mass shootings account for few of the murders⁵ related to firearms that occur annually in the United States. According to the Federal Bureau of Investigation (FBI, the Bureau), in 2011, firearms were used to murder 8,583 people.⁶ To provide further context, over the last two decades, the nation has

¹ The White House, *Now Is the Time: The President's Plan to Protect Our Children and Our Communities by Reducing Gun Violence*, January 16, 2013, http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf. Hereafter: *The President's Plan*.

² For more information on this report's approach regarding the concept of "public mass shooting," please see the section titled "Defining and Identifying Public Mass Shootings."

³ Incidentally, these deaths stemmed from two shooting incidents in which the gunmen were likely motivated by ideology tied to Al Qaeda. For more information, please see CRS Report R41416, *American Jihadist Terrorism: Combating a Complex Threat*, by Jerome P. Bjelopera.

⁴ This count does not include shooters killed in these incidents.

⁵ For this report, murder implies the willful killing of one human being by another.

⁶ Federal Bureau of Investigation, *Uniform Crime Reports, Crime in the United States, 2011*, Table 8, "Expanded Homicide Data," <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/expanded-homicide-data-table-8>. The Federal Bureau of Investigation (FBI, the Bureau) counts what it describes as "murder and nonnegligent manslaughter" for these statistics. Preliminary figures for 2012 suggest "an increase of 1.9 percent in the number of violent crimes ... for the first 6 months of 2012 when compared with figures reported for the same time in 2011." See Federal Bureau of Investigation, *Uniform Crime Reports, Crime in the United States, 2012, January-June Preliminary Semiannual Uniform Crime Report*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/preliminary-semiannual-uniform-crime-report-january-june-2012>. It is unknown, however, whether this preliminary reported increase in violent crimes was coupled with an increase in firearm-related homicides.

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Public Mass Shootings in the United States: Selected Policy Implications

experienced a general *decline* in violent crime. In 1992, 1.9 million violent crimes were reported, while 2011 saw 1.2 million.⁷ In the same period, the national murder rate dropped from 9.3 to 4.7 per 100,000 inhabitants.⁸

Roadmap for the Report

As a starting point, this report delves into public mass shootings over the last three decades, exploring the nature of this threat. *Of note, this report does not focus on gun violence, writ large, nor does it discuss gun control.*⁹

In its broader discussion of related federal public health and safety issues, the report covers selected policy implications in three areas: *law enforcement*, *public health*, and *education*. While mass shootings may occur in a number of public settings, the education realm is one which has generated concern from policy makers, officials, and the public alike—at least since the 1999 shooting at Columbine High School in Littleton, CO. The tragedy at Sandy Hook Elementary has renewed such concerns for many.

In this report, discussion of each of these is further broken down into efforts geared toward

- *prevention*—actions intended to reduce the likelihood of shootings.¹⁰
- *preparedness*—planning how to cope with potential shootings.
- *response*—structured efforts employed to react to an actual shooting.

Policy measures that deal with recovery are also discussed within the context of education and public health initiatives. Recovery entails helping institutions, communities, and individuals cope with the aftermath of a shooting.¹¹ This report is not intended as an exhaustive review of specific federal programs in these areas.

Defining and Identifying Public Mass Shootings

This report attempts to refine the relatively broad concept of *mass shooting* (which could potentially involve a wide variety of actors targeting victims for any number of reasons) into a narrower formulation: *public mass shootings*. This has been done to focus discussion around a number of violent incidents that lie outside of specific crime issues such as terrorism, drug

⁷ Federal Bureau of Investigation, *Uniform Crime Reports, Crime in the United States, 2011*, Table 1, “Crime in the United States by Volume and Rate per 100,000 Inhabitants, 1992–2011,” <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-1>.

⁸ According to the FBI these figures include “murder and nonnegligent manslaughter.” See *ibid*.

⁹ For more information on this see CRS Report RL32842, *Gun Control Legislation*, by William J. Krouse.

¹⁰ Some policies and programs discussed in this report may also help *mitigate* the impact of actual shootings. For example, while the presence of school resource officers may help prevent a school shooting, such an officer could feasibly mitigate the impact of a shooting by intervening after a gunman began his assault.

¹¹ To some degree these concepts—prevention, preparedness, response, and recovery—correspond with ideas that guide federal emergency management. In this report, these concepts are used only to help describe issues involved in devising policy related to public mass shootings. For more on federal emergency management, see CRS Report R42845, *Federal Emergency Management: A Brief Introduction*, coordinated by Bruce R. Lindsay.

trafficking, gang activity, and domestic violence that have federal policies, law enforcement structures, and laws tailored in many instances to specifically address them.

Arriving at a Definition

In order to delineate a workable understanding of *public mass shooting* for this report, CRS examined scholarly journal articles, monographs, and government reports.¹² These sources discussed a variety of terms such as mass murder, mass shooting, mass killings, massacres, and multiple homicide. Definitions of these terms varied with regard to establishing the number of victims or fatalities involved, the weapons used, the motives of the perpetrator, and the timeframes within which the casualties or injuries occurred.

This report defines public mass shootings as *incidents occurring in relatively public places, involving four or more deaths—not including the shooter(s)—and gunmen who select victims somewhat indiscriminately. The violence in these cases is not a means to an end such as robbery or terrorism.*¹³

Relatively public places. For this report, public mass shootings happen in *relatively* public circumstances. Such settings can include schools, workplaces, restaurants, parking lots, public transit, even private parties that include at least some guests who are not family members of the shooter.¹⁴

Tallying Fatalities. Any definition of mass shootings requires a somewhat arbitrary threshold demarcating the number of victims killed per incident. This report's threshold is based on a definition of mass murder offered by the FBI.¹⁵ An important caveat deserves mentioning. A compilation of incidents based on any such arbitrary threshold may fail to adequately describe the

¹² James Alan Fox and Jack Levin, *Extreme Killing: Understanding Serial and Mass Murder*, 2nd ed. (Los Angeles: Sage, 2012), p. 19. Hereafter: Fox and Levin, *Extreme Killing*. James L. Knoll, IV, "The 'Pseudocommando' Mass Murderer: Part I, The Psychology of Revenge and Obliteration," *Journal of the American Academy of Psychiatry and the Law*, vol. 38, no. 1 (2010) pp. 87-89; Federal Bureau of Investigation, *Serial Murder: Multi-Disciplinary Perspectives for Investigators*, 2008, p. 8; John E. Douglas, Ann W. Burgess, and Robert K. Ressler, *Crime Classification Manual: A Standard System for Investigating and Classifying Violent Crimes*, 2nd ed. (San Francisco: Jossey-Bass, 2006) p. 96; Grant Duwe, "A Circle of Distortion: The Social Construction of Mass Murder in the United States," *Western Criminology Review*, vol. 6, no. 1 (2005) p. 59. Paul E. Mullen, "The Autogenic (Self-Generated) Massacre," *Behavioral Sciences and the Law*, vol. 22, no. 3 (2004) pp. 311-314. Hereafter: Mullen, "The Autogenic." Grant Duwe, Tomislav Kovandzic, and Carlisle E. Moody, "The Impact of Right-to-Carry Concealed Firearm Laws on Mass Public Shootings," *Homicide Studies*, vol. 6, no. 4 (2002) p. 273; Michael D. Kelleher, *Flash Point: The American Mass Murderer*, (Westport, CT: Praeger, 1997) p. 2. Hereafter: Kelleher, *Flash Point*.

¹³ This report only includes incidents that occurred in the 50 states, Puerto Rico, and the District of Columbia.

¹⁴ For a general discussion of violence in the workplace, see Federal Bureau of Investigation, *Workplace Violence: Issues in Response*, (2004). Hereafter: Federal Bureau of Investigation, *Workplace Violence*.

¹⁵ The FBI has defined mass murder as "[a] number of murders (four or more) occurring during the same incident, with no distinctive time period between the murders. These events typically involved a single location, where the killer murdered a number of victims in an ongoing incident." This report allows for instances of mass murder to involve more than one specific location. For the FBI definition, see Federal Bureau of Investigation, *Serial Murder*, p. 8. For a different definition, see Fox and Levin, *Extreme Killing*, p. 19. While this report focuses a great deal on the timing involved in serial and mass murder to differentiate the two categories, Fox and Levin emphasize motivation. The 112th Congress passed legislation (P.L. 112-265) that formally authorizes the Attorney General to provide investigative assistance to states in instances of violent crimes in public venues, including attempted and actual mass killings. For the purposes of P.L. 112-265, the term "mass killings" means three or more killings in a single incident and relies on the definition of "place of public use" from 18 U.S.C. 2332f(e)(6).

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universe of incidents to which educators, public health professionals, and law enforcement have to react and for which they have to prepare.¹⁶ One author has stated that gunmen “injure far more victims than they kill; however, they must certainly be considered mass murderers by obvious intentions of their actions.”¹⁷ In the critical early moments of a shooting, police, teachers, and rescue personnel do not necessarily know how many people are injured versus dead. Personnel and resources are initially mobilized in response to a shooting, regardless of the number of fatalities.

Indiscriminate Selection of Victims. For this report’s definition, a killer’s relationship to his or her victims is important. Driven by a desire for revenge and/or power, some killers may target family members or intimate friends.¹⁸ In the incidents described as public mass shootings for this report, the gunmen cannot solely kill such individuals. This particularly rules out cases of domestic violence—instances only involving family members either inside or outside the home—from consideration as public mass shootings. Thus, for this report, the gunmen in public mass shootings somewhat indiscriminately select their victims. For example, a student assailant involved in a public mass shooting plans on killing particular teachers, while simultaneously staging a wider assault on his school.

Violence Not a Means to an End. For this report, a public mass shooter’s agenda certainly may stem from his specific personal experiences and psychological conditions. However, as implied in the above definition, the shooters who perpetrated the incidents counted in this report did not have broad socio-political objectives, such as using violence to advocate the fall of a regime.¹⁹ Thus, gunmen acting in the name of a terrorist organization or a clearly framed philosophy of hate typically were not considered public mass shooters. Also, shootings largely motivated by criminal profit were not counted. Based on the purpose undergirding the assailant’s violence, the following examples do not fit the definition of public mass shooting used for this report.

- In December 2012, Dwayne Moore was convicted of *home invasion, armed robbery*, and four counts of first-degree murder in Massachusetts. He reportedly gunned down four victims, including a child, in a September 2010 drug-related incident in Boston, MA.²⁰
- A mass murder that has been widely reported as a *hate-motivated* incident occurred on the morning of August 5, 2012, when Wade Michael Page shot to death six people at the Sikh Temple of Wisconsin in Oak Creek—near Milwaukee, WI.²¹ According to the FBI, police responding to the scene returned fire, wounding Page. He then took his own life by shooting himself.²²

¹⁶ One expert has written: “A common definition of mass murder requires the intentional death of at least four individuals in a single incident. Another interpretation of the term reduces the number of slain victims to three for the crime to be considered mass murder. Both of these definitions are obviously arbitrary and focus exclusively on the number of victims killed.” Kelleher, *Flash Point*, p. 2.

¹⁷ *Ibid.*

¹⁸ See Fox and Levin, *Extreme Killing*, pp. 23-25 for a discussion.

¹⁹ For more on terrorism-related incidents in the United States see CRS Report R41416, *American Jihadist Terrorism: Combating a Complex Threat*, by Jerome P. Bjelopera and CRS Report R42536, *The Domestic Terrorist Threat: Background and Issues for Congress*, by Jerome P. Bjelopera.

²⁰ Brian Ballou et al., “Dwayne Moore Convicted of Four Counts of First-Degree Murder in Mattapan Slaying Trial,” *Boston Globe*, December 17, 2012, <http://www.boston.com/metrodesk/2012/12/17/dwayne-moore-found-guilty-mattapan-massacre/ETtjeAnjXDGR98symtVy1K/story.html>.

²¹ John Diedrich et al., “FBI: Seeking Second ‘Person of Interest’ in Oak Creek Sikh Temple Shooting,” *Milwaukee* (continued...)

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- U.S. Army Major Nidal Hasan was charged in a shooting at Fort Hood, TX, on November 5, 2009. The mass murder, which has been described as a *terrorist incident*, killed 13 and injured more than 40 others.²³

Identifying Incidents

To identify incidents of public mass shootings, CRS reviewed descriptions of mass shooting events found in scholarly journal articles, monographs, lists created by government entities and advocacy organizations, and news accounts.²⁴ It is important to note that while every effort was made to be thorough in reviewing the sources used, the incidents identified by CRS should not be considered as constituting an exhaustive list of public mass shootings.²⁵

Readers are also cautioned against tying this report's definition of public mass shootings directly to specific federal policy responses. In other words, the policy responses discussed below are not restricted to preventing or reacting to public mass shootings as defined in this report. For instance, many of the policy measures discussed herein respond to shooting events or threats that

(...continued)

Journal Sentinel, August 6, 2012, <http://www.jsonline.com/news/crime/shooter-wade-page-was-army-vet-white-supremacist-856cn28-165123946.html>. Dinesh Ramde and Todd Richmond, "Motive Sought for Mass Shooting at Wis. Sikh Temple," *Associated Press*, August 6, 2012, <http://news.yahoo.com/motive-sought-6-slain-wis-sikh-temple-083039570.html>. A Sikh temple is also called a gurdwara.

²² William Branigin and Michael Laris, "Wade Michael Page Committed Suicide, FBI Says," *Washington Post*, August 8, 2012, http://www.washingtonpost.com/politics/wade-michael-pages-ex-girlfriend-arrested/2012/08/08/00c99f72-e10a-11e1-a19c-fcfa365396c8_story.html.

²³ See U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack*, 112th Cong., 1st sess., February 2011, p. 53, http://hsgac.senate.gov/public/_files/Fort_Hood/FortHoodReport.pdf. "Fort Hood Shooting Suspect to Remain Confined," *Associated Press State and Local Wire*, in *msnbc.com*, November 21, 2009, <http://www.msnbc.msn.com/id/34084622>; "Fort Hood Shooting Suspect Out of Intensive Care," *CNN.com*, December 16, 2009, <http://www.cnn.com/2009/CRIME/12/16/texas.fort.hood.hasan/index.html?iref=allsearch>.

²⁴ Connecticut Office of Legislative Research, "Weapons Used in Mass Shootings," January 18, 2013, <http://www.cga.ct.gov/2013/rpt/2013-R-0057.htm>; Counterterrorism Bureau of the New York City Police Department, "Active Shooter: Recommendations and Analysis for Risk Mitigation," 2012 edition, <http://www.nyc.gov/html/nypd/downloads/pdf/counterterrorism/ActiveShooter2012Edition.pdf>; James Alan Fox and Jack Levin, "Table 19.1: Deadliest Mass Murders in the United States Since 1900," in *Extreme Killing*, p. 230; Citizens Crime Commission of New York City, "Mass Shooting Incidents in America (1984-2012)," <http://www.nycrimcommission.org/initiative1-shootings.php>; Brady Campaign to Prevent Gun Violence, "Mass Shootings in the United States Since 2005," December 14, 2012, <http://www.bradycampaign.org/xshare/pdf/major-shootings.pdf>; Mark Follman, Gavin Aronsen, and Deanna Pan, "US Mass Shootings, 1982-2012: Data from Mother Jones' Investigation," *Mother Jones*, December 28, 2012, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>. Mayors Against Illegal Guns, "Mass Shootings Since January 20, 2009," http://libcloud.s3.amazonaws.com/9/f8/9/1098/1/mass_shootings_2009-13_-_jan_29_12pm.pdf; Michael Kelleher, "Chapter 11: A Survey of Mass Murderers" in *Flash Point*, pp. 173-181. Searches of U.S. newspapers and wire services using LexisNexis were conducted in many instances in order to confirm information or gather more details about incidents listed in the sources consulted.

²⁵ While other sources and methods (relying on the FBI's Supplementary Homicide Reports, for example) can be applied in defining this issue and counting the number of incidents, the approach used for this report was selected based on a careful evaluation of this report's objectives and CRS resources. Our definition encompasses a count of fatalities along with information about motivation for a shooting and where it occurs spatially. While it would be possible to use FBI data to generate counts of incidents involving the requisite number of fatalities for inclusion in an estimate of mass shootings, the additional research needed to assess the motivational and spatial criteria that must be met for inclusion would require a very large undertaking. We expect our estimates provide a good approximation of the frequency and scale of mass shootings, but note that more comprehensive approaches could be taken to improve the precision of the estimates.

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could include fewer than four deaths or shooters with specific ideologies and targets. The shooting definition offered in this report is meant to help illustrate the nature and breadth of a threat that lacks an agreed-upon conceptualization among experts, capturing some of the most extreme shooting cases over the last three decades.

Describing Public Mass Shootings

For many years, mass shootings have been of interest and concern to a variety of experts—including psychologists, sociologists, criminologists, public health experts, policy makers, and students of popular culture—who have written much on the topic. Journalists have tracked such killings for a long time as well. For example, a case involving gunman Howard B. Unruh in September 1949 received national attention.²⁶ There were over 50 news articles in more than a dozen major newspapers in the United States in the month after the shooting occurred.

- In what was reported at the time as the biggest mass murder in U.S. history, Unruh killed 13 people in a 20-minute-long incident in Camden, NJ. He shot people he knew as well as strangers. His victims included three children.²⁷

All of this interest in such shootings has produced a wide variety of terms and concepts that address an assortment of issues. Categorizing types of murder—and mass shootings, more narrowly—can be tricky. In many cases, individual incidents involving assailants who kill one, two, or three people are described as single, double, or triple murder. However, when the number of victims rises or the case involves complicating circumstances such as the killer assailing individuals in different locations or a string of murders committed over a period of days, months, or years, efforts to define and understand murder can grow much more difficult.

Placing Them within a Broader Context

Most scholarly and expert sources suggest that mass shootings are rare violent crimes. One study has described them as “very low-frequency and high intensity event[s].”²⁸ The 78 public mass shootings between 1983 and 2012 that CRS has identified claimed 547 lives (see **Figure 1**).²⁹

²⁶ Richard Goldstein, “Howard Unruh, 88, Dies; Killed 13 of His Neighbors in Camden 1949,” *New York Times*, October 29, 2009. Unruh, who reportedly suffered from paranoid schizophrenia, never stood trial for the murders. He died after being confined for six decades in the Trenton Psychiatric Hospital. In 1950, reporter Meyer Berger received a Pulitzer Prize for his coverage of Unruh’s mass shooting.

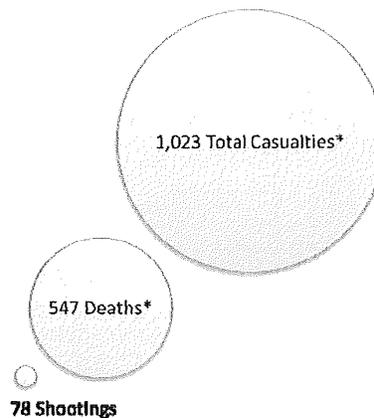
²⁷ Ibid. See also “N.J. Vet Killed 13 in 1949 in Biggest U.S. Mass Murder,” *Boston Globe*, April 16, 1953. Meyer Berger, “Veteran Kills 12 in mad Rampage on Camden Street,” *New York Times*, September 8, 1949.

²⁸ J. Reid Meloy, et. al., “A Comparative Analysis of North American Adolescent and Adult Mass Murderers,” *Behavioral Sciences and the Law*, vol. 22, no. 3 (2004) p. 307.

²⁹ Not including shooters who died in the course of a shooting.

*Public Mass Shootings in the United States: Selected Policy Implications***Figure 1. Public Mass Shootings in the United States 1983-2012**

Deaths and Total Casualties



Source: CRS, based on analysis of mass shooting incidents identified by CRS.

Notes: * "Deaths" do not include shooters. "Total Casualties" include deaths and victims who suffered non-lethal injuries from gunshots.

A Subset of Multiple Murder

Public mass shootings, as defined by this report, can be viewed as part of the larger issue of "multiple murder." A lexicon has emerged since the 1980s to describe instances of multiple murder.³⁰ Qualitatively broader than cases of single, double, or triple murder, instances of multiple murder can be divided into a number of categories including serial or mass killings.³¹ **Figure 2** lays out how this report frames the issue of public mass shootings. Starting at the top of **Figure 2**, *serial murders* involve multiple victims killed by the same offender or offenders in separate events over a period of days, months, or years.³² For this report, *mass murders* involve four or more people killed—not including the shooter(s)—in less than one day by the same

³⁰ There is no universally agreed to or legally codified number of victims per incident that distinguishes multiple murder from other types of murder.

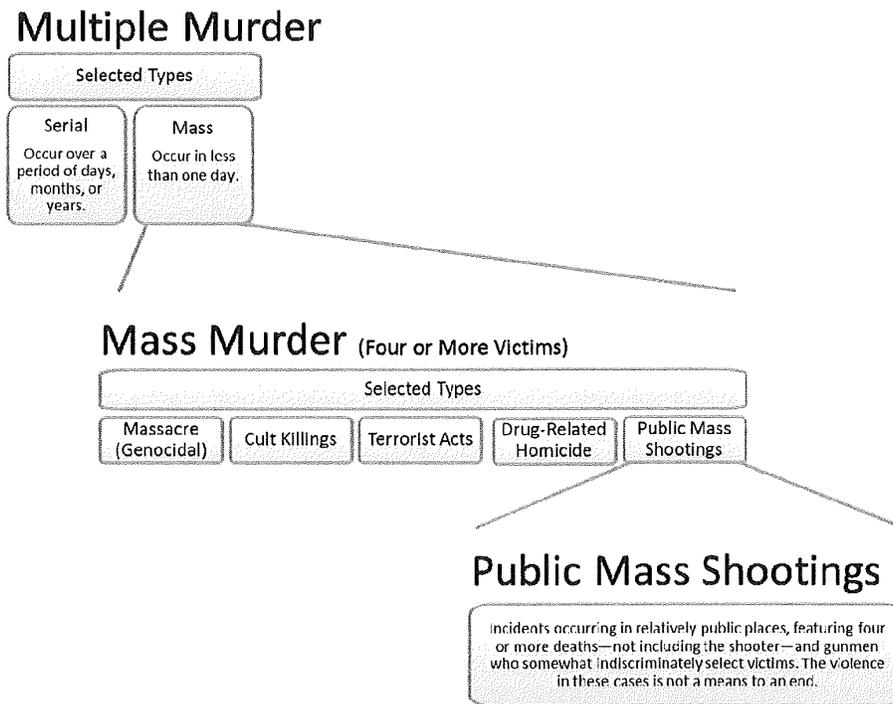
³¹ "Qualitatively broader" is intended to suggest that there are qualitative factors surrounding incidents of multiple murder that help to distinguish them from single, double, or triple murders. This conceptualization of multiple murder does not necessarily require multiple murders to include four or more deaths. Characterizing multiple murders involves examining some of the circumstances surrounding a killer's actions.

³² The FBI has offered what can be seen as a broad definition of serial murder: "The unlawful killing of two or more victims by the same offender(s), in separate events." The Bureau also dismisses the key distinction between serial and spree killing. Spree killing can be defined as: "two or more murders committed by an offender or offenders, without a cooling-off period." The lack of a "cooling off period" theoretically distinguishes spree killing from serial murder. However, a majority of experts convened by the FBI in 2005 to discuss serial killing determined that the concept of a cooling off period was too vague to be useful, thus minimizing spree killing as a distinct type of murder. For this report, crimes that some may consider spree killings also can fall under the category of "public mass shooting," if the shootings occur during one day or less. See Federal Bureau of Investigation, *Serial Murder: Multi-Disciplinary Perspectives for Investigators*, 2008, p. 9. Hereafter: Federal Bureau of Investigation, *Serial Murder*. Serial killing is defined in federal law as: "a series of three or more killings, not less than one of which was committed within the United States, having common characteristics such as to suggest the reasonable possibility that the crimes were committed by the same actor or actors." See 28 U.S.C. § 540B.

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offender or offenders. Mass murder can then be divided into subcategories—that may or may not involve gunmen—such as massacres perpetrated by people interested in genocide, cult killings, terrorist plots, the slaying of people during the course of drug trafficking, and, as conceptualized in this report, public mass shootings.³³

Figure 2. Placing Public Mass Shootings into Context



Sources: Graphic constructed by CRS, adapted from concepts highlighted in: James Alan Fox and Jack Levin, *Extreme Killing: Understanding Serial and Mass Murder*, 2nd ed. (Los Angeles: Sage, 2012), p. 19; James L. Knoll, IV, "The 'Pseudocommando' Mass Murderer: Part I, The Psychology of Revenge and Obliteration," *Journal of the American Academy of Psychiatry and the Law*, vol. 38, no. 1 (2010) pp. 87-89; Federal Bureau of Investigation, *Serial Murder: Multi-Disciplinary Perspectives for Investigators*, 2008, p. 8; John E. Douglas, Ann W. Burgess, and Robert K. Ressler, *Crime Classification Manual: A Standard System for Investigating and Classifying Violent Crimes*, 2nd ed. (San Francisco: Jossey-Bass, 2006) p. 96; Grant Duwe, "A Circle of Distortion: The Social Construction of Mass Murder in the United States," *Western Criminology Review*, vol. 6, no. 1 (2005) p. 59. Paul E. Mullen, "The Autogenic (Self-Generated) Massacre," *Behavioral Sciences and the Law*, vol. 22, no. 3 (2004) pp. 311-314; Grant Duwe, Tomislav Kovandzic, and Carlisle E. Moody, "The Impact of Right-to-Carry Concealed Firearm Laws on Mass Public Shootings," *Homicide Studies*, vol. 6, no. 4 (2002) p. 273; Michael D. Kelleher, *Flash Point: The American Mass Murderer*, (Westport, CT: Praeger, 1997) p. 2.

Notes: For this graphic, "public mass shootings" involve four or more deaths from gunshot wounds, not including the perpetrator of the violence. "Murder" implies the willful killing of one human being by another.

³³ For a discussion of the variety of mass killings see Mullen, "The Autogenic" p. 313.

Public Mass Shootings—Settings

Among the 78 public mass shootings since 1983 that CRS has identified, 26 occurred at workplaces where the shooter was employed either at the time of the incident or prior to it. The next largest number of public mass shootings occurred at places of education (12).³⁴

- In 2000 in Wakefield, MA, Michael McDermott took three guns to Edgewater Technology Inc., where he was employed, and shot seven coworkers.³⁵
- In 2006 Charles Roberts entered a one-room Amish schoolhouse in Lancaster County, PA, where he shot and killed five students and injured five others.³⁶

As the above implies, the public mass shootings identified by CRS involve a high level of localization. A mass shooter usually targets individuals in one location or, as the examples below demonstrate, in a small handful of closely clustered geographic sites.

- In 1988 Michael Hayes shot at people randomly as he roamed his neighborhood in Winston Salem, NC, killing four and injuring five.³⁷
- In 2009 Michael McLendon shot his mother before driving to the nearby town of Samson, GA, where he shot five more people. He then drove to another neighboring town, Geneva, where he shot several more people before killing himself. In total McLendon killed 10 people and injured six.³⁸

Public Mass Shootings—Perpetrators

Many experts agree that a workable, detailed profile of mass shooters does not exist.³⁹ However, there are some observations that can be made regarding public mass shooters. For instance, among the public mass shooting incidents reviewed by CRS, the gunmen generally acted alone, were usually white and male, and often died during the shooting incident. The average age of the shooters in the incidents identified by CRS was 33.5 years.

Only on rare occasions was more than one perpetrator involved in a public mass shooting. CRS has identified three such incidents since 1983.

³⁴ Not all of the incidents CRS identified took place exclusively at one location. The numbers given here reflect incidents that occurred in part or in full at the type of location described.

³⁵ Brian MacQuarrie and Rick Klein, "Slaughter at the Office: Man Held in Deaths of 7 Colleagues in Wakefield," *Boston Globe*, December 27, 2000.

³⁶ Cindy Stauffer et al., "Horror in Schoolhouse: 5 Amish Girls Killed, 5 Critically Wounded in Shocking Massacre," *Lancaster New Era*, October 3, 2006.

³⁷ Paul Nowell, "Four Killed, Five Injured in Shooting Spree," Associated Press, July 18, 1988.

³⁸ Shaila Dewan, "Gunman Kills 10 in Alabama, Then Takes His Life," *New York Times*, March 10, 2009.

³⁹ In this instance, "workable" is intended to convey a profile with the discerning ability to proactively identify individuals planning to engage in a shooting. In the case of school shootings, the FBI has stated that, an effective profile or checklist that can predict who will become an assailant does not exist. See Mary Ellen O'Toole, *The School Shooter: A Threat Assessment Perspective*, (Federal Bureau of Investigation, 2000) p. 1. See also Federal Bureau of Investigation, *Workplace Violence*, pp. 21, 25, 26; Mullen, "The Autogenic," p. 322; Robert A. Fein et al., *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*, (Secret Service, Department of Education, May 2002) p. 17.

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- In 1993, Juan Luna and James Degorski killed seven employees at a restaurant in Palatine, IL.⁴⁰
- In 1998, Andrew Golden and Mitchell Johnson killed five people and injured 10 at their middle school in Jonesboro, AR.⁴¹
- In 1999 Dylan Klebold and Eric Harris killed 13 and injured 23 at their high school in Littleton, CO, and then killed themselves.⁴²

Of the public mass shooting incidents identified by CRS for which information on the race of the perpetrator(s) was available, over half of the shooters were reportedly white.⁴³

Almost always, the shooters were male. Of the incidents compiled by CRS, only one involved a female assailant. In January 2006, Jennifer Sanmarco shot to death seven individuals—six were fatally wounded in a U.S. postal facility in Goleta, CA. One death occurred near Sanmarco's condominium, also in Goleta. She killed herself as well.⁴⁴

It was common for the gunmen involved in the shootings identified by CRS to kill themselves during their assaults. Forty-one of 81 shooters killed themselves. In 10 instances, law enforcement officers killed the gunmen involved.⁴⁵

The shooters identified by CRS ranged in age from 11 to 66 years old. All but 10 were age 20 or older. Most of them were in their 20s, 30s, or 40s (see **Figure 3**).

⁴⁰ Jeff Coen, Eric Ferkenhoff, and Flynn McRoberts, "Brown's Suspects Charged: 'They Are People without a Soul,' Police Chief Says," *Chicago Tribune*, May 19, 2002.

⁴¹ John Kifner et al., "From Wild Talk and Friendship to Five Deaths in a Schoolyard," *New York Times*, March 29, 1998.

⁴² Patricia Callahan, "Dream Turns to Nightmare," *Denver Post*, April 22, 1999, p. A1.

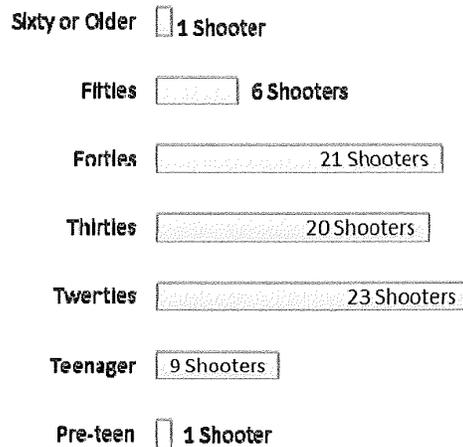
⁴³ While a range of demographic information on the perpetrators (including shooter gender and age) was noted in multiple sources reviewed by CRS, perpetrator race was often noted by just a single source, if at all. As such, CRS is not confident in presenting more nuanced data on the race of the shooters involved in public mass shootings identified for this report.

⁴⁴ Steve Chawkins and Jill Leovy, "7 Victims of Goleta Rampage," *Los Angeles Times*, February 2, 2006.

⁴⁵ Whether these gunmen intended to die at the hands of law enforcement (an act commonly described as "suicide by cop") is unclear. For more on this issue see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, "Suicide by Cop" *FBI Law Enforcement Bulletin*, vol. 74, no. 2 (February 2005), pp. 8-20.

*Public Mass Shootings in the United States: Selected Policy Implications***Figure 3. Age of Perpetrators in Public Mass Shootings 1983-2012**

Grouped in 10-Year Intervals



Source: CRS, based on analysis of mass shooting incidents identified by CRS.

Law Enforcement Implications

When considering law enforcement's role in coping with public mass shootings, policy makers and the public likely are most aware of how police forces react when they learn of an incident. Public mass shootings typically trigger a rapid police response, followed by an investigation and, potentially, prosecutions and sentencing. Also, while a shooting incident may spur an immediate law enforcement response, the *potential* for such a scenario impacts law enforcement prevention and preparedness measures. Police are not typically involved in recovery efforts.

From a law enforcement perspective, mass shootings tend to be single-jurisdiction issues involving a particular community. As such, while the federal government may not play a direct role in formulating specific state and local practices, it may influence these practices through the availability of grants. For example, the Department of Homeland Security (DHS) offers funding via its Homeland Security Grant Program to "fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration."⁴⁶ Although Department of Justice (DOJ) grants are not necessarily framed in terms of prevention, preparedness, or response, they can certainly address these issues regarding mass shootings.⁴⁷

⁴⁶ The State Homeland Security Program (part of the Homeland Security Grant Program) "supports the implementation of state Homeland Security Strategies to address the identified planning, organization, equipment, training, and exercise needs to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events." See <http://www.fema.gov/fy-2012-homeland-security-grant-program#0>.

⁴⁷ A number of existing grant programs may be used as vehicles to incentivize state and local law enforcement. For more information on the history and purpose areas of the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James. For information on the Community Oriented Policing Services (COPS) program, see CRS Report RL33308, (continued...)

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One foundational question is what, if anything, does the federal government want to influence in the states via grant funding related to law enforcement? Should the federal government enhance interagency information sharing and coordination on procedures to evaluate and deal with shooting threats?⁵⁰ Should it increase law-enforcement-related grant funding to bolster school resource officer training or the number of metal detectors in academic settings? In this area, the Obama Administration's January 16, 2013 report, *Now Is the Time: The President's Plan to Protect Our Children and Our Communities by Reducing Gun Violence (The President's Plan)*, included a commitment to using the Community Oriented Policing Services (COPS) program to incentivize police departments to hire more school resource officers. The plan also indicates that DOJ will develop a model—including best practices—for using school resource officers.⁵¹

Of course, such issues potentially involve a variety of specialists—not only police officials but also public health experts and educators,

Federal Framework for Emergency Management

U.S. emergency management is largely decentralized, potentially involving public, private, and nongovernmental agencies. Nonetheless, there exists a federal framework for managing domestic incidents. Within this framework, the National Incident Management System (NIMS) is an all-hazards, national approach to incident management.⁴⁸ It is built on

- continuous preparedness,
- flexible communications and information systems,
- standardized resource management,
- incident management and coordination (built, in part, on the Incident Command System), and
- ongoing updating of NIMS concepts and principles.

All federal departments and agencies are required to adopt NIMS.⁴⁹ In addition, state, local, and tribal organizations must adopt NIMS in order to be eligible for federal preparedness grants.

(...continued)

Community Oriented Policing Services (COPS): Background and Funding, by Nathan James. For information on the various juvenile justice grant programs, see CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*, by Kristin M. Finklea.

⁴⁸ NIMS enables relevant entities to “prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity, in order to reduce the loss of life and property and harm to the environment.” It is a flexible system, adaptable to the spectrum of potential incidents, and one that provides standardized framework to foster coordination and cohesion between relevant agencies. Federal Emergency Management Agency, “National Incident Management System,” December 2008, http://www.fema.gov/pdf/emergency/nims/NIMS_brochure.pdf. NIMS is administered by the Department of Homeland Security (DHS), and through the National Integration Center, the Secretary of DHS “publishes the standards, guidelines, and compliance protocols for determining whether a Federal, State, tribal, or local government has implemented NIMS.” See Federal Emergency Management Agency, “About National Incident Management System,” July 20, 2012, <http://www.fema.gov/about-national-incident-management-system>.

⁴⁹ This is required by Homeland Security Presidential Directive 5 (HSPD-5), issued by former President George W. Bush on February 28, 2003.

⁵⁰ Many such questions involve law enforcement as well as other experts with key roles to play in this area. As a case in point, policy makers may debate whether the federal government should encourage states to provide preventative mental health services to individuals at risk of committing violent crimes. Determining who could benefit from such services potentially involves police officers as well as medical professionals and teachers. Several juvenile justice grant programs have purpose areas that could be used to provide mental health services to at-risk youth. Congress may also consider incentivizing law enforcement training that includes a focus on mental health offender issues. The JAG program, for one, provides grant money for a variety of purpose areas, including law enforcement training broadly. Within programs such as this, funds could be utilized for specialized training.

⁵¹ See *The President's Plan*. While resource officers may be described as a preventive law enforcement measure, this report covers them as part of prevention efforts in the realm of education. See the discussion under the heading “School Resource Officers” in this report.

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among others. Grants impacting preparedness may shape first responder training, and grants influencing response could affect the development of law enforcement protocols for responding to mass shootings. Some policy makers may wish to incentivize the establishment and training of tactical emergency medical services (EMS) teams to support law enforcement during instances of mass shootings or related events. These teams could provide medical threat assessments, deliver medical care, and promote law enforcement safety, among other things. Little research has evaluated the effectiveness of such tactical EMS teams in the civilian domain, and policy makers may wish to request additional research in this arena.⁵² Congress may debate which elements of law enforcement prevention, preparedness, and response—if any—the federal government could try to influence in the states and localities.⁵³

In addition to providing financial assistance and incentives for certain law enforcement activities, the federal government may provide assistance in the form of manpower. Policy makers may debate whether federal law enforcement has sufficient authority and resources to assist state and local entities—if requested and if appropriate—in preparing for and responding to mass shootings and related incidents. For example, *The President's Plan* calls for additional funding for the federal government to train law enforcement, school officials, and others to respond to scenarios involving shooters.

Prevention

While law enforcement's role in crime control traditionally has been viewed as largely *reactive*, there has been a trend toward enhancing *proactive* law enforcement efforts. Thus, in the past three decades, much of the policing world has incorporated investigative strategies bent on preventing crimes in addition to solving crimes that have already occurred.⁵⁴ However, the effectiveness of proactive law enforcement techniques in preventing public mass shootings is unclear. As modern policing has evolved, several prominent philosophies and techniques—including community policing and intelligence-led policing—have focused on law enforcement preventing rather than solely responding to crime.

Community Policing

As laid out by DOJ, “[c]ommunity policing is a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.”⁵⁵ Community policing can employ a range of techniques to

⁵² See Nelson Tang and Gabor D. Kelen, “Invited Commentary: Role of Tactical EMS in Support of Public Safety and the Public Health Response to a Hostile Mass Casualty Incident,” *Disaster Medicine and Public Health Preparedness*, vol. 1, suppl. 1, (2007), pp. s55-s56. See Michael J. Feldman, Brian Schwartz, and Laurie J. Morrison, “Effectiveness of Tactical Emergency Medical Support: A Systematic Review,” June 6, 2006.

⁵³ Beyond guiding or shaping local policing, federal grant programs can also reinforce existing state and local practices or subsidize actions that state and local governments had planned to pursue on their own, among other things.

⁵⁴ These investigative strategies include community policing, problem-oriented policing, intelligence-led policing, and predictive policing. See Lois M. Davis et al., *Long-Term Effects of Law Enforcement's Post-9/11 Focus on Counterterrorism and Homeland Security*, RAND, 2010, pp. 2-4, http://www.rand.org/pubs/monographs/2010/RAND_MG1031.pdf.

⁵⁵ Department of Justice, *Community Policing Defined*, <http://www.cops.usdoj.gov/default.asp?item=36>. See also Bureau of Justice Assistance, “Understanding Community Policing: A Framework for Action,” August 1994, <https://www.ncjrs.gov/pdffiles/commpp.pdf>.

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control crime, and these techniques can be tailored to the specific needs of individual communities. The federal government has incentivized community policing efforts through DOJ's COPS office.⁵⁶

Research on community policing generally speaks to its impact on overall crime rates, and CRS has not identified any comprehensive research on how community policing may be used to specifically address mass shootings. Policy makers may question whether community policing efforts are useful in targeting a specific type of crime (mass shootings) in a specific setting (public places).

Intelligence-Led Policing

Based in part on community policing and problem solving efforts, intelligence-led policing initiatives, originally developed in Great Britain, have emerged throughout the nation.⁵⁹ After 9/11, intelligence operations were transformed at the federal level as well as at the state and local levels. More and more, intelligence-led policing is not a single methodology, but a framework that encompasses much of modern operational police activity.⁶⁰ Similar to community policing, intelligence-led policing relies upon information input (as the basis for intelligence analysis), two-way communications with the public, scientific data analysis (using the basic formula that information plus analysis equals intelligence), and problem solving.⁶¹

The impact of intelligence-led policing cannot yet be fully evaluated because "long term studies of police forces that have fully implemented and adopted intelligence-led policing have yet to be conducted."⁶² Further, like research on community policing efforts,

Intelligence-Led Policing and Fusion Centers

Gunmen involved in public mass shootings may not be targets easily preempted from wrongdoing by intelligence-led policing. However, there still may be roles that fusion centers⁵⁷ can play in countering this threat. (Such centers have been highlighted as tools to enhance intelligence-led policing.) Fusion centers may be able to help contextualize this issue. For instance, the Commonwealth Fusion Center based in Massachusetts launched the "Targeting Violent Crime Initiative," sponsored by DOJ, to examine firearms offenses in Massachusetts. This effort has focused on issues such as determining the source of firearms used in gun crimes in Massachusetts; understanding potential links between the illegal gun markets; and delving into gun crime trends throughout the state.⁵⁸ As such, policy makers may be interested in whether fusion centers have anything to offer in the way of intelligence-led policing to address mass shootings.

⁵⁶ For more information on the Community Oriented Policing Services (COPS) program within DOJ, see CRS Report R40709, *Community Oriented Policing Services (COPS): Current Legislative Issues*, by Nathan James and CRS Report RL33308, *Community Oriented Policing Services (COPS): Background and Funding*, by Nathan James.

⁵⁷ Fusion centers are a "collaborative effort of two or more Federal, state, local, or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity." See P.L. 110-53, Aug. 3, 2007, §511, 121 STAT. 322. Amends Homeland Security Act of 2002 by adding §210A(j).

⁵⁸ David Lambert, Federal Bureau of Investigation, "Intelligence-Led Policing in a Fusion Center," *FBI Law Enforcement Bulletin*, vol. 79, no. 12 (December 2010), pp. 1-6.

⁵⁹ Bureau of Justice Assistance, "Intelligence-Led Policing: The New Intelligence Architecture," September 2005, <https://www.ncjrs.gov/pdffiles1/bja/210681.pdf>.

⁶⁰ Jerry H. Ratcliffe, *Intelligence-Led Policing*, (Portland, OR: Willan Publishing, 2008), p. 6.

⁶¹ Department of Justice, "Intelligence-Led Policing: The Integration of Community Policing and Law Enforcement Intelligence," *Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies*, http://www.cops.usdoj.gov/pdf/e09042536_Chapter_04.pdf.

⁶² Jerry Ratcliffe, "What is Intelligence-Led Policing," <http://jratcliffe.net/research/ilp.htm>.

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available information on intelligence-led policing does not address whether intelligence-led policing may be an effective approach to use in addressing mass shootings.

Using intelligence-led policing to thwart mass shooters may be especially challenging for a number of reasons.

- Mass shooters most often act alone and share few of their plans with others.⁶³ Typically, they do not engage in ongoing conspiracies that can be infiltrated by undercover police officers or monitored by informants.⁶⁴
- There may be too few public mass shooting incidents to establish detailed geographic patterns (hot spots) for law enforcement to exploit.⁶⁵

Offender Profiling for Public Mass Shootings: Not a Preventive Tool

Researchers and policy makers have questioned whether law enforcement can develop a profile of a mass shooter to help identify at-risk individuals before a shooting incident occurs. No effective mass shooter profile exists for law enforcement to use to proactively identify potential suspects. One researcher has succinctly noted that “the predictors [for mass murder] are invariably far more common than the event we hope to predict, and mass murder is very rare. Although mass murderers often do exhibit bizarre behavior, most people who exhibit bizarre behavior do not commit mass murder.”⁶⁶ Aside from usually but not always being male, there are few other characteristics across mass murderers that would be reliable or valid for creating a general profile for individuals most likely to engage in a public mass shooting. This also holds true when examining individuals who carry out mass shootings in specific settings; for instance, “[t]here is no accurate or useful profile of ‘the school shooter.’”⁶⁷

⁶³ This is not meant to suggest that mass shooters are always silent regarding their plans. Rather, they may not typically involve others in orchestrating their schemes.

⁶⁴ Whereas criminal groups may engage in activities that could produce intelligence information for law enforcement to exploit, such as communicating to one another via email regarding their schemes, lone gunmen or mass shooters often do not. Minus any ideological underpinnings for their actions, public mass shooters may in some ways be likened to terrorist suspects who act alone, often described as “lone wolves.” One FBI official has said, “The lone wolf is arguably one of the biggest challenges to American law enforcement. How do you get into the mind of a terrorist? The FBI does not have the capability to know when a person gets up in middle America and decides: ‘I’m taking my protest poster to Washington or I’m taking my gun.’” See Gary Fields and Evan Perez, “FBI Seeks to Target Lone Extremists,” *Wall Street Journal*, June 15, 2009, <http://online.wsj.com/article/SB124501849215613523.html>. For more on lone wolves, see CRS Report R42536, *The Domestic Terrorist Threat: Background and Issues for Congress*, by Jerome P. Bjelopera.

⁶⁵ Hot spot analysis is one technique that may be involved in intelligence-led policing. For more information about mapping crime, see National Institute of Justice, “Mapping Crime: Understanding Hot Spots,” August 2005.

⁶⁶ Richard J. McNally, “Why Psychiatrists Can’t Predict Mass Murderers,” *Salon.com*, January 12, 2011.

⁶⁷ National Institute of Justice, “Preventing School Shootings: A Summary of a U.S. Secret Service Safe School Initiative Report,” *NIJ Journal*, 2002. The notion of profiling “may be an effective strategy for limiting the field of suspects after a crime has occurred,” but it is generally not considered effective for *proactively* identifying an individual who may be a greater risk for committing a targeted act of violence, including a public mass shooting. See Randy Borum, Robert Fein, Bryan Vossekuil, et al., “Threat Assessment: Defining an Approach for Evaluating Risk of Targeted Violence,” *Behavioral Sciences and the Law*, vol. 17 (1999), p. 328. Hereafter: Borum et al., “Threat Assessment.”

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Also of note, criminal profiling is generally utilized *after* a crime has been committed, and not usually as a preventive tool.⁶⁸ In the course of investigating serial crimes by a repeat offender such as a serial murderer, it could be utilized as a proactive tool to narrow the pool of potential offenders before a subsequent crime is committed. However, because mass shooters generally do not have the opportunity to commit a second crime—they are most typically either killed or captured after the mass shooting—investigative analysis would be most commonly employed after the mass shooting to understand how it happened rather than as a tool to identify potential shooters before an incident occurs.

All of this does not mean that preventing public mass shootings is wholly beyond the scope of federal law enforcement. For instance, to enhance law enforcement efforts in the violent crime domain, DHS, DOJ, and the FBI have been working to “identify measures that could be taken to reduce the risk of mass casualty shootings.”⁶⁹

Preparedness and Prevention Combined—Threat Assessments

Alternatively, what has come to be known as “threat assessment” may be more appropriately suited to prepare for the threat of potential shooters and to prevent them from harming others. Federal law enforcement has been involved in providing threat assessment approaches to front-line professionals, such as educators, who may encounter potential shooters. Threat assessments are used after a potentially harmful individual has come to the attention of authorities. The assessment process evaluates the threat he or she poses. Certainly, threat assessments may be used to prevent a mass shooting. Law enforcement efforts to train front-line professionals in the assessment process can be seen as an effort geared toward preparing these individuals to cope with threats.

The National Threat Assessment Center (NTAC), which is part of the U.S. Secret Service, provides research on threat assessment as well as on targeted violence.⁷⁰ The threat assessment approach used by the U.S. Secret Service was developed as part of its broader intelligence activities designed to protect the President and other officials. Nonetheless, it “can be applied with some modification to evaluating risk for other forms of targeted violence.”⁷¹ It does not rely upon “profiles” of potential malicious actors (as profiles have not proven to be reliable predictors

⁶⁸The FBI and its behavioral analysts in the Behavioral Science Unit developed what is often referred to as criminal “profiling,” or criminal investigative analysis. It was advanced as an investigative technique to narrow the field of potential offenders based on analyses of the crimes committed. Today, much of the criminal investigative analysis at the FBI is conducted by agents and analysts in the Behavioral Analysis Units at the National Center for the Analysis of Violent Crime. Federal Bureau of Investigation, “Criminal Profiling Part 1 of 7,” <http://vault.fbi.gov/Criminal%20Profiling/Criminal%20Profiling%20Part%201%20of%207/view>. The National Center for the Analysis of Violent Crime is a component of the Critical Incident Response Group at the FBI. For more information, see http://www.fbi.gov/about-us/cirg/investigations-and-operations-support/investigations-operations-support#cirg_ncavc.

⁶⁹ Components of such risk reduction involve prevention, protection, response, education, and research/evaluation. Department of Homeland Security, “Statement by Secretary Napolitano on President Obama’s Proposal to Combat Gun Violence,” press release, January 16, 2013, <http://www.dhs.gov/news/2013/01/16/statement-secretary-napolitano-president-obama%E2%80%99s-proposal-combat-gun-violence>.

⁷⁰ See Secret Service, “National Threat Assessment Center,” <http://www.secretservice.gov/ntac.shtml>.

⁷¹ Borum et al., “Threat Assessment,” p. 327. In 1992, the Secret Service, along with the Federal Bureau of Prisons and National Institute of Justice, undertook a 5-year Exceptional Case Study Project (ECSP) to study individuals who have attacked or attempted to attack public officials and figures in the United States. For specific ECSP findings, see Robert A. Fein and Bryan Vossekuil, “Threat Assessment Investigations: A Guide for State and Local Law Enforcement Officials,” July 1998.

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for actual threat), nor does it depend on stated threats as a starting point for evaluating risk (because not every person who makes a threat poses a true risk, and not all persons who pose risks make threats).⁷² Within this threat assessment framework, it has been suggested that information be collected relating to: (1) facts that bring the subject to the attention of authorities, (2) the subject of interest, (3) attack-related behaviors, (4) possible motives, and (5) potential targets.⁷³ Of note, law enforcement may not be the only authorities involved in evaluating information and conducting such a threat assessment, but the assessment framework may be one of several tools that law enforcement relies upon in an attempt to prevent targeted violence, including mass shootings. Policy makers may wonder whether threat assessment has proved to be a viable tool for law enforcement to use in preventing incidents of mass shootings. Further, they may question if the threat assessment framework could be modified to better serve law enforcement and other professionals who collaborate on efforts to prevent targeted violence.

If threat assessments can effectively identify potential mass shooters, policy makers may debate how law enforcement could use this information. One potential option could be to create a criminal watchlist, similar to the Terrorist Screening Database,⁷⁴ or terrorist watchlist, to be used in background checks for firearms, among other things.⁷⁵ Similar to questions regarding the threshold for placing a suspected individual on the terrorist watchlist, one of the relevant issues would involve establishing criteria for the addition of potential mass shooters to a violent criminal watchlist. There may also be questions about if or how law enforcement may engage with others such as mental health professionals and community leaders in decisions to place someone on such a watchlist. (For a discussion of how the federal government coordinates preparedness efforts for incidents involving mass casualties see “Preparedness” under the “Public Health Implications” section of this report).

As another means of preparing for mass shootings, some law enforcement agencies have participated in tailored trainings. DHS, for instance, sponsors preparedness courses for shootings as well as webinars, and workshops.⁷⁶ The California Highway Patrol has taken advantage of these opportunities and, between August 2012 and January 2013, “has led 18 active shooter trainings on campuses across Northern California.”⁷⁷ In these two-day classes, officers participate in simulated scenarios; they are trained to respond to a reported incident, bring a shooter under control, and ensure the safety of building occupants.

Response

Federal Response to a Local Crime

From a law enforcement perspective, public mass shootings are often highly localized incidents involving lone gunmen acting near where they live. Thus, these cases largely do not involve

⁷² Borum et al., “Threat Assessment,” p. 372.

⁷³ *Ibid.*, p. 330.

⁷⁴ For more information on the Terrorist Screening Database, see <http://www.fbi.gov/about-us/nsb/tsc>.

⁷⁵ For more information on terrorist watchlist screenings and background checks for firearms, see CRS Report R42336, *Terrorist Watch List Screening and Brady Background Checks for Firearms*, by William J. Krouse.

⁷⁶ See Department of Homeland Security, “Active Shooter Preparedness,” <http://www.dhs.gov/activeshooter>.

⁷⁷ Kaci Poor, “Active Shooter Training Prepares Local Law Enforcement for Sandy Hook Situation,” *The Times-Standard*, January 25, 2013.

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conspiracies or the extensive crossing of jurisdictions. As such, mass shootings generally may be considered a local concern. Nonetheless, federal law enforcement—most notably the FBI—has historically provided assistance, when requested, to state and local law enforcement in the investigation of crimes that do not automatically fall under the jurisdiction of federal law enforcement.⁷⁸

Some have expressed concerns that without official authority to respond to such incidents that fall primarily under a single state's jurisdiction, the federal response to these incidents could be slowed from questions of jurisdiction.⁷⁹ However, in practice, federal law enforcement has routinely assisted state and local law enforcement in a variety of capacities. The FBI's Office of Law Enforcement Coordination (OLEC), for one, is the liaison between the FBI and the greater law enforcement community. FBI assistance includes a variety of criminal justice information and research, background checks and security clearances, and disaster and hazardous material response teams. Of note, the 112th Congress passed legislation (P.L. 112-265) that formally authorizes the Attorney General to provide investigative assistance to states in instances of violent crimes in public venues, including attempted and actual mass killings. Some may question whether this authority will change federal law enforcement involvement in responding to and investigating instances of public mass shootings or whether it will simply formalize an already well-established practice.

Definitional Implications for Criminal Justice Process

As noted, the definition of a mass shooting is not always consistent across the scholarly, policy, and law enforcement realms. Within the law enforcement realm, a clear definition of mass shootings may be more critical during certain phases of the criminal justice process than others. Take, for instance, the question of who counts as a "victim" of a mass shooting. Is a victim

- Only someone who was killed at the scene of the crime?
- Someone who was shot and hospitalized in critical condition for an extended period of time?
- Someone who was caught in the cross-fire but not critically injured by bullets?
- Someone who died or was injured in attempting to escape the situation, but who did not die from a gunshot wound?

The individual circumstances involving victims are quite varied, but in certain steps of the criminal justice process, the need for a concrete definition may be more pressing.

The fact that law enforcement will respond to a public mass shooting may not depend on the ability to pinpoint the exact number of dead or injured victims. However, the details regarding victimization may more greatly impact how the incident is investigated and prosecuted after the conclusion of the mass shooting. Once an investigation begins, information about individuals considered "victims" may be of special interest to investigators and prosecutors. If the shooter

⁷⁸ One of the FBI's top ten priorities is to "support federal, state, local and international partners." See <http://www.fbi.gov/about-us/quick-facts>. Of course, other federal law enforcement agencies, such as the Bureau of Alcohol Tobacco, Firearms, and Explosives, can help local police with mass shooting investigations.

⁷⁹ Jerry Seper, "FBI Agents Back Bill Allowing Feds to Help Probe Mass Killings," *The Washington Times*, January 2, 2013.

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survives the incident and is prosecuted, whether or not a victim dies as a result of the mass shooting will influence the charges brought against the shooter. These charges may include actual and attempted homicide, manslaughter, and assault, among others.⁸⁰ The charges can, in turn, influence the length of sentence a shooter may receive if convicted of the charges brought against him.

A gunman's motives influence how police investigate shootings. A shooter's motives may also drive the charges ultimately brought against him, if he survives the incident. While some cases may be instances of relatively indiscriminate killing, others involve assailants driven by particular hatreds that lead to the targeting of specific groups and can be considered hate crimes and investigated and prosecuted accordingly. Still others can involve ideologically-motivated killing, leading to terrorism-related investigations and charges.

In considering a shooter's motives and intentions, law enforcement may question whether it is the shooter's resolve to die along with his victims, either in an act of self-inflicted suicide or through "suicide-by-cop," what some have termed "suicide by mass murder."⁸¹ When law enforcement officers respond to a report of a shooter, they are faced with multiple concerns in attempting to disarm and arrest the shooter. Will they have to use lethal force on the suspect? Will the suspect take his own life? Will the suspect try to prolong his life and his rampage through the use of body armor and other defensive tactics?

Public Health Implications⁸²

From a public health policy perspective, public mass shootings are mass casualty incidents (MCI) that cause both injury and death.⁸³ Although public mass shootings are infrequent, the health sector⁸⁴ has considerable related experience to bring to bear on preparing for and responding to these events.

⁸⁰ Federal crimes of attempted and actual homicide and manslaughter are codified at 18 U.S.C. § 1111-1113.

⁸¹ Rachel Kalish and Michael Kimmel, "Suicide by Mass Murder: Masculinity, Aggrieved Entitlement, and Rampage School Shootings," *Health Sociology Review*, vol. 19, no. 4 (2010).

⁸² This section includes contributions from Sarah A. Lister, Specialist in Public Health and Epidemiology (public health, prevention, preparedness and response), and Elayne J. Heisler, Analyst in Health Services (emergency departments, trauma care).

⁸³ Casualties can include victims or responders who die from their injuries; victims or responders who survive with physical injuries (not limited to gunshot wounds); and victims, responders, bystanders, and community members who experience psychological repercussions. The most severe injuries are less common than minor injuries such as sprains and strains. See Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), *Emergency Preparedness and Response: Injuries and Mass Casualty Events*, <http://www.bt.cdc.gov/masscasualties/injuriespro.asp> Traumatic events can have both short- and long-term consequences. See Centers for Disease Control and Prevention, *Emergency Preparedness and Response: Coping with a Traumatic Event*, <http://www.bt.cdc.gov/masscasualties/copingpro.asp>.

⁸⁴ According to DHS, in the context of critical national infrastructure, the health care and public health sector (referred to as "the health sector" in this report) consists of a variety of health care facilities and transportation services, products manufacture and distribution, financing and data management systems, governmental public health agencies, and non-governmental organizations. Department of Homeland Security, *Healthcare and Public Health Sector-Specific Plan: An Annex to the National Infrastructure Protection Plan*, 2010, Executive Summary, p. 1, <http://www.dhs.gov/xlibrary/assets/nipp-ssp-healthcare-and-public-health-2010.pdf>.

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The health sector addresses mass shootings as it does any other health threat, through (1) prevention, (2) preparedness, (3) response, and (4) recovery over the long term. Prevention focuses on the perpetrators of mass shooting. The other three components of the health sector approach concentrate on the victims of such incidents.

Public health options to thwart mass shootings are likely limited. Of these four components, the effectiveness of preventive efforts may be most unclear. Fundamentally, this area likely lacks strong evidence regarding what might successfully stop potential shooters from becoming actual shooters. This evidence could come from evaluation of new or existing policies. Such efforts could help fill a gap in knowledge about what is effective.

In terms of preparedness, response, and recovery, proven approaches exist. However, policy makers may wish to consider how existing capacities (or policies to increase capacity) vary across geographic areas and populations. Also, the ability to rapidly evaluate the effectiveness of existing programs and/or deploy resources may hinge on the flexibility of funding structures.

Prevention

Public health interventions are often based on research with large-scale datasets and rigorous information collection regimens.⁸⁵ The effectiveness of this approach may be limited largely because public mass shootings are rare, *potential* perpetrators cannot be identified accurately, and no systematic means of intervening are known to be effective. Regardless, a public health-oriented discussion of prevention of mass shootings should consider the field's traditional approach to stemming any cause of injury or death, highlighting some of the ways that this approach may or may not address public mass shootings.

Public health professionals address prevention of injury and death via a three-step process focused on understanding and stemming health-related problems:

- First, systematic collection of data (*surveillance*)⁸⁶ may help define the scope of the problem, identify an outbreak of the problem, and detect trends related to the problem.
- Second, research may identify characteristics associated with higher rates of injury or death attributed to the problem (called *risk factors* and *protective factors*, respectively). Such research may be based on surveillance or other sources of information.
- Third, efforts to reduce risk factors and enhance protective factors may be developed to stem the problem. These are founded on research pursued in the previous step of this process. Called *preventive interventions* within the context of public health, such undertakings traditionally focus on victims. However, as mentioned above, in the case of public mass shootings, the focus of prevention is generally on the gunmen involved.⁸⁷

⁸⁵ For examples of public health surveillance systems, see Centers for Disease Control and Prevention, National Center for Health Statistics, *Surveys and Data Collection Systems*, <http://www.cdc.gov/nchs/surveys.htm>.

⁸⁶ This does not include what may be considered surveillance within law enforcement contexts, i.e., covertly gathered information about suspects.

⁸⁷ Centers for Disease Control and Prevention, Injury Center, *Violence Prevention, The Public Health Approach to* (continued...)

Surveillance May Not Be Necessary to Identify Public Mass Shootings

Mass shootings are rare, high-profile events, rather than broad trends that require systematic data collection to understand. The public health system does not conduct surveillance specifically for public mass shootings as defined in this report. Some broader information about shootings is collected (e.g., from death certificates⁸⁸); however, this information is largely about victims rather than assailants, limiting its usefulness for research into the prevention of mass shootings. For example, the Centers for Disease Control and Prevention's (CDC's) National Violent Death Reporting System (NVDRS) enables participating states to supplement death certificates with information from law enforcement agencies, crime laboratories, coroner or medical examiner reports, health providers, and other state and local agencies. The NVDRS is currently in operation in fewer than half the states.⁸⁹ *The President's Plan* proposes expanding the NVDRS to all 50 states at a cost of \$20 million.⁹⁰

Difficulty in Identifying Risk and Protective Factors

According to the parameters of this CRS analysis, the victims of public mass shootings are essentially random. Thus, health research into risk and protective factors tied to these incidents would likely focus on things that would either boost or lower the chances that one might become a gunman. One obstacle in identifying such factors is the relatively small data pool available for research (several dozen tragedies over the last thirty years in the United States).

Gun violence broadly, rather than public mass shootings, accounts for many more instances of death and injury per year and yields a far larger pot of observable information. This information may be used in research to identify risk and protective factors. Therefore, potential risk and protective factors may have more utility when public health professionals confront the much

(...continued)

Violence Prevention, <http://www.cdc.gov/ViolencePrevention/overview/publichealthapproach.html>. The approach is discussed in the context of school violence in U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Early Childhood, Youth and Families, *School Violence: Protecting Our Children*, 106th Cong., 1st sess., March 1, 1999, H.Hrg. 106-9 (Washington: GPO, 1999), pp. 44-58. The CDC describes a four-step process; this CRS report combines the last two steps (intervention evaluation and implementation) into one step, resulting in the three-step process described in the text.

⁸⁸ Both the legal authority for maintaining registries of deaths and the responsibility for issuing death certificates reside with individual states, territories, and two cities (Washington, DC, and New York, NY). Information collected in death certificates is aggregated at the federal level by the National Center for Health Statistics (NCHS, within CDC) in the National Vital Statistics System (NVSS); see <http://www.cdc.gov/nchs/nvss.htm>. NCHS extracts information from NVSS to create the National Death Index (NDI), a data set that can be combined with other data sets for research purposes; see http://www.cdc.gov/nchs/data_access/ndi/about_ndi.htm. Information about non-fatal shootings is included in the CDC's National Electronic Injury Surveillance System – All Injury Program (NEISS-AIP), which collects data from a sample of U.S. hospital emergency departments; NEISS-AIP data can be used to generate national estimates of nonfatal injuries. See Centers for Disease Control and Prevention, *Injury Prevention & Control: Data & Statistics*, <http://www.cdc.gov/injury/wisqars/index.html>. Additionally, the National Conference of State Legislatures reports that 40 states have statutes establishing statewide trauma registries that collect data about trauma, including both fatal and non-fatal gunshot wounds; the data collected and the source of the data (e.g., emergency medical service or trauma centers) vary by state. See Hollie Hendrikson, *The Right Patient, the Right Place, the Right Time: A Look at Trauma and Emergency Medical Services Policy in the States*, National Conference of State Legislatures, Washington, DC, September 2012, <http://www.ncsl.org/documents/health/NCSLTraumaReport812.pdf>.

⁸⁹ Centers for Disease Control and Prevention, *National Violent Death Reporting System*, <http://www.cdc.gov/violenceprevention/nvdrs>.

⁹⁰ *The President's Plan*.

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broader phenomenon of gun violence, not just public mass shootings. Consequently, potential risk factors such as mental illness, substance abuse, exposure to violence, and easy access to guns are all addressed to some extent in *The President's Plan*, which covers the wider issue of gun violence.⁹¹ *The President's Plan* also responds to the suggestion by some that health research related to gun violence has been hampered by a statutory prohibition on the use of certain funding to “advocate or promote gun control.”⁹² *The President's Plan* states that research into gun violence is not advocacy,⁹³ and a Presidential Memorandum directs the Health and Human Services (HHS) Secretary to “conduct or sponsor research into the causes of gun violence.”⁹⁴

The Effectiveness of Preventive Interventions Is Unclear

Prevention of public mass shootings in a public health context would in theory involve interventions targeted at potential perpetrators, not potential victims. These interventions would be founded on well-tested risk and protective factors, which—as noted above—do not currently exist. If relatively unproven factors were to be used in the development of preventive interventions, this would likely yield many misidentifications.

Because the number of public mass shootings in the United States may be too small to offer substantive analysis that could produce effective interventions, it may be most feasible to address gunmen involved in such incidents as a subset of violent offenders. Preventive interventions directed at potential violent offenders may target populations, at-risk subgroups, or high-risk individuals. These approaches may or may not prove effective within the broader context of gun violence, and what effect (if any) they would have on mass shootings is unclear as well. *The President's Plan* provides examples of each approach:

- Population-wide interventions include finalizing regulations for mental health parity in private health insurance and ensuring that Medicaid plans are in compliance with parity requirements.⁹⁵
- Interventions targeting at-risk subgroups include a clarification that doctors are permitted to talk about gun safety with patients who have access to guns and efforts to make mental health and conflict resolution services available specifically for students who have been exposed to violence.⁹⁶

⁹¹ *The President's Plan*.

⁹² CDC appropriations from FY1997 through FY2011 included a prohibition on the use of funds “to advocate or promote gun control.” This prohibition has been extended to all HHS agencies for FY2012 and FY2013. See CRS Report WSLG375, *Is Gun Violence Research Advocacy? Appropriations Restrictions on Using HHS Funds to “Advocate or Promote Gun Control,”* by Kathleen S. Swendiman, January 23, 2013. See also Jay Dickey and Mark Rosenberg, “‘Senseless’ is not studying gun violence,” *The Washington Post*, July 29, 2012, and Michael Luo, “Sway of N.R.A. Blocks Studies, Scientists Say,” *The New York Times*, January 25, 2011.

⁹³ *The President's Plan*.

⁹⁴ U.S. President (Obama), “Engaging in Public Health Research on the Causes and Prevention of Gun Violence,” *Public Papers of the Presidents of the United States* (Washington: GPO, 2013).

⁹⁵ *The President's Plan*. See CRS Report R41768, *Mental Health Parity and Mandated Coverage of Mental Health and Substance Use Disorder Services After the ACA*, by Amanda K. Sarata. Mental health parity generally refers to the concept that health insurance coverage for mental health services should be offered on par with covered medical and surgical benefits.

⁹⁶ *The President's Plan*.

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- Interventions targeting high-risk individuals include a clarification that health professionals are permitted to report to law enforcement violent threats that patients may make.⁹⁷ Also, on January 15, 2013, the HHS Office of Civil Rights issued a letter to health care providers to clarify that federal health privacy laws do not prohibit them from disclosing “necessary information about a patient to law enforcement, family members of the patient, or other persons, when [they] believe the patient presents a serious danger to himself or other people.”⁹⁸ Interventions focused on high-risk individuals can also involve training law enforcement officers to work with mental health professionals to intervene with students in crisis.

Preparedness

The federal government has supported coordinated mass casualty incident (MCI) preparedness efforts in large cities since 1997⁹⁹ and in all 50 states, territories, and the District of Columbia since 2002,¹⁰⁰ through federal grants and contracts to public health agencies. These agencies are required to develop plans to integrate responding entities—including federal, state, and local law enforcement; emergency medical services (EMS); private sector health care facilities; and others. These federal grants and contracts support the rapid establishment of interdisciplinary communications (e.g., emergency operations centers) and periodic exercises that bring key responders together to practice before an actual incident, among other things. Although these federal grants and contracts were established in response to concerns about terrorism, they may also help local agencies prepare for MCIs such as public mass shootings. Some are concerned about whether these programs are sufficiently dispersed to enable rural areas to prepare for an MCI.¹⁰¹

Certain aspects of the health care delivery system, such as the capacity and proximity of critical facilities to a mass shooting, can affect survival from a public mass shooting. Three components of the health care delivery system contribute to MCI readiness: (1) emergency medical services (EMS), (2) hospital-based emergency departments (EDs), and (3) trauma care.

⁹⁷ *The President’s Plan*.

⁹⁸ Letter from Leon Rodriguez, Director, Health and Human Services, Office of Civil Rights, “Message to Our National Health Care Providers,” January 15, 2013, <http://www.hhs.gov/ocr>. The letter clarifies requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR § 164.512(j).

⁹⁹ Metropolitan Medical Response System contracts required more than 120 cities to establish and exercise mass casualty management plans. National Research Council, *Preparing for Terrorism: Tools for Evaluating the Metropolitan Medical Response System Program*, Washington, D.C., The National Academies Press, 2002, http://www.nap.edu/catalog.php?record_id=10412. The program, originally managed by HHS, is now a component of the Federal Emergency Management Agency (FEMA) Homeland Security Grant Program (HSGP). It received dedicated appropriations from FY1997 through FY2011. For FY2012, its purposes are allowable, but no longer required, of grantees receiving HSGP funds. Federal Emergency Management Agency, FY2012 Homeland Security Grant Program, <http://www.fema.gov/fy-2012-homeland-security-grant-program>.

¹⁰⁰ Department of Health and Human Services, Public Health Emergency, “Hospital Preparedness Program,” <http://www.phe.gov/preparedness/planning/hpp/pages/default.aspx>.

¹⁰¹ Kristin Viswanathan, Theresa Wizemann, and Bruce M. Altevogt, “Improving Rural Mass Casualty Response in the United States,” in *Preparedness and Response to a Rural Mass Casualty Incident* (Washington, DC: National Academies Press, 2011), pp. 77-86.

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Emergency medical services (EMS) include 911 call centers, medical care that occurs at the scene of an emergency, the transportation of victims to hospitals, and any treatment that occurs on the way. EMS systems vary by locality—some are operated by municipal or county governments, others by fire departments, and still others by private for-profit companies. This may mean that response times, quality, availability, and preparedness vary by locality. Federal responsibility for EMS is shared across the Department of Transportation, DHS, and HHS,¹⁰² which raises potential concerns about coordination and sustainability.¹⁰³ Also, an HHS grant program administered by the Health Resources and Services Administration (HRSA) supports an effort to ensure that emergency medical services are appropriate for children.¹⁰⁴

Hospital-based emergency departments (ED) vary by locality, and not all hospitals have an ED. Rural areas in particular may have both fewer hospitals overall and fewer hospitals that offer emergency care. In both urban and rural areas, some EDs may not function optimally on a day-to-day basis, which would affect their ability to respond to an MCI. EDs may be overcrowded, may “board” patients when inpatient beds are unavailable, and may divert ambulances because they are operating at capacity.¹⁰⁵ The federal government supports EDs through a variety of mechanisms including hospital preparedness grants, interagency coordination, and training of emergency health providers.¹⁰⁶ Through the Medicare and Medicaid programs, the federal government provides payments to hospitals that deliver care to uninsured patients in hospital EDs.¹⁰⁷ These payments (called disproportionate share payments) are an important source of a financial support for EDs.

Trauma centers are specialized hospitals with the resources and equipment needed to treat severely injured patients.¹⁰⁸ They provide specialized care that is beyond the capability of the typical ED. Trauma centers are classified into four levels, with lower numbers (I, II) providing

¹⁰² Institute of Medicine, *Future of Emergency Care: Emergency Medical Services at the Crossroads* (Washington, DC: The National Academies Press, 2007).

¹⁰³ The National Conference of State Legislatures suggests that state-level organization of EMS services also impedes coordination. See Hollie Hendrikson, *The Right Patient, the Right Place, the Right Time: A Look at Trauma and Emergency Medical Services Policy in the States*, National Conference of State Legislatures, Washington, DC, September 2012, p. 9, <http://www.ncsl.org/documents/health/NCSTraumaReport812.pdf>.

¹⁰⁴ This program is described in CRS Report R41278, *Public Health, Workforce, Quality, and Related Provisions in PPACA: Summary and Timeline*, coordinated by C. Stephen Redhead and Erin D. Williams. The funding for this program is described in CRS Report R41390, *Discretionary Spending in the Patient Protection and Affordable Care Act (ACA)*, coordinated by C. Stephen Redhead.

¹⁰⁵ U.S. Government Accountability Office, *Hospital Emergency Departments: Crowding Continues to Occur, and Some Patients Wait Longer than Recommended Time Frames*, 09-347, April 30, 2009, <http://www.gao.gov/products/GAO-09-347>; Institute of Medicine, *Emergency Medical Services at the Crossroads* (Washington, DC: The National Academies Press, 2007); and Institute of Medicine, *Hospital-Based Emergency Care: At the Breaking Point* (2007).

¹⁰⁶ For more information about HHS programs to train emergency providers, see CRS Report R41278, *Public Health, Workforce, Quality, and Related Provisions in PPACA: Summary and Timeline*, coordinated by C. Stephen Redhead and Erin D. Williams. For more about the Hospital Preparedness Program see Department of Health and Human Services, Public Health Emergency, “Hospital Preparedness Program,” <http://www.phe.gov/preparedness/planning/hpp/pages/default.aspx>; and Department of Health and Human Services, Assistant Secretary for Preparedness and Response, *Healthcare Preparedness Capabilities: National Guidance for Healthcare System Preparedness*, January 2012, p. 24, <http://www.phe.gov/Preparedness/planning/hpp/reports/Documents/capabilities.pdf>.

¹⁰⁷ CRS Report R42865, *Medicaid Disproportionate Share Hospital Payments*; and CRS Report R41196, *Medicare Provisions in the Patient Protection and Affordable Care Act (PPACA): Summary and Timeline*, by Alison Mitchell.

¹⁰⁸ Centers for Disease Control and Prevention, “Access to Trauma Care: Getting the Right Care, at the Right Place, at the Right Time,” August 24, 2010, http://www.cdc.gov/traumacare/access_trauma.html. Hereafter: Centers for Disease Control and Prevention, “Access to Trauma Care.”

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more specialized care. Trauma centers may play a role in responding to MCIs, but not all areas have the patient volume to support a trauma center. Distance to the nearest trauma center may be an issue in some MCIs. The federal government provides some funding for trauma centers through grants authorized under HHS, but not of all these programs have received funding.¹⁰⁹ In addition, the CDC is working to raise awareness of trauma centers and has produced research showing the importance of access to trauma care in surviving a severe injury.¹¹⁰

Response

The medical response to an MCI involves triage¹¹¹ and limited treatment of victims on-site, as well as the transfer of victims to appropriate health care facilities for definitive treatment. As described above, federal preparedness funding aims to ensure: (1) that the medical components of MCI response work as well as possible when needed, (2) that individual components are as capable as they can be in response, and (3) that medical responders can coordinate and communicate well with each other and with other response sectors such as law enforcement and public education. However, when an incident occurs, local authorities and health systems are largely on their own during the initial phases of a response. The federal government, through HHS (and, when needed, the Department of Defense), can support local efforts to respond to MCIs, making available mobile medical teams, mobile field hospitals, medical supply and pharmaceutical caches, and medical evacuation and transport.¹¹² In general, however, mass shootings resolve quickly, often before federal operational assistance can be delivered.

In the event of a public mass shooting or other MCI, as with any emergency medical situation, delaying treatment while determining a patient's insurance status or ability to pay for health care services may prove fatal. The Emergency Medical Treatment and Active Labor Act (EMTALA) protects against such a delay.¹¹³ EMTALA requires a hospital that receives Medicare payments (as the vast majority of hospitals do) to screen a patient for emergency medical conditions without regard for the patient's ability to pay. If the screening identifies an emergency medical condition, EMTALA requires the hospital to stabilize the patient. In instances where a patient's injuries are too severe to be treated at an ED, a patient may be sent to a trauma center. EMS or local EDs may determine whether a transfer to a trauma center is needed. Trauma centers are also subject to EMTALA (if the hospitals receive Medicare payments) and are required to accept transfers when an ED has determined that the trauma center possesses the specialized services that the patient needs but the ED lacks.

¹⁰⁹ For information about regional trauma programs, see CRS Report R41278, *Public Health, Workforce, Quality, and Related Provisions in PPACA: Summary and Timeline*, coordinated by C. Stephen Redhead and Erin D. Williams. For information about funding of regional trauma programs, see CRS Report R41390, *Discretionary Spending in the Patient Protection and Affordable Care Act (ACA)*, coordinated by C. Stephen Redhead.

¹¹⁰ Centers for Disease Control and Prevention, "Access to Trauma Care."

¹¹¹ This involves identifying "the severity and type of injury and determin[ing] which hospital or other facility would be the most appropriate to meet the needs of the patient." See Centers for Disease Control and Prevention, "Field Triage," <http://www.cdc.gov/fieldtriage/>.

¹¹² For information, see Department of Health and Human Services, Assistant Secretary for Preparedness and Response, "Medical Assistance," <http://www.phe.gov/Preparedness/support/medicalassistance/Pages/default.aspx>; and Archived CRS Report RL33095, *Hurricane Katrina: DOD Disaster Response*, by Steve Bowman, Amy Belasco, and Lawrence Kapp.

¹¹³ The Emergency Medical Treatment and Active Labor Act (EMTALA) was enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272). For more information on EMTALA, see CRS Report RS22738, *EMTALA: Access to Emergency Medical Care*, by Edward C. Liu.

Recovery

Recovery of affected individuals and communities over the long term may require ongoing services to meet the physical and mental health care needs of both victims and responders. Ongoing services may involve inpatient and outpatient medical care; psychosocial interventions such as pastoral or peer counseling; and population-level interventions such as public announcements about common reactions to traumatic events (which can help normalize people's experiences and reduce anxiety around symptoms that are likely to be transient) or information about how to discuss an incident with children.¹¹⁴ The availability of such services in a timely and accessible manner may also be important for reducing long-term consequences such as posttraumatic stress disorder.¹¹⁵ Although federal resources generally focus on the immediate aftermath of an MCI, the federal government may fund public health interventions as well as programs that support the physician and behavioral health workforce and other infrastructure. The federal government also has a role in providing and financing health services that victims and responders may access.¹¹⁶

For an individual's long-term recovery from a public mass shooting, lack of insurance or inability to pay for health care services may limit the treatment options available (e.g., physical rehabilitation or counseling). Thus, financial support may play a key role in long-term recovery.¹¹⁷

Education Implications

Schools are unique institutions. They have a mission of great importance to our nation—they are responsible for keeping our children safe while educating them and helping prepare them to be

¹¹⁴ Centers for Disease Control and Prevention, *Emergency Preparedness and Response: Mass Casualty Event Preparedness and Response*, <http://www.bt.cdc.gov/masscasualties>.

¹¹⁵ See James Hawdon et al., "Social Solidarity and Wellbeing after Critical Incidents: Three Cases of Mass Shootings," *Journal of Critical Incident Analysis*, vol. 3, no. 1 (Fall 2012), pp. 2-25.

¹¹⁶ For example, the Substance Abuse and Mental Health Services Administration (SAMHSA) has programs that may provide access to mental health services for victims (see <http://www.samhsa.gov/>), and the Health Resources and Services Administration trains mental health providers and has programs to place providers in rural and other underserved areas (see <http://nhsc.hrsa.gov/> and <http://bhpr.hrsa.gov/grants/mentalbehavioral/index.html>). Under certain circumstances (e.g., if the infrastructure damage approached \$1 million), the Governor might request that the President declare a major disaster area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (the Stafford Act). Under a Stafford declaration, FEMA would be authorized to fund (among other things) a Crisis Counseling Assistance and Training Program (CCP); see 42 U.S.C. §5183. Alternatively, the President might consider a mass shooting event to be a "uniquely federal responsibility" and declare an emergency on that basis. Programs such as the CCP could be an adjustment made to the declaration under the President's authority, providing supplemental resources to state, local, and/or private mental health organizations. Such a declaration could also arguably provide assistance to safety forces (e.g., overtime pay) and provide other essential assistance requested by the state. See CRS Report RL33579, *The Public Health and Medical Response to Disasters: Federal Authority and Funding*, by Sarah A. Lister; Archived CRS Report RL33738, *Gulf Coast Hurricanes: Addressing Survivors' Mental Health and Substance Abuse Treatment Needs*, by Ramya Sundararaman, Sarah A. Lister, Erin D. Williams; and CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Francis X. McCarthy.

¹¹⁷ The coverage of mental health services under private health insurance plans, Medicare, and Medicaid may be particularly relevant for the long-term recovery of victims of an MCI. For more information about mental health coverage under private health insurance and Medicaid, see CRS Report R41249, *Mental Health Parity and the Patient Protection and Affordable Care Act of 2010*, by Amanda K. Sarata.

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responsible and productive citizens. All levels of government are involved to some extent in this mission.¹¹⁸ As mentioned earlier in this report, twelve of the 78 public mass shootings identified by CRS occurred in academic settings. Eight of these happened at primary or secondary education facilities. One incident, the December 14, 2012, shooting deaths of 20 children and 6 adults¹¹⁹ at Sandy Hook Elementary School in Newtown, CT, has heightened congressional interest in school security.¹²⁰ Policy makers are examining whether school security can be further enhanced, and if so, how best to accomplish that goal.¹²¹

Four of the 12 public mass shootings in education settings involved high school or middle school students as assailants.¹²² The federal government has supported efforts to preempt students from engaging in gun violence at school. More broadly, it has promoted policies to curb violence in schools, such as anti-bullying programs, which may or may not stem public mass shootings by student perpetrators. This section of the report focuses on those federal programs and initiatives administered by the Department of Education that may be relevant in the event of a public mass shooting in a school setting.

The President's Plan was released following the Newtown tragedy—it includes several provisions specifically related to schools.¹²³ However, funding for these provisions may not be sufficient to provide meaningful assistance to all schools that could potentially benefit. Difficult decisions confront policy makers. They must consider how to make the greatest possible improvements in student safety while likely being faced with limited federal resources to devote to safety initiatives. Policy makers may have to decide whether funds should be spread across many activities so that each activity gets some additional funding, or whether funding should be concentrated in fewer programs believed to be most cost effective. This decision is made even more difficult because research on effectiveness is limited for many school security programs.

¹¹⁸ States and school districts have primary responsibility for the provision of elementary and secondary education in the United States. The vast majority of funding for schools is also provided by states and localities; the federal government contributes approximately 9% to the overall funding of elementary and secondary education. Nevertheless, the United States Department of Education (Department of Education) performs numerous functions, including promoting educational standards and accountability; gathering education data; disseminating research on important education issues; and administering federal education programs and policies. One of the most important priorities for the Department of Education in elementary and secondary education is improving academic outcomes for all students; particularly disadvantaged students, students with disabilities, English language learners, Indians, Native Hawaiians, and Alaska Natives.

¹¹⁹ The gunman also killed himself and his mother. She was not shot at the school.

¹²⁰ For public health resources specifically addressing the Newtown tragedy see <http://www.phe.gov/emergency/events/newtown/Pages/default.aspx>.

¹²¹ In December, 2012, a group of 9 violence prevention researchers and practitioners developed a position statement on the Newtown shootings that has been endorsed by a wide variety of organizations and individuals. See <http://www.ccbd.net/sites/default/files/OFFICIAL%20FOR%20DISSEMINATION-Connecticut%20School%20Shooting%20Position%20Statement%2012-19-2012-2%20pm%20ET.pdf>.

¹²² Of the eight remaining shootings: a) three involved non-students targeting elementary schools, b) one involved a gunman targeting people at the high school he formerly attended, c) four occurred on college campuses and involved either active or former students. CRS did not identify a public mass shooting involving a student attending elementary school who acted as an assailant in an incident at his or her own school.

¹²³ Schools continue to be among the safest places for children. Out of 1,579 homicides of youth ages 5-18 in the 2008-2009 year (most recent data available), approximately 1% (17), were school associated homicides. This percentage has remained consistently at less than 2% since the survey began in school year 1992-1993. These data do not indicate the weapon used. National Center for Education Statistics, Department of Education, and Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, *Indicators of School Crime and Safety: 2011*, Washington, D.C. February, 2012.

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This may lead to consideration of whether more funding should be provided for research into program effectiveness, and if so, whether it would restrict funding for existing school security programs.

Policy makers must also consider the importance of continuity of funds for local program success. It can be difficult for local school districts to plan, develop and implement programs if they cannot be certain of a reliable funding stream. In recent years much of the dedicated funding for school safety programs provided by the Department of Education has been cut.¹²⁴ Some programs were cut because they were perceived as too small to make a difference. Others were cut because they failed to demonstrate their effectiveness. For example, funding for the Safe and Drug Free Schools and Communities Act (SDFSCA) program, the federal government's primary program aimed at preventing drug abuse and violence in and around public schools, has declined from \$435 million in FY2009 to \$65 million in FY2012.¹²⁵

Department of Education guidance has divided the crisis management process for schools into four phases. Those four phases, in sequential order are: prevention, preparedness, response, and recovery.¹²⁶ Because emergency planning at institutions of higher education occurs in a significantly different environment and context, this report focuses on emergency planning at the elementary and secondary school level.¹²⁷

Prevention

Prevention (and mitigation) involves broadly structured efforts to help schools reduce the need to respond to crises including mass shootings. This stage of crisis management is critical for educators. If students do not feel safe at school, they will not be able to focus their energy on the most important task before them—learning. According to the Department of Education, this first stage of crisis management should include the following activities:

- connecting with community responders to identify potential hazards,

¹²⁴ One of the Safe and Drug Free Schools and Communities Act programs (SDFSCA) that is continuing to receive funding is the Safe Schools/Healthy Students (SS/HS) grant program. It is funded jointly by the Department of Education and SAMHSA. The program is administered by the Department of Education, SAMHSA, and DOJ. The SS/HS initiative is a discretionary grant program that provides schools and communities with federal funding to implement an enhanced, coordinated, comprehensive plan of activities, programs, and services that focus on healthy childhood development and the prevention of violence and alcohol and drug abuse. Grantees are required to establish partnerships with local law enforcement, public mental health, and juvenile justice agencies/entities. The program received \$17 million in Department of Education funding for FY2012. These grants are awarded to state education agencies (SEAs), high-need local educational agencies (LEAs) and their partners.

¹²⁵ As authorized, the SDFSCA is divided into two major programs: State Formula Grants and National Programs. The majority of State Formula Grant funding was distributed first by formula to states and then also by formula to LEAs. However, FY2009 is the last year that funding was provided for State Formula Grants. Presently, funding is only provided for National Programs. Funding for the State Grant Formula program was eliminated in part because it was believed that the amount of money reaching LEAs was too small to implement effective programming. For more information on the SDFSCA program see CRS Report RL34496, *Safe and Drug-Free Schools and Communities Act: Program Overview and Reauthorization Issues*, by Gail McCallion.

¹²⁶ The Department of Education has a variety of resources to help schools and communities develop an emergency management plan. See <http://www2.ed.gov/admins/lead/safety/emergencyplan/crisisplanning.pdf>. See also <http://rems.ed.gov/CreatingAndUpdatingSchoolEmergencyManagementPlans.aspx>.

¹²⁷ For a discussion of school safety issues at Institutions of Higher Education, see CRS Report RL33980, *School and Campus Safety Programs and Requirements in the Elementary and Secondary Education Act and Higher Education Act*, by Gail McCallion and Rebecca R. Skinner.

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- reviewing the most recent school safety audit,
- determining who is responsible for overseeing violence prevention at the school,
- soliciting staff input on the crisis plan,
- reviewing school incident data,
- determining major crime and violence problems at the school and assessing how effectively they are currently being addressed, and
- conducting an assessment to determine how existing threats may impact the school's vulnerability to particular crises.¹²⁸

School Climate

Improving school climate is one strategy for mitigating and preventing a variety of crises, including mass shootings (if the perpetrators involved in these incidents are students). A CDC report states that a positive school climate is “characterized by caring and supportive interpersonal relationships; opportunities to participate in school activities and decision-making; and shared positive norms, goals, and values.”¹²⁹ Research has indicated that one of the most important elements in a positive school climate is for students to have a feeling of school connectedness. School connectedness is defined as “the belief by students that adults and peers in the school care about their learning as well as about them as individuals.”¹³⁰

The Department of Education's Office of Special Education Programs funds a Technical Assistance Center on Positive Behavioral Interventions and Supports. The Center provides capacity-building information and technical assistance to schools, districts, and states who are implementing a school climate protocol called *School-wide Positive Behavioral Interventions and Supports* (SWPBIS). SWPBIS is a three-tiered prevention-based approach to improving school-wide disciplinary practices. According to the Center, SWPBIS is used in more than 9,000 schools across 40 states.¹³¹ SWPBIS has been linked to reductions in student suspensions and office discipline referrals.¹³²

¹²⁸ A Secret Service study indicated that conducting threat assessments may help schools be better prepared to address potential problems. The study was based on information regarding 37 school shootings involving 41 attackers. It concluded that there is no accurate or useful ‘profile’ of a school shooter. In contrast, it indicated that threat assessment may be useful if it is: “a fact-based investigative and analytical approach that focuses on what a particular student is doing and saying, and not on whether the student ‘looks like’ those who have attacked schools in the past. Threat assessment emphasizes the importance of behavior and communications for identifying, evaluating and reducing the risk posed by a student who may be thinking about or planning for a school-based attack.” Bryan Vossekuil et al., *The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States*. Department of Education and Secret Service, Washington D.C. 2004, p. 41. For more on threat assessments, see “Preparedness and Prevention Combined—Threat Assessments” in this report.

¹²⁹ Centers for Disease Control and Prevention, *School Connectedness: Strategies for Increasing Protection Factors Among Youth*. Atlanta, GA, Department of Health and Human Services, 2009, p. 7.

¹³⁰ *Ibid.*, p. 3.

¹³¹ *The President's Plan* requests \$50 million to help 8,000 additional schools implement strategies to improve school climate. In addition to assistance provided through the Technical Assistance Center, the Department of Education is currently providing funding to 11 Safe and Supportive Schools grantees (\$47.5 million in FY2012). SEAs, high-need LEAs and their partners can apply for this grant. Funding is used to develop and implement programs that measure and improve conditions for learning based on local needs.

¹³² Catherine Bradshaw, et al., “Examining the Effects of Schoolwide Positive Behavioral Interventions and Supports (continued...) ”

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Bullying prevention is also an important aspect of improving school climate. The Federal government recognizes the importance of this issue and has become increasingly involved in bullying prevention initiatives in recent years.¹³³

Research indicates that both victims of bullying and those who engage in bullying behavior can experience both short and long-term effects resulting in psychological difficulties and social relationship problems. A GAO literature review of seven meta-analyses on the impact of bullying on victims found that bullying could result in psychological, physical, academic, and behavioral issues.¹³⁴ In addition, a Secret Service study on school safety and school attacks found that “Many attackers felt bullied, persecuted or injured by others prior to the attack.”¹³⁵

School Resource Officers

The SDFSCA defines school resource officers as career law enforcement officers assigned by a local law enforcement agency to work with schools and community based organizations to:

- (A) educate students in crime and illegal drug use prevention and safety; (B) develop or expand community justice initiatives for students; and (C) train students in conflict resolution, restorative justice, and crime and illegal drug use awareness.¹³⁶

The President's Plan would provide an incentive for DOJ's Community Oriented Policing Services (COPS) grants to be used to hire more school resource officers in the current year,¹³⁷ and would seek \$150 million in funding for a new *Comprehensive Safety Grants* program. This new

(...continued)

on Student Outcomes,” *Journal of Positive Behavior Interventions*, vol. 12, no. 3 (July 2010).

¹³³ Representatives from the U.S. Departments of Agriculture, Defense, Education, Health and Human Services, the Interior, Justice, the Federal Trade Commission and the White House Initiative on Asian Americans and Pacific Islanders have come together to form a Federal Partners in Bullying Prevention Steering Committee. The Federal Partners work to coordinate policy, research, and communications on bullying topics. The Federal Partners have created a website, <http://www.stopbullying.gov>, which provides extensive resources on bullying, including information on how schools can address bullying. In addition, with leadership the Department of Education, the Federal Partners have sponsored three antibullying summits attended by education practitioners, policy makers, researchers, and federal officials.

¹³⁴ Government Accountability Office, *School Bullying: Extent of Legal Protections for Vulnerable groups Needs to Be More Fully Assessed*, GAO-12-349, May 2012, pp. 8-10, <http://www.gao.gov/assets/600/591202.pdf>.

¹³⁵ Bryan Vossekuil, et al., *The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States*, Department of Education and Secret Service, Washington D.C. 2004, p. 12.

¹³⁶ 20 USC 7161. Another version of the federal conceptualization of the role of a school resource officer is “a career law enforcement officer, with sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in collaboration with schools and community-based organizations” for a variety of purpose areas. See 42 U.S.C. § 3796dd-8. Purpose areas are: “(A) to address crime and disorder problems, gangs, and drug activities affecting or occurring in or around an elementary or secondary school; (B) to develop or expand crime prevention efforts for students; (C) to educate likely school-age victims in crime prevention and safety; (D) to develop or expand community justice initiatives for students; (E) to train students in conflict resolution, restorative justice, and crime awareness; (F) to assist in the identification of physical changes in the environment that may reduce crime in or around the school; and (G) to assist in developing school policy that addresses crime and to recommend procedural changes.” As such, the broad notion of a school resource officer may not be uniform across states and localities.

¹³⁷ This proposal can be implemented through executive action, it will not require congressional action. For more information on the COPS program see CRS Report R40709, *Community Oriented Policing Services (COPS): Current Legislative Issues*, by Nathan James.

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grant program would provide school districts and law enforcement agencies with funding to hire new school resource officers and school psychologists. This new funding stream could also be used to purchase school safety equipment, develop or expand school safety proposals, and to train crisis intervention teams of law enforcement officers to respond and assist students in a crisis.

School resource officers are popular with the public. A recent Pew research study found that 64% of those surveyed supported having armed security guards or police in more schools.¹³⁸ However, some researchers and civil rights organizations have expressed concern about increasing the presence of school resource officers in schools, arguing that the presence of law enforcement can have a negative impact on the learning environment, and may lead to more school suspensions and referrals to the juvenile justice system.¹³⁹ On December 12, 2012, the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, held a hearing titled “Ending the School-to-Prison Pipeline.” In his opening statement Chairman Richard Durbin stated that:

For many young people, our schools are increasingly a gateway to the criminal justice system. This phenomenon is a consequence of a culture of zero tolerance that is widespread in our schools and is depriving many children of their fundamental right to an education.¹⁴⁰

Preparedness and Emergency Planning

Preparedness involves marshaling the necessary resources to ensure that they are available in the event of a crisis, including shooting incidents. This involves

- confirming that the school’s current emergency plan is consistent with the National Incident Management System,
- acquiring the necessary equipment and first aid resources to address a potential crisis,
- establishing procedures to account for the location of all students,
- developing procedures to communicate with staff, families and the media,
- ensuring all school staff are familiar with the school’s layout, safety features, utility shutoffs, etc., and
- conducting practice drills for students and staff.¹⁴¹

One of the proposals included in *The President’s Plan* would provide \$30 million in one-time grants to school districts to help them develop and implement Emergency Management plans. In addition, a current SDFSCA program—Readiness and Emergency Management for schools

¹³⁸ The Pew survey was based on phone interviews with a national sample of 1,502 adults during January 9-13, 2013. The Pew Research Center for the People and the Press, *Gun Rights Proponents More Politically Active: In Gun Control Debate, Several Options Draw Majority Support*, January 14, 2013.

¹³⁹ Data indicate that suspensions for all students have been increasing over time, however, there has been a disproportionate increase for non-Whites, particularly African American students. “The Black/White gap has grown from 3 percentage points in the 1970s to over 10 percentage points in the 2000s. Blacks are now over three times more likely than Whites to be suspended.” Daniel Losen and Russell Skiba, *Suspended Education: Urban Middle Schools in Crisis*, The Civil Rights Project, Los Angeles, CA, September 13, 2010, p. 3.

¹⁴⁰ <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=7dcae2b-b40e-4199-bf20-557b4b1bc650>.

¹⁴¹ <http://www2.ed.gov/admins/lead/safety/emergencyplan/crisisplanning.pdf>.

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(REMS) provides competitive grants to LEAs to strengthen and improve their emergency response and crisis plans. No grants were awarded in FY2012.¹⁴²

The Department of Education has developed resources and training materials that are available online to help schools develop emergency plans and respond to crises.¹⁴³ However, these resources are not limited to addressing a school shooting crisis; they are intended to be applicable to a range of potential crises that could impact a school (e.g., natural disaster, pandemics, terrorism).

Indicators of School Crime and Safety data show that many schools have been increasing measures intended to improve school safety. In school year 1999-2000, 54.1% of surveyed students (ages 12-18) reported that their school had security guards and/or assigned police officers; this percentage had increased to 68.1% by school year 2009-2010. Other school security measures that have increased between school year 1999-2000 and school year 2009-2010 include the use of security cameras (from 19.4% to 61.1%); locking or monitoring doors (from 74.6% to 91.7%); and requiring faculty and staff to wear badges or IDs (from 25.4% to 62.9%).¹⁴⁴ *The President's Plan* would set up an interagency group to release a model set of emergency management plans for schools, houses of worship, and institutions of higher education. It would also require the Department of Education to collect and disseminate best practices for addressing school discipline.

Maintaining crisis response capacity is required of schools by 92% of states.¹⁴⁵ Press accounts of school shootings have provided anecdotal evidence indicating that school emergency planning (lock-down procedures and practice drills, etc.) may have minimized deaths and injuries in incidents of mass shootings. However, federal legislation does not regulate the content or quality of these plans, and the comprehensiveness and implementation of these plans vary considerably across school districts.

¹⁴² LEAs that receive a REMS grant are required to form partnerships and collaborate with community organizations, local law enforcement agencies, heads of local government, and offices of public safety, health, and mental health as they review and revise these plans. Plans are required to be coordinated with state or local homeland security plans and must support the implementation of NIMS (for more on NIMS please see the text box titled "Federal Framework for Emergency Management" at the beginning of the "Law Enforcement Implications" section of this report.) REMS grants may be used for training school safety teams and students, conducting facility audits, informing families about emergency response policies, implementing an Incident Command System, conducting drills and tabletop simulation exercises, preparing and distributing copies of crisis plans, and, to a limited extent, for purchasing school safety equipment. Grantees under this program may receive support in managing and implementing their projects and sustaining their efforts over time from the Readiness and Emergency Management for Schools Technical Assistance Center.

¹⁴³ The Department of Education's website includes information on all stages of crisis management: prevention/mitigation, preparedness, response, and recovery. See <http://www2.ed.gov/admins/lead/safety/emergencyplan/index.html>. The Department of Education emphasizes the importance of schools ensuring that their emergency plans and potential responses are coordinated and aligned with first responders and with NIMS.

¹⁴⁴ These data are based on responses from school principals or persons most knowledgeable about crime and safety issues at the school. National Center for Education Statistics, Department of Education, and Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, *Indicators of School Crime and Safety: 2011*, Washington, D.C. February, 2012.

¹⁴⁵ See "Executive Summary" *Journal of School Health*, vol. 78, no. 2 (February 2008), p. 110. The federal SDFSCA State Formula Grant program required LEAs receiving funding under the program to have a comprehensive plan, including "a crisis management plan for responding to violent or traumatic incidents on school grounds ... " However, FY2009 was the last year that funding was provided for State Formula Grants, and as a consequence this federal requirement has lapsed.

Response

An organized and coordinated response to a crisis is based in large part on the prevention and preparedness activities that schools have adopted and implemented. According to the Department of Education, during a crisis (which can include mass shootings), schools should undertake the following activities:

- identifying the type of crisis that is occurring,
- activating the incident management system,
- identifying the appropriate response to the crisis (e.g., evacuation, shelter in place, lockdown, etc.),
- implementing the plans and procedures established in the preparation phase,
- ensuring that important information is being communicated to staff, students and parents, and
- ensuring that emergency first aid is being provided to the injured.¹⁴⁶

Many school shootings last only minutes—as a consequence, teachers and school staff become the immediate responders out of necessity in many crises, sometimes heroically sacrificing their own lives to protect the children in their care. Community first responders, including law enforcement and emergency medical personnel, are also key to ending a crisis as quickly as possible. Among their many tasks, they must immediately subdue the shooter, if he is still alive; and they must coordinate all the emergency services that are required by survivors of the shooting.

Recovery

Recovery efforts are focused on returning students to the learning environment as soon as possible. These efforts include

- restoring school facilities,
- identifying the supports and services needed by students, staff, and families to help them recover from the crisis,
- connecting individuals to services, including mental health and counseling services, and
- allowing sufficient time for recovery and deciding how to commemorate the event.¹⁴⁷

The primary Department of Education program available to schools to assist recovery efforts following a crisis is Project SERV (School Emergency Response to Violence). This program provides education-related services to schools that have been disrupted by a violent or traumatic crisis. Local educational agencies and institutions of higher education (IHEs) are eligible to apply

¹⁴⁶ See <http://www2.ed.gov/admins/lead/safety/crisisplanning.pdf>.

¹⁴⁷ See <http://www2.ed.gov/admins/lead/safety/emergencyplan/crisisplanning.pdf>.

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for these grants.¹⁴⁸ Project SERV funds may be used for a wide variety of activities, including mental health assessments, referrals, and services for victims and witnesses of violence; enhanced school security; technical assistance in developing a response to the crisis; and training for teachers and staff in implementing the response.¹⁴⁹

School counselors can also play an important role in facilitating a school community's recovery following a crisis. School counselors can provide an avenue for students to be heard by a caring adult, and can provide needed services or make referrals for services to community providers.¹⁵⁰

The President's Plan includes several provisions that would increase student access to mental health services. It seeks \$150 million in funding for a new *Comprehensive Safety Grants* program. One of the authorized uses of this program would be to hire school counselors. In addition, the proposal seeks \$50 million to train 5,000 additional mental health professionals to serve youth in schools and communities, and \$25 million to provide mental health services for trauma, conflict resolution, and other school-based violence prevention strategies. The proposal would also provide \$55 million for a new Project AWARE which would train teachers and other adults to recognize and help youth with mental illness and work with a variety of community agencies and organizations to ensure youth who need help are connected to service providers.

Concluding Comments

When addressing public mass shootings, many of the policymaking challenges may boil down to two interrelated concerns: (1) a need to determine the effectiveness of existing programs—particularly preventive efforts—and (2) figuring out where to disburse limited resources.

¹⁴⁸ Project SERV provides grants of up \$50,000 for short term needs (up to six months); and grants of up to \$250,000 for extended services (for a period of up to 18 months). LEAs and IHEs may apply for both Immediate Services funding and Extended Services funding; however, a separate application must be submitted for each.

¹⁴⁹ Appropriations for this program are requested on a no-year basis, to remain available for obligation at the federal level until expended. Thus, funds can be carried over from year to year in the event that there are no school-related crises in a given year.

¹⁵⁰ The Elementary and Secondary School Counseling program received funding of \$52 million in FY2012. It provides competitive grants to LEAs to establish or expand elementary and secondary school counseling programs. Grantees that receive funding under this program must meet several requirements, including having a program that is comprehensive in addressing the counseling and educational needs of all students; increases the range, availability, quality, and quantity of counseling services; expands services through qualified staff; involves public and private entities in collaborative efforts to enhance the program and promote integrated services; and provides appropriate staff training. The President did not request any FY2013 funding for this program, instead proposing to fund a broader Successful, Safe, and Healthy Students program. In addition to the Elementary and Secondary School Counseling program there are two other mental health programs authorized by the Elementary and Secondary Education Act; however they are no longer receiving funding. The Grants for the Integration of Schools and Mental Health Systems program authorizes the Secretary to award competitive grants or enter into contracts or cooperative agreements with SEAs, LEAs, or Indian tribes for the purpose of increasing student access to quality mental health care by developing innovative programs to link local school systems with the local mental health system. The program last received funding of \$6 million in FY2010. The second program is the Promotion of School Readiness through Early Childhood Emotional and Social Development (Foundations for Learning). The Secretary, in consultation with the Secretary of Health and Human Services, is permitted to award Foundations for Learning Grants to LEAs, local councils, community-based organizations, and other public or nonprofit private entities to assist eligible children with school readiness. The program last received funding of \$1 million in FY2010.

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The law enforcement and public health fields have lengthy histories of applying preventive approaches to their work. However, the utility of widely employed preventive measures in these areas to fight public mass shootings is far from clear. For example, it appears that intelligence-led policing fails to address this threat. Likewise, preventive public health approaches reliant on research drawn from large data sets, covering broad populations, and examining general trends may not adequately address relatively rare—though devastating—public mass shootings. Given this, policy makers may be interested in supporting the development of useful preventive schemes in the law enforcement and public health arenas.

In the area of education, preventive efforts may be more effective. Fostering a positive school climate can be seen as a key element in preventing shootings. Additionally, the use of school resource officers as a preventive measure is popular among Americans. Yet, there are those who question the impact of such officers on the learning environment.

Policy makers confront the task of disbursing resources among a wide assortment of programs to tackle public mass shootings. Which efforts are more important than others? For example, should prevention trump response in most cases? Should programs that have multiple uses be favored over others that may be seen as more focused (or vice versa)? For example, which should receive more support related to dealing with mass shootings: EMS or efforts to cultivate positive school climate? Which untested programs or approaches should be evaluated thoroughly? Who should evaluate them? How long should funding exist to tackle the threat of mass shootings?

All of this hints at an overarching difficulty confronting experts interested in crafting policy to address mass shootings. Essentially, baseline metrics gauging the effectiveness of policies to thwart public mass shootings are often unclear or unavailable. This lack of clarity starts with identifying the number of shootings, themselves, since no broadly agreed-to definition exists. Several questions flow from this issue. How many people have such incidents victimized? How much does prevention of, preparedness for, and response to such incidents cost the federal government? What measurements can be used to determine the effectiveness of such efforts? In other words, and most importantly, how will we measure our successes or determine our failures in fighting this problem?

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Exhibit D

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FBI UNIFORM CRIME REPORTS

The FBI Uniform Crime Reports for the years 1995 through 2012 are voluminous public documents that can be accessed at:

www.fbi.gov/about-us/cjis/usc/usc-publications

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Murder Victims

Types of Weapons Used, 1991-2011

Page 1

Weapons	1991	1992	1993	1994
Total	21,676	22,716	23,180	22,084
Total firearms	14,373	15,489	16,136	15,463
Handguns	11,497	12,580	13,212	12,775
Rifles	745	706	757	724
Shotguns	1,124	1,111	1,057	953
Other guns	30	42	37	19
Firearms, not stated	977	1,050	1,073	992
Knives or cutting instruments	3,430	3,296	2,967	2,802
Blunt objects (clubs, hammers, etc.)	1,099	1,040	1,022	912
Personal weapons (hands, fists, feet, etc.) ¹	1,202	1,131	1,151	1,165
Poison	12	13	9	10
Explosives	16	19	23	10
Fire	195	203	217	196
Narcotics	22	24	22	22
Drowning	40	29	23	25
Strangulation	327	314	331	287
Asphyxiation	113	115	111	113
Other weapons or weapons not stated	847	1,043	1,168	1,079
	1991	1992	1993	1994
Murders to Firearms	66.31%	68.19%	69.61%	70.02%
Murders to Handguns	53.04%	55.38%	57.00%	57.85%
Murders to Rifles	3.44%	3.11%	3.27%	3.28%
Murders to Shotguns	5.19%	4.89%	4.56%	4.32%
MF to Handguns	79.99%	81.22%	81.88%	82.62%
MF to Rifles	5.18%	4.56%	4.69%	4.68%
MF to Shotguns	7.82%	7.17%	6.55%	6.16%

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Murder Victims

Types of Weapons Used, 1991-2011

Page 2

Weapons	1995	1996	1997	1998	1999	2000
Total	20,232	16,967	15,837	14,276	13,011	13,230
Total firearms	13,790	11,453	10,729	9,257	8,480	8,661
Handguns	11,282	9,266	8,441	7,430	6,658	6,778
Rifles	654	561	638	548	400	411
Shotguns	929	685	643	633	531	485
Other guns	29	20	35	16	92	53
Firearms, not stated	896	921	972	630	799	934
Knives or cutting instruments	2,557	2,324	2,055	1,899	1,712	1,782
Blunt objects (clubs, hammers, etc.)	918	792	724	755	756	617
Personal weapons (hands, fists, feet, etc.) ¹	1,201	1,037	1,010	964	885	927
Poison	14	8	6	6	11	8
Explosives	192	15	8	10	-	9
Fire	166	170	140	132	133	134
Narcotics	22	33	37	35	26	20
Drowning	30	24	34	28	28	15
Strangulation	237	248	224	213	190	166
Asphyxiation	137	92	88	101	106	92
Other weapons or weapons not stated	968	771	782	876	684	799
	1995	1996	1997	1998	1999	2000
Murders to Firearms	68.16%	67.50%	67.75%	64.84%	65.18%	65.46%
Murders to Handguns	55.76%	54.61%	53.30%	52.05%	51.17%	51.23%
Murders to Rifles	3.23%	3.31%	4.03%	3.84%	3.07%	3.11%
Murders to Shotguns	4.59%	4.04%	4.06%	4.43%	4.08%	3.67%
MF to Handguns	81.81%	80.90%	78.67%	80.26%	78.51%	78.26%
MF to Rifles	4.74%	4.90%	5.95%	5.92%	4.72%	4.75%
MF to Shotguns	6.74%	5.98%	5.99%	6.84%	6.26%	5.60%

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Murder Victims

Types of Weapons Used, 1991-2011

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Weapons	2001	2002	2003	2004	2005
Total	14,061	14,263	14,465	14,210	14,965
Total firearms	8,890	9,528	9,659	9,385	10,158
Handguns	6,931	7,294	7,745	7,286	7,565
Rifles	386	488	392	403	445
Shotguns	511	486	454	507	522
Other guns	59	75	76	117	138
Firearms, not stated	1,003	1,185	992	1,072	1,488
Knives or cutting instruments	1,831	1,776	1,828	1,866	1,920
Blunt objects (clubs, hammers, etc.)	680	681	650	667	608
Personal weapons (hands, fists, feet, etc.) ¹	961	954	962	943	905
Poison	12	23	9	13	9
Explosives	4	11	4	1	2
Fire	109	103	170	118	125
Narcotics	37	48	44	80	46
Drowning	23	20	17	16	20
Strangulation	153	145	184	156	118
Asphyxiation	116	100	131	109	96
Other weapons or weapons not stated	1,245	874	807	856	958
	2001	2002	2003	2004	2005
Murders to Firearms	63.22%	66.80%	66.77%	66.05%	67.88%
Murders to Handguns	49.29%	51.14%	53.54%	51.27%	50.55%
Murders to Rifles	2.75%	3.42%	2.71%	2.84%	2.97%
Murders to Shotguns	3.63%	3.41%	3.14%	3.57%	3.49%
MF to Handguns	77.96%	76.55%	80.18%	77.63%	74.47%
MF to Rifles	4.34%	5.12%	4.06%	4.29%	4.38%
MF to Shotguns	5.75%	5.10%	4.70%	5.40%	5.14%

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Murder Victims

Types of Weapons Used, 1991-2011

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Weapons	2006	2007	2008	2009	2010	2011
Total	15,087	14,916	14,224	13,752	13,164	12,664
Total firearms	10,225	10,129	9,528	9,199	8,874	8,583
Handguns	7,836	7,398	6,800	6,501	6,115	6,220
Rifles	438	453	380	351	367	323
Shotguns	490	457	442	423	366	356
Other guns	107	116	81	96	93	97
Firearms, not stated	1,354	1,705	1,825	1,828	1,933	1,587
Knives or cutting instruments	1,830	1,817	1,888	1,836	1,732	1,694
Blunt objects (clubs, hammers, etc.)	618	647	603	623	549	496
Personal weapons (hands, fists, feet, etc.) ¹	841	869	875	817	769	728
Poison	12	10	9	7	11	5
Explosives	1	1	11	2	4	12
Fire	117	131	85	98	78	75
Narcotics	48	52	34	52	45	29
Drowning	12	12	16	8	10	15
Strangulation	137	134	89	122	122	85
Asphyxiation	106	109	87	84	98	89
Other weapons or weapons not stated	1,140	1,005	999	904	872	853
	2006	2007	2008	2009	2010	2011
Murders to Firearms	67.77%	67.91%	66.99%	66.89%	67.41%	67.77%
Murders to Handguns	51.94%	49.60%	47.81%	47.27%	46.45%	49.12%
Murders to Rifles	2.90%	3.04%	2.67%	2.55%	2.79%	2.55%
Murders to Shotguns	3.25%	3.06%	3.11%	3.08%	2.78%	2.81%
MF to Handguns	76.64%	73.04%	71.37%	70.67%	68.91%	72.47%
MF to Rifles	4.28%	4.47%	3.99%	3.82%	4.14%	3.76%
MF to Shotguns	4.79%	4.51%	4.64%	4.60%	4.12%	4.15%

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Murder Victims

Types of Weapons Used, 1991-2011

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1991-2011

TOTALS

338,980	Total
227,989	Total firearms
177,610	Handguns
10,570	Rifles
13,165	Shotguns
1,428	Other guns
25,216	Firearms, not stated
	Knives or cutting instruments
44,842	
	Blunt objects (clubs, hammers, etc.)
15,457	
	Personal weapons (hands, fists, feet, etc.) ¹
20,297	
217	Poison
355	Explosives
2,895	Fire
778	Narcotics
445	Drowning
3,982	Strangulation
2,193	Asphyxiation
	Other weapons or weapons not stated
19,530	

1991-2011

67.26%	Murders to Firearms
52.40%	Murders to Handguns
3.12%	Murders to Rifles
3.88%	Murders to Shotguns
77.90%	MF to Handguns
4.64%	MF to Rifles
5.77%	MF to Shotguns

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Murder Victims by State
Types of Weapons Used, 1995 - 2010 (1 of 2)

		<u>Total Murders</u>	<u>Total Firearms</u>	<u>Handguns</u>	<u>Rifles</u>	<u>Shotguns</u>	<u>Firearms u/k</u>	<u>Knives</u>	<u>Other Weapons</u>	<u>Hands/Feet</u>
1995	CT	150	102	96	2	0	4	19	17	12
	NY	1522	1012	916	22	47	27	241	156	113
1996	CT	158	109	87	3	3	16	17	18	14
	NY	305	168	125	12	19	12	72	42	23
1997	CT	124	80	70	5	0	5	18	20	6
	NY	710	408	346	15	39	8	138	108	56
1998	CT	135	79	62	5	3	9	29	17	10
	NY	898	521	473	12	31	5	156	120	101
1999	CT	107	74	66	2	4	2	16	12	5
	NY	864	487	449	10	26	2	166	125	86
2000	CT	95	62	49	4	1	8	16	9	8
	NY	926	563	522	13	25	3	164	124	75
2001	CT	105	72	53	1	3	15	16	11	6
	NY	927	532	489	16	21	6	193	104	98
2002	CT	75	45	32	1	4	8	17	6	7
	NY	860	506	463	20	16	7	181	89	84
2003	CT	78	31	23	0	1	7	14	27	6
	NY	878	545	490	13	10	32	150	105	78
2004	CT	86	47	39	0	2	6	16	18	5
	NY	864	500	419	10	25	46	173	123	68
2005	CT	91	47	27	0	2	18	14	20	10
	NY	868	500	428	10	10	52	188	107	73
2006	CT	100	65	57	0	2	6	18	12	5
	NY	921	400	308	14	8	70	141	351	29
2007	CT	95	57	37	0	4	16	14	20	4
	NY	800	500	113	12	9	366	142	124	34
2008	CT	112	71	46	1	0	24	27	11	3
	NY	835	475	107	12	20	336	184	147	29
2009	CT	107	70	51	0	2	17	17	14	6
	NY	779	481	117	8	13	343	166	109	23
2010	CT	117	65	34	0	4	27	20	21	11
	NY	860	517	135	6	12	364	173	148	22
2011	CT									
	NY									
CT TTLS		1,735	1,076	829	24	35	188	288	253	118
NY TTLS		13,817	8,115	5,900	205	331	1,679	2,628	2,082	992
		<u>Total Murders</u>	<u>Total Firearms</u>	<u>Handguns</u>	<u>Rifles</u>	<u>Shotguns</u>	<u>Firearms u/k</u>	<u>Knives</u>	<u>Other Weapons</u>	<u>Hands/Feet</u>

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Murder Victims by State
Types of Weapons Used, 1995 - 2010 (2 of 2)

<u>M/F</u>	<u>M/H</u>	<u>M/R</u>	<u>M/S</u>	<u>MF/H</u>	<u>MF/R</u>	<u>MF/S</u>		
68%	64%	1%	0%	94%	2%	0%	CT	1995
66%	60%	1%	3%	91%	2%	5%	NY	
69%	55%	2%	2%	80%	3%	3%	CT	1996
55%	41%	4%	6%	74%	7%	11%	NY	
65%	56%	4%	0%	88%	6%	0%	CT	1997
57%	49%	2%	5%	85%	4%	10%	NY	
59%	46%	4%	2%	78%	6%	4%	CT	1998
58%	53%	1%	3%	91%	2%	6%	NY	
69%	62%	2%	4%	89%	3%	5%	CT	1999
56%	52%	1%	3%	92%	2%	5%	NY	
65%	52%	4%	1%	79%	6%	2%	CT	2000
61%	56%	1%	3%	93%	2%	4%	NY	
69%	50%	1%	3%	74%	1%	4%	CT	2001
57%	53%	2%	2%	92%	3%	4%	NY	
60%	43%	1%	5%	71%	2%	9%	CT	2002
59%	54%	2%	2%	92%	4%	3%	NY	
40%	29%	0%	1%	74%	0%	3%	CT	2003
62%	56%	1%	1%	90%	2%	2%	NY	
55%	45%	0%	2%	83%	0%	4%	CT	2004
58%	48%	1%	3%	84%	2%	5%	NY	
52%	30%	0%	2%	57%	0%	4%	CT	2005
58%	49%	1%	1%	86%	2%	2%	NY	
65%	57%	0%	2%	88%	0%	3%	CT	2006
43%	33%	2%	1%	77%	4%	2%	NY	
60%	39%	0%	4%	65%	0%	7%	CT	2007
63%	14%	2%	1%	23%	2%	2%	NY	
63%	41%	1%	0%	65%	1%	0%	CT	2008
57%	13%	1%	2%	23%	3%	4%	NY	
65%	48%	0%	2%	73%	0%	3%	CT	2009
62%	15%	1%	2%	24%	2%	3%	NY	
56%	29%	0%	3%	52%	0%	6%	CT	2010
60%	16%	1%	1%	26%	1%	2%	NY	
							CT	2011
							NY	
62%	48%	1%	2%	77%	2%	3%	CT TTLS	
59%	43%	1%	2%	73%	3%	4%	NY TTLS	
<u>M/F</u>	<u>M/H</u>	<u>M/R</u>	<u>M/S</u>	<u>MF/H</u>	<u>MF/R</u>	<u>MF/S</u>		

Exhibit E

A-1988

Case 1:13-cv-00291-WMS Document 116-5 Filed 08/19/13 Page 2 of 7

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Buffalo Division

NEW YORK STATE RIFLE AND PISTOL :
ASSOCIATION, INC., et al, :
 :
 :
 Plaintiffs. :
 :

v. :

Civil No.: 1:13-cv-00291-WMS

ANDREW M. CUOMO, Governor of the State of :
New York, et al, :
 :
 Defendants. :

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

THOMAS H. KING, being duly sworn, hereby states the following pursuant to penalties of perjury:

1. I am presently an officer of NEW YORK STATE RIFLE AND PISTOL ASSOCIATION, INC. with its principal place of business in Albany County, New York.
2. I am personally acquainted with the facts herein stated.
3. Plaintiff NEW YORK STATE RIFLE AND PISTOL ASSOCIATION, INC. ("NYSRPA", "association plaintiff"), is a New York not-for-profit corporation with approximately 45,000 members. The NYSRPA is New York state's largest and the nation's oldest firearms advocacy organization. Since 1871 the NYSRPA has been dedicated to the preservation of Second Amendment rights, promotion of firearm safety, education and training, and the shooting sports. Members of the NYSRPA participate in numerous rifle and pistol matches within and without the State of New York on an annual basis.

Case 1:13-cv-00291-WMS Document 116-5 Filed 08/19/13 Page 3 of 7

4. Given my role as an officer of the NYSRPA, I have direct, first-hand knowledge that members of NYSRPA (“member plaintiffs”) possess and wish to acquire rifles, handguns, shotguns, ammunition feeding devices, and ammunition, but are prevented from doing so by the Act’s restrictions on “assault weapons,” “large capacity ammunition feeding devices,” and ammunition sales.

5. Some members possess magazines manufactured before September 13, 1994, with a capacity of more than ten rounds that are now criminalized by the Act. Other members do not possess magazines with a capacity of more than ten rounds, but would acquire them forthwith but for the Act. Many members would load more than seven rounds in their magazines for use in firearms kept in the home for self-protection but cannot do so because of the Act. Members are unaware how to modify magazines so they cannot “readily be restored or converted to accept” more than ten rounds.

6. Some members possess “assault weapons” now prohibited by the Act as “assault weapons” that were lawfully possessed prior to September 14, 1994, and under the laws of 2000. Other members possess arms now criminalized as “assault weapons” under the Act’s new definitions in Penal Law § 265.00(22) that they lawfully possessed prior to January 15, 2013. But for the Act, still other members, individual plaintiffs, and business plaintiffs would forthwith obtain and possess “assault weapons” under each and every one of the Act’s new definitions in Penal Law § 265.00(22).

7. As examples, some members possess, and other members would possess but for the Act, semiautomatic rifles that have an ability to accept a detachable magazine with a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, or a thumbhole stock. Other members possess or would possess

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such rifles with muzzle brakes, muzzle compensators, or threaded barrels designed to accommodate such attachments.

8. Further, some members possess semiautomatic rifles with detachable magazines and with a thumbhole stock. Such rifles are commonly used for hunting game and for target shooting. A thumbhole stock allows the rifle to be held more comfortably and fired more accurately, but it causes the rifle to be defined as an “assault weapon”.

9. But for the Act, other members would forthwith obtain and possess identical or similar rifles but may not do so in that they are now considered illegal “assault weapons”.

10. Some members obtained M-1 carbines from the Civilian Marksmanship Program (“CMP”), either when it was administered by the U.S. Department of the Army or later when it became a private corporation established by federal law. Other members wish to obtain such carbines in the future. M-1 carbines are semiautomatic, have the ability to accept a detachable magazine, have a bayonet mount, and use a 15-round or 30-round detachable magazine. The Act’s restrictions prevent these members from possessing or acquiring these rifles.

11. Some members obtained M-1 Garand rifles from the CMP, and others would like to do so in the future. M-1 Garand rifles are semiautomatic, have the ability to accept a detachable clip, and have a bayonet mount. Accordingly, the Act’s prohibitions severely restrict possession and acquisition of these rifles by the members.

12. Being in possession of, or wishing to acquire, “assault weapons,” “large capacity ammunition feeding devices,” members are subject to the Act’s requirements regarding registration, transferring such items to persons outside of New York, and

Case 1:13-cv-00291-WMS Document 116-5 Filed 08/19/13 Page 5 of 7

converting magazines, and to the Act's serious criminal penalties, including incarceration, fines, forfeitures, and cancellation of licenses.

13. Members are unaware of how to convert "large capacity ammunition feeding devices" manufactured before September 13, 1994, so that they will hold only ten rounds. Other members might possess the technical ability to attempt such conversions, but are unaware of the definition of "readily converted or restored" or "permanent" that the State of New York would apply to such conversions. The New York State website on the Act contains no guidance in this regard, nor does it refer gun or magazine owners to other resources that can provide adequate guidance.

14. Members have sought guidance from the State of New York as to the scope of, application of, and exceptions to the SAFE Act, and have either received no response from the State or responses that are inaccurate and confusing.

15. Members purchase ammunition at competitive prices from out-of-state businesses. The Act's ban on out-of-state ammunition sales has caused financial harm to these members and makes it more difficult for them to obtain ammunition for lawful self protection, hunting, target shooting, and trap shooting.

16. I also have direct, first-hand knowledge that the firearms now classified as "assault weapons" by the SAFE Act have been used for self-defense, hunting and shooting competitions throughout the State of New York for decades. I personally have used the firearms classified as "assault weapons" to hunt, and personally know many, many other members who have done the same for years. In this sense, the argument that "assault weapons are not used for hunting is simply untrue.

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17. In addition, there are numerous shooting competitions for non-military personnel that have taken place throughout the State of New York for years that regularly used the firearms now classified as “assault weapons” to compete. For example, multi-gun matches that include those competitions known as “2 Gun Matches” and “3 Gun Matches” are regularly held at such places as the West Point U.S.M.A. (the Houghton Memorial Match), the Toga County Sportsmen's Association in Oswego, NY and the Genesee Conservation League in Rochester, NY. I have personally attended some of these matches. These matches regularly used the rifles and pistols now classified by the SAFE Act as “assault weapons” in timed competitions that test accuracy and proficiency. These matches are extremely popular, have been taking place throughout New York for years, and have been attended throughout the years by hundreds (and likely thousands) of members.

18. In addition, competitions known as “high power matches” have been held throughout New York for decades. I have personally attended some of these matches. These matches use the rifles, pistols and shotguns now classified as “assault weapons,” are extremely popular, and have been attended throughout the years by hundreds (and likely thousands) of members. In this sense, the argument that the firearms now classified as “assault weapons” are not used by private citizens for sporting competitions is simply untrue.

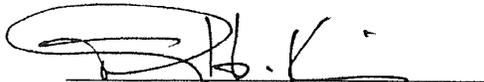
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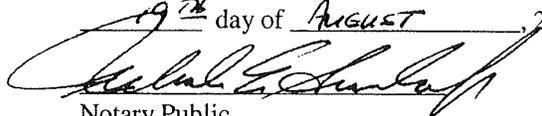
A-1993

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19. I have reviewed the foregoing statements and believe them to be true and accurate, based upon my own information and belief.


/s/ THOMAS H. KING

Sworn to before me this
19th day of AUGUST, 2013

Notary Public

RICHARD E. SCANLAN, JR.
Notary Public, State of New York
No. 01SC4984092
Qualified in Albany County
Commission Expires Oct. 8, 2015

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Exhibit F

A-1995

Case 1:13-cv-00291-WMS Document 116-6 Filed 08/19/13 Page 2 of 7

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Buffalo Division

NEW YORK STATE RIFLE AND PISTOL	:	
ASSOCIATION, INC., et al,	:	
	:	
Plaintiffs.	:	
	:	
v.	:	Civil No.: 1:13-cv-00291-WMS
	:	
ANDREW M. CUOMO, Governor of the State of	:	
New York, et al,	:	
	:	
Defendants.	:	

AFFIDAVIT

STATE OF NEW YORK)	
)	ss.:
COUNTY OF WESTCHESTER)	

J. SCOTT SOMMAVILLA, being duly sworn, hereby states the following pursuant to penalties of perjury:

1. I am presently an officer of WESTCHESTER COUNTY FIREARMS OWNERS ASSOCIATION (“WCFOA”) is a New York not-for-profit corporation with approximately 20,000 members and with its principal place of business in Rye Brook (Westchester County), New York.

2. I am personally acquainted with the facts herein stated.

3. WESTCHESTER COUNTY FIREARMS OWNERS ASSOCIATION, INC. (“WCFOA”, “association plaintiff”) is a New York not-for-profit corporation with approximately 20,000 members. The WCFOA is a grassroots, all-volunteer organization. The WCFOA’s primary purpose is to protect and defend the right of lawful firearm owners to exercise their fundamental constitutional right to keep and bear arms.

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4. Given my role as an officer of the WCFOA, I have direct, first-hand knowledge that members of the WCFOA possess and wish to acquire rifles, handguns, shotguns, ammunition feeding devices, and ammunition, but are prevented from doing so by the Act's restrictions on "assault weapons," "large capacity ammunition feeding devices," and ammunition sales.

5. Some members possess magazines manufactured before September 13, 1994, with a capacity of more than ten rounds that are now criminalized by the Act. Other members do not possess magazines with a capacity of more than ten rounds, but would acquire them forthwith but for the Act. Many members would load more than seven rounds in their magazines for use in firearms kept in the home for self-protection but cannot do so because of the Act. Members are unaware how to modify magazines so they cannot "readily be restored or converted to accept" more than ten rounds.

6. Some members possess "assault weapons" now prohibited by the Act as "assault weapons" that were lawfully possessed prior to September 14, 1994, and under the laws of 2000. Other members possess arms now criminalized as "assault weapons" under the Act's new definitions in Penal Law § 265.00(22) that they lawfully possessed prior to January 15, 2013. But for the Act, still other members, individual plaintiffs, and business plaintiffs would forthwith obtain and possess "assault weapons" under each and every one of the Act's new definitions in Penal Law § 265.00(22).

7. As examples, some members possess, and other members would possess but for the Act, semiautomatic rifles that have an ability to accept a detachable magazine with a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, or a thumbhole stock. Other members possess or would possess

Case 1:13-cv-00291-WMS Document 116-6 Filed 08/19/13 Page 4 of 7

such rifles with muzzle brakes, muzzle compensators, or threaded barrels designed to accommodate such attachments.

8. Further, some members possess semiautomatic rifles with detachable magazines and with a thumbhole stock. Such rifles are commonly used for hunting game and for target shooting. A thumbhole stock allows the rifle to be held more comfortably and fired more accurately, but it causes the rifle to be defined as an “assault weapon”.

9. But for the Act, other members would forthwith obtain and possess identical or similar rifles but may not do so in that they are now considered illegal “assault weapons”.

10. Some members obtained M-1 carbines from the Civilian Marksmanship Program (“CMP”), either when it was administered by the U.S. Department of the Army or later when it became a private corporation established by federal law. Other members wish to obtain such carbines in the future. M-1 carbines are semiautomatic, have the ability to accept a detachable magazine, have a bayonet mount, and use a 15-round or 30-round detachable magazine. The Act’s restrictions prevent these members from possessing or acquiring these rifles.

11. Some members obtained M-1 Garand rifles from the CMP, and others would like to do so in the future. M-1 Garand rifles are semiautomatic, have the ability to accept a detachable clip, and have a bayonet mount. Accordingly, the Act’s prohibitions severely restrict possession and acquisition of these rifles by the members.

12. Being in possession of, or wishing to acquire, “assault weapons,” “large capacity ammunition feeding devices,” members are subject to the Act’s requirements regarding registration, transferring such items to persons outside of New York, and

Case 1:13-cv-00291-WMS Document 116-6 Filed 08/19/13 Page 5 of 7

converting magazines, and to the Act's serious criminal penalties, including incarceration, fines, forfeitures, and cancellation of licenses.

13. Members are unaware of how to convert "large capacity ammunition feeding devices" manufactured before September 13, 1994, so that they will hold only ten rounds. Other members might possess the technical ability to attempt such conversions, but are unaware of the definition of "readily converted or restored" or "permanent" that the State of New York would apply to such conversions. The New York State website on the Act contains no guidance in this regard, nor does it refer gun or magazine owners to other resources that can provide adequate guidance.

14. Members have sought guidance from the State of New York as to the scope of, application of, and exceptions to the SAFE Act, and have either received no response from the State or responses that are inaccurate and confusing.

15. Members purchase ammunition at competitive prices from out-of-state businesses. The Act's ban on out-of-state ammunition sales has caused financial harm to these members and makes it more difficult for them to obtain ammunition for lawful self protection, hunting, target shooting, and trap shooting.

16. I also have direct, first-hand knowledge that the firearms now classified as "assault weapons" by the SAFE Act have been used for self-defense, hunting and shooting competitions throughout the State of New York for decades. I personally have used the firearms classified as "assault weapons" to hunt, and personally know many, many other members who have done the same for years. In this sense, the argument that "assault weapons are not used for hunting is simply untrue.

Case 1:13-cv-00291-WMS Document 116-6 Filed 08/19/13 Page 6 of 7

17. In addition, there are numerous shooting competitions for non-military personnel that have taken place throughout the State of New York for years that regularly used the firearms now classified as “assault weapons” to compete. For example, multi-gun matches that include those competitions known as "2 Gun Matches" and "3 Gun Matches" are regularly held at such places as the West Point U.S.M.A. (the Houghton Memorial Match), the Toga County Sportsmen's Association in Oswego, NY and the Genesee Conservation League in Rochester, NY. I have personally attended some of these matches. These matches regularly used the rifles and pistols now classified by the SAFE Act as “assault weapons” in timed competitions that test accuracy and proficiency. These matches are extremely popular, have been taking place throughout New York for years, and have been attended throughout the years by hundreds (and likely thousands) of members.

18. In addition, competitions known as “high power matches” have been held throughout New York for decades. I have personally attended some of these matches. These matches use the rifles, pistols and shotguns now classified as “assault weapons,” are extremely popular, and have been attended throughout the years by hundreds (and likely thousands) of members. In this sense, the argument that the firearms now classified as “assault weapons” are not used by private citizens for sporting competitions is simply untrue.

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A-2000

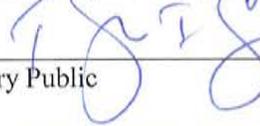
Case 1:13-cv-00291-WMS Document 116-6 Filed 08/19/13 Page 7 of 7

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I have reviewed the foregoing statements and believe them to be true and accurate,
based upon my own information and belief.


/s/ J. SCOTT SOMMAVILLA

Sworn to before me this
19th day of August, 2013


Notary Public

BRIAN THOMAS STAPLETON
Notary Public, State of New York
No. 02ST6118062
Qualified in Westchester County
My Commission Expires 1/2/16

Case 1:13-cv-00291-WMS Document 116-7 Filed 08/19/13 Page 1 of 7

Exhibit G

Aug. 19. 2013 12:08PM Case 1:13-cv-00291-WMS Document 116-7 Filed 08/19/13 Page 3 of 7 P. 2/6

affiliated club through the State has 100 members. The NYSATA hosts four major shoots throughout the year in Cicero, New York.

3. Given my role as counsel to the NYSATA, I have direct, first-hand knowledge that members of NYSATA possess and wish to acquire rifles, handguns, shotguns, ammunition feeding devices, and ammunition, but are prevented from doing so by the SAFE Act's restrictions on "assault weapons," "large capacity ammunition feeding devices," and ammunition sales.

4. Some members possess magazines manufactured before September 13, 1994, with a capacity of more than ten rounds that are now criminalized by the SAFE Act. Other members do not possess magazines with a capacity of more than ten rounds, but would acquire them forthwith but for the Act. Many members would load more than seven rounds in their magazines for use in firearms kept in the home for self-protection but cannot do so because of the SAFE Act. Members are unaware how to modify magazines so they cannot "readily be restored or converted to accept" more than ten rounds.

5. Some members possess "assault weapons" now prohibited by the Act as "assault weapons" that were lawfully possessed prior to September 14, 1994, and under the laws of 2000. Other members possess arms now criminalized as "assault weapons" under the Act's new definitions in Penal Law § 265.00(22) that they lawfully possessed prior to January 15, 2013. But for the SAFE Act, still other members, individual plaintiffs, and business plaintiffs would forthwith obtain and possess "assault weapons" under each and every one of the Act's new definitions in Penal Law § 265.00(22).

Aug. 19. 2013 12:00PM Case 1:13-cv-00291-WMS Document 116-7 Filed 08/19/13 Page 4 of 7 P. 3/6

6. As examples, some members possess, and other members would possess but for the Act, semiautomatic rifles that have an ability to accept a detachable magazine with a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, or a thumbhole stock. Other members possess or would possess such rifles with muzzle brakes, muzzle compensators, or threaded barrels designed to accommodate such attachments.

7. Further, some members possess semiautomatic rifles with detachable magazines and with a thumbhole stock. Such rifles are commonly used for hunting game and for target shooting. A thumbhole stock allows the rifle to be held more comfortably and fired more accurately, but it causes the rifle to be defined as an "assault weapon".

8. But for the Act, other members would forthwith obtain and possess identical or similar rifles but may not do so in that they are now considered illegal "assault weapons".

9. Some members obtained M-1 carbines from the Civilian Marksmanship Program ("CMP"), either when it was administered by the U.S. Department of the Army or later when it became a private corporation established by federal law. Other members wish to obtain such carbines in the future. M-1 carbines are semiautomatic, have the ability to accept a detachable magazine, have a bayonet mount, and use a 15-round or 30-round detachable magazine. The Act's restrictions prevent these members from possessing or acquiring these rifles.

10. Some members obtained M-1 Garand rifles from the CMP, and others would like to do so in the future. M-1 Garand rifles are semiautomatic, have the ability

Aug. 19. 2013 12:00PM Case 1:13-cv-00291-WMS Document 116-7 Filed 08/19/13 Page 5 of 7 P. 4/6

to accept a detachable clip, and have a bayonet mount. Accordingly, the Act's prohibitions severely restrict possession and acquisition of these rifles by the members.

11. Being in possession of, or wishing to acquire, "assault weapons," "large capacity ammunition feeding devices," members are subject to the Act's requirements regarding registration, transferring such items to persons outside of New York, and converting magazines, and to the Act's serious criminal penalties, including incarceration, fines, forfeitures, and cancellation of licenses.

12. Members are unaware of how to convert "large capacity ammunition feeding devices" manufactured before September 13, 1994, so that they will hold only ten rounds. Other members might possess the technical ability to attempt such conversions, but are unaware of the definition of "readily converted or restored" or "permanent" that the State of New York would apply to such conversions. The New York State website on the Act contains no guidance in this regard, nor does it refer gun or magazine owners to other resources that can provide adequate guidance.

13. Members have sought guidance from the State of New York as to the scope of, application of, and exceptions to the SAFE Act, and have either received no response from the State or responses that are inaccurate and confusing.

14. Members purchase ammunition at competitive prices from out-of-state businesses. The Act's ban on out-of-state ammunition sales has caused financial harm to these members and makes it more difficult for them to obtain ammunition for lawful self protection, hunting, target shooting, and trap shooting.

15. The NYSATA hosts four major trapshoots throughout the year in Cicero, New York, which are attended by members and guests who live within and without the

State of New York. To host the events, the NYSATA purchases ammunition from out-of-state and sells it to other NYSATA members and guests. However, the Act's restriction on on ammunition sales, and its prohibitions and restrictions on the ordinary rifles, pistols, and shotguns it mischaracterizes as "assault weapons" have already caused a decrease in the number of out-of-state entrants for the NYSATA's shooting events.

16. Many of the out-of-state competitors who would have entered the competition at our shoots, and would enter NYSATA shoots in the future but for the SAFE Act, have expressed their reluctance to NYSATA officers about traveling to New York and attending NYSATA shoots because of the SAFE Act's prohibitions and restrictions on ordinary rifles, pistols, and shotguns. Those out-of-state competitors have expressed that the ambiguities of the SAFE Act and how it applies to them are the main deterrents to attending NYSATA's shooting events.

17. The four major shoots that the NYSATA hosted last year (2012) had a total of 2,289 entrants. 825 of those entrants, or 36% of the total number of entrants, were from out-of-state. The decrease in out-of-state entrants to NYSATA shoots due to the Act's prohibitions and restrictions on the ordinary rifles, pistols, and shotguns has already and in the future will continue directly to injure the NYSATA and its members by lost profits (through lost entrant fees and a decrease in ammunition sales by the NYSATA at those shoots) and by decreasing the diversity and skill-level of entrants at NYSATA-sponsored events in New York State.

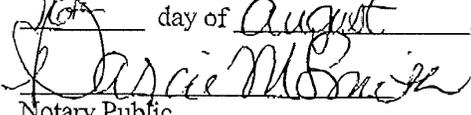
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A-2007

Aug. 19. 2013 12:00PM Case 1:13-cv-00291-WMS Document 116-7 Filed 08/19/13 Page 7 of 7 P. 6/6

18. I have reviewed the foregoing statements and believe them to be true and accurate, based upon my own information and belief.


/s/ JONATHAN R. KARP, ESQ.

Sworn to before me this
10th day of August, 2013

Notary Public

DARCIE M. SMITH
Notary Public, State of New York
No. 4978242
Qualified in Onondaga County
Commission Expires February 25, 2015

Exhibit H

A-2009

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Buffalo Division

NEW YORK STATE RIFLE AND PISTOL :
ASSOCIATION, INC., et al, :
 :
 :
 Plaintiffs. :
 :

v. : Civil No.: 1:13-cv-00291-WMS

ANDREW M. CUOMO, Governor of the State of :
New York, et al, :
 :
 Defendants. :

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

JOHN CUSHMAN, being duly sworn, hereby states the following pursuant to penalties of perjury:

1. I am over the age of eighteen (18) and believe in the nature of an oath.
2. I am presently an officer of SPORTSMEN'S ASSOCIATION FOR FIREARMS EDUCATION, INC. a New York not-for-profit corporation with approximately 1,200 members and with its principal place of business in Commack (Suffolk County), New York.
3. I am personally acquainted with the facts herein stated:
4. Plaintiff SPORTSMEN'S ASSOCIATION FOR FIREARMS EDUCATION, INC. ("SAFE", "association plaintiff"), is a New York not-for-profit corporation with approximately 1,200 members. Since September 1994, the SAFE has been dedicated to the preservation of Second Amendment rights, promotion of firearm safety, education and training, and the shooting sports. Members of the SAFE participate

in numerous rifle events each year and the SAFE sponsors many outdoor shooting events. For example, the SAFE sponsors biannual women's only instructional classes to promote safety and gun education to women.

5. Given my role as an officer of the SAFE, I have direct, first-hand knowledge that members of SAFE possess and wish to acquire rifles, handguns, shotguns, ammunition feeding devices, and ammunition, but are prevented from doing so by the Act's restrictions on "assault weapons," "large capacity ammunition feeding devices," and ammunition sales.

6. Some members possess magazines manufactured before September 13, 1994, with a capacity of more than ten rounds that are now criminalized by the Act. Other members do not possess magazines with a capacity of more than ten rounds, but would acquire them forthwith but for the Act. Many members would load more than seven rounds in their magazines for use in firearms kept in the home for self-protection but cannot do so because of the Act. Members are unaware how to modify magazines so they cannot "readily be restored or converted to accept" more than ten rounds.

7. Some members possess "assault weapons" now prohibited by the Act as "assault weapons" that were lawfully possessed prior to September 14, 1994, and under the laws of 2000. Other members possess arms now criminalized as "assault weapons" under the Act's new definitions in Penal Law § 265.00(22) that they lawfully possessed prior to January 15, 2013. But for the Act, still other members, individual plaintiffs, and business plaintiffs would forthwith obtain and possess "assault weapons" under each and every one of the Act's new definitions in Penal Law § 265.00(22).

8. As examples, some members possess, and other members would possess but for the Act, semiautomatic rifles that have an ability to accept a detachable magazine with a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, or a thumbhole stock. Other members possess or would possess such rifles with muzzle brakes, muzzle compensators, or threaded barrels designed to accommodate such attachments.

9. Further, some members possess semiautomatic rifles with detachable magazines and with a thumbhole stock. Such rifles are commonly used for hunting game and for target shooting. A thumbhole stock allows the rifle to be held more comfortably and fired more accurately, but it causes the rifle to be defined as an "assault weapon".

10. But for the Act, other members would forthwith obtain and possess identical or similar rifles but may not do so in that they are now considered illegal "assault weapons".

11. Some members obtained M-1 carbines from the Civilian Marksmanship Program ("CMP"), either when it was administered by the U.S. Department of the Army or later when it became a private corporation established by federal law. Other members wish to obtain such carbines in the future. M-1 carbines are semiautomatic, have the ability to accept a detachable magazine, have a bayonet mount, and use a 15-round or 30-round detachable magazine. The Act's restrictions prevent these members from possessing or acquiring these rifles.

12. Some members obtained M-1 Garand rifles from the CMP, and others would like to do so in the future. M-1 Garand rifles are semiautomatic, have the ability

to accept a detachable clip, and have a bayonet mount. Accordingly, the Act's prohibitions severely restrict possession and acquisition of these rifles by the members.

13. Being in possession of, or wishing to acquire, "assault weapons," "large capacity ammunition feeding devices," members are subject to the Act's requirements regarding registration, transferring such items to persons outside of New York, and converting magazines, and to the Act's serious criminal penalties, including incarceration, fines, forfeitures, and cancellation of licenses.

14. Members are unaware of how to convert "large capacity ammunition feeding devices" manufactured before September 13, 1994, so that they will hold only ten rounds. Other members might possess the technical ability to attempt such conversions, but are unaware of the definition of "readily converted or restored" or "permanent" that the State of New York would apply to such conversions. The New York State website on the Act contains no guidance in this regard, nor does it refer gun or magazine owners to other resources that can provide adequate guidance.

15. Members have sought guidance from the State of New York as to the scope of, application of, and exceptions to the SAFE Act, and have either received no response from the State or responses that are inaccurate and confusing.

16. Members purchase ammunition at competitive prices from out-of-state businesses. The Act's ban on out-of-state ammunition sales has caused financial harm to these members and makes it more difficult for them to obtain ammunition for lawful self protection, hunting, target shooting, and trap shooting.

A-2013

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17. I have reviewed the foregoing statements and believe them to be true and accurate, based upon my own information and belief.

John L. Cushman
/s/ JOHN CUSHMAN

Sworn to before me this
15th day of August, 2013

Chris G Phillips III
Notary Public

Chris G Phillips III
Notary Public, State of New York
Qualified in Suffolk County
Reg. # 01PH6253219
My Commission Expires 12/19/2015

A-2014

Case 1:13-cv-00291-WMS Document 116-9 Filed 08/19/13 Page 1 of 5

Exhibit I

Case 1:13-cv-00291-WMS Document 116-9 Filed 08/19/13 Page 3 of 5
AUG. 16. 2013 5:43PM GOLDBERG-SEGALLA NO. 0836 P. 3

amputee.

5. I possess magazines manufactured before September 13, 1994, with a capacity of more than ten rounds that are now criminalized by the Act.

6. I possess "assault weapons" now prohibited by the Act as "assault weapons" that were lawfully possessed prior to September 14, 1994, and under the laws of 2000. I possess arms now criminalized as "assault weapons" under the Act's new definitions in Penal Law § 265.00(22) that I lawfully possessed prior to January 15, 2013. But for the Act, I would forthwith obtain and possess "assault weapons" under each and every one of the Act's new definitions in Penal Law § 265.00(22).

7. As examples, I possess and would possess but for the Act, semiautomatic rifles that have an ability to accept a detachable magazine with a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, or a thumbhole stock. I possess or would possess such rifles with muzzle brakes, muzzle compensators, or threaded barrels designed to accommodate such attachments.

8. I possess semiautomatic rifles with detachable magazines and with a thumbhole stock. Such rifles are commonly used for hunting game and for target shooting. A thumbhole stock allows the rifle to be held more comfortably and fired more accurately, but it causes the rifle to be defined as an "assault weapon".

9. But for the Act, I would forthwith obtain and possess identical or similar rifles but may not do so in that they are now considered illegal "assault weapons".

10. I possess and wish to acquire rifles, handguns, shotguns, ammunition feeding devices, and ammunition, and am subject to and adversely affected by each and every restriction

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AUG. 16. 2013 5:43PM GOLDBERG-SEGALLA NO. 0836 P. 4

articulated in the complaint on "assault weapons" (including each definition thereof), "large capacity ammunition feeding devices," and ammunition sales. I am adversely affected by the change in the definition of "large capacity feeding devices" and also by the restrictions on ammunition sales.

11. Given my condition, it would be difficult or impossible for me to obtain multiple magazines and change magazines if confronted with a sudden home invasion, robbery, or other attack. For self protection and competition purposes, I own one model 17 Glock pistol and one model 19 Glock pistol, five M1A and twelve Colt Target Model AR15 rifles, all of which were manufactured before 1994 and have magazines with capacities over 7 or 10 rounds. If confronted with a sudden home invasion, robbery, or other attack, I would have to pinch the pistol or rifle under my left arm and against my body without dropping the firearm in order to change the magazine. I would have to do the same during competitions. The necessity of changing magazines under such circumstances, because of the Act's requirements, presents me with no viable option allowing for use of my pistols and rifles to protect myself and my family in an adequate fashion.

12. I have no knowledge as to where I could obtain magazines that comport with the restrictions imposed by the Act. Nor do I know how to convert magazines in higher capacities to magazines in lower capacities, and even if I could, I would have no way of knowing whether such magazines would be considered to be "readily restored or converted" to accept a higher capacity. By limiting new magazines to those with a capacity of 7 rounds, my handguns, rifles, and shotguns owned, possessed, sold and/or transferred are functionally inoperable. But for the criminal penalties in the Act forbidding me to do so, I would continue to possess, or would forthwith acquire, magazines with a capacity over 7 or 10 rounds for handguns, rifles, and shotguns for

A-2018

Case 1:13-cv-00291-WMS Document 116-9 Filed 08/19/13 Page 5 of 5

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NO. 0836 P. 5

protection of myself and my family for other lawful purposes, including shooting competitions and instructional purposes.

13. I am being deprived from use of my pistols and firearms at competitive competitions, including those held monthly at The Genesee Conservation League, Inc. But for the restrictions in the Act, I would attend those competitions. Further, I reside in a rural area where there are few law enforcement officials within close proximity to my residence. Due to my physical condition, I feel vulnerable to robbery, theft, and other crimes, and will not be able to effectively defend myself and my family.

14. I have reviewed the foregoing statements and believe them to be true and accurate, based upon my own information and belief.

[Handwritten Signature]
/s/ THOMAS GALVIN

Sworn to before me this
19 day of August, 2013

[Handwritten Signature]
Notary Public

LAURIE L. VOOK
Notary Public, New York State, Wayne Co.
My Commission Expires July 2, 2014

Exhibit J

A-2020

Case 1:13-cv-00291-WMS Document 116-10 Filed 08/19/13 Page 2 of 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Buffalo Division

NEW YORK STATE RIFLE AND PISTOL ASSOCIATION, INC., et al,	:	
	:	
Plaintiffs.	:	
	:	
v.	:	Civil No.: 1:13-cv-00291-WMS
	:	
ANDREW M. CUOMO, Governor of the State of New York, et al,	:	
	:	
Defendants.	:	

AFFIDAVIT

STATE OF NEW YORK)	
) ss.:	
COUNTY OF ERIE)	

DAN BEDELL, being duly sworn, hereby states the following pursuant to penalties of perjury:

1. I am over the age of eighteen (18) and believe in the nature of an oath.
2. I am the owner and operator of BEDELL CUSTOM a New York sole proprietorship with a principal place of business in Lancaster (Erie County), New York.
3. I am a resident of Lancaster, New York and a citizen of the United States.
4. I hold a Federal Firearms License (“FFL”) for the sale and re-sale of firearms and ammunition, as well as Gunsmith and Dealer licenses issued by Erie County.
5. I am personally acquainted with the facts herein stated:
6. Plaintiff BEDELL CUSTOM (“Bedell”) business is subject to and adversely affected by each and every restriction articulated in the SAFE Act on “assault weapons,” “large capacity ammunition feeding devices,” and ammunition sales.

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7. For example, prior to the enactment of the SAFE Act, a significant segment of Bedell's business involved the purchase of "AR"-type firearms from out-of-state distributors and the sale of these "AR"-type firearms to customers. As a direct and proximate result of the Act's passage, Bedell's out-of-state distributors have significantly reduced and, in some cases, stopped altogether the shipment of "AR"-type firearms to Bedell due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. These reductions and stoppages have caused actual harm to Bedell's sales and overall business.

8. By way of further example, another segment of Bedell's business involves modifying and customizing specific types of firearms that are used in United States Practical Shooting Association ("USPSA") competitions. While the caliber and type of these USPSA firearms may vary, they share a common denominator in that they regularly require the use of magazines that can hold more than ten (10) rounds of ammunition. As a direct and proximate result of the passage of the SAFE Act, Bedell's orders for and shipments of USPSA firearms and magazines have been significantly reduced, and this segment of Bedell's business has suffered actual harm.

9. I personally sought guidance from the State of New York as to the scope of, application of, and exceptions to the SAFE Act, and have either received no response from the State or responses that are inaccurate and confusing.

10. For example, on January 29, 2013, I attended a SAFE Act "town meeting" held at the Clarence Public Library in Clarence, New York. The meeting was attended by Mike Green (Executive Deputy Commissioner of the New York State Division of Criminal Justice Services) and Steve Hogan (First Deputy Counsel, New York State

Case 1:13-cv-00291-WMS Document 116-10 Filed 08/19/13 Page 4 of 5

Police). During this meeting, Mr. Green and Mr. Hogan were asked numerous questions regarding, *inter alia*, how the Act was to be applied and/or enforced, the types of firearms the Act implicated, the nature and scope of any exceptions to the Act's criminal provisions, and/or the timing of the Act's enforcement.

11. The responses of Green and Hogan were vague, ambiguous, confusing and non-responsive to the questions that were asked. In several instances, Green and Hogan simply read from sections of the Act, without bothering to explain their application. The response of Green and Hogan did not shed any further light on how the Act was to be applied and/or enforced, the nature and scope of any exceptions to the Act's criminal provisions, the types of firearms the Act implicated, and/or the timing of the Act's enforcement.

12. During this same meeting I asked Mr. Green and Mr. Hogan specific questions, such as whether I could sell stripped AR-15 lower receivers under the new law. Examination of the Act reveals that these items are not mentioned anywhere within its numerous provisions. However, Mr. Green and Mr. Hogan classified these items as prohibited "assault weapons," even though they bear none of the characteristics attributed to "assault weapons" defined by the Act. Mr. Green's and Mr. Hogan's insistence that these items are "assault weapons" that could not be sold has caused me confusion and uncertainty as to how the Act is to be implemented and enforced.

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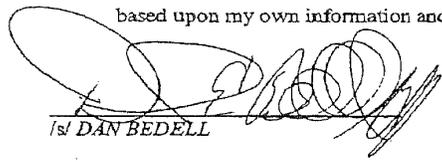
Gibson McASKILL & Crosby

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they bear none of the characteristics attributed to "assault weapons" defined by the Act. Mr. Green's and Mr. Hogan's insistence that these items are "assault weapons" that could not be sold has caused me confusion and uncertainty as to how the Act is to be implemented and enforced.

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13. I have reviewed the foregoing statements and believe them to be true and accurate, based upon my own information and belief.


/s/ DAN BEDELL

Sworn to before me this
19th day of August, 2013
Lori C. Mulhisen
Notary Public

Lori C. Mulhisen
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 8-3-14

Exhibit K

sale, re-sale and importation of firearms and ammunition, as well as a handgun re-sale license issued by Monroe County.

6. One segment of Beikirch's business involves the purchase ammunition at competitive prices from out-of-state businesses. The SAFE Act's ban on out-of-state ammunition sales has caused financial harm to my business as it makes it more difficult to obtain ammunition for sale to customers. This increased difficulty has caused decreased ammunition sales, which has caused harm to my business.

7. Beikirch's business has also been harmed by the SAFE Act's restrictions on "assault weapons," "large capacity ammunition feeding devices," and ammunition sales.

8. For example, one segment of Beikirch's business involves the purchase, sale and re-sale of long arms, "AR"- type firearms, and ammunition. As a direct result of the passage of the Act, Beikirch's suppliers of long arms, "AR"- type firearms and ammunition have refused to sell, ship or transport these items into the State of New York due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. These refusals have caused actual harm to Beikirch's sales and overall business.

9. The actual harm to Beikirch's business has been so great that Beikirch has recently purchased a firearms and ammunition business located in Pennsylvania, close to the New York border, near its own current location. This purchase was made out of concern created by dwindling firearms and ammunition sales (and related business difficulties) that have been caused by the SAFE Act's passage. The purchase was costly, and the initial outlay to close on the purchase has caused actual harm to Beikirch's

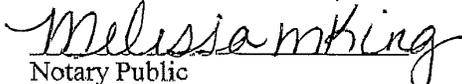
A-2027

business. The Act has harmed Beikirch's business to the point that Beikirch is now contemplating either the imminent shutting down of its New York business and/or the imminent laying off of a large number of its current employees.

10. I have reviewed the foregoing statements and believe them to be true and accurate, based upon my own information and belief.


/s/ HANS FARNUNG

Sworn to before me this
16 day of August, 2013


Notary Public

MELISSA M. KING
Notary Public, State of New York
Monroe County Reg. #01K18172861
Commission Expires 08/13/15

Exhibit L

A-2029

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Buffalo Division

NEW YORK STATE RIFLE AND PISTOL ASSOCIATION, INC., et al,	:	
	:	
Plaintiffs.	:	
	:	
v.	:	Civil No.: 1:13-cv-00291-WMS
	:	
ANDREW M. CUOMO, Governor of the State of New York, et al,	:	
	:	
Defendants.	:	

AFFIDAVIT

STATE OF NEW YORK)	
) ss.:	
COUNTY OF WESTCHESTER)	

BENJAMIN ROSENSHINE, being duly sworn, hereby states the following pursuant to penalties of perjury:

1. I am over the age of eighteen (18) and believe in the nature of an oath.
2. I am the Chief Executive Officer of BLUELINE TACTICAL & POLICE SUPPLY, LLC. (“Blueline”). Blueline is a New York limited liability corporation with a principal place of business in Elmsford (Westchester County), New York.
3. I am personally acquainted with the facts herein stated.
4. Blueline is in the business of selling firearms and ammunition both within and without the State of New York. Blueline holds an FFL for the sale, re-sale and importation of firearms and ammunition, as well as a Dealer license issued by Westchester County.
5. Blueline’s business has been harmed by the SAFE Act’s restrictions on “assault weapons,” “large capacity ammunition feeding devices,” and ammunition sales.

Case 1:13-cv-00291-WMS Document 116-12 Filed 08/19/13 Page 3 of 4

6. Blueline's business involves the purchase, sale and re-sale of rifles, including "AR"- type firearms, and ammunition. As a direct result of the passage of the Act, Blueline's sales of rifles, "AR"-type firearms and ammunition have been significantly reduced. These reductions have caused actual harm to Blueline's business.

7. In addition, suppliers of long arms, magazines and parts, "AR"- type firearms have refused to sell, ship or transport these items into the State of New York due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. These refusals have caused actual harm to Blueline's sales and overall business.

8. Since the passage of the Act, Blueline's customers have demonstrated a decreased willingness to sell or buy long arms, including "AR"-type firearms due to concern and confusion over whether these types of arms can legally be possessed, purchased or sold in the State of New York. In addition, since the passage of the Act, a large segment of Blueline's customers have shown an increasing willingness to simply turn in their firearms (rather than sell them) as they are confused and concerned about whether continued possession of these arms constitutes a crime and will result in their (the customers') criminal prosecution. In my estimation, Blueline's customers are tired of being made to feel like criminals.

9. As a direct result of Blueline's customers' willingness to give up their firearms and/or buy other firearms, Blueline's sales of firearms have suffered and Blueline's business has been actually harmed.

A-2031

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10. In addition, those individuals able under the SAFE Act (i.e., law enforcement officers) to purchase AR-type firearms and other guns banned by the Act have demonstrated a reduced willingness and/or reluctance to purchase these guns due to a concern over and confusion about whether they might be breaking the law. This concern and confusion has led to reduced firearm sales, which has caused actual harm to Blueline's business.

11. I have reviewed the foregoing statements and believe them to be true and accurate, based upon my own information and belief.


/s/ BENJAMIN ROSENSHINE

Sworn to before me this
19th day of August, 2013


Notary Public

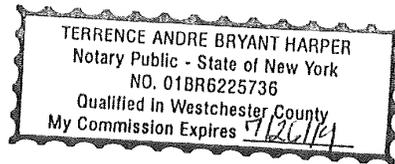


Exhibit M

A-2033

Case 1:13-cv-00291-WMS Document 116-13 Filed 08/19/13 Page 2 of 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Buffalo Division

NEW YORK STATE RIFLE AND PISTOL	:	
ASSOCIATION, INC., et al,	:	
	:	
Plaintiffs.	:	
	:	
v.	:	Civil No.: 1:13-cv-00291-WMS
	:	
ANDREW M. CUOMO, Governor of the State of	:	
New York, et al,	:	
Defendants.	:	

AFFIDAVIT

STATE OF NEW YORK)	
) ss.:	
COUNTY OF GENESEE)	

MICHAEL P. BARRETT, being duly sworn, hereby states the following pursuant to penalties of perjury:

1. I am over the age of eighteen (18) and believe in the nature of an oath.
2. I am the President of Batavia Marine & Sporting Supplies, Inc. is a New York corporation with a principal place of business in Batavia (Genesee County), New York.
3. I am personally acquainted with the facts herein stated.
4. Batavia Marine holds an FFL for the sale and re-sale of firearms and ammunition, as well as Dealer and Gunsmith licenses issued by Genesee County.
5. BATAVIA MARINE & SPORTING SUPPLY (“Batavia Marine”, “business plaintiff”) is in the business of buying, selling, and re-selling firearms and ammunition within and without the State of New York. Batavia Marine’s business is

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subject to and adversely affected by each and every restriction imposed by the SAFE Act (“the Act”) on firearms classified as “assault weapons,” “large capacity ammunition feeding devices,” and ammunition sales.

6. For example, one segment of Batavia Marine’s business involves the purchase, sale and re-sale of rifles, including “AR”- type firearms, and ammunition. As a direct result of the passage of the Act, Batavia Marine’s sales of rifles, “AR”-type firearms and ammunition have been significantly reduced. These reductions have caused actual harm to Batavia Marine’s business.

7. In addition, part of Batavia Marine’s business involves the purchase ammunition at competitive prices from out-of-state businesses. The Act’s ban on out-of-state ammunition sales has caused financial harm to my business in that the Act makes it more difficult to obtain ammunition for both sale and lawful uses like self-protection, hunting, target shooting, and trap shooting.

8. Suppliers of long arms, “AR”- type firearms and ammunition have refused to sell, ship or transport these items into the State of New York due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. These refusals have caused actual harm to Batavia Marine’s sales and overall business.

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A-2035

08/18/2013 Case 1:13-cv-00291-WMS Document 116-13 Filed 08/19/13 Page 4 of 4 PAGE 04

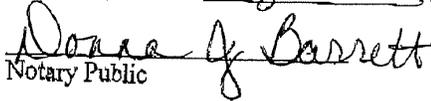
AUG. 16. 2013 3:34PM GOLDBERG-SEGALLA

NO. 0834 P. 5

9. I have reviewed the foregoing statements and believe them to be true and accurate, based upon my own information and belief.


/s/ MICHAEL P. BARRETT

Sworn to before me this
18th day of August, 2013


Notary Public

DONNA J. BARRETT
Notary Public, State of New York
Qualified in Genesee County
Commission Expires April 10, ~~2014~~ 2015

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Exhibit N

A-2037

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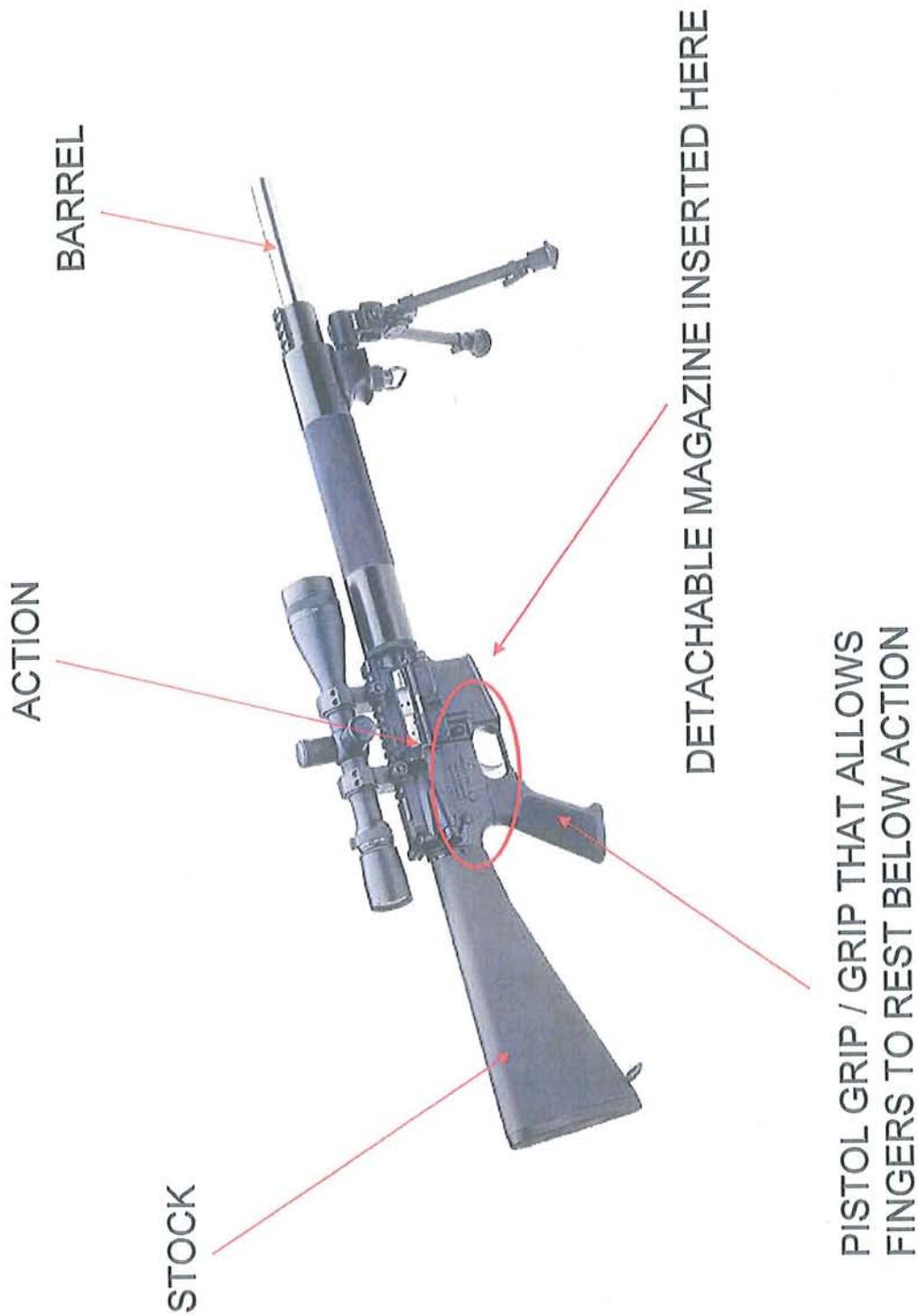


Exhibit O

Case 1:13-cv-00291-WMS Document 116-15 Filed 08/19/13 Page 2 of 23

Dr. Gary K. Roberts, DDS
750 Welch Road #118
Palo Alto, California 94304

August 16, 2013

Goldberg Segalla, LLP
11 Martine Avenue – 7th Floor
White Plains, NY 10606
Attention: Brian Stapleton, Esq.

In Re: NYSRPA v Cuomo, et al.
Case No.: 1:13-cv-00291-WMS
Motion for Preliminary Injunction

Mr. Stapleton:

I offer this declaration in support of a motion made by plaintiffs in the above-referenced action that seeks a preliminary injunction enjoining the enforcement of the New York Secure Ammunition and Firearms Enforcement Act (“the SAFE Act,” “the Act”). This declaration is based upon my review of the Act, the Complaint filed by plaintiffs herein, and my review of defendants’ opposition to plaintiffs’ motion for preliminary injunction. It is also based upon my years of study, training, research and consulting in wound ballistics; my education; and my experience.

I offer the following opinions under the penalties of perjury, and to a reasonable degree of certainty found in the fields of weapon ballistics and wound ballistics.

I. EXPERIENCE & TRAINING

I am currently on staff at Stanford University Medical Center; this is a large teaching hospital and Level I Trauma center where I perform hospital dentistry and surgery. After completing my residency at Navy Hospital Oakland in 1989 while on active military duty, I studied at the Army Wound Ballistic Research Laboratory at the Letterman Army Institute of Research and became one of the first members of the International Wound Ballistic Association.

Since then, I have been tasked with performing military, law enforcement, and privately funded independent wound ballistic testing and analysis. As a Navy Reserve officer from 1986 to 2008, I served on the Joint Service Wound Ballistic IPT, as well as being a consultant to the Joint FBI-USMC munitions testing program and the TSWG MURG program.

I am frequently asked to provide wound ballistic technical assistance to numerous U.S. and allied SOF units and organizations, such as the Canadian Armed Forces Weapons Effect and Protection SIPES TDP. In addition, I am a technical advisor to the Association of Firearms and Toolmark Examiners, as well as to a variety of Federal, State, and municipal law enforcement agencies.

I have been a sworn Reserve Police Officer in the San Francisco Bay Area and have recently served in a Law Enforcement (LE) training role.

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Mr. Brian Stapleton, Esq.
Goldberg Segalla, LLP
August 17, 2013
Page 2 of 22

II. THE SEMI-AUTOMATIC AR15 CARBINE IS LIKELY THE MOST ERGONOMIC, SAFE, AND EFFECTIVE FIREARM FOR CIVILIAN SELF-DEFENSE

A. INTRODUCTION to TERMINAL BALLISTICS

Gunshot wounds are an unfortunate fact in our world. Due to the large number of gunshot wounds which occur during military conflicts and the frequency of civilian gunshot wounds in large urban areas, the common assumption is that firearms injuries are well understood and that health care providers have gained the necessary knowledge and skill to appropriately treat gunshot wounds. Unfortunately, this assumption is incorrect. Probably no scientific or medical field contains more misinformation than wound ballistics.

Numerous "war stories" and a great deal of folklore exists about gunshot wounds, but the actual effects of bullets on the human body remain shrouded in mystery to the average person. An overwhelming volume of conflicting and contradictory articles written about firearms wounds have been published in medical journals, law enforcement publications, military briefings, and civilian articles. Sadly, while many of these texts propose theories which purport to explain the effects of penetrating projectiles on the body, the majority are replete with erroneous assumptions and pseudoscientific speculation which result in further misunderstanding. In addition, many of the myths and misconceptions about bullet wounds are perpetuated by inaccurate entertainment industry portrayals on television shows and at the cinema, and by distorted exaggerations of weapons effects in news media accounts of shootings.

Internal ballistics is the study of projectile behavior from the time the cartridge is fired and propellant ignited, until the bullet exits the barrel of the firearm. External ballistics is the study of projectile flight through air after exiting the barrel of the firearm, until a target or object is hit. Terminal ballistics is the study of projectile behavior from the time the first target, intermediate barrier, or object is hit, until the projectile stops moving. Wound ballistics is the branch of terminal ballistics that studies the interaction between penetrating projectiles and tissue; essentially the pathophysiology of gunshot wounds. This is of crucial importance to the healthcare provider who must treat gunshot wounds, as a poor understanding of the types of injuries produced by penetrating projectiles may result in improper or inadequate clinical treatment being provided to a shooting victim. Terminal ballistics and wound ballistics are also of interest to military and law enforcement personnel as well as private citizens who depend on firearms to protect themselves since misconceptions regarding bullet effectiveness and body armor can jeopardize their lives and those of innocent individuals they are protecting.

B. BASIC WOUND BALLISTIC FACTS

The last 25 years of modern wound ballistic research has demonstrated yet again what historical reports have always indicated--that there are only two valid methods of incapacitation: one based on psychological factors and the other physiological damage.

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Mr. Brian Stapleton, Esq.
Goldberg Segalla, LLP
August 17, 2013
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People are often rapidly psychologically incapacitated by minor wounds that are not immediately physiologically incapacitating. Preconceived notions of how people should react when shot; intimidation from the weapon or act of being shot; fear of pain, injury, or death; anxiety about the appearance of their wound and the sight of their own blood; or a lack of will to continue and a desire to quit can all influence an individual's response to being shot. Up to fifty percent of those individuals rapidly incapacitated by bullet wounds are probably incapacitated for psychological rather than physiological reasons. Psychological factors are also the reason people can receive severe, even non-survivable wounds and continue functioning for short periods of time. Since pain is often initially absent following injury, an individual may not be aware of their wound and therefore will not react to it. Strong emotions such as anger, rage, hate, and basic survival instincts that release adrenalin, can stimulate the body. Chemicals can strongly influence an individual's psychological state. People under the influence of analgesics, stimulants, tranquilizers, or dissociative agents may not be aware of their injury, may have decreased pain perception, or may show no concern about their wound. Psychological incapacitation is an extremely erratic, highly variable, and completely unpredictable human response, independent of any inherent characteristics of a particular projectile.

On the other hand, the degree and rapidity of any physiological incapacitation is determined by the anatomic structures the projectile disrupts and the severity the tissue damage caused by the bullet. Physiologically, immediate incapacitation or death can only occur when the brain or upper spinal cord is damaged or destroyed. The tactical reality is that in OIS (*officer involved shooting*) incidents, opportunities for LE (*law enforcement*) personnel to take precisely aimed shots at the CNS (*central nervous system*) of threatening opponents is rare due to high stress unexpected contact marked by rapid fleeting movements, along with frequent poor visibility of the target caused by darkness, innocent bystanders, and the use of cover and concealment. Battlefield conditions for military personnel can be even more chaotic. Likewise, civilian self-defense encounters can be highly stressful and confusing. Thus there is a reduced likelihood of routine CNS targeting in defensive encounters requiring lethal force. Absent CNS damage, circulatory system collapse from severe disruption of the vital organs and blood vessels in the torso is the only other reliable method of physiological incapacitation from small arms. If the CNS is uninjured, physiological incapacitation is delayed until blood loss is sufficient to deprive the brain of oxygen. Multiple hits may be needed before an individual is physiologically incapacitated. An individual wounded in any area of the body other than the CNS may physiologically be able to continue their actions for a short period of time, even with non-survivable injuries. In a 1992 IWBA Journal paper, Dr. Ken Newgard wrote the following about how blood loss effects incapacitation:

A 70 kg male has a cardiac output of around 5.5 liters per minute. His blood volume is about 4200 cc. Assuming that his cardiac output can double under stress, his aortic blood flow can reach 11 Liters per minute. If this male had his thoracic aorta totally severed, it would take him 4.6 seconds to lose 20% of his total blood volume. This is the minimum amount of time in which a person could lose 20% of his blood volume from one point of injury. A marginally trained person can fire at a rate of two shots per second. In 4.6 seconds there could easily be 9 shots of return

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fire before the assailant's activity is neutralized. Note this analysis does not account for oxygen contained in the blood already perusing the brain that will keep the brain functioning for an even longer period of time.

LE personnel are generally trained to shoot at the center of mass, usually the torso, of an aggressive opponent who must be stopped through the use of lethal force. While the human body can appear incredibly complex and frail, it is also remarkably robust and durable, with the capacity to withstand severe stress and damage before being incapacitated. Physiological incapacitation with wounds to the torso is usually the result of circulatory system collapse. More rapid incapacitation may occur with greater tissue disruption. Tissue is damaged through two wounding mechanisms: the tissue in the projectile's path is permanently crushed and the tissue surrounding the projectile's path is temporarily stretched. A penetrating projectile physically crushes and destroys tissue as it cuts its path through the body. The space occupied by this pulped and disintegrated tissue is referred to as the permanent cavity. The permanent cavity, or wound track, can quite simply be considered as the hole bored by the projectile's passage. Obviously, bullets of greater diameter crush more tissue, forming a larger permanent cavity. The formation of this permanent cavity is consistent and reliable.

The tissue surrounding the permanent cavity is briefly pushed laterally aside as it is centrifugally driven radially outward by the projectile's passage. The empty space normally occupied by the momentarily displaced tissue surrounding the wound track is called the temporary cavity. The temporary cavity quickly subsides as the elastic recoil of the stretched tissue returns it towards the wound track. The tissue that was stretched by the temporary cavity may be injured and is analogous to an area of blunt trauma surrounding the permanent crush cavity. The degree of injury produced by temporary cavitation is quite variable, erratic, and highly dependent on anatomic and physiologic considerations. Many flexible, elastic soft tissues such as muscle, bowel wall, skin, blood vessels, and empty hollow organs (*stomach, intestines, bladder, etc...*) are good energy absorbers and are highly resistant to the blunt trauma and contusion caused by the stretch of temporary cavitation. Inelastic tissues such as the liver, kidney, spleen, pancreas, brain, and completely full fluid or gas filled hollow organs are highly susceptible to severe permanent splitting, tearing, and rupture due to temporary cavitation insults. Projectiles are traveling at their maximum velocity when they initially strike and then slow as they travel through tissue. In spite of this, the maximum temporary cavity is not always found at the surface where the projectile is at its highest velocity, but often deeper in the tissue after it has slowed considerably. The maximum temporary cavitation is usually coincidental with that of maximum bullet yaw, deformation, or hyper-expansion and fragmentation, but not necessarily maximum projectile velocity.

All projectiles that penetrate the body can only disrupt tissue by these two wounding mechanisms: the localized crushing of tissue in the bullet's path and the transient stretching of tissue adjacent to the wound track. Projectile wounds differ in the amount and location of crushed and stretched tissue. The relative contribution by each of these mechanisms to any wound depends on the physical characteristics of the projectile, its size, weight, shape, construction, and velocity, penetration depth and the type of tissue with which the projectile interacts. Unlike rifle bullets, handgun bullets, regardless of whether they are fired from

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pistols or SMG's (*sub-machine gun*), generally only disrupt tissue by the crush mechanism. In addition, temporary cavitation from most handgun bullets does not reliably damage tissue and is not usually a significant mechanism of wounding.

Vital anatomic structures are located deep within the body, protected by various layers of tissue. The average thickness of an adult human torso is 9.4" and the major blood vessels in the torso of even a slender adult are located approximately 6" from the ventral skin surface. Bullets that may be required to incapacitate aggressors must reliably penetrate a minimum of approximately 10 to 12 inches of tissue in order to ensure disruption of the major organs and blood vessels in the torso from any angle and through excessive adipose tissue, hypertrophied muscle, or intervening anatomic structures, such as a raised arm. The FBI has defined the ideal penetration range for projectiles intended for LE use to be 12-18", thus ensuring adequate penetration, while limiting the chance of projectiles exiting a violent aggressor and going downrange to hit an innocent bystander. Bullet penetration depth varies depending on the density and resistance of the tissue encountered. Bullets striking dense structures such as bone have reduced penetration while those traveling through less resistant tissue, such as lung, exhibit increased penetration. The tough, resilient, flexible skin on the exit side of the body can have the same resistance to bullet passage as four inches of muscle and often causes bullets to end their path just under the skin at the anticipated exit point.

All other factors being equal, heavier bullets penetrate to a deeper depth in tissue than lighter bullets and non-deforming bullets generally penetrate deeper than deforming bullets. Non-deforming projectiles exhibit greater penetration as velocity is increased. Higher velocity also increases the penetration depth of deforming bullets, but only until the bullet begins to upset. The higher velocity then increases the amount and rate of bullet deformation, with the enlarged frontal area of the expanded bullet causing increased resistance to further penetration and a decreased total penetration depth. Projectiles that become destabilized after leaving the muzzle have greater yaw angles in flight and therefore greater AOA (*angle-of-attack*) on impact. AOA at impact refers to the angle between the flight axis of the projectile and the geometric axis of the projectile at the moment of impact. This results in decreased tissue penetration compared to the same bullet when properly stabilized. Decreased projectile penetration can also result if the bullet is deformed or fragmented after passing through intermediate obstacles, for example automobile windshields or sheet metal, before striking tissue. Penetration depth can be increased if an expanding bullet fails to deform, either through poor bullet design or external influences. For example, if the hollow nose cavity of a JHP (*jacketed hollow point*) bullet collapses in on itself after passing through intermediate obstacles such as automobile steel or if the hollow point becomes clogged with material from intermediate obstacles like wood or heavy clothing, it may be prevented from expanding and will behave like a deeper penetrating, non-deforming bullet.

Aerodynamic projectiles, such as bullets, cause minimal tissue disturbance when passing point forward through tissue. Tissue is a denser medium than air; as the bullet strikes tissue, the increased drag on the projectile overcomes its rotational stabilization and the bullet can upset and yaw. If the bullet yaws, more surface area is in contact with tissue, so it crushes more tissue, creating a larger permanent cavity. When a bullet yaws, it also

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displaces more of the surrounding tissue, increasing the temporary cavity size. Both the largest permanent and temporary cavities are produced by a non-deforming projectile when it is traveling sideways at 90 degrees of yaw, allowing the maximum lateral cross sectional area of the bullet to strike tissue and displace the greatest amount of tissue. Longer and wider bullets have a greater lateral cross sectional area and thus create a larger permanent cavity when they yaw. The depth in tissue at which a given bullet upsets is independent of bullet mass and velocity, and is strongly influenced by the AOA at which the bullet strikes tissue, as well as the projectile shape, construction, and center of gravity. All non-deforming, pointed tip Spitzer type projectiles, such as the FMJ (*full metal jacketed*) rifle bullets commonly used by militaries, yaw past 90 degrees in tissue, finally ending their path pointed backwards, their bases facing the direction of travel, as this is the most stable position for these projectiles when traveling through tissue since this places the bullet's center of gravity forward.

Projectile deformation destroys the aerodynamic shape of the bullet, shortening its length and increasing its diameter by expanding and flattening the bullet tip in the classic "mushroom" pattern exhibited by deforming JHP and JSP (*jacketed soft point bullets*). The larger frontal area of deformed bullets can crush more tissue, thus increasing permanent cavity size; more tissue is also displaced by a bullet with increased frontal area, causing an enlarged temporary cavity. The larger permanent and temporary cavities occur at a shallower penetration depth than that caused by non-deforming projectiles. The increased frontal area of a deformed bullet provides greater resistance to the projectile's passage, resulting in decreased penetration depth.

Projectile hyper-expansion and fragmentation in tissue can also greatly increase the permanent cavity size. When a rifle bullet hyper-expands and fragments in tissue, each of the multiple fragments spreads out radially from the main wound track, cutting its own path through tissue. This fragmentation acts synergistically with the stretch of temporary cavitation. The multiply perforated tissue loses its elasticity and is unable to absorb stretching that would ordinarily be tolerated by intact tissue. The temporary cavitation displacement of tissue, which occurs following the passage of the projectile, stretches this weakened tissue and can grossly disrupt its integrity, tearing and detaching pieces of tissue. Note that handgun bullets, regardless of whether they are fired from pistols or SMG's, do not generally exhibit the hyper-expansion and fragmentation effects produced by some rifle bullets. If handgun bullets do fragment, the bullet fragments are usually found within 1 cm of the permanent cavity and wound severity is usually decreased by the fragmentation since the bullet mass is reduced, causing a smaller permanent crush cavity. Depending on bullet design, as the velocity of a projectile is increased, the potential for fragmentation is often magnified. Tissue disruption can also be increased if bullets strike bone, since fractured bone fragments can act as secondary missiles, cutting through tissue surrounding the wound track. Furthermore, bullet deformation and fragmentation is more likely to occur if a projectile strikes bone. This same fragmentation effect can occur if a bullet strikes an intermediate object, such as a belt buckle, prior to penetrating tissue.

The approximately 40% to 60% of gunshot victims who fall down immediately upon wounding are not knocked over by the kinetic energy or momentum of the bullet impact, but rather are incapacitated by physiological and psychological effects. Bullets cannot

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physically knock down a person by the force of their impact. The U.S. M1911 .45 ACP 230 gr FMJ bullet has developed a legendary reputation for having "knock-down power", yet the impact or momentum of that bullet hitting the body is equivalent to being hit by a 10 pound weight dropped from a height of only 1.37 inches. Obviously, this impact could not knock a person over. Newton's Second Law of motion shows that every action has an equal and opposite reaction. If a bullet had the energy to knock a person down on impact, the recoil of the gun would also knock the shooter down as the bullet was fired. This basic law of physics is dramatically illustrated by a well known demonstration in which an adult male, protected by body armor, is shot from less than five feet by a 7.62 x 51mm NATO bullet fired from an FN FAL type rifle; the approximately 2667 ft/lbs of energy which the bullet "deposits" or "transfers" to the man does not knock him down or push him violently backwards. Kinetic energy or momentum transfer from a projectile to tissue is not a wounding mechanism. The amount of energy "deposited" in the body by a bullet is approximately equal to the amount transferred to the body when a person is hit by a baseball. The amount of kinetic energy "deposited" or momentum transferred to a body by a projectile is not directly proportional to the amount of tissue damaged and is not a measure of wounding power. Wounds of vastly differing severity can be inflicted by bullets of identical kinetic energy and momentum. What the bullet does in the body--whether it yaws, deforms, or fragments, how deeply it penetrates, and what tissue it passes through is what determines wound severity, not kinetic energy, momentum, or velocity.

Projectiles which travel at supersonic velocity form a sonic wave which trails in the air behind the projectile. Because the speed of sound in tissue is four times faster than the speed of sound in air, the Sonic Wave jumps ahead of the projectile as the skin surface is penetrated, and then precedes the projectile through tissue. This sonic wave is often erroneously referred to as a "shock wave". There are no shock waves or hydrostatic shock effects in tissue. The sonic wave produces no tissue movement or tissue damage; it is not a wounding mechanism and should not be confused with temporary cavitation. The benign nature of a sonic wave is illustrated by lithotripter treatment of kidney stones, where similar sonic pressure waves cause no gross injury to the soft tissue surrounding the kidney stones.

A basic knowledge of external ballistics is necessary in order to understand the principles of wound ballistics. Because projectiles must overcome air resistance during their flight to the target, they have an elongated, pointed, aerodynamic shape that reduces drag in the air. However, this position places the bullet's center of gravity at the rear of the projectile, an inherently unstable position that would cause the bullet to deviate from a nose forward position during flight and tumble end over end through the air if not rotationally stabilized by the spin imparted by the barrel's rifling. Yaw in flight is the angle of deviation of the projectile's longitudinal axis from its forward trajectory; in other words, the bullet turns sideways in relation to its direction of forward movement. Properly stabilized bullets have a negligible yaw angle in flight, usually less than three degrees, and do not tumble while in the air. Projectiles such as arrows and flechettes resist this tendency to yaw in the air because of the stabilization provided by their rear fins. Intermediate obstacles, including foliage, can disrupt bullet stabilization and induce tumbling while in flight, drastically compromising bullet accuracy and range. Bullets that are destabilized in flight can exhibit a large AOA on impact, causing increased tissue disruption at a shallower penetration depth than properly stabilized bullets.

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A variety of equally important methodologies are used for terminal performance testing, including actual shooting incident reconstruction, forensic evidence analysis, and post-mortem data and/or surgical findings; properly conducted ethical animal test results; and laboratory testing—this includes the use of tissue simulants proven to have correlation with living tissue. The last several years of OCONUS military operations have provided a tremendous amount of combat derived terminal performance information. The U.S. government gathered numerous experts from a variety of disciplines, including military and law enforcement end-users, trauma surgeons, aero ballisticians, weapon and munitions engineers, and other scientific specialists to form the Joint Service Wound Ballistic Integrated Product Team to conduct a 4 year, 6 million dollar study to determine what terminal performance assessment best reflected the actual findings noted in combat the past few years. The test protocol that was found to be correct, valid, and became the agreed upon JSWB-IPT “standard” evolved from the one first developed by Dr. Fackler at LAIR in the 1980’s, promoted by the IWBA in the 1990’s, and used by most reputable wound ballistic researchers. The JSWB-IPT, FBI BRF, AFTE, and other organizations get to assess an extensive amount of post-shooting forensic data. The whole raison d’être of these independent, non-profit organizations is to interpret and disseminate information that will help LE and military personnel more safely and effectively perform their duties and missions. Physiological damage potential is the only metric that has been shown to have any correlation with field results in actual shooting incidents, based on law enforcement autopsy findings, as well as historical and ongoing combat trauma results.

C. DEFENSIVE MUNITION REQUIREMENTS

All projectiles discharged by firearms have the capacity to kill. None are more "lethal" than others. If person is shot with a projectile that can penetrate into the body, it has the capacity to kill and deadly force has been applied. The hype created by the entertainment industry and media has led the general public to be ignorant of the true mechanics of wound ballistics. When law enforcement agencies select munitions intended for potential lethal force use, the primary requirement is to choose ammunition that can reliably rapidly incapacitate and stop hostile individuals who pose an immediate life threatening danger to public safety and prevent them from continuing their violent actions. In addition, the munitions are carefully selected to try and minimize danger to innocent bystanders, as well as officers. By design, hunting bullets are designed to kill efficiently and humanely. In contrast, LE munitions are engineered to incapacitate and stop violent action as quickly as possible—an important distinction. This differentiation between death and incapacitation is not just one of semantics. If a hunter shoots and incapacitates a deer and the animal is still alive when the hunter reaches it, the hunter quickly kills the deer. The hunter is shooting to kill. If a LE officer uses a firearm to incapacitate a suspect and the suspect is still alive as the officer approaches, the officer captures the suspect and initiates medical care. This is shooting to stop a threat. There is a major difference in intent and action.

There is in fact a significant difference between many of the most common civilian hunting munitions and those used by law enforcement—the civilian ammunition is generally substantially more powerful and destructive than almost all small arms munitions

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in common police use. The most commonly used LE handguns in service calibers like 9 mm, .40 S&W, and .45 Auto are far less powerful than typical hunting handguns firing deep penetrating magnum calibers like the .357 Mag, .41 Mag, .44 Mag, .460 S&W Mag, and .500 S&W Mag. Likewise, police AR15's firing relatively weak .223/5.56 mm ammunition are quite anemic in penetration capability and pale in destructive capacity when compared to common civilian hunting rifles firing calibers like .260 Rem, .270 Win, 7 mm Mag, .30-06, .300 Mag, .338 Mag, .375 H&H, 416 Rigby, .458 Lott, and .500 Nitro. Even hunting rifles in older calibers from the 1800's like .30-30 and .45-70, penetrate much deeper and are far more damaging than the .223/5.56 mm ammunition fired by the AR15 carbines generally used by police. The only common LE weapon that approaches the destructive capability of civilian hunting firearms are 12 gauge shotguns, however police shotgun ammunition almost always uses the weaker 2 3/4" shells, while many civilian hunting shotguns use the more powerful 3" and 3 1/2" magnum shotgun loads. Any of the civilian handgun, rifle, or shotgun calibers that are commonly used to hunt feral hogs, deer, elk, moose, bear, etc... will prove far more penetrative and destructive than most of the typical police handgun or carbine loads.

Almost all modern law enforcement ammunition is engineered to meet FBI guidelines of penetrating no less than 12" and no more than 18". In addition, LE ammunition is designed to be blind to barriers--in other words to consistently perform the same, whether a shot is unobstructed or first has to go through an intermediate barrier like an automobile windshield, vehicle door, or structural materials (*ex. a wall or door in a building, as well as window glass*). If a member of the public is sadly forced to use lethal force to defend themselves, their family, or other innocent citizens, the requirements for lethal force munitions are EXACTLY the same as needed by the Police in such a horrible eventuality--to quickly stop the violent criminal without endangering other innocent people. In fact, it would likely be prudent and wise for a legally armed citizen to seek out the same tested and proven arms and munitions that are used by police in order to have the greatest chance of safely and successfully surviving a lethal force encounter. As the progenitor of modern law enforcement, Sir Robert Peel, so cogently noted:

The police are the public and the public are the police; the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.

In short, civilian citizens should use the same munitions chosen by police in their community, as the lethal force requirements are identical and the anatomy, physiology, and incapacitation potential of a violent felon does not suddenly change whether confronted by law enforcement officers or private citizens.

D. MAGAZINE CAPACITY

The media and politicians have repeatedly distorted accurate nomenclature for firearms. A standard capacity magazine is one containing the number of cartridges the firearm was designed to operate with: typically 15-17 rounds in 9 mm, 15 rounds in .40 S&W, 7-13 rounds in .45 ACP, 20-30 rounds in 5.56 mm, and 20 rounds in .308; high

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capacity magazines and feeding devices are those holding more cartridges than the weapon was originally designed to use; neutered, low capacity magazines are those whose capacity is artificially reduced from that which the firearm was originally designed to use. Numerous tests by LE and military entities have documented that the most reliable magazines are those the weapon was originally designed to use; both high capacity and reduced capacity magazines have frequently demonstrated more malfunctions in various types of firearms.

According to data from the BATF, the majority (approx. 62%) of pistols currently manufactured each year in the U.S. are designed to use magazines with a standard capacity greater than 10 rounds. The U.S. military has not adopted a handgun with a standard magazine capacity less than 10 rounds since 1911. Likewise, all U.S. military rifles that have been adopted since 1937 have a magazine capacity of 15 or more rounds. By capriciously limiting magazine capacity to 10 rounds or less, citizens are denied the benefits of modern technology and forced to use defensive tools from a bygone era. It is like forcing citizens to go back to driving the Model-T Ford because current automobiles are too fast and result in too many traffic deaths each year or mandating a return to telegraphs for personal communication and prohibiting mobile phone use, because the modern devices can be used to transmit child pornography.

The most recently released NYPD SOP-9 "Annual Firearms Discharge Report" data show from 2011 document that 7 rounds or less were fired in 65% of NYPD OIS incidents, while in 35% of cases officers needed to fire more than 7 shots to stop the threat. Interestingly in 29% of the incidents, more than 10 shots were required to end the violent encounter. For 2010, in 67% of the NYPD OIS incidents 7 rounds or less were fired; however in 33% of the incidents more than 7 shots were required to subdue the threat. In 21% of lethal force encounters more than 10 shots were required.

So if NYPD officers need more than 7 shots to stop violent attackers greater than 1/3 of the time, why would innocent civilians who likely have no body armor, no radio, no partner, no cover units, no less lethal options, no duty belt with extra magazines, yet who are being confronted by the same violent felons as the police need less ammunition than the NYPD officers? What about citizens with disabilities that may prevent their escape or avoidance of a threat and severely limit their ability to rapidly and effectively reload a firearm? By arbitrarily restricting magazine capacity for civilians to 7 or 10 rounds, the most current NYPD SOP-9 data strongly suggests that in 1/4 to 1/3 of incidents that civilians will likely run out of ammunition before the violent attacker has been stopped...

The public should never be limited to magazines of less capacity than that authorized for police in their community. To do so flies in the face of basic science, as well as logic, fact, and justice.

E. FIREARMS FOR SELF-DEFENSE

There are multiple factors that will play a role in determining which weapon might be the best choice for self-defense. Handguns are compact and easily carried, but generally offer poor incapacitation potential and are harder to shoot accurately compared to shoulder

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fired weapons. In contrast to handgun caliber weapons, virtually any shoulder fired firearm chambered in a center fire rifle caliber or using 12 ga. shotgun ammunition will prove superior from a both a wound ballistic and practical accuracy standpoint. SA Urey Patrick of the FBI Firearms Training Unit wrote the following to emphasize this point:

[N]o law enforcement officer should ever plan to meet an expected attack armed only with a handgun. Experienced officers implicitly recognize...when potential violence is reasonably anticipated their preparations are characterized by obtaining as many shoulder (fired) weapons as possible.

If at all possible, civilians forced to defend themselves with a firearm should heed this advice and select a shoulder-fired weapon in an effective caliber whenever circumstances allow this option.

The question then becomes which shoulder fired weapon is optimum for self-defense. In America's past, common shoulder fired weapons for home defense included muskets like the ubiquitous "Brown Bess" from the time of our Nation's founding, the Winchester lever action repeating rifle from the days of the Western Frontier, and a variety of shotguns. Until recently, the 12 gauge shotgun has remained the universally accepted shoulder fired weapon for United States law enforcement use. A close range hit from a 12 ga. shotgun using buckshot will create more tissue damage than most other commonly used LE firearms. Unfortunately, shotguns are not an ideal weapon due to their short effective range, imprecise accuracy, potential downrange hazard to innocent bystanders from stray pellets, possible excessive penetration, small ammunition capacity, slow reloading, difficult manual of arms, poor ergonomics, and harsh recoil. Recognition of the shotgun's significant limitations have prompted many American law enforcement agencies to adopt the more versatile semi-automatic magazine fed carbine. Semi-automatic carbines offer superior accuracy, less recoil, greater effective range, faster reloading, potentially reduced downrange a hazard, better ergonomics, and a larger ammunition capacity than the traditional shotgun. Currently, the most common carbine in LE use is the .223/5.56 mm AR15.

Recently many in the media and politics have focused their ire on the AR15 and vilified it as an "assault weapon" only good for killing people. This is both inaccurate and unfortunate. The AR15 is the semi-automatic civilian sporting version of the select-fire M16 rifle and M4 carbine used by the U.S. military and many LE agencies. If the civilian legal, semi-automatic AR15 is only a dangerous and unusual offensive weapon of war, with no legitimate hunting, sporting, or self-defense purpose, good only for producing mass mayhem, and not in common use by law abiding citizens for lawful purposes as some uninformed individuals have claimed, why is it that AR15 rifles have consistently been used by winning competitors for the past quarter of a century at the U.S. Civilian Marksmanship National Match target shooting championships held each year at Camp Perry, Ohio? Why have AR15's become one of the most popular hunting rifles for harvesting a wide variety of game, including varmints, feral hog, deer, and even elk? Why are AR15's the most commonly used and recommended rifles for defensive use by LE personnel? Aren't target shooters, hunters, and police officers law abiding citizens engaged in lawful pursuits?

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According to experts such as the U.S. military, the Association of Firearms and Toolmark Examiners (AFTE), and the Smithsonian Museum, for a weapon to be labeled an “Assault Rifle”, it must have the following specific physical and performance characteristics:

- Shoulder Fired Carbine
- Uses an Intermediate Cartridge
- Fires from a Closed Bolt
- Magazine with Capacity of at least 20 rounds
- Offers Select Fire Capability (*ie. can fire multiple shots per each trigger pull*)

The civilian legal, semi-automatic AR15 does NOT meet these criteria, as it is NOT select-fire and cannot easily be modified to be so. As a result of their select fire capability, true assault rifles like the M16 and M4 are severely restricted and effectively banned for routine civilian ownership by the NFA of 1934, the GCA of 1968, and the FOPA of 1986. Some glib persons have stated that semi-automatic weapons like the AR15 can be shot at rates of fire making them virtually indistinguishable from machine guns; clearly this is ludicrous, as the U.S. military has documented that the average rate of accurate semi-automatic fire from an AR15 type rifle is approximately 45-90 RPM, while select-fire M16 rifles or M4 carbines shoot at 700-970 RPM—a quite profound and obvious difference.

In the past 2 decades, a new term has joined the popular lexicon: “Assault Weapon”. The term “assault weapon” is a vague, inaccurate misnomer, and is not synonymous with “assault rifle”. The term “assault weapon” appears to arbitrarily be based on the appearance of a firearm and not specific functional or performance parameters. Any civilian firearm which has the appearance of a military weapon, such as a detachable magazine, magazine with a standard capacity of 20+ rounds, flash hider, bayonet lug, pistol grip, adjustable stock, or black synthetic furniture is often arbitrarily referred to as an “assault weapon” by ignorant individuals, as well as by politicians and media personalities attempting to sway public opinion. Many mendacious commentators have decried these “military features” as only being useful for combat and criminal applications, but unnecessary for self-defense or sporting purposes. Obviously this is utterly inaccurate, as features like adjustable stocks, muzzle devices, and free float rails are commonly in use on precision target firearms used for competition, as well as on LE rifles intended for self-defense use, as they increase accuracy and improve ergonomics. Some areas also have laws codifying various firearms as so-called “assault weapons”. This is illogical, confusing, and bizarre, as two firearms can exhibit identical performance parameters: the same caliber, same magazine capacity, and same rate of fire, but one is classified as an “assault weapon” and the other is not.

If assault weapons are, “*the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder*” as stated by some individuals, why do almost all major U.S. law enforcement agencies, including the FBI, recommend “assault weapons” like the AR15 for lawful defensive purposes? If “assault

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weapons” are so profligate and dangerous as alleged by some commentators, why do the FBI Uniform Crime Reports (UCR) document that more people are feloniously killed by hammers in a year than by rifles of ALL types, let alone rifles spuriously classified as “assault weapons”? If “assault weapons” are disproportionately used to kill police officers as alleged by some sources, why does the most recent FBI UCR from 2011 yet again clearly illustrate that most police officers are killed by common handguns, while rifles of all types, let alone those classified “assault weapons”, accounted for less than 10% of LE officers killed?

Quoting Sir Robert Peel again: “*Public opinion is a compound of folly, weakness, prejudice, wrong feeling, right feeling, obstinacy, and newspaper paragraphs.*”

Sadly, many political, press, and media accounts have exaggerated the effects of military small arms munitions. Despite meretricious protestations to the contrary by many individuals with a political or social agenda to push, true military assault rifles, as well as civilian firearms disingenuously labeled as “assault weapons” based on physical appearance rather than functional characteristics, do not inflict wounds of any greater severity than those produced by traditional military rifles. In addition, wounds caused by common civilian hunting rifles and shotguns like those in use for the past 150 years or so are typically far more severe and destructive to tissue than many so-called “assault weapons.”

The roots of the .223/5.56 mm cartridge commonly used in the AR15 come from a caliber designed for small game varmint hunting and used to eliminate small furry rodents and animals up to coyote size. Many hunters avoid it for medium size, 100 + pound game; in fact in numerous states it is prohibited to hunt deer size game with the .223/5.56 mm. 5.56 mm 55 gr M193 FMJ fired from 20” barrel M16A1 rifles was the standard U.S. military 5.56 mm ammunition in the 1960’s and 1970’s. Dr. Martin Fackler, the man who has done more research on the 5.56 mm 55 gr M193 FMJ than anyone else on this planet, has written the following (Fackler, ML: “*Literature Review*”. **Wound Ballistics Review**; 5(2):40, Fall 2001) about 55 gr FMJ:

*In 1980, I treated a soldier shot accidentally with an M16 M193 bullet from a distance of about ten feet. The bullet entered his left thigh and traveled obliquely upward. It exited after passing through about 11 inches of muscle. The man walked in to my clinic with no limp whatsoever: the entrance and exit holes were about 4 mm across, and punctate. X-ray films showed intact bones, no bullet fragments, and no evidence of significant tissue disruption caused by the bullet’s temporary cavity. The bullet path passed well lateral to the femoral vessels. He was back on duty in a few days. Devastating? Hardly. The wound profile of the M193 bullet (page 29 of the *Emergency War Surgery—NATO Handbook*, GPO, Washington, D.C., 1988) shows that most often the bullet travels about five inches through flesh before beginning significant yaw. But about 15% of the time, it travels much farther than that before yawing—in which case it causes even milder wounds, if it missed bones, guts, lung, and major blood vessels. In my experience and research, at least as many M16 users in Vietnam concluded that it produced unacceptably minimal, rather than*

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“massive”, wounds. After viewing the wound profile, recall that the Vietnamese were small people, and generally very slim. Many M16 bullets passed through their torsos traveling mostly point forward, and caused minimal damage. Most shots piercing an extremity, even in the heavier-built Americans, unless they hit bone, caused no more damage than a 22 caliber rimfire bullet.

During defensive shooting encounters, shots that inadvertently miss the intended target in CQB and urban environments can place innocent citizens in danger. In general, .223/5.56 mm bullets demonstrate LESS penetration after passing through building structural materials than other common LE and civilian calibers. All of the .223/5.56mm bullets recommended for law enforcement use offer reduced downrange penetration hazards, resulting in less potential risk of injuring innocent citizens and reduced risk of civil litigation in situations where bullets miss their intended target and enter or exit structures compared with common handgun bullets, traditional hunting rifle ammunition, and defensive shotgun projectiles (*buckshot and slugs*). When comparing issued handgun, shotgun, and rifle ammunition, the FBI has explicitly stated that the .223/5.56 mm ammunition used in the AR15 was the only caliber that offered ideal penetration of 12-18” in all test events, that the issued .223/5.56 mm loading had no overpenetration issues compared with the other service caliber handgun, shotgun, and rifle ammunition tested, and that .223/5.56 mm was more consistent in performance than all the other calibers. This is in sharp contrast and completely refutes the people who have falsely claimed that the .223/5.56 mm ammunition used in AR15’s increases the threat of stray bullets harming innocent family members, neighbors, and passerby.

The AR15 is extremely common in America. The AR15 is extremely common in America. According to data from the BATF, FBI, and NSSF (National Shooting Sports Foundation) approximately 4.5 million AR15’s have been sold in the U.S. since 1986; historical data indicates that an additional 350,000 AR15’s were produced from 1963-1986. AR15 commercial sales continue to increase, currently accounting for approximately 20% of all rifles sold in the U.S. Within the next year, the total number of AR15’s sold in American will likely have reached 5 million rifles. In addition, approximately 6 million Ruger Mini-14 rifles have been sold in the U.S.; these fire the same .223 cartridge as the AR15, have the same rate of fire, an identical magazine capacity, and have also been used by some LE agencies, including NYPD and CHP. However, the Mini-14 has not proven as accurate, durable, ergonomic, reliable, or as easy to maintain in LE service as the AR15 and has generally fallen out of LE use. In addition, quite a few of the 3 million or so AK type rifles imported to the U.S. use the .223 cartridge, as do many rifles that have been sold in the U.S. by foreign companies such as Beretta, Daewoo, FN, HK, IMI, Sig, Steyer, Valmet, and other vendors.

As a result of the M16 FOW (Family of Weapons) being used by the U.S. military for nearly 50 years, perhaps more Americans have been trained to safely operate the AR15 than any other firearm, as there are approximately 25 million American veterans who have been taught how to properly use an AR15 type rifle through their military training, not to mention in excess of 1 million American LE officers who have qualified on the AR15 over the last several decades, as well as numerous civilian target shooters and hunters who

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routinely use AR15's. Since so few military service members, particularly those not on active duty, get enough training and practice with their M16 or M4 service rifle, many military Reservists and National Guard personnel, as well as some active duty service members, have purchased civilian AR15's in order to train and practice on their own time with a rifle offering similar ergonomics and operating controls as the service weapon they are issued in the military. In many ways, the AR15 is the ubiquitous "Brown Bess" musket or Winchester repeating rifle of the modern era—a true firearm for the people. The AR15 is a highly versatile design that can be adapted for military, law enforcement, civilian self-defense, hunting, target shooting, and other sporting purposes. AR15's come in numerous configurations and are not all the same!

The semi-automatic AR15 carbine is likely the most ergonomic, safe, and effective firearm for law enforcement general purpose use and for civilian self-defense.

III. CONCLUSION

The Act's broadening of the definition of banned "assault weapons" encompasses semi-automatic carbines that offer superior accuracy, less recoil, greater effective range, faster reloading, potentially reduced downrange hazard, better ergonomics, and a larger ammunition capacity than the traditional shotgun. For this very reason, the most common carbine in law enforcement use is the .223/5.56 mm AR15. Likewise, the AR15 carbine is likely the most ergonomic, safe, and effective firearm for civilian self-defense.

I have reviewed the foregoing statement, and pursuant to 28 U.S.C. § 1746(1), I hereby declare under the penalties of perjury that they are true, correct, complete and accurate according to the best of my knowledge, information and belief.

Sincerely,



Dr. Gary Roberts

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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

Plaintiffs,

13-cv-00291-WMS

-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.

**STATE DEFENDANTS' RESPONSE TO PLAINTIFFS'
LOCAL CIVIL RULE 56(a)(2) COUNTER-STATEMENT AND
SUPPLEMENTAL STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Local Rule 56(a)(2) of the Civil Rules of the United States District Court for the Western District of New York, 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 hereinafter, the "State Defendants"), sued in their official capacities only, by their attorney, ERIC T.

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SCHNEIDERMAN, Attorney General of the State of New York, respectfully submit the following response to the Counter-Statement of Undisputed Material Facts, dated August 19, 2013 (ECF No. 116) (hereinafter, the “Rule 56(a)(2) Counter-Statement” or the “Counter-Statement”) submitted by Plaintiffs in response to the State Defendants’ Statement of Undisputed Material Facts in Support of State Defendants’ Motion of Summary Judgment, dated June 21, 2013 (ECF No. 73), and in support of Plaintiffs’ cross-motion for summary judgment.¹

General Objections As to the Plaintiffs' Local Counter Statement of Fact Pursuant to Local Civil Rule 56(a)(2) Including Objections Based Upon a Lack of Materiality

This is an action in which Plaintiffs seek declaratory, injunctive, and related relief in order to invalidate duly enacted legislation by the State of New York. The parties have cross-moved for summary judgment pursuant to Fed. R. Civ. P. 56, and the State Defendants have also moved to dismiss the First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6).

As set forth below, the State Defendants dispute many of the 173 statements contained in Plaintiffs’ Counter-Statement. However, the mere existence of a factual dispute is not sufficient to preclude summary judgment. The disputed facts must be “material.” Fed. R. Civ. P. 56(a). What facts are “material” for the purposes of summary judgment is determined by “the substantive law” relevant to the case, because “it is the substantive law’s identification of which facts are critical and which facts are irrelevant that governs.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Only disputes over facts that might affect the outcome of the suit

¹ Plaintiffs have also submitted a separate Response to the State Defendants’ Statement of Undisputed Material Facts, dated August 19, 2013 (ECF No. 115) (hereinafter, the “Rule 56(a)(2) Response” or the “Response”). Plaintiffs’ Rule 56(a)(2) Response contains many of the same statements that are also set forth in the Rule 56(a)(2) Counter-Statement -- except in their Response Plaintiffs assert that these statements are disputed (*i.e.*, they are “material facts as to which there exists a genuine triable issue”) and, conversely, in their Counter-Statement Plaintiffs assert that these very same statements are “undisputed.” Plaintiffs’ inconsistency does not matter, however, because

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under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*; accord, e.g., *Suleski v. Harlach*, 11-CV-376S, 2013 U.S. Dist. LEXIS 124922, at *7 (W.D.N.Y. Aug. 30, 2013).

The governing law in this case is clear, as is the limited and deferential scope of this Court’s inquiry. As discussed in the State Defendants’ accompanying reply memorandum of law (and as was previously discussed in the State Defendants’ memorandum of law submitted with their cross-motion), the Second Circuit has held that, given “the general reticence to invalidate the acts of [our] elected leaders,” firearms legislation of the sort at issue in this case should be struck down under the Second Amendment “only if ‘the lack of constitutional authority to pass [the] act in question is clearly demonstrated.’” *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 100-01 (2d Cir. 2012) (quoting *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2579 (2012)) (internal quotation marks omitted) (alterations in *Kachalsky*), cert. denied, 133 S. Ct. 1806 (2013). That means that, because of the “substantial deference” that must be given to “the predictive judgments of [the legislature],” particularly in the context of firearms regulation, the Court’s role here, at most (*i.e.*, even if it determines that Plaintiffs’ Second Amendment rights have been “substantially burdened” and therefore assesses the challenged provisions under intermediate constitutional scrutiny) “is only to ‘assure that, in formulating its judgments, [New York] has drawn reasonable inferences based on substantial evidence.’” *Id.* at 97 (quoting *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997), and *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 666 (1994)) (alterations in *Kachalsky*). And thus where, as here, the State has submitted substantial evidence, including “studies and data” in support of the firearms legislation at issue, even “the existence of studies and data challenging” that legislative judgment is not nearly enough to invalidate the statutory provision under the Second Amendment. *Id.* at

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99; (*see* State Defendants' Reply Memorandum, dated September 24, 2013 (“Defs.’ Reply Mem.”) at 4-10).

Under these governing legal standards, Plaintiffs’ voluminous citation of “irrelevant [and] unnecessary” statements in the Counter-Statement -- setting forth, among other things, their own preferred views as to the purposes and uses of assault weapons and large-capacity magazines, their own self-interested assertions that New York law addressing this dangerous weaponry will be ineffectual, and selective, incomplete, and/or irrelevant data regarding firearms and firearms violence -- are plainly not material. That the State Defendants dispute these statements, as set forth below, thus provides no basis for denying the State Defendants’ cross-motion to dismiss and/or for summary judgment dismissing all of Plaintiffs’ claims. None of the parties’ disputes as to these statements is one of material fact necessitating a trial.

In addition, in many instances, the State Defendants have disputed a statement in Plaintiffs’ Rule 56(a)(2) Counter-Statement because the statement: (i) is not supported by a citation to relevant evidence supporting the assertions in the statement, and thus should be disregarded, *see Holtz v. Rockefeller & Co., Inc.*, 258 F.3d 62, 73 (2d Cir. 2001); (ii) is inadmissible hearsay and/or is followed only by a citation to evidence that constitutes such hearsay and/or is otherwise inadmissible, *see* W.D.N.Y. Local Civ. R. 56(a)(3); *see also, e.g., NYC C.L.A.S.H., Inc. v. City of New York*, 315 F. Supp. 2d 461, 488 n.23, 492-94 n.32 (S.D.N.Y. 2004); (iii) improperly cites to materials that “ha[ve] . . . not been filed in conjunction with the motion” and are not otherwise contained in the record before the Court, W.D.N.Y. Local Civ. R. 56(a)(4); and/or (iv) is an improper conclusion or argument that the Court must also disregard, *see, e.g., Rhodes v. Tevens*, 07-CV-471S, 2012 U.S. Dist. LEXIS 30290, at *17 (W.D.N.Y. Mar. 7, 2012), *aff’d*, 2013 U.S. App. LEXIS 4701 (2d Cir. Mar. 8, 2013); *Costello v. New York State*

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Nurses Ass'n, 783 F.Supp.2d 656, 661 n. 5 (S.D.N.Y. 2011). As this Court has noted, “[i]t is well-settled that [such] ‘conclusory statements, conjecture, and inadmissible evidence are insufficient to defeat summary judgment.’” *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17 (quoting *ITC Ltd. v. Punchgini, Inc.*, 432 F.3d 135, 151 (2d Cir. 2007)). Thus, for these reasons as well, along with providing no support for Plaintiffs’ summary judgment motion, none of these statements in Plaintiffs’ Rule 56(a)(2) Counter-Statement provides any basis for denying the State Defendants’ motion here either.

The following specific responses by the State Defendants, into which they hereby incorporate all the above discussion, bear the same paragraph numbers as those used by Plaintiffs in their Rule 56(a)(2) Counter-Statement:

Gun Deaths In The United States

1. The leading cause of death by firearm in the U.S. is suicide. *See* Pew Research Center, *Gun Homicide Rate Down 49% Since 1993 Peak; Public Unaware* (May 2013) (“Pew Report”), at 2. [A copy of the Pew Report is attached hereto as “**Exhibit A**”].

State Defendants’ Response

1. Disputed and immaterial. The referenced material states: “. . . gun suicides now account for six-in-ten firearms deaths . . .” However, the chart included with that passage indicates that the most recent available data was from 2010. Regardless, the contents of said passage speak for themselves and are, in any event, immaterial to this controversy, which concerns the State’s recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Declaration of Dr. Christopher S. Koper, dated September 23, 2013 (“Koper

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Suppl. Decl.”) ¶ 25; Declaration of Kevin Bruen, dated June 20, 2013, (“Bruen Decl.”) ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on this report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the U.S. Centers for Disease Control and Prevention, upon which it appears the Pew Report is relying.

2. Gun suicides now account for six out of every ten firearm deaths in this country.

Id.

State Defendants’ Response

2. Disputed and immaterial. The referenced material states: “. . . gun suicides now account for six-in-ten firearms deaths . . .” However, the chart included with that passage indicates that the most recent available data was from 2010. Regardless, the contents of said passage speak for themselves and are, in any event, immaterial to this controversy, which concerns the State’s recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on this report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably,

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Plaintiffs have not even provided the data from the U.S. Centers for Disease Control and Prevention, upon which it appears the Pew Report is relying.

3. The gun suicide rate has been higher than the gun homicide rate since at least 1981. *Id.* at 4.

State Defendants' Response

3. Disputed and immaterial. State Defendants do not dispute that the referenced material states that “. . . the gun suicide rate has been higher than the gun homicide rate since at least 1981” The cited passage, however, provides no support itself for this conclusion. Regardless, the contents of said passage speak for themselves and are, in any event, immaterial to this controversy, which concerns the State’s recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on this report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the U.S. Centers for Disease Control and Prevention, upon which it appears the Pew Report is relying. State Defendants do not dispute the accuracy of the quotes from Exhibit “A” to Plaintiff’s Counter-Statement of Undisputed Material Facts, other than to note that the Exhibit must be read as a whole and it speaks for itself.

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4. There were 31,672 firearm deaths in the U.S. in 2010; 61% of these were caused by suicide, versus 35% being caused by homicide. Pew Report at 4. In 2010, firearm suicide was the fourth leading cause of violent-injury death in the U.S., behind motor vehicle accidents, unintentional poisoning, and falls. *Id.* at 16.

State Defendants' Response

4. Disputed and immaterial. State Defendants do not dispute that the referenced material states that “there were 31,672 deaths from guns in 2010, that “[m]ost (19,392) were suicides,” and that “[f]irearm suicide was the fourth leading cause of violent-injury death in 2010.” However, other than a reference to “data from the Centers for Disease Control and Prevention,” the cited passages provides no support themselves for these conclusions. Regardless, the contents of said passages speak for themselves and are, in any event, immaterial to this controversy, which concerns the State’s recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on this report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the U.S. Centers for Disease Control and Prevention, upon which it appears the Pew Report is relying.

Gun Homicides In The United States

5. National rates of gun homicide and other violent gun crimes are “strikingly lower” now than during their peak in the mid-1990s. Pew Report at 1. *See also* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Special Report - Firearm Violence, 1993-2011* (May 2013) (“BJS Report”) at 1. [A copy of the BJS Report is attached hereto as “**Exhibit B**”].

State Defendants’ Response

5. Disputed and immaterial. The reports referenced speak for themselves and the cited statements are, in any event, immaterial to this controversy, which concerns the State’s recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on these reports for the truth of the matter asserted, they are inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the U.S. Centers for Disease Control and Prevention, upon which it appears these reports are relying. The Pew Report’s assertion that the rates it references are “strikingly lower” is also an opinion and conclusion, not a statement of fact. For that reason, too, it is not appropriate for a Rule 56(a)(2) Counter-Statement. *See, e.g., Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc. v. Int’l Bhd. of Elec. Works Local Union No. 3, AFL-CIO*, No. 00 Civ. 4673, 2006 U.S. Dist. LEXIS 52870, at *9 (S.D.N.Y. Aug. 1, 2006) (“Rule 56.1 statements are

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not argument. They should contain factual assertions with citation to the record. They should not contain conclusions.” (emphasis omitted)).

6. The firearm homicide rate in the late 2000s has not been this low since the early 1960s. Pew Report at 2.

State Defendants’ Response

6. Disputed and immaterial. State Defendants do not dispute that the referenced material states that “. . . firearm homicide rates in the late 2000s were equal to those not seen since the early 1960s.” Regardless, the contents of said passages speak for themselves and are, in any event, immaterial to this controversy, which concerns the State’s recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on this report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the source that the Pew Report itself cites for its assertion.

7. The firearm homicide rate in 2010 was 49% lower than it was in 1993. *Id.* *See also* BJS Report at 1.

State Defendants’ Response

7. Disputed and immaterial. State Defendants dispute that the referenced material specifically states anywhere in the cited pages what Plaintiffs assert in this statement.

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Regardless, the contents of said passages speak for themselves and are, in any event, immaterial to this controversy, which concerns the State's recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on the cited reports for the truth of the matter asserted, they are inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the U.S. Centers for Disease Control and Prevention, upon which it appears the Pew Report is relying.

Non-Fatal Gun Crimes In The United States

8. The victimization rate for other violent crimes committed with a firearm (i.e., assaults, robberies and sex crimes) was 75% lower in 2011 than in 1993. Pew Report at 1. *See also* BJS Report at 1.

State Defendants' Response

8. Disputed and immaterial. The reports referenced speak for themselves and the cited statements are, in any event, immaterial to this controversy, which concerns the State's recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent

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Plaintiffs are attempting to rely on these reports for the truth of the matter asserted, they are inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32 W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the U.S. Department of Justice's National Crime Victimization Survey, upon which it appears these reports are relying. State Defendants do not dispute the accuracy of the quotes from Exhibit "A" to Plaintiff's Counter-Statement of Undisputed Material Facts, other than to note that the Exhibit must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy.

9. In 1993, the rate of non-fatal violent gun crime amongst people aged 12 and over was 725.3 per 100,000 people. Pew Report at 17. By 2011, that rate had plunged 75% to 181.5 per 100,000 people. *Id.*

State Defendants' Response

9. Disputed and immaterial. The report referenced speaks for itself and the cited statements are, in any event, immaterial to this controversy, which concerns the State's recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on the cited report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the U.S. Department of Justice's National Crime Victimization Survey,

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upon which it appears the Pew Report is relying.

10. During this same period, the victimization rate for aggravated assault with firearms declined 75%, and the rate for robbery with firearms declined 70%. *Id.*

State Defendants' Response

10. Disputed and immaterial. The report referenced speaks for itself and the cited statements are, in any event, immaterial to this controversy, which concerns the State's recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on the cited report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the U.S. Department of Justice's National Crime Victimization Survey, upon which it appears the Pew Report is relying.

Public Knowledge Of The Dropping Gun Crime Rate

11. Despite the widespread media attention given to gun violence recently, most Americans are unaware that gun crime is markedly lower than it was two decades ago. Pew Report at 4.

State Defendants' Response

11. Disputed and immaterial. The report referenced speaks for itself and the cited statements are, in any event, immaterial to this controversy, which concerns the State's recently

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strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on the cited report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). State Defendants do not dispute the accuracy of the quotes from Exhibit "A" to Plaintiff's Counter-Statement of Undisputed Material Facts, other than to note that the Exhibit must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy.

12. A national survey taken between March 14-17 of 2013 found that 56% of Americans believe the number of gun crimes is higher than it was 20 years ago; 26% say it stayed the same, and only 12% say it is lower. *Id.*

State Defendants' Response

12. Disputed and immaterial. The report referenced speaks for itself and the cited statements are, in any event, immaterial to this controversy, which concerns the State's recently strengthened restrictions and prohibitions on assault weapons and large-capacity magazines -- unusually dangerous weaponry that, among other things, is disproportionately involved in particular kinds of crime, including mass shootings and shootings of law enforcement (*see* Koper Suppl. Decl. ¶ 25; Bruen Decl. ¶¶ 3-34, 41-42) -- as well as its new regulations to prevent unlawful and dangerous ammunition sales (*see* Bruen Decl. ¶¶ 35-42). Moreover, to the extent Plaintiffs are attempting to rely on the cited report by the Pew Research Center for the truth of

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the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3).

Mass Shootings

13. Mass shootings, while a matter of great public interest and concern, account for only a very small share of shootings overall. Pew Report at 4. Homicides that claimed the lives of three or more people accounted for less than 1% of all homicide deaths between 1980 and 2008. *Id.*

State Defendants' Response

13. Disputed in part and undisputed in part and immaterial. Undisputed that mass shootings are a matter of great public interest and concern. State Defendants also do not dispute that the Pew Report contains statements that Plaintiffs have essentially copied into this statement No. 13 of their Counter-Statement. But the State Defendants note that the report itself must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy, because the ratio of mass shootings to the overall homicide rate does not diminish the government interest in reducing the frequency, and the number of victims, of mass shootings. It is also immaterial under the governing legal standards. Moreover, to the extent Plaintiffs are attempting to rely on the cited report by the Pew Research Center for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the "Bureau of Justice Statistics Review," upon which it appears the Pew Report is relying.

14. Most scholarly and expert sources conclude that mass shootings are rare violent crimes. *See* Congressional Research Service, *Public Mass Shootings in the United States:*

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Selected Implications for Federal Public Health and Safety Policy (March 2013) (“CRS Report”). [A copy of the CRS Report is attached hereto as “**Exhibit C**”].

State Defendants’ Response

14. Disputed in part and undisputed in part and immaterial. State Defendants do not dispute that mass shootings are exceedingly violent and damaging to the public's perception of its own safety. State Defendants also do not dispute that the cited report, at p. 7, contains a statement that Plaintiffs have essentially copied into this statement No. 14 of their Counter-Statement. But the State Defendants note that the report itself must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy, because of the obvious governmental interest in reducing the frequency, and the number of victims, of mass shootings. It is also immaterial under the governing law. Moreover, to the extent Plaintiffs are attempting to rely on the cited report by the Congressional Research Service for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3).

15. One study has described mass shootings as “very low-frequency and high intensity events.” *Id.* [citing J. Reid Meloy, *et al*, “A Comparative Analysis of North American Adolescent and Adult Mass Murders,” *BEHAVIORAL SCIENCES AND THE LAW*, vol. 22, no. 3 (2004) at 307].

State Defendants’ Response

15. Disputed in part and undisputed in part and immaterial. State Defendants do not dispute that mass shootings are exceedingly violent and damaging to the public's perception of its own safety. State Defendants also do not dispute that the cited report, at p. 7, contains a statement that Plaintiffs have essentially copied into this statement No. 15 of their Counter-Statement. But

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the State Defendants note that the report itself must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy, because of the obvious governmental interest in reducing the frequency, and the number of victims, of mass shootings. It is also immaterial under the governing law. Moreover, to the extent Plaintiffs are attempting to rely on the cited report by the Congressional Research Service for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the journal article from which the CRS report is quoting here.

The Prevalence Of Handgun Use In Gun Crimes

16. Approximately 90% of all non-fatal firearm crimes in the U.S. between 1993 and 2011 were committed with a handgun. BJS Report at 1, 3.

State Defendants' Response

16. Disputed and immaterial. The report referenced speaks for itself and the cited statements are, in any event, immaterial to this controversy. State Defendants also note that certain handguns fall within the definition of assault weapons. *See* Penal Law § 265.00(22)(c); (Bruen Decl. ¶ 25). Moreover, to the extent Plaintiffs are attempting to rely on the cited report for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the data from the National Crime Victimization Survey and the FBI Supplementary Homicide Reports upon which the report appears to be relying here.

17. Approximately 80% of all gun homicides in the U.S. between 1991 and 2001 were committed with a handgun. *See* U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States - Uniform Crime Report* ("FBI UCRs"), 1995 to 2011.

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[Complete copies of the FBI UCRs for the years 1995 through 2012 can be accessed at: www.fbi.gov/about-us/cjis/usc/uscpublications. True, complete and accurate summaries of the gun homicide data provided by the FBI UCRs are attached hereto as “**Exhibit D**”]. *See also* BJS Report at 1,3.

State Defendants’ Response

17. Disputed and immaterial. The reports referenced speak for themselves and the cited statement is, in any event, immaterial to this controversy. State Defendants also note that certain handguns fall within the definition of assault weapons. *See* Penal Law § 265.00(22)(c); (Bruen Decl. ¶ 25). Moreover, to the extent Plaintiffs are attempting to rely on the cited report for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the full FBI report upon which they are relying here. State Defendants do not dispute that the statistics are recited accurately from the source quoted; they are, in any event, immaterial to this controversy. State Defendants note that certain handguns fall within the definition of assault weapons.

18. In contrast, only 6% of the gun homicides committed between 1991 and 2001 involved a shotgun, and even less (4.6%) involved a rifle, FBI UCRs, 1995 to 2011.

State Defendants’ Response

18. Disputed and immaterial. The report referenced speaks for itself and the cited statement is, in any event, immaterial to this controversy. State Defendants also note that certain handguns fall within the definition of assault weapons. *See* Penal Law § 265.00(22)(c); (Bruen Decl. ¶ 25). Moreover, to the extent Plaintiffs are attempting to rely on the cited report for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at

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488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the full FBI report upon which they are relying here. State Defendants do not dispute that the statistics are recited accurately from the source quoted; they are, in any event, immaterial to this controversy.

19. In New York, 73% of the gun homicides between 1995 and 2010 were committed with a handgun. *Id.* Only 4% of these involved a shotgun, and a mere 3% involved a rifle. *Id.*

State Defendants' Response

19. Disputed and immaterial. The report referenced speaks for itself and the cited statement is, in any event, immaterial to this controversy. State Defendants also note that certain handguns fall within the definition of assault weapons. *See* Penal Law § 265.00(22)(c); (Bruen Decl. ¶ 25). Moreover, to the extent Plaintiffs are attempting to rely on the cited report for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the full FBI report upon which they are relying here. State Defendants do not dispute that the statistics are recited accurately from the source quoted; but they are, in any event, immaterial to this controversy.

20. The numbers are very similar in Connecticut: 77% of the gun homicides between 1995 and 2010 were committed with a handgun. *Id.* Just 3% of these involved a shotgun, and 2% involved a rifle. *Id.*

State Defendants' Response

20. Disputed and immaterial. The report referenced speaks for itself and the cited statement is, in any event, immaterial to this controversy. State Defendants also note that certain handguns fall within the definition of assault weapons. *See* Penal Law § 265.00(22)(c); (Bruen Decl. ¶ 25).

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State Defendants further note that the this action involves New York, not Connecticut. Moreover, to the extent Plaintiffs are attempting to rely on the cited report for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Notably, Plaintiffs have not even provided the full FBI report upon which they are relying here.

The Prevalence of Illegal Guns Used In Crimes

21. Between 1997 and 2004, more state inmates who used guns during crimes (40%) obtained those guns illegally than from any other source. BJS Report at 13.

State Defendants' Response

21. Disputed and immaterial. State Defendants do not dispute that the reference relied upon states: "In 2004, among state prison inmates who possessed a gun at the time of offense . . . 40% obtained it from an illegal source. This was similar to the percentage distribution in 1997." But the State Defendants note that the report itself must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy. Moreover, to the extent Plaintiffs are attempting to rely on this reports for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32 W.D.N.Y. Local Civ. R. 56(a)(3). Plaintiff's Counter-Statement, Exhibit B. The cited material must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy.

22. Almost as many (37%) obtained guns from family or friends. *Id.*

State Defendants' Response

22. Disputed and immaterial. State Defendants do not dispute that the referenced material states what Plaintiffs purport. But the State Defendants note that the report itself must be read

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as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy. Moreover, to the extent Plaintiffs are attempting to rely on this reports for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32 W.D.N.Y. Local Civ. R. 56(a)(3).

23. A very small number of state inmates (10%) purchased their guns at retail stores or pawn shops, and even fewer (less than 2%) bought their guns at gun shows or flea markets. *Id.*

State Defendants' Response

23. Disputed as immaterial. Defendants do not dispute that the referenced material states that: "In 2004, among state prison inmates who possessed a gun at the time of offense, fewer than 2% bought their firearm at a flea market or gun show, about 10% purchased it from a retail store or pawnshop This was similar to the percentage distribution in 1997." But the State Defendants note that the report itself must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy. Moreover, to the extent Plaintiffs are attempting to rely on this reports for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32 W.D.N.Y. Local Civ. R. 56(a)(3). State Defendants do not dispute that the referenced material states what Plaintiffs purport, however the cited material must be read as a whole and it speaks for itself. The content of said referenced statement is, in any event, immaterial to this controversy.

The Prevalence of "Assault Weapons" Used In Crimes

24. Numerous studies have examined the use of firearms characterized as "assault weapons" ("AWs") both before and after the implementation of Title XI of the Violent Crime Control and Law Enforcement Act of 1994 (the federal assault weapons ban) ("the Ban"). *See*

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e.g., Christopher Koper, Daniel Woods and Jeffrey Roth, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (June 2004) (“Koper 2004”); Christopher Koper and Jeffrey Roth, *Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994 - Final Report* (March 1997) (“Koper 2007”). [The Koper 2004 report was submitted as “Exhibit 32” (Doc. #78-7) as part of the defendants’ Memorandum of Law in Support of Cross-Motion for Summary Judgment and/or Dismissal. The Koper 2007 was submitted by the defendants as “Exhibit 35” (Doc. #81-5)].

State Defendants’ Response

24. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement

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officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs’ Rule 56(a)(2) Counter-Statement, and notes that “Plaintiffs’ . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). In any event, this statement is not material to the resolution of this controversy.

25. The “overwhelming weight” of evidence produced by these studies indicates that AWs are used in a only a very small percentage of gun crimes overall. Koper 2004 at 17. According to most studies, AWs are used in approximately 2% of all gun crimes, Koper 2004 at 2, 14, 19.

State Defendants’ Response

25. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying

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firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). Disputed; calls for speculation. State Defendants cannot attest to, or verify the alleged statement because it fails to state any facts or information to identify the studies to which it refers. The content of said referenced statement is, in any event, immaterial to this controversy.

26. The inclusion of AWs among crime guns is "rare." Koper 2007 at 69.

State Defendants' Response

26. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-

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motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). Disputed; calls for speculation. State Defendants cannot attest to, or verify the alleged statement because it is not placed within any context and is susceptible to multiple meanings.

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27. Even the highest estimates of AW use in gun crime, which correspond to “particularly rare” events such as mass shootings and police murders, are no higher than 13%. Koper 2004 at 15-16.

State Defendants’ Response

27. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs’ Rule 56(a)(2) Counter-Statement, and notes that “Plaintiffs’ . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions

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that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). Disputed; calls for speculation. State Defendants cannot attest to, or verify the alleged statement because it fails to state any facts or information to identify the studies to which it refers and it is unclear as to whether Plaintiffs are merely quoting the referenced source or are referring to other material as well.

28. AWs (including so-called assault pistols (“APs”) and assault rifles (“ARs”)) and ammunition magazines that can accept more than ten rounds of ammunition (so-called “Large Capacity Magazines” or “LCMs”) are not used disproportionately in crimes. Koper 2004 at 17; Koper 2007 at 65, 70, 96.

State Defendants’ Response

28. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round

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load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). Disputed; calls for speculation. State Defendants cannot attest to, or verify the alleged statement because it fails to state any facts or information to identify the studies to which it refers and it is unclear as to whether Plaintiffs are merely quoting the referenced source or are referring to other material as well. The phrase "are not used disproportionately in crimes" is susceptible to multiple meanings.

29. Prior to the Ban, AWs (as defined by the federal law) accounted for about 2.5% of guns produced from 1989 through 1993. Koper 2004 at 17. This figure is consistent with the fact that AWs are used in just 2% of all gun crimes. *Id.*

State Defendants' Response

29. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference,

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has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). Disputed; calls for speculation as it is unclear what Plaintiffs mean by stating the figures are "consistent". The cited material must be read as a whole and it speaks for itself.

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30. Prior to the Ban, LCMs accounted for 14% to 26% of guns used in crime. Koper 2004 at 2, 18. This range is consistent with the national survey estimates indicating approximately 18% of all civilian-owned guns and 21% of civilian-owned handguns were equipped with LCMs as of 1994. Koper 2004 at 18.

State Defendants' Response

30. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and

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incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). Disputed; the cited passage is unintelligible as it refers to LCMs, or large capacity magazines, as a percentage “of guns used in crime”. The cited material must be read as a whole and it speaks for itself.

31. Post-Ban analysis of ATF trace requests for AWs involved in violent and drug related crime between 1994 and 1996 show that, on average, the monthly number of assault weapon traces associated with violent crimes across the entire nation ranged from approximately 30 in 1995 to 44 in 1996. Koper 2007 at 65. For drug crimes, the monthly averages ranged from 34 in 1995 to 50 in 1994. *Id.*

State Defendants’ Response

31. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on

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assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). State Defendants do not dispute that the statistics are recited accurately; regardless, the cited material must be read as a whole and it speaks for itself. The statistics are, in any event, immaterial to this controversy.

32. These trace ranges represent a "strikingly small" magnitude. Koper 2007 at 65.

State Defendants' Response

32. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF

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No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs’ Rule 56(a)(2) Counter-Statement, and notes that “Plaintiffs’ . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). Disputed; calls for speculation. State Defendants cannot attest to, or verify the alleged statement because it fails to state any facts or information to identify the magnitude of what, to which it refers. The cited material must be read as a whole and it speaks for itself.

33. ATF trace figures from 1996 show that assault weapons accounted for 3% of all trace requests. *Id.* Analysis of trace requests for ARI5, Intratec and SWD types of domestic firearms (*i.e.*, those not impacted by pre-Ban legislation (Koper 2007 at 63)), and also those arms

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characterized as “assault weapons” that were most frequently sold at the enactment of the Ban (Koper 2007 at 63), showed that AWs associated with violent and drug-related crimes represented only 2.5% of all traces. Koper 2007 at 70. Traces for this select AW group accounted for 2.6% of traces for guns associated with violent crimes and 3.5% of traces for guns associated with drug crimes. *Id.*

State Defendants’ Response

33. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the

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Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

34. According to Koper, "these numbers reinforce the conclusion that assault weapons are rare among crime guns." *Id.*

State Defendants' Response

34. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass

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shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

35. Koper also analyzed all guns confiscated by police in various jurisdictions to obtain "a more complete and less biased" picture of weapons used in crime that that presented by ATF trace requests. Koper 2007 at 71. Data collected from police departments in Boston and St. Louis confirmed that AWs are not overrepresented in violent crime relative to other guns. *Id.* at 72, 75.

State Defendants' Response

35. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*,

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his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

36. Overall, assault weapons accounted for about 1% of guns associated with homicides, aggravated assaults, and robberies. *Id.* at 75.

State Defendants' Response

36. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion

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for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs’ Rule 56(a)(2) Counter-Statement, and notes that “Plaintiffs’ . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

The Prevalence of “Assault Weapons” Used in the Murder of Police Officers

37. Police officers are rarely murdered with assault weapons. Koper 2007 at 99.

State Defendants’ Response

37. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, Plaintiffs’ characterization of that report is belied by the record here. The

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State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (See Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

38. The fraction of police gun murders perpetrated with AWs is only slightly higher than that for civilian gun murders. *Id.*

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State Defendants' Response

38. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the

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1997 report. (*Id.* ¶ 3 n.1).

39. The argument that assault weapons pose a unique, disproportionate danger to police officers is contradicted by FBI data. *See* LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED (“LEOKA”) [www.fbi.gov/about-us/cjis/ucr/leoka/2010]. The LEOKA data show that, in 2010, a law enforcement officer was eight times more likely to be murdered with a revolver than with an AW or LCM, eight times more likely to be killed with his own service pistol, three times as likely to be killed by a “firearms mishap” during police training (whether by his own hand or that of a fellow officer), and 72 times as likely to be killed in the line of duty accidentally-usually by being run over by another motorist while the officer was standing on a roadside to issue somebody a traffic ticket. The LEOKA statistics for 2011 are similar. *See* www.fbi.gov/about-us/cjis/ucr/leoka/2011.

State Defendants’ Response

39. Disputed and immaterial. Defendants dispute that the Plaintiffs have accurately set forth the data cited on weapons used to kill law enforcement officers and state that the results in that report speak for themselves but are, in any event, immaterial. As Dr. Koper has found, “[a]ssault weapons and LCMs have been used disproportionately in the murders of law enforcement.” appear to be used in a disproportionately high number of shootings of law enforcement.” (Koper Suppl. Decl. ¶ 9; *see id.* ¶¶ 17-18, 24; Koper Decl. ¶¶ 8, 11, 14, 20). The FBI reports cited also should not be considered because they have not been included as exhibits, *see* W.D.N.Y. Local Civ. R. 56(a)(4). Moreover, to the extent Plaintiffs are attempting to rely on the cited reports for the truth of the matter asserted, they are inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3).

The Impact of the Federal Assault Weapons Ban

The Impact of the Ban on “Assault Weapon” and “Large Capacity Magazine” Market Scarcity

40. Repeated statistical analysis of the Ban’s impact on primary market prices for AWs and LCMs showed that primary-market prices of the banned guns and magazines rose by upwards of 50% during 1993 and 1994, while the Ban was being debated and as gun distributors, dealers, and collectors speculated that the banned weapons would become expensive collectors’ items. Koper 2007 at 1, 3. *Cf.*, Koper 2004 at 23-29. However, production of the banned guns also surged, so that more than an extra year’s normal supply of assault weapons and legal substitutes was manufactured during 1994. *Id.* at 1. After the Ban took effect, primary-market prices of the banned guns and most large-capacity magazines fell to nearly pre-Ban levels and remained there at least through mid-1996, reflecting both the oversupply of grandfathered guns and the variety of legal substitutes that emerged around the time of the Ban. *Id.* at 1-3. *Cf.*, Koper 2004 at 2.

State Defendants’ Response

40. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying

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firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

The Ban's Impact on the Consequences of "Assault Weapon" Use

Total Gun Murders

41. The percentage of violent gun crimes resulting in death has been very stable since 1990. Koper 2004 at 92. In fact, the percentage of gun crimes resulting in death during 2001 and 2002 (2.94%) was slightly higher than that during 1992 and 1993 (2.9%). *Id.*

State Defendants' Response

41. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference,

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has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

42. Similarly, neither medical nor criminological data have shown any post-Ban reduction in the percentage of crime-related gunshot victims who die. Koper 2004 at 92. If anything, this percentage has been higher since the Ban. *Id.*

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State Defendants' Response

42. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the

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1997 report. (*Id.* ¶ 3 n.1).

43. According to medical examiners' reports and hospitalization estimates, about 20% of gunshot victims died nationwide in 1993. *Id.* This figure rose to 23% in 1996, before declining to 21% in 1998.⁹² *Id.* Estimates derived from the FBI UCRs and the Bureau of Justice Statistics' annual National Crime Victimization Survey ("NCVS") follow a similar pattern from 1992 to 1999, and also show a considerable increase in the percentage of gunshot victims who died in 2000 and 2001. *Id.*

State Defendants' Response

43. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement

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officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs’ Rule 56(a)(2) Counter-Statement, and notes that “Plaintiffs’ . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

44. Overall, the statistical evidence is not strong enough to conclude that the Ban had any meaningful effect on the rate of gun murders (i.e., that the effect was different from zero). Koper 2007 at 6.

State Defendants’ Response

44. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round

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load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

Gun Homicides Associated With AWs
(multiple victims in a single incident, or multiple bullet wounds per victim)

45. The Ban failed to reduce both multiple-victims and multiple-bullet-wounds-per-victim murders. Koper 2007 at 2.

State Defendants' Response

45. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013,

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submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs’ Rule 56(a)(2) Counter-Statement, and notes that “Plaintiffs’ . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

46. Using a variety of national and local data sources, Koper found no statistical evidence of post-Ban decreases in either the number of victims per gun homicide incident, the number of gunshot wounds per victim, or the proportion of gunshot victims with multiple wounds. Koper 2007 at 6. Nor did he find assault weapons to be overrepresented in a sample of mass murders involving guns *Id.*

State Defendants’ Response

46. Disputed and immaterial. The reports cited speak for themselves and must be read as a

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whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

Multiple- Victim Gun Homicides

47. Examination of the FBI's Supplemental Homicide Report ("SHR") data produced no evidence of short term decreases in the lethality of gun violence as measured by the mean number of victims killed in gun homicide incidents. Koper 2007 at 86.

State Defendants' Response

47. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and

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incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

48. The number of victims-per-incident gun murders increased very slightly (less than 1 percent) after the Ban. *Id.* Multiple-victim gun homicides remained at relatively high levels through at least 1998, based on the national average of victims killed per gun murder incident. Koper 2004 at 93. If anything, then, gun attacks appear to have been more lethal and injurious since the Ban. *Id.* at 96.

State Defendants’ Response

48. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety --

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and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

49. An interrupted time series analysis failed to produce any evidence that the Ban reduced multiple-victims gun homicides. *Id.*

State Defendants' Response

49. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying

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firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

Multiple- Wound-Per- Victim Gun Homicides

50. Multiple wound shootings were elevated over pre-Ban levels during 1995 and 1996 in four of five localities examined during Koper's first AW study, though most of the differences were not statistically significant. Koper 2004 at 93.

State Defendants' Response

50. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-

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motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

51. If attacks with AWs and LCMs result in more shots fired and victims hit than attacks with other guns and magazines, Koper expected a decline in crimes with AWs and LCMs to reduce the share of gunfire incidents resulting in victims wounded or killed. Koper 2004 at 93. Yet, when measured nationally with VCR and NCVS data, this indicator was relatively stable

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at around 30% from 1992 to 1997, before rising to about 40% from 1998 through 2000. *Id.*

State Defendants' Response

51. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper

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2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

52. Analysis of the number of wounds inflicted in both fatal and non-fatal gunshot cases in Milwaukee, Seattle, Jersey City, San Diego, and Boston failed to produce evidence of a post-Ban reduction in the average number of gunshot wounds per case, or the proportion of cases involving multiple wounds. Koper 2007 at 97.

State Defendants’ Response

52. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper

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Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

The Role of LCMs in Increased Gunshot Victimization

53. There is very little empirical evidence on the direct role of ammunition capacity in determining the outcomes of criminal gun attacks. Koper 2007 at 10. Specific data on shots fired in gun attacks are quite fragmentary and often inferred indirectly, but they suggest that relatively few attacks involve more than 10 shots fired. Koper 2004 at 90. The limited data which do exist suggest that criminal gun attacks involve three or fewer shots on average. Koper 2007 at 10.

State Defendants' Response

53. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*,

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his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

54. Based on national data compiled by the FBI, there were only about 19 gun murder incidents a year involving four or more victims from 1976 through 1995 (for a total of 375), and only about one a year involving six or more victims from 1976 through 1992 (for a total of 17). Koper 2004 at 90.

State Defendants' Response

54. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference,

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has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

55. Similarly, gun murder victims are shot two to three times on average (according to a number of sources), and a study at a Washington, DC trauma center reported that only 8% of all gunshot victims treated from 1988 through 1990 had five or more wounds. Koper 2004 at 90.

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State Defendants' Response

55. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the

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1997 report. (*Id.* ¶ 3 n.1).

56. The few available studies on shots fired show collectively that assailants fire less than four shots on average, a number well within the 10-round magazine limit imposed by the AW-LCM ban. Koper 2004 at 90.

State Defendants' Response

56. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and

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incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

57. A study of mass shootings (defined therein as incidents in which six or more victims were killed with a gun, or twelve or more were wounded) from 1984 to 1993 found that “for those incidents where the number of rounds fired and the duration of the shooting were both reported, the rate of fire never was faster than about one round every two seconds, and was usually much slower than that.” *See* Kleck, TARGETING GUNS at 124-25. Thus, “[n]one of the mass killers maintained a sustained rate of fire that could not also have been maintained--- even taking reloading time into account---with either multiple guns or with an ordinary six-shot revolver and the common loading devices known as ‘speedloaders.’” *Id.* at 125.

State Defendants’ Response

57. Disputed and immaterial. The cited work should not be considered because it has not been included as an exhibit. *See* W.D.N.Y. Local Civ. R. 56(a)(4). Moreover, to the extent Plaintiffs are attempting to rely on the cited reference for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the author of the referenced work (Gary Kleck) was rejected as an expert. The trial court found that Kleck’s testimony was “biased,” that it “focused on the public debate,” and that it “did not help the inquiry of the court with respect to the legal claims.” *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super.

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Ct. June 30, 1994). (A copy of the trial court decision in *Benjamin v. Bailey* is attached to the accompanying declaration of William J. Taylor, Jr., dated September 24, 2013, as Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

58. There is no evidence comparing the fatality rate of attacks perpetrated with guns having large-capacity magazines to those involving guns without large-capacity magazines. Koper 2004 at 90. Indeed, there is no evidence comparing the fatality rate of attacks with semiautomatics to those with other firearms. *Id.*

State Defendants' Response

58. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass

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shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). (*See also* Declaration of Lucy Allen, dated June 21, 2013 ("Allen Decl."), ¶¶16-19).

Summary of Past and Future Impacts of the Ban

59. The Ban cannot clearly be credited with any of the nation's recent drop in gun violence. Koper 2004 at 2, 96.

State Defendants' Response

59. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying

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firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

60. The Ban has produced no discernible reduction in the lethality and injuriousness of gun violence, based on indicators like the percentage of gun crimes resulting in death or the share of gunfire incidents resulting in injury. *Id.* at 96. See also NATIONAL RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW 97 (Charles F. Wellford et al. eds., 2005) ("[G]iven the nature of the [1994 assault weapons ban], the maximum potential effect of the ban on gun violence outcomes would be very small and, if there were any observable effects, very difficult to disentangle from chance yearly variation and other state and local gun violence initiatives that took place simultaneously"); Centers for Disease Control, *Recommendations To Reduce Violence Through Early Childhood Home Visitation, Therapeutic*

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Foster Care, and Firearms Laws, 28 AM. J. PREV. MED. 6, 7 (2005) (With respect to “bans on specified firearms or ammunition,” the CDC Task Force found that “[e]vidence was insufficient to determine the effectiveness of bans ... for the prevention of violence.”); *see also* Robert A. Hahn *et al.*, *Firearms Laws and the Reduction of Violence: A Systematic Review*, 28 AM. J. PREV. MED. 40, 49 (2005) (“available evidence is insufficient to determine the effectiveness or ineffectiveness on violent outcomes of banning the acquisition and possession of [particular] firearms”).

State Defendants’ Response

60. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the first report cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs’ cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law

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enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs’ Rule 56(a)(2) Counter-Statement, and notes that “Plaintiffs’ . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). The other materials cited should not be considered because they have not been included as exhibits. *See* W.D.N.Y. Local Civ. R. 56(a)(4). Moreover, to the extent Plaintiffs are attempting to rely on those materials for the truth of the matter asserted, they are inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3).

61. If the AW ban were to be renewed, its effects on gun violence would likely to be small at best and perhaps too small for reliable measurement. Koper 2004 at 3. AWs were rarely used in gun crimes even before the ban. *Id.* at 3, 97. LCMs are involved in a more substantial share of gun crimes, but it is not clear how often the outcomes of gun attacks depend on the ability of offenders to fire more than ten shots (the current magazine capacity limit) without reloading. Koper 2004 at 3, 19, 97.

State Defendants’ Response

61. Disputed and immaterial. The reports cited speak for themselves and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the reports cited, as well as a more recent 2013 report that Plaintiffs do not reference, has submitted two expert declarations in this case in support of the State Defendants’ cross-

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motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1).

The Impact of the SAFE Act

Plaintiffs

62. Members of Plaintiffs NYSRPA, WCFOA, NYSATA and SAFE ("member plaintiffs," "members") possess and wish to acquire rifles, handguns, shotguns, ammunition

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feeding devices, and ammunition, but are prevented from doing so by the Act's restrictions on "assault weapons," "large capacity ammunition feeding devices," and ammunition sales. *See* Affidavit of Tom King ("King Aff.") [attached hereto as "**Exhibit E**"]; Affidavit of Scott Somavilla ("Somavilla Aff.") [attached hereto as "**Exhibit F**"]; Affidavit of Jonathan Karp ("Karp Aff.") [attached hereto as "**Exhibit G**"]; Affidavit of John Cushman ("Cushman Aff.") [attached hereto as "**Exhibit H**"]; Affidavit of Thomas Galvin ("Galvin Aff.") [attached hereto as "**Exhibit I**"].

State Defendants' Response

62. Disputed and immaterial. None of the members of the Plaintiff organizations are parties to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.' Opp. Mem. at 49). In any event, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 62, and are insufficient to confer a right to sue nor to otherwise provide any support for Plaintiffs' claims. *See, e.g., Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932, at *12 (E.D. Cal. July 8, 2011); *see also, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 496 ("Such 'some day' intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the 'actual or imminent' injury that our cases require."); *see also, e.g., Holtz*, 258 F.3d at 73.

63. Some members, individual plaintiffs, and business plaintiffs possess magazines manufactured before September 13, 1994, with a capacity of more than ten rounds that are now criminalized by the Act. King Aff. at 2; Somavilla Aff. at 2; Karp Aff. at 2; Cushman Aff. at 2; Galvin Aff. at 2. Other members, individual plaintiffs, and business plaintiffs do not possess

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magazines with a capacity of more than ten rounds, but would possess those magazines forthwith but for the Act. King Aff. at 2; Somavilla Aff. at 2; Karp Aff. at 2; Cushman Aff. at 2. Many members, individual plaintiffs, and business plaintiffs would load more than seven rounds in their magazines for use in firearms kept in the home for self-protection, but cannot do so because of the Act. King Aff. at 2; Somavilla Aff. at 2; Karp Aff. at 2; Cushman Aff. at 2; Galvin Aff. at 3-4. Members, individual plaintiffs, and business plaintiffs are unaware how to modify magazines so they cannot “readily be restored or converted to accept” more than ten rounds. King Aff. at 2; Somavilla Aff. at 2; Karp Aff. at 2; Cushman Aff. at 2; Galvin Aff. at 3.

State Defendants’ Response

63. Disputed and immaterial. The specific guns identified in the affidavits submitted by Plaintiffs Galvin and Horvath are the only type of assault weapon that any of the Plaintiffs here have specifically stated they possess. With respect to the assault weapons and magazines that Plaintiffs claim they would now purchase if not for New York law, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 63, and are not sufficient to confer a right to sue nor to otherwise provide any support for Plaintiffs’ claims. *See, e.g., Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932, at *12 (E.D. Cal. July 8, 2011); *see also, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (“Such ‘some day’ intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the ‘actual or imminent’ injury that our cases require.”); *see also, e.g., Holtz*, 258 F.3d at 73. Moreover, none of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims on behalf of their individual members. (*See* Pls.’ Opp. Mem. at 49). In addition, the business Plaintiffs have no Second

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Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (See State Defendants Memorandum of Law, dated June 21, 2013 (“Defs.’ Mem.”) at 78).

64. Some members, individual plaintiffs, and business plaintiffs possess arms now prohibited by the Act as “assault weapons” that were lawfully possessed prior to September 14, 1994, and under the laws of 2000. King Aff. at 2; Somavilla Aff. at 2; Karp Aff. at 2; Cushman Aff. at 2; Galvin Aff. at 2. Other members possess arms now criminalized as “assault weapons” under the Act’s new definitions in Penal Law § 265.00(22) that they lawfully possessed prior to January 15, 2013. King Aff. at 2; Somavilla Aff. at 2; Karp Aff. at 2; Cushman Aff. at 2; Galvin Aff. at 2. But for the Act, still other members, individual plaintiffs, and business plaintiffs would forthwith obtain and possess “assault weapons” under the Act’s new definitions in Penal Law § 265.00(22). King Aff. at 2; Somavilla Aff. at 2; Karp Aff. at 2; Cushman Aff. at 2; Galvin Aff. at 2.

State Defendants’ Response

64. Disputed and immaterial. The specific guns identified in the affidavits submitted by Plaintiffs Galvin and Horvath are the only type of assault weapon that any of the Plaintiffs here have specifically stated they possess. With respect to the assault weapons and magazines that Plaintiffs claim they would now purchase if not for New York law, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 63, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs’ claims. See, e.g., *Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932, at *12 (E.D. Cal. July 8, 2011); see also, e.g., *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (“Such ‘some day’ intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the ‘actual or imminent’

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injury that our cases require.”); *see also, e.g., Holtz*, 258 F.3d at 73. Moreover, none of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.’ Opp. Mem. at 49). In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See* State Defs.’ Mem. at 78).

65. As examples, some members, individual plaintiffs, and business plaintiffs possess, and other members, individual plaintiffs, and business plaintiffs would possess but for the Act, semiautomatic rifles that have an ability to accept a detachable magazine with a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, or a thumbhole stock. King Aff. at 2-3; Somavilla Aff. at 2-3; Karp Aff. at 3; Cushman Aff. at 3; Galvin Aff. at 2. Other members, individual plaintiffs, and business plaintiffs possess or would possess such rifles with muzzle brakes, muzzle compensators, or threaded barrels designed to accommodate such attachments. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3; Galvin Aff. at 2.

State Defendants’ Response

65. Disputed and immaterial. The specific guns identified in the affidavits submitted by Plaintiffs Galvin and Horvath are the only type of assault weapon that any of the Plaintiffs here have specifically stated they possess. With respect to the assault weapons and magazines that Plaintiffs claim they would now purchase if not for New York law, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 63, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs’ claims. *See, e.g., Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932,

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at *12 (E.D. Cal. July 8, 2011); *see also, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (“Such ‘some day’ intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the ‘actual or imminent’ injury that our cases require.”); *see also, e.g., Holtz*, 258 F.3d at 73. Moreover, none of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.’ Opp. Mem. at 49). In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See* State Defs.’ Mem. at 78).

66. Further, some members, individual plaintiffs, and business plaintiffs possess semiautomatic rifles with detachable magazines and with a thumbhole stock. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3; Galvin Aff. at 2. Such rifles are commonly used for hunting game and for target shooting. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3; Galvin Aff. at 3. A thumbhole stock allows the rifle to be held more comfortably and fired more accurately, but it causes the rifle to be defined as an “assault weapon.” King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3; Galvin Aff. at 3.

State Defendants’ Response

66. Disputed and immaterial. The specific guns identified in the affidavits submitted by Plaintiffs Galvin and Horvath are the only type of assault weapon that any of the Plaintiffs here have specifically stated they possess. With respect to assault weapons already possessed at the time of the passage of the SAFE Act, those weapons may be registered and legally possessed. But with respect to the assault weapons and magazines that Plaintiffs claim they would now

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purchase if not for New York law, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 63, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs' claims. *See, e.g., Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932, at *12 (E.D. Cal. July 8, 2011); *see also, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 496 ("Such 'some day' intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the 'actual or imminent' injury that our cases require."); *see also, e.g., Holtz*, 258 F.3d at 73. Moreover, none of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.' Opp. Mem. at 49). In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See* State Defs.' Mem. at 78). State Defendants dispute that semiautomatic rifles with detachable magazines and with thumbhole stock are "commonly" used for hunting game and target shooting, and Plaintiffs' conclusory affidavits provide no support for such an assertion. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants also note that thumbhole stocks, like protruding pistol grips, aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen Decl. ¶ 19; Ex. 12 (1998 ATF Study) at ex. 5); *Richmond Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681, 685 (2d Cir. 1996); *Heller v. District of Columbia*, 670 F.3d 1244, 1262-63 (D.C. Cir. 2011) ("*Heller II*"). Nevertheless, these assertions by Plaintiffs are not material under the governing law.

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67. But for the Act, other members, individual plaintiffs, and business plaintiffs would forthwith obtain and possess identical or similar rifles but may not do so in that they are now considered illegal “assault weapons.” King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3; Galvin Aff. at 2.

State Defendants’ Response

67. Disputed and immaterial. The specific guns identified in the affidavits submitted by Plaintiffs Galvin and Horvath are the only type of assault weapon that any of the Plaintiffs here have specifically stated they possess. With respect to the assault weapons and magazines that Plaintiffs claim they would now purchase if not for New York law, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 63, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs’ claims. *See, e.g., Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932, at *12 (E.D. Cal. July 8, 2011); *see also, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (“Such ‘some day’ intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the ‘actual or imminent’ injury that our cases require.”); *see also, e.g., Holtz*, 258 F.3d at 73. Moreover, none of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.’ Opp. Mem. at 49). In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See* State Defs.’ Mem. at 78).

68. Some members of the NYSRPA, the WCFOA, the NYSATA, and the SAFE obtained M-I carbines from the Civilian Marksmanship Program (“CMP”), either when it was

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administered by the U.S. Department of the Army or later when it became a private corporation established by federal law. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3. Other such members wish to obtain such carbines in the future. *Id.* M-1 carbines are semiautomatic, have the ability to accept a detachable magazine, have a bayonet mount, and use a 15-round or 30-round detachable magazine. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3. The Act's restrictions prevent member plaintiffs from possessing or acquiring these rifles. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3.

State Defendants' Response

68. Disputed and immaterial. None of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.' Opp. Mem. at 49). In any event, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 62, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs' claims. *See, e.g., Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932, at *12 (E.D. Cal. July 8, 2011); *see also, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 496 ("Such 'some day' intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the 'actual or imminent' injury that our cases require."); *see also, e.g., Holtz*, 258 F.3d at 73. Moreover, Plaintiffs' assertions in the last sentence are a legal argument that is not appropriate in this Rule 56(a)(2) Counter-Statement. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

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69. Some members of the NYSRPA, the WCFOA, the NYSATA, and the SAFE obtained M-I Garand rifles from the CMP, and others would like to do so in the future. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3; Cushman Aff. at 3. M-I Garand rifles are semiautomatic, have the ability to accept a detachable clip, and have a bayonet mount. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 3-4; Cushman Aff. at 3-4. Accordingly, the Act's prohibitions severely restrict possession and acquisition of these rifles by the member plaintiffs. King Aff. at 3; Somavilla Aff. at 3; Karp Aff. at 4; Cushman Aff. at 4.

State Defendants' Response

69. Disputed and immaterial. None of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.' Opp. Mem. at 49). In any event, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 69, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs' claims. *See, e.g., Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932, at *12 (E.D. Cal. July 8, 2011); *see also, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 496 ("Such 'some day' intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the 'actual or imminent' injury that our cases require."); *see also, e.g., Holtz*, 258 F.3d at 73. Moreover, Plaintiffs' assertions in the last sentence are a legal argument that is not appropriate in this Rule 56(a)(2) Counter-Statement. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

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70. Being in possession of, or wishing to acquire, “assault weapons” and “large capacity ammunition feeding devices,” members of the NYSRPA, the WCFOA, the NYSATA and the SAFE and other plaintiffs are subject to the Act’s requirements regarding registration, transferring such items to persons outside of New York, and converting magazines, and to the Act’s serious criminal penalties, including incarceration, fines, forfeitures, and cancellation of licenses. King Aff. at 3-4; Somavilla Aff. at 3-4; Karp Aff. at 4; Cushman Aff. at 4; Galvin Aff. at 2.

State Defendants’ Response

70. Disputed in part, undisputed in part, and immaterial. It is undisputed that all New Yorkers are subject to New York's Penal Code. However, the specific guns identified in the affidavits submitted by Plaintiffs Galvin and Horvath are the only type of assault weapon that any of the Plaintiffs here have specifically stated they possess. With respect to the assault weapons and magazines that Plaintiffs claim they would now purchase if not for New York law, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 70, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs’ claims. *See, e.g., Enos v. Holder*, No. 2:10-CV-2911, 2011 U.S. Dist. LEXIS 73932, at *12 (E.D. Cal. July 8, 2011); *see also, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (“Such ‘some day’ intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the ‘actual or imminent’ injury that our cases require.”); *see also, e.g., Holtz*, 258 F.3d at 73. Moreover, none of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See Pls.’ Opp. Mem.* at 49). In addition, the

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business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See* State Defs.’ Mem. at 78). Moreover, Plaintiffs’ assertions herein constitute a legal argument that is not appropriate in this Rule 56(a)(2) Counter-Statement. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also*, *e.g.*, *U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

71. Members, individual plaintiffs and business plaintiffs are unaware of how to convert “large capacity ammunition feeding devices” manufactured before September 13, 1994, so that they will hold only ten rounds. King Aff. at 4; Somavilla Aff. at 4; Karp Aff. at 4; Cushman Aff. at 4; Galvin Aff. at 3. Other members, individual plaintiffs and business plaintiffs might possess the technical ability to attempt such conversions, but are unaware of the definition of “readily converted or restored” or “permanent” that the State of New York would apply to such conversions. King Aff. at 4; Somavilla Aff. at 4; Karp Aff. at 4; Cushman Aff. at 4; Galvin Aff. at 3. The New York State website on the Act contains no guidance in this regard, nor does it refer gun or magazine owners to other resources that can provide adequate guidance. King Aff. at 4; Somavilla Aff. at 4; Karp Aff. at 4.

State Defendants’ Response

71. Disputed and immaterial. The conclusory, near identical affidavits submitted by Plaintiffs do not provide any support for Plaintiffs’ assertions here. *See, e.g., Holtz*, 258 F.3d at 73. Regardless, the term “can be readily restored or converted to accept” means, with respect to any modification of a magazine, work that can be performed by a gun owner of average intelligence and abilities without engaging the services of a gunsmith. (Bruen Decl. ¶ 28 n.10). The term was used in the same way, in the definition of “large capacity ammunition feeding device,” in both the 1994 federal assault weapons ban, as well as the New York assault weapons

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ban of 2000. (*Id.*) Plaintiffs themselves acknowledge such an understanding of the term. (Pls. Mem. at 4-5). Whether Plaintiffs or others have the technical capability for such alterations is not material herein.

72. Members, individual plaintiffs and business plaintiffs have sought guidance from the State of New York as to the scope of, application of, and exceptions to the SAFE Act, and have either received no response from the State or responses that are inaccurate and confusing. King Aff. at 4; Somavilla Aff. at 4; Karp Aff. at 4; Cushman Aff. at 4. *See also* Affidavit of Daniel Bedell (“Bedell Aff.”) [attached hereto as “**Exhibit J**”].

State Defendants’ Response

72. Disputed and immaterial. Plaintiffs do not provide specific examples in this statement of any responses (or lack of responses) received from the State of New York, and thus there is no way to evaluate if they could be considered “inaccurate and confusing.” Moreover, Plaintiffs’ conclusory argument that any such responses were “inaccurate and confusing” is an opinion and conclusion, not a statement of fact. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor is it in any way material to this action.

73. For example, on January 29, 2013 Daniel Bedell attended a SAFE Act “town meeting” held at the Clarence Public Library in Clarence, New York. Bedell Aff. at 2-4. The meeting was attended by Mike Green (Executive Deputy Commissioner of the New York State Division of Criminal Justice Services) and Steve Hogan (First Deputy Counsel, New York State Police). *Id.* During this meeting, Mr. Green and Mr. Hogan were asked numerous questions regarding, inter alia, how the Act was to be applied and/or enforced, the types of firearms the Act implicated, the nature and scope of any exceptions to the Act’s criminal provisions, and/or the

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timing of the Act's enforcement. *Id.* The responses of Green and Hogan were vague, ambiguous, confusing and non-responsive to the questions that were asked. *Id.* In several instances, Green and Hogan simply read from sections of the Act, without bothering to explain their application. *Id.* The response of Green and Hogan did not shed any further light on how the Act was to be applied and/or enforced, the nature and scope of any exceptions to the Act's criminal provisions, the types of firearms the Act implicated, and/or the timing of the Act's enforcement. *Id.*

State Defendants' Response

73. Disputed and immaterial. State Defendants do not know, and have no way of knowing, what Plaintiffs find "vague, ambiguous, confusing and non-responsive." The affidavit cited does not support this statement. Moreover, Plaintiffs' conclusory argument that any the responses were "vague, ambiguous, confusing and non-responsive" is an opinion and conclusion, not a statement of fact. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor is it in any way material to this action.

74. During this same meeting Mr. Bedell asked Mr. Green and Mr. Hogan specific questions, such as whether he (Bedell) could sell stripped AR-15 lower receivers under the new law. *Bedell Aff.* at 2-4. Examination of the Act reveals that these items are not mentioned anywhere within its numerous provisions. *Id.* However, Mr. Green and Mr. Hogan classified these items as prohibited "assault weapons," even though they bear none of the characteristics attributed to "assault weapons" defined by the Act. *Id.* Mr. Green's and Mr. Hogan's insistence that these items are "assault weapons" that could not be sold has caused confusion and uncertainty as to how the Act is to be implemented and enforced. *Id.*

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State Defendants' Response

74. Disputed and immaterial. State Defendants do not know what Plaintiffs found confusing, or why they asked a question on a matter they found self-evident from the statute. State Defendants refer this court to the statute which speaks for itself. Regarding Plaintiffs' other characterizations of the SAFE Act, State Defendants refer this court to the statute which speaks for itself. Moreover, Plaintiffs' conclusory argument the responses received were confusing is an opinion and conclusion, not a statement of fact, and this conclusion is contradicted by the allegations of the supporting affidavit, which states that Mr. Bedell received a clear response to this question but simply disagreed with that response.. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor is it in any way material to this action.

75. NYSRPA, WCFOA, SAFE, and NYSATA members purchase ammunition at competitive prices from out-of-state businesses. King Aff. at 4; Somavilla Aff. at 4; Karp Aff. at 4; Cushman Aff. at 4. The Act's ban on out-of-state ammunition sales has caused financial harm to these plaintiffs and their members and makes it more difficult to obtain ammunition for lawful self protection, hunting, target shooting, and trap shooting. *Id.*

State Defendants' Response

75. Disputed and immaterial. None of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See Pls.' Opp. Mem.* at 49). Further, Plaintiffs' concede, as they must, that the SAFE Act's ammunition sales provisions do not go into effect until, at the earliest, January 15, 2014, and have not applied to Plaintiffs in any

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way. (Pls.' Opp. Mem. p. 45). In any event, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 75, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs' claims. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. For example, State Defendants do not know, nor do any of the conclusory affidavits even state, at what price and under what terms Plaintiffs previously purchased, and now purchase, ammunition but such allegation would not but any dispute relating to this would, in any event, not be material.

76. The NYSATA hosts four major trapshoots throughout the year in Cicero, New York, which are attended by members and guests who live within and without the State of New York. *Karp Aff.* at 4-5. To host the events, the NYSATA purchases ammunition from out-of-state and sells it to other NYSATA members and guests. *Id.* However, the Act's restriction on ammunition sales, and its prohibitions and restrictions on the ordinary rifles, pistols, and shotguns it mischaracterizes as "assault weapons" have already caused a decrease in the number of out-of-state entrants for the NYSATA's shooting events. *Id.* Many of the out-of-state competitors who would have entered the competition at this shoot, and would enter NYSATA shoots in the future but for the Act, have expressed their reluctance to NYSATA officers about traveling to New York and attending NYSATA shoots because of the Act's prohibitions and restrictions on ordinary rifles, pistols, and shotguns. *Id.* Those out-of-state competitors have expressed that the ambiguities of the Act and how it applies to them are the main deterrents to attending NYSATA's shooting events. *Id.*

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State Defendants' Response

76. Disputed and immaterial. None of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.' Opp. Mem. at 49). In any event, the conclusory, near identical affidavits submitted by Plaintiffs provide no support for the assertions in this statement No. 76, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs' claims. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. State Defendants do not know, nor does the conclusory affidavit cited even state, the number and identity of any individual not attending any NYSATA event; nor said individual's reason for not attending any NYSATA event. Regardless, the attendance of out of state residents at NYSATA events is not in any way material to this action. (*See* State Defs.' Mem. at 31 & n.30).

77. The four major shoots that the NYSATA hosted in 2012 had a total of 2,289 entrants. 825 of those entrants, or 36% of the total number of entrants, were from out-of-state. Karp Aff. at 5. The decrease in out-of-state entrants to NYSATA shoots due to the Act's prohibitions and restrictions on the ordinary rifles, pistols, and shotguns has already, and in the future will continue to, directly injure the NYSATA and its members by lost profits (through lost entrant fees and a decrease in ammunition sales by the NYSATA at those shoots) and by decreasing the diversity and skill-level of entrants at NYSATA-sponsored events in New York State. Karp Aff. at 5.

State Defendants' Response

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77. Disputed and immaterial. None of the members of Plaintiff organizations is a party to this action, and Plaintiffs have conceded that the organizations themselves have no standing to assert claims in this case on behalf of their individual members. (*See* Pls.' Opp. Mem. at 49). In any event, the conclusory affidavit submitted by Plaintiffs provide no support for the assertions in this statement No. 76, and are not nearly enough to confer a right to sue nor to otherwise provide any support for Plaintiffs' claims. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. State Defendants do not know, nor does the conclusory affidavit cited even state, the number and identity of any individual not attending any NYSATA event; nor said individual's reason for not attending any NYSATA event; nor any actual injury which NYSATA has incurred as a result. Regardless, the attendance of out of state residents at NYSATA events is not in any way material to this action. (*See* State Defs.' Mem. at 31 & n.30).

78. Plaintiff BEDELL CUSTOM is in the business of gunsmithing, buying and selling firearms and ammunition within and without the State of New York. Bedell Aff. at 1. Bedell's business has been harmed by the Act's restrictions on "assault weapons," "large capacity ammunition feeding devices," and ammunition sales. *Id.* at 2.

State Defendants' Response

78. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Bedell Custom has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See* State Defs.' Mem. at 78). And any

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issues relating to claims of damages suffered by Bedell Custom are not material to this declaratory and injunctive action in any event.

79. For example, prior to the enactment of the Act, a significant segment of Bedell's business involved the purchase of "AR"-type firearms from out-of-state distributors and the sale of these "AR"-type firearms to customers. Bedell Aff. at 2. As a direct result of the Act's passage, Bedell's out-of-state distributors have significantly reduced and, in some cases, stopped altogether the shipment of "AR"-type firearms to Bedell due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. *Id.* These reductions and stoppages have caused actual harm to Bedell's sales and overall business. *Id.*

State Defendants' Response

79. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to if and how the business of Plaintiff Bedell Custom has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.' Mem.* at 78). And any issues relating to claims of damages suffered by Bedell Custom are not material to this declaratory and injunctive action in any event.

80. Another segment of Bedell's business involves modifying and customizing specific types of firearms that are used in United States Practical Shooting Association ("USPSA") competitions. Bedell Aff. at 2. While the caliber and type of these USPSA firearms may vary, they share a common denominator in that they regularly require the use of magazines

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that can hold more than ten (10) rounds of ammunition. *Id.* As a direct result of the passage of the Act, Bedell's orders for and shipments of USPSA firearms and magazines have been significantly reduced, and this segment of Bedell's business has suffered actual harm. *Id.*

State Defendants' Response

80. Disputed and immaterial. State Defendants do not know, nor does the conclusory affidavit provide any supporting facts with respect to, if and how the business of Plaintiff Bedell Custom has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.' Mem.* at 78). And any issues relating to claims of damages suffered by Bedell Custom are not material to this declaratory and injunctive action in any event.

81. Plaintiff BEIKIRCH AMMUNITION CORP. is in the business of buying, selling, and re-selling firearms and ammunition within and without the State of New York. See Affidavit of Hans Farnung ("Fanung Aff.") [attached hereto as "**Exhibit K**"] at 1-2. Beikirch's business has been harmed by the Act's restrictions on "assault weapons," "large capacity ammunition feeding devices," and ammunition sales. *Id.*

State Defendants' Response

81. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to if and how the business of Plaintiff Beikirch Ammunition has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing

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to assert such claims on behalf of their customers. (*See* State Defs.' Mem. at 78). And any issues relating to claims of damages suffered by Bedell Custom are not material to this declaratory and injunctive action in any event.

82. For example, one segment of Beikirch's business involves the purchase, sale and resale of long arms, "AR"- type firearms, and ammunition. Farnung Aff. at 2. As a direct result of the passage of the Act, Beikirch's suppliers of long arms, "AR"- type firearms and ammunition have refused to sell, ship or transport these items into the State of New York due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. *Id.* These refusals have caused actual harm to Beikirch's sales and overall business. *Id.*

State Defendants' Response

82. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Beikirch Ammunition has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See* State Defs.' Mem. at 78). And any issues relating to claims of damages suffered by Beikirch are not material to this declaratory and injunctive action in any event.

83. The actual harm to Beikirch's business has been so great that Beikirch has recently purchased a firearms and ammunition business located in Pennsylvania, close to the New York border near its own current location. *Id.* at 2-3. This purchase was made out of concern created by dwindling firearms and ammunition sales (and related business difficulties)

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that have been caused by the Act's passage. *Id.* at 3. The purchase was costly, and the initial outlay to close on the purchase has caused actual harm to Beikirch's business. *Id.* The Act has harmed Beikirch's business to the point that Beikirch is now contemplating either the imminent shutting down of its New York business and/or the imminent laying off of a large number of its current employees. *Id.*

State Defendants' Response

83. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Beikirch Ammunition has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.' Mem.* at 78). And any issues relating to claims of damages suffered by Beikirch are not material to this declaratory and injunctive action in any event.

84. Plaintiff BLUELINE TACTICAL & POLICE SUPPLY, LLC is in the business of buying, selling, and re-selling firearms and ammunition within and without the State of New York. *See* Affidavit of Benjamin Rosenshine ("Rosenshine Aff.") [attached hereto as "**Exhibit L**"]. BlueLine's business has been harmed by the Act's restrictions on "assault weapons," "large capacity ammunition feeding devices," and ammunition sales. *Id.* at 1-2.

State Defendants' Response

84. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff BlueLine Tactical & Police Supply, LLC has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*,

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2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.’ Mem. at 78*). And any issues relating to claims of damages suffered by BlueLine are not material to this declaratory and injunctive action in any event.

85. For example, one segment of BlueLine’s business involves the purchase, sale and resale of rifles, including “AR”- type firearms, and ammunition. *Rosenshine Aff. at 2*. As a direct result of the passage of the Act, BlueLine’s sales of rifles, “AR”-type firearms and ammunition have been significantly reduced. *Id.* These reductions have caused actual harm to BlueLine’s business. *Id.*

State Defendants’ Response

85. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to if and how the business of Plaintiff BlueLine Tactical & Police Supply, LLC has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.’ Mem. at 78*). And any issues relating to claims of damages suffered by BlueLine are not material to this declaratory and injunctive action in any event.

86. In addition, suppliers of long arms, “AR”- type firearms and ammunition have refused to sell, ship or transport these items into the State of New York due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by

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the holder of an FFL. *Id.* These refusals have caused actual harm to Blueline's sales and overall business. *Id.*

State Defendants' Response

86. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Blueline Tactical & Police Supply, LLC has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.' Mem.* at 78). And any issues relating to claims of damages suffered by Blueline are not material to this declaratory and injunctive action in any event.

87. Since the passage of the Act, Blueline's customers have demonstrated a decreased willingness to sell or buy long arms, including "AR"-type firearms due to concern and confusion over whether these types of arms can legally be possessed, purchased or sold in the State of New York. *Rosenshine Aff.* at 2. In addition, since the passage of the Act, a large segment of Blueline's customers have shown an increasing willingness to simply turn in their firearms (rather than sell them) as they are confused and concerned about whether continued possession of these arms constitutes a crime and will result in their (the customers') criminal prosecution. *Id.* As *Rosenshine* puts it, "the customers are tired of being made to feel like criminals." *Id.*

State Defendants' Response

87. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Blueline Tactical & Police Supply, LLC has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*,

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2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.’ Mem. at 78*). And any issues relating to claims of damages suffered by Blueline are not material to this declaratory and injunctive action in any event.

88. As a direct result of Blueline’s customers’ willingness to give up their firearms and/or buy other firearms, Blueline’s sales of firearms have suffered and Blueline’s business has been actually harmed. *Id.*

State Defendants’ Response

88. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Blueline Tactical & Police Supply, LLC has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.’ Mem. at 78*). And any issues relating to claims of damages suffered by Blueline are not material to this declaratory and injunctive action in any event.

89. Plaintiff BATAVIA MARINE & SPORTING SUPPLY is in the business of buying, selling, and re-selling firearms and ammunition within and without the State of New York. *See* Affidavit of Michael Barrett (“Barrett Aff.”) [attached hereto as “**Exhibit M**”]. Batavia Marine’s business has been harmed by the Act’s restrictions on “assault weapons,” “large capacity ammunition feeding devices,” and ammunition sales. Barrett Aff. at 1-2.

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State Defendants' Response

89. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Batavia Marine & Sporting Supply has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.' Mem.* at 78). And any issues relating to claims of damages suffered by Batavia Marine are not material to this declaratory and injunctive action in any event.

90. For example, one segment of Batavia Marine's business involves the purchase, sale and re-sale of rifles, including "AR"-type firearms, and ammunition. Barrett Aff. at 2. As a direct result of the passage of the Act, Batavia Marine's sales of rifles, "AR"-type firearms and ammunition have been significantly reduced. *Id.* These reductions have caused actual harm to Batavia Marine's business. *Id.*

State Defendants' Response

90. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Batavia Marine & Sporting Supply has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.' Mem.* at 78). And any issues relating to claims of damages suffered by Batavia Marine are not material to this declaratory and injunctive action in any event.

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91. In addition, suppliers of long arms, “AR”- type firearms and ammunition have refused to sell, ship or transport these items into the State of New York due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. Barrett Aff. at 2. These refusals have caused actual harm to Batavia Marine’s sales and overall business. *Id.*

State Defendants’ Response

91. Disputed and immaterial. The conclusory affidavit cited does not provide any supporting facts with respect to, if and how the business of Plaintiff Batavia Marine & Sporting Supply has been impacted, if at all, by the SAFE Act. *See Holtz*, 258 F.3d at 73; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the business Plaintiffs have no Second Amendment claims, nor do they have standing to assert such claims on behalf of their customers. (*See State Defs.’ Mem.* at 78). And any issues relating to claims of damages suffered by Batavia Marine are not material to this declaratory and injunctive action in any event.

Ammunition Magazines

92. Magazines with a capacity of more than ten cartridges, and rifles and shotguns with telescoping stocks, pistol grips, and thumbhole stocks, are commonly possessed for lawful purposes in the millions by law-abiding citizens throughout the United States. *See Declaration of Mark Overstreet* (“Overstreet Decl.”) [attached to Plaintiffs’ Memorandum of Law in Support of Motion for Preliminary Injunction as Exhibit A] (Doc. #23-2)] at 4-7; the National Shooting Sports Foundation 2010 Modern Sporting Rifle Comprehensive Consumer Report) (“NSSF 2010 MSR Report”) [attached to Plaintiffs’ Memorandum of Law in Support of Motion for Preliminary Injunction as Exhibit B] (Doc. ## 23-3, 23-4, and 23-5)] at 27; Declaration of Guy

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Rossi (“Rossi Decl.”) [attached to Plaintiffs’ Memorandum of Law in Support of Motion for Preliminary Injunction as Exhibit C (Doc. #23-6)] at 2.

State Defendants’ Response

92. Disputed and immaterial. The cited materials do not support the assertions stated by Plaintiffs. *See Holtz*, 258 F.3d at 73. Moreover, the Plaintiffs’ assertions as to whether “[m]agazines with a capacity of more than ten cartridges, and rifles and shotguns with telescoping stocks, pistol grips, and thumbhole stocks, are commonly possessed for lawful purposes in the millions by law-abiding citizens throughout the United States” is an opinion and conclusion, not a statement of fact. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. It is also not supported by the law or the record. (*See* State Defs.’ Mem. at 25-39 and authorities cited). Nor are Plaintiffs’ assertions here material under the governing law. (*See* State Defs.’ Reply Mem. at 4-10).

93. Magazines that hold more than ten rounds are commonplace to the point of being a standard for pistols and rifles: nationwide, most pistols are manufactured with magazines holding 10 to 17 rounds. Overstreet Decl. at 4-7; Rossi Decl. at 2. Many commonly possessed popular rifles are manufactured with magazines holding 15, 20, or 30 rounds. *Id.*

State Defendants’ Response

93. Disputed and immaterial. The cited materials do not support the assertions stated by Plaintiffs. *See Holtz*, 258 F.3d at 73. Nor are Plaintiffs’ assertions here material under the governing law. (*See* State Defs.’ Reply Mem. at 4-10). Moreover, the Plaintiffs’ assertions with respect whether such magazines are “commonplace” nationwide is an opinion and conclusion, not a statement of fact. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See,*

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e.g., id.; Rhodes, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. It is also not supported by the law or the record. (*See State Defs.’ Mem.* at 25-39 and authorities cited).

94. A review of the current edition of GUN DIGEST, a standard reference work that includes specifications of currently available firearms, reveals that about two-thirds of the distinct models of semiautomatic centerfire rifles listed are normally sold with standard magazines that hold more than ten rounds of ammunition. GUN DIGEST 2013 455-64,497-99 (Jerry Lee ed., 67th ed. 2012). And many rifles sold with magazines of smaller capacity nonetheless accept standard magazines of twenty, thirty, or more rounds without modification. *Id.* Similarly, about one-third of distinct models of semiautomatic handguns listed—even allowing for versions sold in different calibers, which often have different ammunition capacities—are normally sold with magazines that hold more than ten rounds. *Id.* at 407-39. In both cases, but especially for handguns, these figures underestimate the ubiquity of magazines capable of holding more than ten rounds of ammunition, because they include many minor variations of lower-capacity firearms offered by low-volume manufacturers, such as those devoted to producing custom versions of the century-old Colt .45 ACP Government Model 1911.

State Defendants’ Response

94. Disputed and immaterial. The cited work should not be considered because it has not been included as an exhibit. *See* W.D.N.Y. Local Civ. R. 56(a)(4). Moreover, to the extent Plaintiffs are attempting to rely on the cited reference for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Nor are Plaintiffs’ assertions here material under the

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governing law. (*See* State Defs.’ Reply Mem. at 4-10). These assertions also constitute an opinion and conclusion, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. They are also not supported by the law or the record. (*See* State Defs.’ Mem. at 25-39 and authorities cited).

95. LCMs have been a familiar feature of firearms for more than 150 years. Indeed, many firearms with “large” magazines date from the era of ratification of the 14th Amendment: the Jennings rifle of 1849 had a twenty-round magazine, the Volcanic rifle of the 1850s had a thirty-round magazine, both the 1866 Winchester carbine and the 1860 Henry rifle had fifteen-round magazines, the 1892 Winchester could hold seventeen rounds, the Schmidt-Rubin Model 1889 used a detachable twelve-round magazine, the 1898 Mauser Gewehr could accept a detachable box magazine of twenty rounds, and the 1903 Springfield rifle could accept a detachable box magazine of twenty-five rounds. *See* GUN: A VISUAL HISTORY 170-71,174-75,180-81,196-97 (Chris Stone ed., 2012); Military Small Arms 146-47,149 (Graham Smith ed., 1994); WILL FOWLER AND PATRICK SWEENEY, WORLD ENCYCLOPEDIA OF RIFLES AND MACHINE GUNS 135 (2012); K.D. KIRKLAND, AMERICA’S PREMIER GUNMAKERS: BROWNING 39 (2013).

State Defendants’ Response

95. Disputed and immaterial. The cited works should not be considered because they have not been included as exhibits. *See* W.D.N.Y. Local Civ. R. 56(a)(4). Moreover, to the extent Plaintiffs are attempting to rely on the cited references for the truth of the matter asserted, they are in inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Nor are Plaintiffs’ assertions here material under the

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governing law. (*See* State Defs.' Reply Mem. at 4-10). These assertions also constitute an opinion and conclusion, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. They are also not supported by the law or the record. (*See* State Defs.' Mem. at 25-39 and authorities cited).

96. Annual ATF manufacturing and export statistics indicate that semiautomatic pistols rose as a percentage of total handguns made in the United States and not exported, from 50% of 1.3 million handguns in 1986, to 82% of three million handguns in 2011. Overstreet Decl. at 4-6. Standard magazines for very commonly owned semiautomatic pistols hold up to 17 rounds of ammunition. *Id.* In 2011, about 61.5% of the 2.6 million pistols made in the U.S. were in calibers typically using magazines that hold over ten rounds. *Id.*

State Defendants' Response

96. Disputed and immaterial. The cited materials do not support the assertions stated by Plaintiffs. *See Holtz*, 258 F.3d at 73. Nor are Plaintiffs' assertions here material under the governing law. (*See* State Defs.' Reply Mem. at 4-10). Moreover, the Plaintiffs' assertions as to what firearms and magazines are "commonly owned" constitute an opinion and conclusion, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Plaintiffs' assertions are also not supported by the law or the record. (*See* State Defs.' Mem. at 25-39 and authorities cited).

97. In recent decades, the trend in semiautomatic pistols has been away from those designed to hold 10 rounds or fewer, to those designed to hold more than ten rounds. Overstreet Decl. at 4-6. This tracks with trends among law enforcement and military personnel. *Id.*

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State Defendants' Response

97. Disputed and immaterial. The cited materials do not support the assertions stated by Plaintiffs. *See Holtz*, 258 F.3d at 73. Nor are Plaintiffs' assertions here material under the governing law. (*See State Defs.' Reply Mem.* at 4-10). Moreover, the Plaintiffs' assertions as to what the "trend" is in magazine size constitute an opinion and conclusion, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Plaintiffs' assertions are also not supported by the law or the record. (*See State Defs.' Mem.* at 25-39 and authorities cited).

98. Today, police departments typically issue pistols the standard magazines for which hold more than ten rounds. *Overstreet Decl.* at 4-6. One such pistol is the Glock 17, the standard magazines for which hold 17 rounds. *Id.* The standard magazine for our military's Beretta M9 9mm service pistol holds 15 rounds. *Id.* The M9 replaced the M1911 .45 caliber pistol, the standard magazine for which holds seven rounds. *Id.*

State Defendants' Response

98. Disputed and immaterial. The cited materials do not support the assertions stated by Plaintiffs. *See Holtz*, 258 F.3d at 73. Nor are Plaintiffs' assertions here material under the governing law. (*See State Defs.' Reply Mem.* at 4-10). Moreover, the Plaintiffs' assertions as to what firearms and magazines police departments and the U.S. military "typically issue" constitute an opinion and conclusion, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Plaintiffs'

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assertions are also not supported by the law or the record. (*See* State Defs.' Mem. at 25-39 and authorities cited).

99. Magazines holding more than ten rounds are ubiquitous in the law enforcement community: currently, the nation's nearly one million law enforcement agents at the federal, state and local levels are virtually all armed with semiautomatic handguns with magazines holding more than ten, and as many as twenty, rounds of ammunition. *See* MASSAD AYOOB, *THE COMPLETE BOOK OF HANDGUNS* 50 (2013) (discussing police transition from revolvers to semiautomatics with large magazines); *id.* ("For a time in the 1980s, this Sig Sauer P226 was probably the most popular police service pistol") (fifteen-round magazines); *id.* at 87 ("Known as the Glock 22, this pistol is believed to be in use by more American police departments than any other. Its standard magazine capacity is 15 rounds."); *id.* at 89 ("On the NYPD, where officers have a choice of three different 16-shot 9mm pistols for uniform carry, an estimated 20,000 of the city's estimated 35,000 sworn personnel carry the Glock 19."); *id.* at 90 ("The most popular police handgun in America, the Glock is also hugely popular for action pistol competition and home and personal defense.").

State Defendants' Response

99. Disputed and immaterial. The cited work should not be considered because it has not been included as an exhibit. *See* W.D.N.Y. Local Civ. R. 56(a)(4). Moreover, to the extent Plaintiffs are attempting to rely on the cited reference for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Nor are Plaintiffs' assertions here material under the governing law. (*See* State Defs.' Reply Mem. at 4-10). These assertions also constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule

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56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. They are also not supported by the law or the record. (*See State Defs.’ Mem.* at 25-39 and authorities cited).

100. Beginning with the M1 Carbine, introduced in the 1940s, rifles equipped with detachable magazines holding more than ten rounds have been increasingly common: there are about two million privately owned M1 Carbines currently in existence, the standard magazines for which hold 15 or 30 rounds. *Overstreet Decl.* at 6-7.

State Defendants’ Response

100. Disputed and immaterial. The cited materials do not support the assertions stated by Plaintiffs. *See Holtz*, 258 F.3d at 73. Nor are Plaintiffs’ assertions here material under the governing law. (*See State Defs.’ Reply Mem.* at 4-10). Moreover, the Plaintiffs’ unsupported assertions as to what firearms and magazines “have been increasingly common” constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Plaintiffs’ assertions are also not supported by the law or the record. (*See State Defs.’ Mem.* at 25-39 and authorities cited).

101. There are approximately 4 million AR-15 type rifles currently in existence, and these are typically sold with between one and three 30-round magazines. *Overstreet Decl.* at 6-7. Ruger Mini-14 series rifles, which may outnumber M1 Carbines and AR-15s combined, have the capacity to accept magazines that hold more than ten rounds, and many are equipped with such magazines. *Id.* Numerous other rifle designs use magazines holding more than 10 rounds. *Id.* An unknown number in the millions of such rifles exist in private ownership. *Id.*

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State Defendants' Response

101. Disputed and immaterial. State Defendants have no way of knowing at any time, how many “privately owned M1 Carbines are currently in existence.” The State Defendants have no way of knowing at any time, the number and types of various firearms that “exist in private ownership.” Nor do the cited materials support the assertions stated by Plaintiffs. *See Holtz*, 258 F.3d at 73. Plaintiffs’ assertions are also not supported by the law or the record. (*See State Defs.’ Mem.* at 25-39 and authorities cited). State Defendants note that the Penal Law permits the transfer and possession of assault weapons if they are more than fifty years old. (*See Bruen Decl.*, ¶3, fn. 1). Furthermore, Plaintiffs’ assertions are not material to the resolution of this controversy. (*See State Defs.’ Reply Mem.* at 4-10).

102. The actual number of magazines made or imported each year is not known, since the ATF does not require manufacturers to report magazine production. *Overstreet Decl.* at 6. However, estimates are set forth in the Koper 2004 report [Defendants’ “Exhibit 32” (Doc. #78-7)]. *Overstreet Decl.* at 6. Koper reported that, as of 1994, 18% of civilian-owned firearms, including 21% of civilian-owned handguns, were equipped with magazines holding over ten rounds, and that 25 million guns were equipped with such magazines. *Id.* Some 4.7 million such magazines were imported during 1995-2000. *Id.*

State Defendants' Response

102. Disputed and immaterial. The report cited speaks for itself and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the report cited, as well as a more recent 2013 report that Plaintiffs do not reference anywhere in their submission, has submitted two expert declarations in this case in support of the State Defendants’ cross-motion to dismiss and/or for summary judgment and in opposition to the

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Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his] findings or the conclusions that [he] actually reached." (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper's 1997 report as "Koper 2007." To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). In addition, the State Defendants have no way of knowing at any time, the number and types of various magazines "made or imported each year." Nor are Plaintiffs' assertions here material under the governing law. (*See* State Defs.' Reply Mem. at 4-10).

103. Koper further reported that, as of 1994, 40% of the semiautomatic handgun models and a majority of the semiautomatic rifle models manufactured and advertised before the

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Ban were sold with, or had a variation that was sold with, a magazine holding over ten rounds.

Overstreet Decl. at 7.

State Defendants' Response

103. Disputed and immaterial. The report cited speaks for itself and must be read as a whole. Moreover, the State Defendants note that Christopher Koper, the criminologist who authored the report cited, as well as a more recent 2013 report that Plaintiffs do not reference anywhere in their submission, has submitted two expert declarations in this case in support of the State Defendants' cross-motion to dismiss and/or for summary judgment and in opposition to the Plaintiffs' cross-motion for summary judgment. (*See* Declaration of Christopher S. Koper, dated June 21, 2013 (ECF No. 67); and Supplemental Declaration of Christopher S. Koper, dated September 23, 2013, submitted herewith). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Dr. Koper also states that he has reviewed, among other documents, the Plaintiffs' Rule 56(a)(2) Counter-Statement, and notes that "Plaintiffs' . . . selective and incomplete use of [his] reports does not reflect the totality of [his]

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findings or the conclusions that [he] actually reached.” (*Id.* ¶ 8). Furthermore, the State Defendants note that throughout their Rule 56(a)(2) Response Plaintiffs incorrectly cite to Dr. Koper’s 1997 report as “Koper 2007.” To be clear, there is no 2007 report, and these references all are (or appear to be) to the 1997 report. (*Id.* ¶ 3 n.1). In addition, the State Defendants have no way of knowing at any time, the number and types of various magazines “made or imported each year.” Nor are Plaintiffs’ assertions here material under the governing law. (*See* State Defs.’ Reply Mem. at 4-10).

Remanufacturing of Ammunition Magazines

104. New Yorkers who wish to retain magazines grandfathered by the SAFE Act must remanufacture them so that they cannot be “readily restored or converted” to hold more than ten rounds. Penal Law § 265.00(23).

State Defendants’ Response

104. Disputed and not material. No magazines have been grandfathered by the SAFE Act. Plaintiffs’ assertion here constitutes an opinion and argument, not a statement of fact. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. State Defendants refer the Court to the New York Penal Law, which speaks for itself. Magazines which have a capacity of greater than ten rounds or which can be readily restored or converted to ten rounds are prohibited pursuant to Penal Law § 265.00(23). In any event, whether admitted or disputed, this statement is not material to the resolution of this matter. (*See* State Defs.’ Reply Mem. at 4-10).

105. Remanufacturing or conversion of magazines so that they cannot be readily restored or converted to hold more than ten rounds of ammunition would require engineering

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know-how, parts, and equipment that are beyond the capacity of most law-abiding gun owners. Rossi Decl. at 2. *See also* Declaration of Roger Horvath [attached to Plaintiffs' Motion for Preliminary Injunction as Exhibit D] (Doc. #23-7)] at 3; Declaration of Thomas Galvin [(attached to Plaintiffs' Motion for Preliminary Injunction as Exhibit E] (Doc. #23-8)] at 2.

State Defendants' Response

105. Disputed and immaterial. State Defendants do not know, and have no way of knowing what technical abilities Plaintiffs possess, nor do the conclusory, near identical affidavits submitted by Plaintiffs provide any support for Plaintiffs' assertions here. *See, e.g., Holtz*, 258 F.3d at 73. Regardless, the term "can be readily restored or converted to accept" means, with respect to any modification of a magazine, work that can be performed by a gun owner of average intelligence and abilities without engaging the services of a gunsmith. (Bruen Decl. ¶ 28 n.10). The term was used in the same way, in the definition of "large capacity ammunition feeding device," in both the 1994 federal assault weapons ban, as well as the New York assault weapons ban of 2000. (*Id.*) Plaintiffs themselves acknowledge such an understanding of the term. (Pls. Mem. at 4-5). Any dispute over the meaning of this term is not material to this action. (*See* State Defs.' Mem. at 60-65; State Defs.' Reply Mem. at 26-30).

106. No such products or services that would permit the plaintiffs to restore or convert grandfathered magazines by themselves are currently available on the market. Rossi Decl. at 2. Magazine model and design types number in the hundreds or the thousands. *Id.*

State Defendants' Response

106. State Defendants do not know, and have no way of knowing, what technical abilities Plaintiffs possess, nor do the conclusory, near identical affidavits submitted by Plaintiffs provide any support for Plaintiffs' assertions here. *See, e.g., Holtz*, 258 F.3d at 73. Regardless, the term

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“can be readily restored or converted to accept” means, with respect to any modification of a magazine, work that can be performed by a gun owner of average intelligence and abilities without engaging the services of a gunsmith. (Bruen Decl. ¶ 28 n.10). The term was used in the same way, in the definition of “large capacity ammunition feeding device,” in both the 1994 federal assault weapons ban, as well as the New York assault weapons ban of 2000. (*Id.*) Plaintiffs themselves acknowledge such an understanding of the term. (Pls. Mem. at 4-5). Any dispute over the meaning of this term is not material to this action. (*See* State Defs.’ Mem. at 60-65; State Defs.’ Reply Mem. at 26-30). In addition, State Defendants have no way of knowing whether any such products that would permit plaintiffs “to restore or convert grandfathered magazines by themselves” exists in the market, nor do the conclusory affidavits provide any support for Plaintiffs’ assertion in this regard. *See, e.g., Holtz*, 258 F.3d at 73. The speculated unavailability of such products is not material to this action. (*See* State Defs.’ Mem. at 60-65; State Defs.’ Reply Mem. at 26-30).

Tubular Ammunition Magazines

107. The “capacity” of tubular magazines for rifles and shotguns varies with the length of the cartridges or shells inserted therein. They may hold no more than ten of one length, but more than ten of another length.

State Defendants’ Response

107. Disputed and immaterial. Plaintiffs have not cited anything in support of this assertion, and thus it should be disregarded by the Court. *See Holtz*, 258 F.3d at 73. The ability of a tubular magazine to accept more shells of smaller size is also not material to this controversy. (*See* State Defs.’ Mem. at 60-63, 65-67; State Defs.’ Reply Mem. at 26-30).

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Common Features Banned by the SAFE Act

108. The SAFE Act redefines the term “assault weapon” so as to criminalize features that are commonly found on rifles, pistols and shotguns. Penal Law § 254.00(22). These features include telescoping stocks, pistol grips, and thumbhole stocks. *Id.* Telescoping stocks, pistol grips, and thumbhole stocks promote the safe and comfortable use of a firearm, and also promote firing accuracy. Rossi Decl. at 3-5.

State Defendants’ Response

108. Disputed and immaterial. Assault weapons have been restricted in New York since 1994, and have been restricted under State law since 2000. The SAFE Act strengthened these existing restrictions. Statement No. 108 contains Plaintiffs’ characterization of the Penal Law, which speaks for itself, and Plaintiffs’ contentions as to whether these features are “common[]”, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs’ assertions material under the governing law. (State Defs.’ Reply Mem. at 4-10). Plaintiffs’ assertions are also not supported by the law or the record. (*See* State Defs.’ Mem. at 25-39 and authorities cited). The evidence demonstrates that a folding or telescoping stock sacrifices accuracy for advantages such as concealability and mobility in close combat and, as the Second Circuit has noted, “is characteristic of military and not sporting weapons.” *Richmond Boro*, 97 F.3d at 684-85; (Bruen Decl. ¶ 18; Ex. 10 (2011 ATF Study) at 9; *see* State Defs.’ Mem. at 26-27 (citing evidence)). This evidence also demonstrates that protruding pistol grips and thumbhole stocks do aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen Decl. ¶ 19; Ex. 12 (1998

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ATF Study) at ex. 5; *Heller II*, 670 F.3d at 1262-63; see State Defs.’ Mem. at 26-27 (citing evidence)). The Second Circuit, in fact, has expressly held as much. *Richmond Boro*, 97 F.3d at 685. To the extent that Plaintiffs merely disagree with the State on this issue, such disagreement does not create an disputed issue of fact precluding judgment for the State since such disagreement is not material herein.

Telescoping Stocks

109. A stock is that part of a firearm a person holds against the shoulder when shooting. See diagram attached hereto as “**Exhibit N.**” It provides a means for the shooter to support the firearm and easily aim it. Rossi Decl. at 3-4.

State Defendants’ Response

109. Disputed in part and undisputed in part and immaterial. The first sentence is undisputed to the extent that a stock is that part of a firearm that a person may hold against the shoulder when shooting but State Defendants otherwise cannot comment on d how “easily” a shooter may aim with a given stock. Nor is such an assertion supported by the cited material. See *Holtz*, 258 F.3d at 73. Nor is it material. To the extent that Plaintiffs merely disagree with the State on this issue, such disagreement does not create an disputed issue of fact precluding judgment for the State since such disagreement is not material herein.

110. A “telescoping stock” allows the length of the stock to be shortened or lengthened consistent with the length of the person’s arms, so that the stock fits comfortably against the shoulder and the rear hand holds the grip and controls the trigger properly. Rossi Decl. at 3-4. It simply allows the gun to fit the person’s physique correctly, in the same manner as one selects the right size of shoe to wear. *Id.* For example, a telescoping stock allows a hunter to change the length of the stock depending on the clothing appropriate for the weather encountered. *Id.*

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Shooting outdoors in fall and winter require heavy clothing and a shooting vest, thus requiring shortening the stock so that the firearm can be fitted for proper access to the trigger. *Id.* The gun may be adjusted to fit the different sizes of several people in a family or home. *Id.* A gun that properly fits the shooter promotes greater shooting accuracy. *Id.*

State Defendants' Response

110. Disputed in part and undisputed in part and immaterial. That a telescoping stock allows the length of a stock to be shortened or lengthened is undisputed. The remaining statements, apparently comprising Plaintiffs' view of alternative uses for a telescoping or folding stock, are not supported by the cited material. *See Holtz*, 258 F.3d at 73. Moreover, the evidence demonstrates that a folding or telescoping stock sacrifices accuracy for advantages such as concealability and mobility in close combat and, as the Second Circuit has noted, "is characteristic of military and not sporting weapons." *Richmond Boro*, 97 F.3d at 684-85; (Bruen Decl. ¶ 18; Ex. 10 (2011 ATF Study) at 9; *see* State Defs.' Mem. at 26-27 (citing evidence)). And Plaintiffs' assertions here with respect to the uses of telescoping stocks constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs' assertions material under the governing law. (State Defs.' Reply Mem. at 4-10).

111. A telescoping stock does not make a firearm more powerful or more deadly. *Id.*

State Defendants' Response

111. Disputed and immaterial. The evidence demonstrates that a folding or telescoping stock sacrifices accuracy for advantages such as concealability and mobility in close combat and, as the Second Circuit has noted, "is characteristic of military and not sporting weapons." *Richmond*

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Boro, 97 F.3d at 684-85; (Bruen Decl. ¶ 18; Ex. 10 (2011 ATF Study) at 9; *see* State Defs.’ Mem. at 26-27 (citing evidence)). Moreover, Plaintiffs’ assertions here with respect to the uses of telescoping stocks constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs’ assertions material under the governing law. (State Defs.’ Reply Mem. at 4-10).

Pistol Grips

112. A pistol grip is a grip of a shotgun or rifle shaped like a pistol stock. Exhibit N. A pistol grip allows a rifle to be held at the shoulder with more comfort and stability. Rossi Decl. at 4-5. Many rifles have pistol grips rather than straight grips. *Id.*

State Defendants’ Response

112. Disputed in part and undisputed in part and immaterial. Undisputed that a pistol grip is a grip of a shotgun or rifle shaped like a pistol stock. However, Plaintiffs’ contentions about possible uses of a pistol grip are not supported by the cited material. *See Holtz*, 258 F.3d at 73. Moreover, the record evidence demonstrates that protruding pistol grips and thumbhole stocks aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen Decl. ¶ 19; Ex. 12 (1998 ATF Study) at ex. 5; *Heller II*, 670 F.3d at 1262-63; *see* State Defs.’ Mem. at 26-27 (citing evidence)). The Second Circuit, in fact, has expressly held as much. *Richmond Boro*, 97 F.3d at 685. Plaintiffs’ assertions here with respect to the uses of pistol grips constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info.*

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Sys., Inc., 2006 U.S. Dist. LEXIS 52870, at *9. Plaintiffs' assertions material under the governing law. (State Defs.' Reply Mem. at 4-10).

113. Pistol grips serve two basic functions. The first is assisting sight-aligned accurate fire. Rossi Decl. at 4. Positioning the rear of the stock into the pocket of the shoulder and maintaining it in that position is aided by the pistol grip, and is imperative for accurate sight alignment and thus accurate shooting with rifles of this design, due to the shoulder stock being in a straight line with the barrel. *Id.* With the forward hand holding the fore-end, the rearward hand holding the grip, and the butt securely against the shoulder, a rifle may be fired accurately. *Id.* The more consistent the shooter's eye is in relation to the line of the stock and barrel, the more accurate the shot placement. *Id.*

State Defendants' Response

113. Disputed and immaterial. The record evidence demonstrates that protruding pistol grips and thumbhole stocks aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen Decl. ¶ 19; Ex. 12 (1998 ATF Study) at ex. 5; *Heller II*, 670 F.3d at 1262-63; *see* State Defs.' Mem. at 26-27 (citing evidence)). The Second Circuit, in fact, has expressly held as much. *Richmond Boro*, 97 F.3d at 685. Plaintiffs' assertions here with respect to the uses of pistol grips constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs' assertions material under the governing law. (State Defs.' Reply Mem. at 4-10).

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114. The second function of the pistol grip is firearm retention, imperative, for example, during a home invasion when assailant(s) may attempt to disarm a citizen in close quarters. Rossi Decl. at 4.

State Defendants' Response

114. Disputed and immaterial. The record evidence demonstrates that protruding pistol grips and thumbhole stocks aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen Decl. ¶ 19; Ex. 12 (1998 ATF Study) at ex. 5; *Heller II*, 670 F.3d at 1262-63; see State Defs.' Mem. at 26-27 (citing evidence)). The Second Circuit, in fact, has expressly held as much. *Richmond Boro*, 97 F.3d at 685. Plaintiffs' assertions here with respect to the uses of pistol grips constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. See, e.g., *id.*; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; see also, e.g., *U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs' assertions material under the governing law. (State Defs.' Reply Mem. at 4-10).

115. A pistol grip does *not* function to allow a rifle to be fired from the hip. Rossi Decl. at 5. (emphasis added). Sight alignment between the eye and firearm is not conducive to spray or hip fire. Rossi Decl. at 4. Conversely, a rifle with a straight grip and no pistol grip would be more conducive to firing from the hip. Rossi Decl. at 5. Firing from the hip would be highly inaccurate and is simply not a factor in crime. *Id.*

State Defendants' Response

115. Disputed and immaterial. The record evidence demonstrates that protruding pistol grips and thumbhole stocks aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen

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Decl. ¶ 19; Ex. 12 (1998 ATF Study) at ex. 5; *Heller II*, 670 F.3d at 1262-63; *see* State Defs.’ Mem. at 26-27 (citing evidence)). The Second Circuit, in fact, has expressly held as much. *Richmond Boro*, 97 F.3d at 685. Plaintiffs’ assertions here with respect to the uses of pistol grips constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. To the extent that the parties disagree as to need to this issue, this disagreement is not a dispute regarding a material fact which would preclude judgment for the State under the governing law. (State Defs.’ Reply Mem. at 4-10).

116. A pistol grip (“conspicuous” or otherwise) does not make a firearm more powerful or deadly. Rossi Decl. at 4.

State Defendants’ Response

116. Disputed and immaterial. The record evidence demonstrates that protruding pistol grips and thumbhole stocks aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen Decl. ¶ 19; Ex. 12 (1998 ATF Study) at ex. 5; *Heller II*, 670 F.3d at 1262-63; *see* State Defs.’ Mem. at 26-27 (citing evidence)). The Second Circuit, in fact, has expressly held as much. *Richmond Boro*, 97 F.3d at 685. Plaintiffs’ assertions here with respect to the uses of pistol grips constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs’ assertions material under the governing law. (State Defs.’ Reply Mem. at 4-10).

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Thumbhole Stocks

117. A thumbhole stock is simply a hole carved into the stock of a rifle through which a user inserts his or her thumb. Rossi Decl. at 5. Thumbhole stocks allow the rifle to be held with more comfort and stability and, thus, fired more accurately. *Id.*

State Defendants' Response

117. Disputed and immaterial. The record evidence demonstrates that protruding pistol grips and thumbhole stocks aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen Decl. ¶ 19; Ex. 12 (1998 ATF Study) at ex. 5; *Heller II*, 670 F.3d at 1262-63; *see* State Defs.' Mem. at 26-27 (citing evidence)). The Second Circuit, in fact, has expressly held as much. *Richmond Boro*, 97 F.3d at 685. Plaintiffs' assertions here with respect to the uses of thumbhole stocks constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs' assertions material under the governing law. (State Defs.' Reply Mem. at 4-10).

118. A thumbhole stock does not make a rifle more powerful or more lethal. *Id.*

State Defendants' Response

118. Disputed and immaterial. The record evidence demonstrates that protruding pistol grips and thumbhole stocks aid a shooter in retaining control of a firearm while holding it at his or her hip, facilitating the rapid and continuous fire of ammunition without precise aiming. (Bruen Decl. ¶ 19; Ex. 12 (1998 ATF Study) at ex. 5; *Heller II*, 670 F.3d at 1262-63; *see* State Defs.' Mem. at 26-27 (citing evidence)). The Second Circuit, in fact, has expressly held as much. *Richmond Boro*, 97 F.3d at 685. Plaintiffs' assertions here with respect to the uses of thumbhole

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stocks constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs' assertions material under the governing law. (State Defs.' Reply Mem. at 4-10).

Firearms Affected By The SAFE Act's Restrictions

119. The SAFE Act's broadened definition of "assault weapon" impacts a wide range of firearms, all of which are regularly used for lawful and legitimate purposes like hunting, sporting competitions and self defense. Rossi Decl. at 2. The pistols, rifles and shotguns criminalized by these restrictions are immensely popular and have widespread use throughout the United States. *Id.*

State Defendants' Response

119. Disputed and immaterial. As specifically defined by the SAFE Act, assault weapons are military-style weapons that are designed to enable shooters to engage multiple targets very rapidly in a combat setting. However, aside from defined assault weapons, the SAFE Act leaves literally all other types of guns, including handguns, rifles and shotguns, available to the public to use for self-defense and other lawful purposes. It does not ban the sale, or require the registration of, semiautomatic rifles with detachable magazines that have no banned feature, or semiautomatic rifles with the prohibited military features that cannot accept a detachable magazine. (Bruen Decl. ¶¶ 9-11). In addition, New Yorkers who lawfully owned assault weapons prior to the SAFE Act's enactment may keep the weapons so long as they are registered by April 15, 2014. (*Id.* ¶ 25). Moreover, Plaintiffs' assertions here with respect to the impact of the SAFE Act and the uses of assault weapons constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See,*

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e.g., id.; Rhodes, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs' assertions material under the governing law. (State Defs.' Reply Mem. at 4-10).

120. One type of rifle that is directly impacted by the Act's restrictions is arguably the most popular: the AR-15 type of Modern Sporting Rifle ("MSR"). Overstreet Decl. at 2-4; NSSF 2010 MSR Report. Colt introduced the AR-15 SP-1 rifle in 1963. Overstreet Decl. at 2. Since that time, "AR-15" has become a generic term commonly used to describe the same or similar MSRs made by Colt and other manufacturers. *Id.*

State Defendants' Response

120. Disputed and immaterial. As specifically defined by the SAFE Act, assault weapons are military-style weapons that are designed to enable shooters to engage multiple targets very rapidly in a combat setting. However, aside from defined assault weapons, the SAFE Act leaves literally all other types of guns, including handguns, rifles and shotguns, available to the public to use for self-defense and other lawful purposes. It does not ban the sale, or require the registration of, semiautomatic rifles with detachable magazines that have no banned feature, or semiautomatic rifles with the prohibited military features that cannot accept a detachable magazine. (Bruen Decl. ¶¶ 9-11). In addition, New Yorkers who lawfully owned assault weapons prior to the SAFE Act's enactment may keep the weapons so long as they are registered by April 15, 2014. (*Id.* ¶ 25). Moreover, Plaintiffs' assertions here with respect to the impact of the SAFE Act and the uses of assault weapons constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006

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U.S. Dist. LEXIS 52870, at *9. Nor are Plaintiffs' assertions material under the governing law. (State Defs.' Reply Mem. at 4-10).

121. AR-15 model MSRs (and all other rifles called "assault weapons" under the Act) are semiautomatic, meaning that they are designed to fire only once when the trigger is pulled. Overstreet Decl. at 2. As a general matter, semiautomatic firearms are extremely common in the U.S. (Overstreet Decl. at 2-4), having flooded the handgun market for at least twenty (20) years. *See Koper 2004* at 81 (80% of handguns produced in 1993 were semiautomatic). *See also* David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. CONTEMP. L. 381, 413 (1994) ("semiautomatics are more than a century old"). "Sixty percent of gun owners [own] some type of semiautomatic firearm." Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue*, 60 HASTINGS L.J. 1285, 1293-95 (2009).

State Defendants' Response

121. Disputed and immaterial. The cited material must be read as a whole and it speaks for itself. The last two works cited, however, should not be considered because they have not been included as exhibits. *See* W.D.N.Y. Local Civ. R. 56(a)(4). Moreover, to the extent Plaintiffs are attempting to rely on the cited references for the truth of the matter asserted, they are inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). Moreover, Plaintiffs' assertions here with respect to the impact of the SAFE Act and the uses of assault weapons constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In any event, whether admitted or disputed, this statement is not material to the resolution of this matter. (*See* State Defs.' Reply Mem. at 4-10).

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122. AR-15 MSRs are not fully automatic machine guns, which continue to fire so long as the trigger is pressed. Overstreet Decl. at 2. AR-15 model MSRs have the capacity to accept a detachable magazine. *Id.* Standard magazines for AR-15 MSRs hold 20 or 30 rounds of ammunition, but magazines of other capacities are also available. *Id.* AR-15 MSRs also have a pistol grip typically 3 ¾ to 4 inches in length that protrudes at a rearward angle beneath the action of the rifle. *Id.*

State Defendants' Response

122. Disputed and immaterial. Plaintiffs' assertions constitute speculation, as State Defendants have no way of knowing whether any, or all, particular AR-15 models would fall into the description as set forth by Plaintiffs. Nor are Plaintiffs' assertions supported by the cited material. *See Holtz*, 258 F.3d at 73. Whether any, or all, particular AR-15s fall into the description as set forth by plaintiff above is also not material to the resolution of this action. (State Defs.' Reply Mem. at 4-10).

123. The AR15 is the semi-automatic civilian sporting version of the select-fire M16 rifle and M4 carbine used by the United States military and many law enforcement agencies. *See* Declaration of Gary Roberts ("Roberts Decl.") [attached hereto as "**Exhibit 0**"].

State Defendants' Response

123. Undisputed in part and disputed in part and immaterial. The State Defendants do not dispute that the AR-15 is a version of the M-16. As the D.C. Circuit noted in *Heller II*, it is "difficult to draw meaningful distinctions between the AR-15 and the M-16" -- the automatic military firearms that "*Heller* suggests . . . may be banned [as] dangerous and unusual." *Heller II*, 670 F.3d at 1263; *see Staples v. United States*, 511 U.S. 600, 603 (1994) ("Many M-16 parts are interchangeable with those in the AR-15 into an automatic weapon."). Plaintiffs' assertions

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as to whether “many law enforcement agencies” use the AR-15 is not material to the resolution of this action. (State Defs.’ Reply Mem. at 4-10).

124. The AR15 is extremely common in America. Roberts Decl. at 14-16. As a result of being used by the military for nearly 50 years, perhaps more Americans have been trained to safely operate the AR15 than any other firearm, as there are approximately 25 million American veterans who have been taught how to properly use an AR15 type rifle through their military training, not to mention in excess of 1 million American law enforcement officers who have qualified on the AR15 over the last several decades, as well as numerous civilian target shooters and hunters who routinely use AR15s. *Id.* Since so few military service members, particularly those not on active duty, get enough training and practice with their M16 or M4 service rifle, many military Reservists and National Guard personnel, as well as some active duty service members, have purchased civilian AR15s in order to train and practice on their own time with a rifle offering similar ergonomics and operating controls as the service weapon they are issued in the military. *Id.*

State Defendants’ Response

124. Disputed and immaterial. Plaintiffs’ assertions here with respect to the uses of assault weapons constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Further, Plaintiffs’ assertions here are speculative, as State Defendants have no way of knowing how many Americans possess, were taught to “properly use” and “safely operate” the AR-15 type rifle, and the reasons for training and practicing with it. Nor are Plaintiffs’ assertions supported by the cited material. *See Holtz*, 258 F.3d at 73. Moreover, whether admitted or

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disputed, this statement is not material to the resolution of this matter. (State Defs.' Reply Mem. at 4-10).

125. U.S. Government data sources (such as ATF manufacturing and export statistics) and nationwide market and consumer surveys (such as the National Shooting Sports Foundation ("NSSF") *Modern Sporting Rifle Comprehensive Consumer Report*) indicate that the AR-15 MSR is one of the most widely and commonly possessed rifle in the United States. Overstreet Decl. at 2-4.

State Defendants' Response

125. Disputed and immaterial. State Defendants do not dispute that the referenced material provides certain survey and market data; the cited material must be read as a whole and it speaks for itself. However, the Plaintiffs' assertions as to what firearms are "widely and commonly possessed" constitute an opinion and conclusion, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Plaintiffs' assertions are also not supported by the law or the record. (*See* State Defs.' Mem. at 25-39 and authorities cited). the cited materials do not support the vague, conclusory assertions stated by Plaintiffs. *See Holtz*, 258 F.3d at 73. Finally, whether admitted or disputed, this statement is not material to the resolution of this matter. (*See* State Defs.' Reply Mem. at 4-10).

126. Between 1986-2011, over 3.3 million AR-15s were made and not exported by AR-15 manufacturers whose production can be identified from government data sources. Overstreet Decl. at 2-4.

State Defendants' Response

126. Disputed and immaterial. State Defendants do not dispute that the referenced material

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provides certain survey and market data; the cited material must be read as a whole and it speaks for itself. Plaintiffs' assertions here, however, are not material to the resolution of this matter. (*See State Defs.' Reply Mem.* at 4-10).

127. In 2011, there were 6,244,998 firearms (excluding fully-automatic firearms, i.e., machine guns) made in the U.S. and not exported. *Id.* Of these, 2,238,832 were rifles, including 408,139 AR-15s by manufacturers whose production figures could be discerned from the ATF reports. *Id.* Thus, AR-15s accounted for at least 7% of firearms, and 18% of rifles, made in the U.S. for the domestic market that year. *Id.*

State Defendants' Response

127. Disputed and immaterial. State Defendants do not dispute that the referenced material provides certain survey and market data; the cited material must be read as a whole and it speaks for itself. Plaintiffs' assertions here, however, are not material to the resolution of this matter. (*See State Defs.' Reply Mem.* at 4-10).

128. From 1986 through 2011, U.S.-made firearms accounted for 69% of all new firearms available on the commercial market in the United States. *Id.* Even with the inclusion of imported firearms into the above calculations, AR-15s would account for a significant percentage of new firearms available in the United States. *Id.*

State Defendants' Response

128. Disputed and immaterial. State Defendants do not dispute that the referenced material provides certain survey and market data; the cited material must be read as a whole and it speaks for itself. However, whether admitted or disputed, this statement is not material to the resolution of this matter. (*See State Defs.' Reply Mem.* at 4-10).

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129. The FBI reports that background checks processed through the National Instant Criminal Background Check System (NICS), most of which are conducted for retail purchases of firearms by consumers, increased 14.2 % in 2011 as compared to 2010; 19.1 % in 2012 as compared to 2011; and 44.5 % during the first three months of 2013 as compared to the same period in 2012. Overstreet Decl. at 2-4.

State Defendants' Response

129. Disputed and immaterial. State Defendants do not dispute that the referenced material provides references to FBI background check data; it does not however provide the data itself. In any event, the cited material must be read as a whole and it speaks for itself and whether admitted or disputed, this statement is not material to the resolution of this matter. (*See* State Defs.' Reply Mem. at 4-10).

130. If the 2011-2013 trend for AR-15 rifle production was identical to that for NICS checks, it would mean that nearly 660,000 AR-15s were made in the U.S. and not exported during 2012 and the first three months of 2013. *Id.* That figure, added to the over 3.3 million noted earlier, implies a conservative estimate of 3.97 million AR-15s for the period 1986-March 2013, excluding production by Remington and Sturm, Ruger. Overstreet Decl. at 2-4.

State Defendants' Response

130. Disputed and immaterial. Plaintiffs' assertions here are speculative, as the number of AR-15's manufactured in the United States for the period 1986-March 2013 is unknown. Moreover, the Plaintiffs' assertions in this regard constitute an opinion and conclusion, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.*; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In any event, whether admitted or disputed, this statement is not material to

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the resolution of this matter. (*See* State Defs.' Reply Mem. at 4-10).

131. The NSSF 2010 MSR Report (Doc. ## 23-3, 23-4, 23-5) illustrates the lawful and legitimate reasons supporting the MSR's popularity and common use as of 2010. According to this report, 60% of MSR owners that responded to the study owned multiple MSRs. NSSF 2010 MSR Report at 7-8. Recreational target shooting and home defense were the top two reasons for owning an MSR. *Id.* Beyond this, MSR owners consider accuracy and reliability to be the two most important things to consider when buying a MSR. *Id.* Those who shoot often are much more likely to own multiple MSRs. *Id.* 3 out of 4 people who shoot twice a month or more own multiple MSRs. *Id.* 60% of MSR owners use a collapsible/folding stock. *Id.* One-third of all MSR owners use a 30-round magazine in their MSR. *Id.*

State Defendants' Response

131. Disputed and immaterial. The report referenced speaks for itself. Plaintiffs' assertions as to what the report "illustrates" constitutes opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Moreover, to the extent Plaintiffs are attempting to rely on this report for the truth of the matter asserted, it is inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). In any event, whether admitted or disputed, this statement is not material to the resolution of this matter. (*See* State Defs.' Reply Mem. at 4-10).

Sporting Purposes of the Firearms Affected by the SAFE Act

131.1 The firearms characterized as "assault weapons" under the federal assault weapons law, as well as those characterized as "assault weapons" under the SAFE Act, have

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been widely and legally used for sporting purposes (as well as for self-defense and hunting) throughout New York and the United States for decades. *See* King Aff. at ¶¶ 16-18; Somavilla Aff. at ¶¶ 16-18.

State Defendants' Response

131.1. Disputed and immaterial. Plaintiffs' conclusory assertions are not supported by the cited material. *See Holtz*, 258 F.3d at 73. Moreover, Plaintiffs' assertions here with respect to the uses of assault weapons for self-defense constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.*; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. This statement is not material to the resolution of this matter. (*See* State Defs.' Reply Mem. at 4-10).

131.2 There are numerous shooting competitions for non-military personnel that have taken place throughout the State of New York for years that regularly and legally used the firearms now classified as "assault weapons" to compete. King Aff. at ¶¶ 16-18; Somavilla Aff. at ¶¶ 16-18. For example, multi-gun matches that include those competitions known as "2 Gun Matches" and "3 Gun Matches" are regularly held at such places as the West Point U.S.M.A. (the Houghton Memorial Match), the Toga County Sportsmen's Association in Oswego, NY and the Genesee Conservation League in Rochester, NY. *Id.* These matches regularly use the rifles and pistols now classified as "assault weapons" in timed competitions that test accuracy and proficiency. *Id.* These matches were and are extremely popular, have been taking place throughout New York for years, and have been attended throughout the years by hundreds (and likely thousands) of individual and member plaintiffs. *Id.*

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State Defendants' Response

131.2 Disputed and immaterial. Plaintiffs' conclusory assertions are not supported by the cited material. *See Holtz*, 258 F.3d at 73. In addition, the State Defendants note that the ATF has declined thus far to find that the competitions Plaintiffs reference even constitute a recognized "sporting purpose" and, using a similar one-feature test as is the law in New York, does not permit assault weapons to be imported as sporting weapons. (State Defs.' Ex. 10 at 7-8; Ex. 19 at 2-3). And the State Defendants further note that there are no assertions in the cited affidavits that any of the Plaintiffs participate in the referenced competitions. In any event, whether admitted or disputed, this statement is not material to the resolution of this matter. (*See State Defs.' Reply Mem.* at 4-10).

131.3 In addition, competitions known as "high power matches" have been held throughout New York for decades. *Id.* These matches legally used the rifles, pistols and shotguns now classified as "assault weapons," were and are extremely popular, and have been attended throughout the years by hundreds (and likely thousands) of individual and member plaintiffs. *Id.*

State Defendants' Response

131.3 Disputed and immaterial. Plaintiffs' conclusory assertions are not supported by the cited material. *See Holtz*, 258 F.3d at 73. Moreover, Plaintiffs' assertions here with respect to the uses of assault weapons constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In addition, the State Defendants note that the ATF has the ATF has declined thus far to find that the competitions Plaintiffs reference even constitute a recognized "sporting purpose" and, using a similar one-feature test as is the law in New York, does not permit assault weapons

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to be imported as sporting weapons. (Ex. 10 at 7-8; Ex. 19 at 2-3). And the State Defendants further note that there are no non-speculative assertions in the cited affidavits that any of the Plaintiffs participate in the referenced competitions. In any event, whether admitted or disputed, this statement is not material to the resolution of this matter. (See State Defs.' Reply Mem. at 4-10).

Suitability of the AR-15 MSR For Home Defense

132. It is widely accepted that the AR15 chambered in a .223/5.56 mm caliber is the firearm best suited for home defense use. Roberts Decl. at 14-16. See also J. Guthrie, *Versatile Defender: An Argument for Advanced AR Carbines in the Home*, in BOOK OF THE AR-15 134 (Eric R. Poole, ed. 2013) (“If a system is good enough for the U.S. Army’s Delta and the U.S. Navy SEALs, surely it should be my weapon of choice, should I be a police officer or Mr. John Q. Public looking to defend my home”); Eric Poole, *Ready To Arm: It’s Time to Rethink Home Security*, in GUNS & AMMO, BOOK OF THE AR-15 15-22 (Eric R. Poole, ed. 20 13) (discussing virtues of the AR-15 platform as a home defense weapon); Mark Kayser, *AR-15 for Home & the Hunt*, In PERSONAL & HOME DEFENSE 28-29, 30-31 (2013) (advising use of AR-15 for self-defense in the home and recommending customizing with accessories).

State Defendants’ Response

132. Disputed and immaterial. The AR-15, and other semiautomatic assault rifles, are not the best option for home self-defense. (Bruen Decl. ¶ 13); see also *Heller v. District of Columbia*, 554 U.S. 570, 629 (2008) (noting the “many reasons” that “the American people have considered the handgun to be the quintessential self-defense weapon”). The Roberts Declaration, which contains his own opinion as to the best weapon for home self-defense and is internally inconsistent, provides no support for Plaintiffs’ assertions here that this proposition is widely

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accepted. (*See* State Defs.' Reply Mem. at 11). The other materials cited should not be considered because they have not been included as exhibits. *See* W.D.N.Y. Local Civ. R. 56(a)(4). Moreover, to the extent Plaintiffs are attempting to rely on these cited reference for the truth of the matter asserted, they are inadmissible hearsay. *See, e.g., NYC C.L.A.S.H., Inc.*, 315 F. Supp. 2d at 488 n.23, 492-94 n.32; W.D.N.Y. Local Civ. R. 56(a)(3). In addition, Plaintiffs' assertions here with respect to the uses of assault weapons constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In any event, this statement is not material to the resolution of this matter. (*See* State Defs.' Reply Mem. at 4-10).

133. The AR15 .223/5.56 mm caliber carbine configuration is extremely common. Roberts Decl. at 14-16. In fact, it is the carbine configuration most commonly used by law enforcement officers today. *Id.* This configuration (i.e., 5.56 mm 55 grain cartridges fired from 20" barrel M16A1 rifles) was the U.S. military standard ammunition in the 1960s and 1970s. *Id.* The roots of the .223/5.56 mm cartridge commonly used in the AR15 come from a caliber designed for small game varmint hunting and used to eliminate small furry rodents and animals up to coyote size. *Id.*

State Defendants' Response

133. Disputed and immaterial. The Roberts Declaration, which contains his own opinion and is internally inconsistent, provides no support for Plaintiffs' assertions here. (*See* State Defs.' Reply Mem. at 11). In addition, Plaintiffs' assertions here with respect to the uses of assault weapons constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist.

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LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

Nor are Plaintiffs' assertions material to the resolution of this controversy under the governing law. (State Defs.' Reply Mem. at 4-10).

134. During defensive shooting encounters, shots that inadvertently miss the intended target in close quarter battle and urban environments can place innocent citizens in danger. Roberts Decl. at 14-16. In general, .223/5.56 mm bullets demonstrate less penetration after passing through building structural materials than other common law enforcement and civilian calibers. *Id.* All of the .223/5.56 mm bullets recommended for law enforcement use offer reduced downrange penetration hazards, resulting in less potential risk of injuring innocent citizens and reduced risk of civil litigation in situations where bullets miss their intended target and enter or exit structures compared with common handgun bullets, traditional hunting rifle ammunition, and shotgun projectiles. *Id.*

134. Disputed and immaterial. The AR-15, and other semiautomatic assault rifles, are not the best option for home self-defense. In fact, they may be more of a liability than an asset in home defense. Given the size, speed and penetrating power of a center-fire round commonly fired by these weapons, any "miss" and even a direct hit on the intruder, is very likely to pass through any drywall, and/or the intruder, and potentially injure an unintended target. Larger caliber bullets, like the 7.62mm round commonly fired by an AK-47 style gun, can even pass through cinder block. A safer choice for home defense, for example, might be a shotgun loaded with buckshot. While a shotgun loaded with buckshot has less secondary penetrating power it has just as much, if not more, stopping power on the primary target, i.e. the home intruder. (Bruen Decl. ¶ 13). The Roberts Declaration, which sets out Roberts' own opinion of the best weapon for self-defense and is internally inconsistent, provides no support for Plaintiffs' assertions here. (*See*

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State Defs.' Reply Mem. at 11). In addition, Plaintiffs' assertions here with respect to the uses of assault weapons constitute an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In any event, Plaintiffs' statement is not material to the resolution of the controversy here. (State Defs.' Reply Mem. at 4-10).

The Impact Of The SAFE Act On Crime

135. The SAFE Act's restriction on the number of rounds loaded in a magazine is unlikely to have any detectable effect on the number of homicides or violent acts committed with firearms. *See* Declaration of Gary Kleck ("Kleck Decl.") [attached to the Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction as "Exhibit F") (Doc. #23-9)] at 2. Criminals will be even less likely to be affected by the LC magazine restriction than non-criminals. *Id.* It is the law-abiding citizens who will primarily be impacted by the restriction. *Id.*

State Defendants' Response

135. Disputed and immaterial. The SAFE Act -- and, in particular, its strengthened bans on assault weapons and LCMs and its new regulations of ammunition sales -- is a reasonable, limited and balanced approach to protect the compelling state interests in crime prevention and public safety. Among other things, the SAFE Act furthers the State of New York's vital interests in protecting its citizenry from the offensive capabilities of weapons designed to function as military firearms. And it takes away the ability of criminals and other dangerous persons to randomly fire large numbers of rounds into crowded areas and to outgun law enforcement. (*E.g.*, Koper Suppl. Decl. ¶¶ 5, 24-25; Bruen ¶¶ 41-42; Allen Decl. ¶¶5-15). Plaintiffs' disagreement

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with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert by the Court. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (A copy of the trial court decision in *Benjamin v. Bailey* is attached hereto as Ex. 71.). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

136. The Act's limitation of the number of rounds allowable for a firearm in the home impairs a homeowner's ability to successfully defend himself or herself during a criminal attack in the home because: (a) victims often face multiple criminal adversaries; and (b) people miss with most of the rounds they fire, even when trying to shoot their opponents. Kleck Decl. at 3. In 2008, the NCVS indicated that 17.4% of violent crimes involved two or more offenders, and that nearly 800,000 crimes occurred in which the victim faced multiple offenders. *Id.*

State Defendants' Response

136. Disputed and immaterial. Plaintiffs' assertions and speculative fears about home invasions and the need to load more than seven rounds in a single magazine is not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see*

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Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

137. Like civilians, police officers frequently miss their targets: numerous studies have been done of shootings by police officers in which the officers were trying to shoot criminal adversaries. Kleck Decl. at 3. In many of these shootings, the officers fired large numbers of rounds. *Id.* Yet, in 63% of the incidents, the officers failed to hit even a single offender with even a single round. Kleck Decl. at 3. Police officers have the experience, training, and temperament to handle stressful, dangerous situations far better than the average civilian, so it is reasonable to assume marksmanship among civilians using guns for self-protection will be still lower than that of police. *Id.*

State Defendants Response

137. Disputed and immaterial. Plaintiffs' assertions and speculative fears about home invasions and the need to load more than seven rounds in a single magazine is not supported by

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the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

138. Some law-abiding citizens, along with many criminals, might invest in multiple ten-round magazines in the absence of larger capacity magazines - a development which obviously defeats the purpose of the magazine capacity limit. Kleck Decl. at 3. Beyond that, however, some people will not be able to make effective use of additional magazines. *Id.*

State Defendants Response

138. Disputed and immaterial. Plaintiffs' assertions and speculation are not supported by any evidence. Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14; Declaration of Franklin E. Zimring, dated June 20, 2013 ("Zimring Decl."), at ¶¶

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18-21). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

139. The restrictions on LC magazines will have an inconsequential impact on reducing homicides and violent crimes. Kleck Decl. at 4. Criminals rarely fire more than ten rounds in gun crimes. *Id.* Indeed, they usually do not fire any at all - the gun is used only to threaten the victim, not attack him or her. *Id.* For the vast majority of gun crimes, the unavailability of LC magazines would therefore be inconsequential to deterring the criminal behavior. *Id.*

State Defendants' Response

139. Disputed and immaterial. By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons, and magazines, the SAFE Act can potentially prevent hundreds of gunshot victimizations annually. (Koper Suppl. Decl. ¶¶ 24-25). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an

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opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

140. A ban on LC magazines will have an inconsequential effect on reducing the number of killed or injured victims in mass shootings. Kleck Decl. at 4-5. The presumption is false that an offender lacking LC magazines would be forced to reload sooner or more often, thereby giving bystanders the opportunity to tackle him and stop his attacks. *Id.* Analysis of mass shootings in the United States shows it is exceedingly rare that victims and bystanders in mass shootings have tackled shooters while they are reloading. *Id.* This is particularly true because most mass shooters bring multiple guns to the crimes and, therefore, can continue firing without reloading even after anyone gun's ammunition is expended. *Id.* at 5. A study of every large-scale mass shooting committed in the United States in the 10-year period from 1984 through 1993 found that the killers in 13 of these 15 incidents possessed multiple guns. Kleck Decl. at 5.

State Defendants' Response

140. Disputed and immaterial. By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons, and magazines, the SAFE

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Act can potentially prevent hundreds of gunshot victimizations annually. (Koper Suppl. Decl. ¶¶ 24-25). A recent analysis conducted under the direction of Dr. Koper has also found both an increase in gunshot victimizations in mass shootings involving an assault weapon and an increase in the numbers of fatalities and casualties in mass shootings conducted with a large capacity magazine. (*Id.* ¶¶ 19-23). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

141. The Act's restrictions on rifles and shotguns that contain so-called "Assault Weapon" characteristics will not further the goals of reducing homicides or violent crimes or improving public safety. Kleck Decl. at 6.

State Defendants' Response

141. Disputed and immaterial. Disputed and immaterial. By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons, and magazines, the SAFE Act can potentially prevent hundreds of gunshot victimizations annually.

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(Koper Suppl. Decl. ¶¶ 24-25). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Plaintiffs’ disagreement with the duly elected Legislators’ policy judgments in enacting the SAFE Act is not material to this action. (States Defs.’ Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck’s testimony was “biased,” that it “focused on the public debate,” and that it “did not help the inquiry of the court with respect to the legal claims.” *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court’s decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

142. Criminals are just as likely to use non-banned firearms that function the same as firearms falling within the so-called “assault weapon” (“AW”) definition under the Act. Kleck

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Decl. at 6. Under the Act, though some semi-automatic firearms are banned, other semi-automatic firearms are left legally available, including (a) unbanned models; (b) currently banned models that are redesigned to remove the features that make them AWs; and (c) firearms that would otherwise be banned as AWs but are grandfathered into lawful status because they were manufactured before September 13, 1994, or were lawfully possessed before January 15, 2013. *Id.* Thus, firearms will continue to be available that function in essentially identical ways as the banned firearms - i.e., they can accept detachable magazines (including LC magazines), can be fired just as fast, and can fire rounds that are, shot-for-shot, just as lethal as rounds fired from the banned firearms. *Id.* Consequently, criminals can substitute mechanically identical firearms for banned AWs, commit the same crimes they otherwise would have committed with the banned firearms, with the same number of wounded or killed victims. *Id.*

State Defendants' Response

142. Disputed in part, undisputed in part and not material. Undisputed that Plaintiffs concede that they have adequate alternatives to assault weapons “that function in essentially identical ways to the banned firearms.” Disputed that the SAFE Act will have no impact on firearm violence and public safety. By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons, and magazines, the SAFE Act can potentially prevent hundreds of gunshot victimizations annually. (Koper Suppl. Decl. ¶¶ 24-25; *see also* Zimring Decl. ¶¶ 17-21). As Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in

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protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

143. The Act's expanded definition and ban of "assault weapons" will make little difference on public safety by reducing crimes committed with firearms. Kleck Decl. at 6-7. Criminals who do not currently possess or use banned AWs have no need to acquire substitute weapons because they will presumably continue to use the firearms they currently possess. Kleck Decl. at 7.

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State Defendants' Response

143. Disputed and immaterial. By reducing the availability of assault weapons and the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons, and magazines, the SAFE Act can potentially prevent hundreds of gunshot victimizations annually. (Koper Suppl. Decl. ¶¶ 24-25; Zimring ¶¶ 17-21; Allen ¶ 22). A recent analysis conducted under the direction of Dr. Koper has also found both an increase in gunshot victimizations in mass shootings involving an assault weapon and an increase in the numbers of fatalities and casualties in mass shootings conducted with a large capacity magazine. (*Id.* ¶¶ 19-23). And, as Dr. Koper concludes, “based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York’s recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State’s interest in protecting public safety -- and, in particular, are likely to advance New York’s interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State’s interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations.” (Koper Suppl. Decl. ¶ 4). Plaintiffs’ disagreement with the duly elected Legislators’ policy judgments in enacting the SAFE Act is not material to this action. (States Defs.’ Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced

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declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

144. All attributes of AWs that *do* make them more useful for criminal purposes (i.e., accuracy, the ability to fire many rounds without reloading) are present in easily-substituted, unbanned, counterpart firearms. Kleck Decl. at 7. More importantly, these same attributes increase the utility of AWs for *lawful* self-defense or various sporting uses. *Id.*

State Defendants' Response

144. Disputed in part, undisputed in part and immaterial. Undisputed that Plaintiffs concede that they have adequate alternatives to assault weapons, in that, according to Plaintiffs, "all attributes of AWs" that "increase the utility of AWs for lawful self-defense or various sporting uses" "are present in easily-substituted, unbanned, counterpart firearms." Disputed that the SAFE Act will have no impact on firearm violence and public safety. By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons, and magazines, the SAFE Act can potentially prevent hundreds of gunshot victimizations annually. (Koper Suppl. Decl. ¶¶ 24-25). As Dr. Koper concludes, "based upon [his] findings in those studies [*i.e.*, his 1997, 2004, and 2013 reports], as well as [his] nineteen years as a criminologist studying firearms generally, it is [his] considered opinion that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest

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in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in criminal confrontations." (Koper Suppl. Decl. ¶ 4). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

145. In self-defense situations where it is necessary for the crime victim to shoot the criminal in order to prevent harm to the defender or others, accuracy is crucial for the victim. Kleck Decl. at 7. Where it is necessary for a crime victim to shoot the aggressor, and only lethal or incapacitating injury will stop him, the lethality of the defender's firearm is a precondition to her ability to end the criminal attack, and prevent harm to herself and other potential victims. *Id.*

State Defendants' Response

145. Disputed and immaterial. This is not a factual statement. It is an opinion and argument. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012

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U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995). In any event, Plaintiffs' speculation about how particular criminal assaults might unfold is not material to this action.

146. Where a crime victim faces multiple adversaries, the ability and need to fire many rounds without reloading is obvious. Kleck Decl. at 7-8. The ability to fire rapidly may be essential to either deter offenders from attacking, or failing that, to shoot those aggressors who cannot be deterred. *Id.* at 8. This is because some of the defender's shots will miss, and because the offender(s) may not allow the victim much time to shoot before incapacitating the victim. *Id.* Regardless of how an AW is defined, restricting firearms with the attributes that make them useful for criminal purposes necessarily restricts firearms possessing attributes that make them more effective for lawful self-defense. *Id.*

State Defendants' Response

146. Disputed and immaterial. Large-capacity magazines are any semiautomatic weapon's most dangerous feature, as it is the LCM that allows a dangerous individual to fire high numbers of rounds without reloading but these LCMs have not been shown to be necessary for self-defense. (Koper Suppl. Decl. ¶ 24; Zimring ¶¶ 17-21; Allen ¶¶ 5-21). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to

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this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.*; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995).

147. The Act's ban on firearms defined as "assault weapons" will not deter criminals from using them to commit crimes or from finding substitute firearms with the same features, and will simultaneously deny law-abiding citizens access to those weapons to defend themselves. Kleck Decl. at 8.

State Defendants' Response

147. Disputed and immaterial. This is not a factual statement. It is an opinion and argument, and conjecture. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.*; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Further, the statement is not supported by the record which demonstrates that only a portion of criminals obtain their guns illegally and most mass shooters, in particular, obtain their weapons legally. (*see, e.g., Zimring* ¶¶ 17-21; *Allen* ¶ 22). The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found

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that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995). In any event, Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10).

148. While either criminals or prospective crime victims *could* substitute alternative weapons for banned "AWs," criminals are more likely to actually do so because they are more powerfully motivated to have deadly weapons. Kleck Decl. at 8. This would be especially true of the extremely rare mass shooters, who typically plan their crimes in advance and thus are in a position to take whatever time and effort is needed to acquire substitute weapons. *Id.* Further, even ordinary criminals are strongly motivated to acquire firearms both for purposes of committing crimes and for purposes of self-defense. *Id.* Because criminals are victimized at a rate higher than non-criminals, this means that they have even stronger self-defense motivations to acquire and retain guns than non-criminals. *Id.* In contrast, many prospective crime victims do not face an imminent threat at the time they consider acquiring a gun for self-protection, have a weaker motivation to do whatever it takes to acquire their preferred type of firearm, and are therefore less likely to do so. *Id.*

State Defendants' Response

148. Disputed in part, undisputed in part, and immaterial. Undisputed that Plaintiffs concede that they "could substitute alternative weapons for banned [assault weapons]." The remaining statements in the paragraph are disputed as opinion and argument, and conjecture and thus not

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appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Further, evidence suggests that availability of guns effects their use by criminals and, in particular, perpetrators of mass shootings obtain their guns legally. (*See, e.g., Zimring* ¶¶ 17-21; *Allen* ¶ 22). The State Defendants further note that, in a Connecticut state court case involving a challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995). In any event, Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10).

149. It is virtually a tautology that criminals will disobey the AW ban at a higher rate than non-criminals. Kleck Decl. at 8.

State Defendants' Response

149. Disputed and immaterial. This is not a factual statement. It is an opinion and argument that, apparently, there is no point in passing laws since criminals disobey them. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. Further, evidence suggests that availability of guns effects their use by criminals and, in particular, perpetrators of mass shootings obtain their guns legally. (*See, e.g., Zimring* ¶¶ 17-21; *Allen* ¶ 22). The State Defendants further note that, in a Connecticut state court case involving a

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challenge to an assault weapons statute, the referenced declarant, Gary Kleck, was rejected as an expert. The trial court found that Kleck's testimony was "biased," that it "focused on the public debate," and that it "did not help the inquiry of the court with respect to the legal claims."

Benjamin v. Bailey, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994). (Ex. 71). The trial court's decision was ultimately affirmed by the Connecticut Supreme Court. *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995). In any event, Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10).

The Impact Of The SAFE Act On Self-Defense

150. Limiting plaintiffs' ability to possess a magazine containing more than seven rounds of ammunition in one's home severely compromises their ability to defend themselves, their families, and their property. Rossi Decl. at 5-9.

State Defendants' Response

150. Disputed and immaterial. Plaintiffs' opinions, assertions and speculative fears about home invasions and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; see Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. See, e.g., *id.*; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; see also, e.g., *U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

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The Ability to Aim Under Stress

151. The SAFE Act's seven-round limitation assumes that all homeowners will never need to fire more than seven rounds to defend themselves, that they own multiple firearms, or that they will be able to switch out their firearms' magazines while under criminal attack. Rossi Decl. at 5. However, a homeowner under the extreme duress of an armed and advancing attacker is likely to fire at, but miss, his or her target. *Id.* Nervousness and anxiety, lighting conditions, the presence of physical obstacles that obscure a "clean" line of sight to the target, and the mechanics of retreat are all factors which contribute to this likelihood. Rossi Decl. at 5.

State Defendants' Response

151. Disputed and immaterial. Plaintiffs' assertions and speculative fears about home invasions and the need to load more than seven rounds in a single magazine is not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to the resolution of this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

152. Highly trained police officers are not immune to the stressors affecting the ability to aim well under pressure: the 2010 New York City Police Department's Annual Firearms Discharge Report ("NYPD AFDR") (available at http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/afdr_20111116.pdt)

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provides detailed information on all incidents in which NYPD officers discharged their weapons in 2010. Rossi Decl. at 8. In that year there were thirty-three (33) incidents of the police intentionally discharging firearms in encounters of adversarial conflict. Rossi Decl. at 8; NYPD AFDR at p.8, Figure A.10. 65% of these incidents took place at a distance of less than ten (10) feet. *Id.*, NYPD AFDR at p.9, Figure A.11. In 33% of these incidents, the NYPD officer(s) involved fired more than seven (7) rounds. *Id.*, NYPD AFDR at p.8, Figure A.10. In 21% of these incidents, the NYPD officer(s) fired more than ten (10) rounds. *Id.*

State Defendants' Response

152. Disputed and immaterial. There is no evidence and no basis to conclude that the situations faced by police officers exercising their duties and civilians in their homes are comparable. Thus this statement is not material to the resolution of this action. In any event, the data cited does not aid Plaintiffs. In 2010, New York City's population was more than 8,000,000 people and the New York Police Department employed more than 34,000 people. But there were only 33 incidents of intentional firearms discharge by police in an adversarial conflict. Plaintiffs point to the reports of total shots fired per incident, *by all officers involved*, but the most striking totals here are how few shots were fired: in 27% of all incidents, the total number of shots fired *by all officers involved* was one, and in 60% five or fewer shots were fired. Even more notably, on the very same pages as the per-incident data (pp. 7-8 of the 2010 report), "shots fired per officer" is listed. Here, the results are even starker; 77% of officers fired five or fewer times, a quarter of all officers discharging their weapon in such a situation fired only once, and the mode number of shots fired was one. *See*

http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/afdr_20111116.pdf.

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153. If highly trained and experienced NYC police officers required the use of at least eight rounds in 1/3rd of their close-range encounters to subdue an aggressive assailant, it stands to reason that a “green” civilian gun owner under duress (and certainly far less experienced and trained than a NYC police officer) would need at least that many rounds to subdue an armed assailant with his or her home. *Id.*

State Defendants’ Response

153. Disputed and immaterial. There is no evidence and no basis to conclude that the situations faced by police officers exercising their duties and civilians in their homes are comparable. Thus this statement is not material to the resolution of this action. Moreover, this is not a factual statement. It is opinion and argument. It is thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. In any event, the data relied on here does not aid Plaintiffs. In 2010, New York City’s population was more than 8,000,000 people and the New York Police Department employed more than 34,000 people. But there were only 33 incidents of intentional firearms discharge by police in an adversarial conflict. Plaintiffs point to the reports of total shots fired per incident, *by all officers involved*, but the most striking totals here are how few shots were fired: in 27% of all incidents, the total number of shots fired *by all officers involved* was one, and in 60% five or fewer shots were fired. Even more notably, on the very same pages as the per-incident data (pp. 7-8 of the 2010 report), “shots fired per officer” is listed. Here, the results are even starker; 77% of officers fired five or fewer times, a quarter of all officers discharging their weapon in such a situation fired only once, and the mode number of shots fired was one. *See*

http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/afdr_20111116.pdf.

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154. Under such expected conditions and with such likely results, it is of paramount importance that a homeowner have quick and ready access to ammunition in quantities sufficient to provide a meaningful opportunity to defend herself and/or her loved ones. *Id.* It is equally important that the homeowner under attack have the capability to quickly and efficiently re-load a firearm after all of the rounds it holds are fired. *Id.* However, many homeowners cannot re-load quickly or efficiently due to such factors as age, physical limitations, and the stress/anxiety produced by a potentially life-threatening situation. *Id.*

State Defendants' Response

154. Disputed and immaterial. Plaintiffs' assertions and speculation about potential criminal scenarios are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' disagreement with the duly elected Legislators' policy judgments in enacting the SAFE Act is not material to the resolution of this action. (States Defs.' Reply Mem. at 4-10). It is also an opinion and argument, not a statement of fact. It is not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

Delayed Reaction Time Under Stress

155. Violent criminal attacks frequently occur suddenly and without warning, leaving the victim with very little time to fire the handgun to save herself. Rossi Decl. at 5. Reaction time under stress is complicated and can be attributed to many physiological, psychological and environmental factors. *Id.* The most basic premise breaks down into three factors: the ability for an individual to perceive a threat (Perceptual Processing), the ability to make a decision

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(Cognitive Processing), and lastly the ability of the brain to send messages to the muscles to react (Motor Processing). Rossi Decl. at 5-6.

State Defendants' Response

155. Disputed and immaterial. Plaintiffs' assertions and speculative fears about home invasions and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41; Rice Decl. ¶14). Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario are not material to this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

156. This processing takes, minimally, several seconds without consideration to other factors such as distractions, noise, multiple assailants, lighting conditions, nervousness and fatigue. Rossi Decl. at 6.

State Defendants' Response

156. Disputed and immaterial. Plaintiffs' assertions and speculative fears about home invasions and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41; Rice Decl. ¶14). Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario are not

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material to this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

Loading and Re-Loading Difficulties for the Physically Disabled

157. Loading a firearm requires two hands, and is a far more difficult task when someone is physically handicapped, or one hand is wounded during an attack. Rossi Decl. at 6-7. Having more rounds in a magazine allows the victim to better protect himself or herself without the need to reload especially if handicapped, disabled or injured. *Id.* at 7.

State Defendants' Response

157. Disputed in part, undisputed in part, and immaterial. Plaintiffs' assertions and speculative fears about home invasions and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14*). While the state concedes that in some circumstances a physical handicap may make it more difficult for a person to load or re-load a firearm, Plaintiffs' speculative and conclusory assertions that having more than seven rounds loaded in a magazine would better enable a handicapped or wounded person to protect themselves are not material to the resolution of this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

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158. Plaintiff Thomas Galvin and Plaintiff Roger Horvath are but two examples.

State Defendants' Response

158. Disputed and immaterial. Plaintiffs do not set forth what Plaintiffs and Galvin are examples of here. In any event, to the extent that Plaintiffs are referring to the risk about home invasions and the need to load more than seven rounds in a single magazine, such assertions are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). These assertions are not material to the resolution of this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

159. Mr. Galvin is a left-hand amputee. *See* Declaration of Thomas Galvin (attached to Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction as Exhibit E)(Doc. #23-8) at 1. He owns several pistols and rifles with magazines having capacities over ten rounds that were manufactured before September 13, 1994. Galvin Decl. at 1-2.

State Defendants' Response

159. Disputed and immaterial. State Defendants have no information regarding Mr. Galvin's particular physical characteristics but assert that such characteristics are not material to Plaintiffs' facial challenge in this action. *See United States v. Decastro*, 682 F.3d 160, 168-69 & n.7 (2d Cir. 2012); (Defs.' Mem. at 45 and authorities cited). Moreover, with respect to any as-applied claim, far from making any particularized showing as to why he must be able to fire more than seven rounds from a gun without reloading or changing a magazine to effectively

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defend himself, Galvin's own affidavit states that he is an expert marksman and currently owns at least eight separate firearms. (*See Galvin Aff.* at 1-2). Mr. Galvin's conclusory affidavit also does not provide an adequate basis for these assertions. *See Holtz*, 258 F.3d at 73.

160. In order to change a magazine in one of his pistols or rifles, Mr. Galvin has to pinch the pistol or rifle under his left arm and against his body without dropping the firearm or magazine. Galvin Decl. at 2. The seven-round limitation will require Mr. Galvin to switch out the magazines of his pistols and rifles more frequently if confronted with a sudden home invasion, robbery, or other attack. *Id.* Therefore, Mr. Galvin's ability to defend himself, his family and property with these pistols and rifles is substantially compromised by the seven-round limitation. *Id.*

State Defendants' Response

160. Disputed and immaterial. State Defendants have no information regarding Mr. Galvin's particular physical characteristics but assert that such characteristics are not material to Plaintiffs' facial challenge in this action. *See United States v. Decastro*, 682 F.3d 160, 168-69 & n.7 (2d Cir. 2012); (Defs.' Mem. at 45 and authorities cited). Moreover, with respect to any as-applied claim, far from making any particularized showing as to why he must be able to fire more than seven rounds from a gun without reloading or changing a magazine to effectively defend himself, Galvin's own affidavit states that he is an expert marksman and currently owns at least eight separate firearms. (*See Galvin Aff.* at 1-2). In addition, Plaintiffs' assertions here are not factual statements. They are opinion and argument. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

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161. Plaintiff Roger Horvath is similarly impacted by the limitation. *See* Declaration of Roger Horvath [attached to Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction as Exhibit D] (Doc. #23-7)]. Mr. Horvath is a paraplegic and wheelchair bound. Horvath Decl. at 1. He suffers from advanced Carpal Tunnel Syndrome and, as such, has extreme difficulty manipulating objects such as ammunition magazines. *Id.*

State Defendants' Response

161. Disputed and immaterial. State Defendants have no information regarding Mr. Horvath's particular physical characteristics, but assert that such characteristics are not material to Plaintiffs' facial challenge in this action. *See United States v. Decastro*, 682 F.3d 160, 168-69 & n.7 (2d Cir. 2012); (Defs.' Mem. at 45 and authorities cited). Moreover, with respect to any as-applied claim, nothing in Horvath's affidavit shows that he is particularly vulnerable to an attack or that he is unable to defend himself from such attack through immediate access to more than seven rounds of live ammunition in the magazine of a single firearm. (Horvath Aff. at 1-3). Mr. Horvath's conclusory affidavit also does not provide an adequate basis for these assertions. *See Holtz*, 258 F.3d at 73.

162. Because of his physical limitations, Mr. Horvath has a limited ability to retreat effectively and safely if faced with a home invasion. Horvath Decl. at 2. Mr. Horvath owns several firearms, all with magazine capacities of over ten rounds that were manufactured before September 13, 1994. *Id.*

State Defendants' Response

162. Disputed and immaterial. State Defendants have no information regarding Mr. Horvath's particular physical characteristics but assert that they are not material to Plaintiffs' facial

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challenge in this action. *See United States v. Decastro*, 682 F.3d 160, 168-69 & n.7 (2d Cir. 2012); (Defs.' Mem. at 45 and authorities cited). Moreover, with respect to any as-applied claim, nothing in Horvath's affidavit shows that he is particularly vulnerable to an attack or that he is unable to defend himself from such attack through immediate access to more than seven rounds of live ammunition in the magazine of a single firearm. (Horvath Aff. at 1-3). In addition, Plaintiffs' assertions here are not factual statements. They are opinion and argument. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

163. Mr. Horvath is particularly vulnerable to a home invasion: he lives alone on approximately two acres of land with a large, wooded area behind his house. Horvath Decl. at 2. The nearest police precinct to his house is five miles away. *Id.* Mr. Horvath has an adopted nine-year-old son whom he cares for several days and nights during the week. *Id.*

State Defendants' Response

163. Disputed and immaterial. State Defendants have no information regarding Mr. Horvath's particular physical characteristics but assert that they are not material to Plaintiffs' facial challenge in this action. *See United States v. Decastro*, 682 F.3d 160, 168-69 & n.7 (2d Cir. 2012); (Defs.' Mem. at 45 and authorities cited). Moreover, with respect to any as-applied claim, nothing in Horvath's affidavit shows that he is particularly vulnerable to an attack or that he is unable to defend himself from such attack through immediate access to more than seven rounds of live ammunition in the magazine of a single firearm. (Horvath Aff. at 1-3). In addition, Plaintiffs' assertions here are not factual statements. They are opinion and argument. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S.

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Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

164. In light of Mr. Horvath's physical limitations, the seven-round limitation deprives him of adequately protecting himself, his son, and his property and increases his vulnerability during a home invasion. Horvath Decl. at 2.

State Defendants' Response

164. Disputed and immaterial. State Defendants have no information regarding Mr. Horvath's particular physical characteristics but assert that they are not material to Plaintiffs' facial challenge in this action. *See United States v. Decastro*, 682 F.3d 160, 168-69 & n.7 (2d Cir. 2012); (Defs.' Mem. at 45 and authorities cited). Moreover, with respect to any as-applied claim, nothing in Horvath's affidavit shows that he is particularly vulnerable to an attack or that he is unable to defend himself from such attack through immediate access to more than seven rounds of live ammunition in the magazine of a single firearm. (Horvath Aff. at 1-3). In addition, Plaintiffs' assertions here are not factual statements. They are opinion and argument. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

165. Mr. Horvath's physical limitations significantly compromise his ability to quickly or effectively reload a firearm. Horvath Decl. at 2. The extended time Mr. Horvath requires to switch out ammunition magazines represents a prolonged exposure to capture, injury and/or death at the hands of a home invader, robber, or other predator advancing upon him during the switch out. *Id.*

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State Defendants' Response

165. Disputed and immaterial. State Defendants have no information regarding Mr. Horvath's particular physical characteristics but assert that they are not material to Plaintiffs' facial challenge in this action. *See United States v. Decastro*, 682 F.3d 160, 168-69 & n.7 (2d Cir. 2012); (Defs.' Mem. at 45 and authorities cited). Moreover, with respect to any as-applied claim, nothing in Horvath's affidavit shows that he is particularly vulnerable to an attack that could only be repelled through immediate access to more than seven rounds of live ammunition in the magazine of a single firearm or that access to more than seven rounds in a single magazine would ensure that he avoided prolonged exposure to capture, injury or death. (Horvath Aff. at 1-3). In addition, Plaintiffs' assertions here are not factual statements. They are opinion and argument. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.*; *Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

166. Under such conditions, Mr. Horvath's safety -- and the well-being of those who depend upon him for defense - rest upon his ability to use a magazine that holds more than ten (10) rounds of ammunition. *Id.*

State Defendants' Response

166. Disputed and immaterial. State Defendants have no information regarding Mr. Horvath's particular physical characteristics but assert that they are not material to Plaintiffs' facial challenge in this action. *See United States v. Decastro*, 682 F.3d 160, 168-69 & n.7 (2d Cir. 2012); (Defs.' Mem. at 45 and authorities cited). Moreover, with respect to any as-applied claim, nothing in Horvath's affidavit shows that he is particularly vulnerable to an attack that could only be repelled through immediate access to more than seven rounds of live ammunition

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in the magazine of a single firearm. (Horvath Aff. at 1-3). In addition, Plaintiffs' assertions here are not factual statements. They are opinion and argument. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

Loading and Re-Loading Difficulties for All Gun Owners

167. The physiological reaction to the "stress flood" produced by an armed attack, the time delay caused by loading/re-loading a firearm, the loss of defensive use of the non-dominant arm and hand during loading/re-loading, and the attention distraction caused by loading/re-loading a firearm are factors that effect able-bodied gun owners as well as those who are handicapped. Rossi Decl. at 8-10.

State Defendants' Response

167. Disputed and immaterial. Plaintiffs' assertions and speculative fears about armed attacks and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14*). Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario are not material to this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

168. Under the "stress flood" of a life or death encounter the blood within one's body is re-routed to the larger muscles so as to allow a "flee or fight" response Rossi Decl. at 8. This

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physiological reaction to extreme stress causes significant reloading difficulty during an attack due to loss of fine motor control in the fingers. *Id.* Trying to push a magazine release or align a magazine with the magazine well with fingers that are shaking and weakened due to blood loss is very difficult for a seasoned veteran soldier or police officer who expects this phenomena. Rossi Decl. at 8.

State Defendants' Response

168. Disputed and immaterial. Plaintiffs' assertions and speculative fears about armed attacks and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario are not material to this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

169. It is far more difficult for a civilian who has never been trained that such changes will occur, or trained during realistic scenario-based training, or who is experiencing a life-threatening attack for the first time. *Id.*

State Defendants' Response

169. Disputed and immaterial. Plaintiffs' assertions and speculative fears about armed attacks and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate

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alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario are not material to this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

170. Police and civilians who train in defensive handgun use learn to draw a loaded handgun, quickly acquire a sight picture, and place two shots on the attacker's upper center of mass. Rossi Decl. at 8. Optimally, all this can be accomplished in a little over two seconds. *Id.* The process of loading the handgun will take at least a few extra seconds. *Id.* Extensive practice can reduce how long it takes a person to load a firearm under stress, but that time cannot be reduced to zero. *Id.* Accordingly, the simple time delay of loading a spent firearm may result in the success of a violent attacker who otherwise could have been thwarted. *Id.*

State Defendants' Response

170. Disputed and immaterial. Plaintiffs' assertions and speculative fears about armed attacks and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario are not material to this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-

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Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

171. Carrying an unloaded firearm will often not provide a viable means of self-defense and would frequently result in a situation where the assailant has closed the distance on the victim so that the assailant is on the person of the victim. Rossi Decl. at 9. The victim is left with a firearm she needs to retain so that she is not shot with her own gun. *Id.* At best then, the firearm becomes a bludgeoning tool. *Id.*

State Defendants' Response

171. Disputed and immaterial. This is not a factual statement. It is an opinion and argument, and thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9. It is also unintelligible. In any event, Plaintiffs' assertions and speculative fears about armed attacks and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see Bruen Decl.* ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Nor are Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario material to this action. (States Defs.' Reply Mem. at 4-10).

172. The delay in loading a firearm has additional deadly implications. Rossi Decl. at 9. While the left arm and hand are being used to load the handgun, they cannot be used for anything else. *Id.* The victim is more vulnerable because both hands are occupied. *Id.* The non-gun hand becomes useless to fend off the attacker or to deflect the attacker's knife, stick, or other weapon. *Id.*

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State Defendants' Response

172. Disputed and immaterial. Plaintiffs' assertions and speculative fears about armed attacks and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario are not material to this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

173. Further, if the victim were to be grabbed during the loading of the firearm, the sympathetic nervous system reaction of clenching one hand to retain the magazine, or simply tightening muscles under stress would further limit the victim's ability to complete the loading of the firearm. Rossi Decl. at 9.

State Defendants' Response

173. Disputed and immaterial. Plaintiffs' assertions and speculative fears about armed attacks and the need to load more than seven rounds in a single magazine are not supported by the record. (Allen Decl. ¶¶ 5-15). Moreover, as Plaintiffs concede, they have access to adequate alternatives for self-defense purposes. (Pls.' Mem. at 20-23; Kleck at 3-5, 7-8; *see* Bruen Decl. ¶¶ 3, 7, 12-13, 41, Rice Decl. ¶14). Plaintiffs' statements about the theoretical physical and psychological factors asserted to exist in any particular hypothetical self-defense scenario are not material to this action. (States Defs.' Reply Mem. at 4-10). They are also an opinion and

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argument, not a statement of fact. They are thus not appropriate for this Rule 56(a)(2) Counter-Statement. *See, e.g., id.; Rhodes*, 2012 U.S. Dist. LEXIS 30290, at *17; *see also, e.g., U.S. Info. Sys., Inc.*, 2006 U.S. Dist. LEXIS 52870, at *9.

State Defendants' Supplemental Statements of Undisputed Material Fact

1. Christopher S. Koper, Ph.D., Associate Professor for the Department of Criminology, Law and Society at George Mason University, in Fairfax, Virginia, and a senior fellow at George Mason's Center for Evidence-Based Crime Policy, has authored the only published academic studies to have examined the impact and efficacy of the federal government's bans on assault weapons and large-capacity magazines (or "LCMs"), which were in effect nationwide from 1994 until 2004 (referred to hereinafter as the "federal assault weapons ban" or the "federal ban"). (Koper Suppl. Decl. ¶ 3).

2. Dr. Koper has submitted two declarations in this case, summarizing some of the key findings of his detailed studies regarding the federal ban and its impact on crime prevention and public safety, and, based upon those findings and his nineteen years as a criminologist studying firearms generally, has provided his expert opinion on the potential impact and efficacy of New York's recently strengthened bans on assault weapons and large-capacity magazines. (*Id.* ¶¶ 2, 4-5 & Ex. A; Koper Decl. ¶ 3).

3. Dr. Koper has found and concluded the following:

a) Assault weapons pose particular dangers to public safety because of their disproportionate involvement in mass shootings and killings of law enforcement officers (Koper Decl. ¶¶ 11-14; Koper Suppl. Decl. ¶ 24);

b) In addition, there is evidence that assault weapons are more attractive to criminals because of their military-style features and their ability to

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accommodate LCMs (Koper Decl. ¶¶ 15-16; Koper Suppl. Decl. ¶ 24);

c) LCMs present an even greater danger because they can be used either with an assault weapon, or other firearms, and allow in either instance, increased firing capacity (Koper Decl. ¶¶ 17-26; Koper Suppl. Decl. ¶ 24);

d) Like assault weapons, guns with LCMs have also been used disproportionately in murders of police and in mass public shootings (Koper Decl. ¶¶ 20-23; Koper Suppl. Decl. ¶ 24);

e) The available evidence also shows that gun attacks with semiautomatics -- especially assault weapons and other guns equipped with large capacity magazines -- tend to result in more shots fired, more persons wounded, and more wounds per victim, than do gun attacks with other firearms; there is evidence that victims who receive more than one gunshot wound are substantially more likely to die than victims who receive only one wound; and thus, it appears that crimes committed with these weapons are likely to result in more injuries, and more lethal injuries, than crimes committed with other firearms (Koper Decl. ¶¶ 22-26; Koper Suppl. Decl. ¶ 24);

f) The federal ban's exemption of millions of pre-ban assault weapons and LCMs meant that the effects of the law would occur only gradually, and that those effects were still growing when the ban expired in 2004. Nevertheless, while the ban did not appear to have a measurable effect on the overall number or rate of gun crimes committed (due to criminals' ability to substitute other guns in their crimes), the evidence does suggest a significant impact on the number of gun crimes involving assault weapons. Had it remained in effect over the long-term,

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moreover, it could have had a potentially significant impact on the number of crimes involving LCMs. (Koper Decl. ¶ 50; Koper Suppl. Decl. 24);

g) Moreover, there is evidence that, had the federal ban remained in effect longer (or were it renewed), it could conceivably have yielded significant additional benefits as well, potentially preventing hundreds of gunshot victimizations annually and producing millions of dollars of cost savings per year in medical care alone (*see* Koper Decl. ¶ 51; Koper Suppl. Decl. 24); and

h) New York's recent strengthening of its bans on assault weapons and LCMs -- by eliminating the grandfathering of pre-ban LCMs, limiting to seven the number of rounds of ammunition that may be loaded into a magazine, and moving from a two-feature to a one-feature test for its assault weapons ban -- addresses some of the weaknesses that were present in the federal ban. Thus, New York's law appears to have even greater potential for reducing gun deaths and injuries, and doing so more immediately, than did the federal ban. (Koper Decl. ¶¶ 58-65; Koper Suppl. Decl. 24).

4. It is Dr. Koper's considered opinion, based on his studies on the federal ban and his almost two decades as a criminologist studying firearms, that New York's recently strengthened bans on assault weapons and large-capacity magazines, particularly its LCM ban and its seven-round load limit for magazines, are likely to advance the State's interest in protecting public safety -- and, in particular, are likely to advance New York's interest in protecting its populace from the dangers of gunfire incidents involving high numbers of shots fired, including random, mass shootings in its public spaces, as well as the State's interest in protecting its law enforcement officers from being murdered, or otherwise overwhelmed, in

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criminal confrontations. (Koper Suppl. Decl. ¶¶ 5, 25; Koper Decl. ¶¶ 4, 65).

Dated: New York, New York
September 24, 2013

Respectfully Submitted,
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