UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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

Plaintiffs,

-v.-

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

Defendants.

13-cv-00291-WMS

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.

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

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

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*

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

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,

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.

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

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.

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

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,

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

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

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:*

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

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.

[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

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).

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

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 (l0%) 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*

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

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

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-

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.

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.

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

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

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,

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.

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

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

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

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

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

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

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.*,

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

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

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.*

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

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/20l0]. 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

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,

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.*

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

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

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

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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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

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

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 --

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

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-

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

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

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

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.*,

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,

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.

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

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

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 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). 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.

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

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

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*

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

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-

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

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

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

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'

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; Somavil1a 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,

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; Somavil1a 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

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.

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

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-l 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.

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-l 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.

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

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

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

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.*

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 thy 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

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.*

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

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

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

that can hold more than ten (l0) 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 Beikrich 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 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 Beikrich 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 Beikrich 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)

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 Beikrich 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 Beikrich 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*,

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

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*,

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.

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.

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

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. (S*ee* 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,*

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 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

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

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.*

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'

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

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 Ml 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 Ml 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 Ml 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.*

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

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

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]

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 of 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

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

" 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).

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

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.*

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*

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.*

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).

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

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).

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

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,*

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-l 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

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).

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

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

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

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).

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 20 13. *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

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

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; Sommavilla 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.*

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

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-15for 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

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 M16Al 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.

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*

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

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*

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

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 ¶¶

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

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

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.

(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

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

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.

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

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

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

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

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

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

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

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.

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)

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 (l0) 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.

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.

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

(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

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.

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

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.

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

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.

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.*

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

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

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

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-

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.*

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

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

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,

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

criminal confrontations. (Koper Suppl. Decl. ¶¶ 5, 25; Koper Decl. ¶¶ 4, 65).

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Respectfully Submitted,
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