

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK  
Buffalo Division

|                                    |   |                             |
|------------------------------------|---|-----------------------------|
| NEW YORK STATE RIFLE AND PISTOL    | ) |                             |
| ASSOCIATION, INC., <i>et al.</i> , | ) |                             |
|                                    | ) |                             |
| Plaintiffs,                        | ) | Case No.: 1:13-cv-00291-WMS |
|                                    | ) |                             |
| v.                                 | ) |                             |
|                                    | ) |                             |
| ANDREW M. CUOMO, <i>et al.</i> ,   | ) |                             |
|                                    | ) |                             |
| Defendants.                        | ) |                             |

**PLAINTIFFS’ COUNTER-STATEMENT OF UNDISPUTED MATERIAL FACTS**

Plaintiffs, by and through counsel and pursuant to W.D.N.Y. L.R.Civ.P. 56(a)(2), hereby submit this Counter-Statement of Undisputed Material Facts in response and opposition to the State Defendants’ “Statement of Undisputed Material Facts in Support of State Defendants’ Motion For Summary Judgment” dated 06/21/13 (Doc. # 73), as well as in support of Plaintiffs’ own Cross-Motion for Summary Judgment dated 08/19/13 (Doc. # 113).

**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**”].
2. Gun suicides now account for six out of every ten firearm deaths in this country. *Id.*
3. The gun suicide rate has been higher than the gun homicide rate since at least 1981. *Id.* at 4.

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.

#### **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**”].

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

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

#### **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.

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.*

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.*

#### **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.

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.*

#### **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.*

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: 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**”].

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].

### **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.

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. [Complete copies of the FBI UCRs for the years 1995 through 2012 can be accessed at: [www.fbi.gov/about-us/cjis/usc/usc-publications](http://www.fbi.gov/about-us/cjis/usc/usc-publications). 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.

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.

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.*

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.*

### **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.

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

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.*

**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 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)].

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.

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

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

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.

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.*

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.

31. Post-Ban analysis of ATF<sup>1</sup> 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.*

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

33. ATF trace figures from 1996 show that assault weapons accounted for 3% of all trace requests. *Id.* Analysis of trace requests for AR15, Intratec and SWD types of domestic firearms (i.e., those not impacted by pre-Ban legislation (Koper 2007 at 63)), and also those arms 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

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<sup>1</sup> “ATF” refers to the Bureau of Alcohol, Tobacco, and Firearms, which was renamed the Bureau of Alcohol, Tobacco, and Firearms and Explosives in 2003.

traces for guns associated with violent crimes and 3.5% of traces for guns associated with drug crimes. *Id.*

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

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.

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

#### **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.

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

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](http://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](http://www.fbi.gov/about-us/cjis/ucr/leoka/2011).

### **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.

#### *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.*

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.*

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.*

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.

*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.

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.*

*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.

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.

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

#### *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.

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 UCR and NCVS data, this indicator was relatively stable at around 30% from 1992 to 1997, before rising to about 40% from 1998 through 2000. *Id.*

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.

*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.

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.

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.

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.

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.

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.*

*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.

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 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”).

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.

### **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 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**”].

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

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.

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.

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.

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.

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.

68. Some members of the NYSRPA, the WCFOA, the NYSATA, and the SAFE 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. 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.

69. Some members of the NYSRPA, the WCFOA, the NYSATA, and the SAFE obtained M-1 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-1 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.

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.

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.

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**”].

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 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.*

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.*

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.*

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.*

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.

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.

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.*

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 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.*

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 ("Farnung 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.*

82. For example, one segment of Beikirch's business involves the purchase, sale and re-sale 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.*

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) 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.*

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.

85. For example, one segment of BlueLine's business involves the purchase, sale and re-sale 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.*

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 the holder of an FFL. *Id.* These refusals have caused actual harm to BlueLine's sales and overall business. *Id.*

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.*

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.*

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.

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.*

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.*

*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 Rossi ("Rossi Decl.") [attached to Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction as Exhibit C (Doc. #23-6)] at 2.

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.*

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.

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).

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.*

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.*

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.*

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 AYOUB, 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.”).

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.

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.*

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.*

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 Ban were sold with, or had a variation that was sold with, a magazine holding over ten rounds. Overstreet Decl. at 7.

Remanufacturing of Ammunition Magazines

104. New Yorkers who wish 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).

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 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.

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.*

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.

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.

#### *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.

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.* 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.*

111. A telescoping stock does not make a firearm more powerful or more deadly. *Id.*

#### *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.*

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.*

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.

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.*

116. A pistol grip ("conspicuous" or otherwise) does not make a firearm more powerful or deadly. Rossi Decl. at 4.

#### *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.*

118. A thumbhole stock does not make a rifle more powerful or more lethal. *Id.*

*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.*

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.*

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).

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.*

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 O**”].

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.*

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.

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.

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.*

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.*

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.

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.

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.*

*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 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.

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.*

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.*

*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. 2013) (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).

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.*

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.*

*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.*

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.*

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.*

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.*

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.*

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 any one 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.

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.

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 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.*

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.

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.*

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.*

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.*

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.

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.*

149. It is virtually a tautology that criminals will disobey the AW ban at a higher rate than non-criminals. Kleck Decl. at 8.

*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.

*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.

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.pdf](http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/afdr_20111116.pdf)) 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.*

153. If highly trained and experienced NYC police officers required the use of at least eight rounds in 1/3<sup>rd</sup> 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.*

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.*

#### *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 (Cognitive

Processing), and lastly the ability of the brain to send messages to the muscles to react (Motor Processing). Rossi Decl. at 5-6.

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.

*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.

158. Plaintiff Thomas Galvin and Plaintiff Roger Horvath are but two examples.

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.

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.*

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.*

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.*

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.*

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.

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.*

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.*

*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.

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 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.

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.*

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.*

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.*

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.*

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.

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Respectfully Submitted,

LAW OFFICE OF STEPHEN HALBROOK

GOLDBERG SEGALLA, LLP

By: /s/ Stephen P. Halbrook

By: /s/ Brian T. Stapleton

Stephen P. Halbrook, Esq.  
*Pro Hac Vice* (pending)  
3925 Chain Bridge Road, Suite 403  
Fairfax, VA 22030  
(703) 352-7276  
[protell@aol.com](mailto:protell@aol.com)

Brian T. Stapleton, Esq.  
Matthew S. Lerner, Esq.  
Martine Avenue, Suite 750  
White Plains, New York 10606-1934  
(914) 798-5400  
[bstapleton@goldbergsegalla.com](mailto:bstapleton@goldbergsegalla.com)

***Counsel For Plaintiffs***

**CERTIFICATION**

I hereby certify that on August 19, 2013, a copy of the foregoing COUNTER-STATEMENT OF UNDISPUTED MATERIAL FACTS was filed electronically and served by mail upon anyone unable to accept electronic filing. Notice of this filing was will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

GOLDBERG SEGALLA, LLP

By:     /s/    Brian T. Stapleton      
Brian T. Stapleton, Esq.