

14-0319-cv

United States Court of Appeals
for the
Second Circuit

THE CONNECTICUT CITIZENS' DEFENSE LEAGUE, THE COALITION OF
CONNECTICUT SPORTSMEN, JUNE SHEW, RABBI MITCHELL ROCKLIN,
STEPHANIE CYPHER, PETER OWENS, BRIAN MCCLAIN, ANDREW MUELLER,
HILLER SPORTS, LLC and MD SHOOTING SPORTS, LLC,

Plaintiffs-Appellants,

– v. –

DANNEL P. MALLOY, in his official capacity as Governor of the State of Connecticut,
KEVIN T. KANE, in his official capacity as chief state's attorney of the state of

(For Continuation of Caption See Inside Cover)

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

**AMICUS BRIEF OF MAJOR CITIES CHIEFS ASSOCIATION
IN SUPPORT OF APPELLEES**

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Defendants-Appellees.

CORPORATE DISCLOSURE STATEMENT

Amicus curiae, Major Cities Chiefs Association, states that it has no parent corporation and that no publicly held corporation owns more than 10% of its stock.

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DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006)..... 25

District of Columbia v. Heller, 554 U.S. 570 (2008) 4

Heller v. District of Columbia, 670 F.3d 1244 (D.C. Cir. 2011)..... 23

Federal Treasury Enterprise Sojuzplodimport v. SPI Spirits, Ltd.,
726 F.3d 62 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 1921 (2014)..... 23

Kachalsky v. County of Westchester, 701 F.3d 81 (2d Cir. 2012)..... 5, 6

Maher v. Roe, 432 U.S. 464 (1977) 25

McLaughlin v. Florida, 379 U.S. 184 (1964) 25

Shew v. Malloy, No. 3:13CV739 (AVC), 2014 WL 346859 (D. Conn. Jan. 30,
2014) 6

United States v. Decastro, 682 F.3d 160 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 838
(2013)..... 5

STATUTES

An Act Concerning Gun Violence Prevention And Children’s Safety, Public Act
13-3, as amended by Public Act 13-220..... *passim*

Violent Crime Control and Law Enforcement Act of 1994 12

MISCELLANEOUS

ATF, *Report and Recommendations of the ATF Working Group on the
Importability of Certain Semi-Automatic Rifles* (July 6, 1989)..... 10

ATF, U.S. Department of the Treasury, *Assault Weapons Profile* (1994)..... 7, 8, 10

Brady Center, *On Target: The Impact of the 1994 Federal Assault Weapon Act*
(2004)..... 7

Christopher S. Koper, *America’s Experience with the Federal Assault Weapons Ban, 1994-2004: Key Findings and Implications*, in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, (Daniel W. Webster & Jon S. Vernick, eds., 2013) *passim*

Christopher S. Koper, Jerry Lee Center of Criminology, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (2004) 9, 11, 12, 14

David S. Fallis, *Data indicate drop in high-capacity magazines during federal gun ban*, Washington Post, January 10, 2013, available at http://www.washingtonpost.com/investigations/data-point-to-drop-in-high-capacity-magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-11e2-a6a6-aabac85e8036_story.html 16, 17

Dianne Feinstein et al., U.S. Senate, *Assault Weapons Ban of 2013* (2013), available at http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=dd2252a0-db96-45cc-96a8-493a2e348c6d \ 9, 10

Everytown for Gun Safety, *Analysis of Recent Mass Shootings* (July 17, 2014), available at <http://3gbwir1ummda16xrhf4do9d21bsx.wpengine.netdna-cdn.com/wp-content/uploads/2014/07/analysis-of-recent-mass-shootings.pdf> ... 15

FBI Crime in the United States, Table 20, Murder by State, Types of Weapon, available at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl20.xls> 19

International Association of Chiefs of Police, *Legislative Agenda for the 113th Congress, January 2013-January 2015*, at 7 (2013), available at <http://www.theiacp.org/Portals/0/pdfs/IACP113thLegislativeAgendaFINAL.pdf> 11

Jake Matthews, *For Lives and Liberty: Banning Assault Weapons in America*, Harvard University Institute Of Politics, <http://www.iop.harvard.edu/lives-and-liberty-banning-assault-weapons-america> 13, 14

Joanna Molloy, *Ex-NYPD top cop Bill Bratton pushing for overdue ban on assault-weapons ammo clips*, NY Daily News, May 19, 2011, available at <http://www.nydailynews.com/news/crime/ex-nypd-top-bill-bratton-pushing-overdue-ban-assault-weapons-ammo-clips-article-1.142101> 16

Mark Follman and Gavin Aronsen, “A Killing Machine”: *Half of All Mass Shooters Used High-Capacity Magazines*, Mother Jones, January 30, 2013, <http://www.motherjones.com/politics/2013/01/high-capacity-magazines-mass-shootings>. 18

Mark Follman, Gavin Aronsen, and Deanna Pan, *A Guide to Mass Shootings in America*, Mother Jones, <http://www.motherjones.com/politics/2012/07/mass-shootings-map> 14

Matt Pearce, *Gun’s magazine shaped the pace of Colorado theater massacre*, LA Times, July 22, 2010, available at <http://articles.latimes.com/2012/jul/22/nation/la-na-nn-theater-shooting-magazine-20120722/2>..... 18, 19

Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings 1* (2013), available at <http://3gbwir1ummda16xrhf4do9d21bsx.wpengine.netdna-cdn.com/wp-content/uploads/2014/07/analysis-of-recent-mass-shootings.pdf> ... 15

Police Executive Research Forum, *Guns and Crime: Breaking New Ground By Focusing on the Local Impact*, May 2010, available at http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=40f529c9-edf2-4492-a424-348412b283c2 13

Police Fear a Future of Armored Enemies, USA Today, March 3, 1997 10

Richard Weizel, *Connecticut town mulls fate of Sandy Hook school months after massacre*, Reuters, May 3, 2013, available at <http://www.reuters.com/article/2013/05/04/us-usa-shooting-newtown-idUSBRE94302420130504> 26

Trevor Hughes, *First responders praised for speed, caring in Colo. shooting*, USA Today, July 22, 2012, available at <http://usatoday30.usatoday.com/news/nation/story/2012-07-22/aurora-police-praise-first-responders/56422078/1> 19

U.S. Department of the Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* (1998) 10

Violence Policy Center, “Officer Down”: *Assault Weapons and the War on Law Enforcement* (2003), <https://www.vpc.org/studies/officer%20down.pdf> 12

INTEREST OF AMICUS¹

Amicus curiae, the Major Cities Chiefs Association (“MCCA” or “*Amicus*”) is composed of police executives heading the sixty-six largest police departments in the United States, including Atlanta, Chicago, Dallas, Detroit, Los Angeles, New York, Philadelphia, Washington, D.C., and many others, which protect roughly 22% of America's population.² This *amicus* brief provides the insight and perspective of a national organization that represents the interests of police officers and police chiefs on the critically important role that reasonable firearms restrictions—like those contained in an Act Concerning Gun Violence Prevention and Children’s Safety, Public Act 13-3, as amended by Public Act 13-220 (the “Act”)—play in protecting the lives of citizens and law enforcement personnel.

Members of the MCCA experience firsthand the dangers posed by the firearms and accessories at issue in this litigation. Law enforcement personnel are often the front-line defense against violent gun crimes. Therefore, the MCCA has unique insight into the impact that laws such as the Act have in safeguarding the public and law enforcement officers, as well as the potentially serious

¹ *Amicus curiae* make the following disclosure pursuant to Fed. R. App. P. 29(c)(5): No party’s counsel authored this brief in whole or in part. Neither any party nor any party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person other than *amicus curiae*, its members, and its counsel contributed money that was intended to fund preparing or submitting this brief.

² All parties appearing in this appeal have consented to the filing of this brief.

consequences that would result from reversing the District Court's decision to uphold the Act.

SUMMARY OF ARGUMENT

The Act, which the District Court upheld in its entirety, does not in any way impinge upon the fundamental right to keep and bear arms for the lawful purpose of self-defense, principally in the home. Accordingly, heightened scrutiny need not be applied here. However, even if this Court were to decide that some form of heightened scrutiny is warranted, intermediate scrutiny should be the applicable standard. The Act passes constitutional muster even under that standard because the means it employs are substantially related to an important—indeed compelling—governmental interest: the protection of the general public as well as law enforcement officers who risk their lives daily protecting civilians from gun violence.

Not only are the Act's prohibitions on assault weapons and large-capacity magazines constitutional, they are sensible. Limiting access to assault weapons and large-capacity magazines reduces the number of deaths resulting from homicides involving firearms. The facts are clear: assault weapons and large-capacity magazines are instruments of war and are designed to kill and maim multiple human beings at close range. As our front-line defenders, law enforcement personnel are slain in crimes involving assault weapons and large-

capacity magazines with unacceptable and astonishing frequency. In light of the danger they pose, prohibiting access to these weapons is a lawful, common-sense response to a pervasive menace.

Several *amici* inexplicably claim that prohibiting assault weapons and large-capacity magazines will not assist law enforcement in combating violent crime, and will actually decrease public safety. However, the *amici* support this claim with irrelevant, incomplete, and subjective data. For example, they cite statistics about the *frequency* of gun crimes involving assault weapons, while completely ignoring the heightened *lethality* of such crimes. Further, the *amici's* statistics ignore the relative scarcity of assault weapons and large-capacity magazines on the civilian market, which, when taken into account, actually demonstrates that these weapons are used at a disproportionately high rate in gun crimes. The *amici* additionally cite to surveys and statements purporting to show that police officers do not believe that the Act will effectively reduce crime or foster police safety. But even if these selective and highly subjective perspectives were fairly representative of police officers' views, they could not substitute for the stark reality—supported by objective data—that assault weapons and large-capacity magazines are disproportionately lethal to both civilians and law enforcement.

The *amici* also claim that the Act is fatally vague and that as a result, police officers will be unable to determine whether certain weapons are prohibited,

resulting in unwarranted arrests and wasted law enforcement resources. These claims reflect a misunderstanding of police officers' practiced ability to make discretionary judgments. Numerous laws already on the books, including Connecticut's prior assault weapons ban, require law enforcement professionals to enforce statutory prohibitions and consult resources. The MCCA is confident in police officers' continuing ability to do so and to enforce the Act.

Therefore, the District Court's decision upholding the Act should be AFFIRMED.³

ARGUMENT

I. THE ACT'S BAN ON ASSAULT WEAPONS AND LARGE-CAPACITY MAGAZINES DOES NOT WARRANT HEIGHTENED SCRUTINY, BUT AT MOST INTERMEDIATE SCRUTINY SHOULD BE APPLIED

As set forth in the brief submitted by the State Defendants (*see* State Def. Br. at 21-53), the Act's ban on assault weapons and large-capacity magazines does not intrude upon the core protections of the Second Amendment—the right of law-abiding citizens to possess firearms for the lawful purpose of self-defense, primarily in the home—and therefore does not warrant heightened scrutiny. *See District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (holding that the right

³ This brief is intended to support the affirmance of the Act, which was found to be constitutional by the District Court. To avoid doubt, this brief does not seek the affirmance of the District Court's finding that the firearms and magazines at issue are "in common use" within the meaning of *Heller* and that the Act therefore levies a substantial burden on Plaintiffs' Second Amendment rights.

guaranteed by the Second Amendment “is not unlimited” and is not “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose”). Likewise, heightened scrutiny is not warranted here because the ban on assault weapons and large-capacity magazines does not substantially burden the Second Amendment rights of Plaintiffs. (*See* State Def. Br. at 57-61.) *United States v. Decastro*, 682 F.3d 160, 166 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 838 (2013) (“[H]eightedened scrutiny is triggered only by those restrictions that (like the complete prohibition on handguns struck down in *Heller*) operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes).”).

However, even if the ban on assault weapons and large-capacity magazines is somehow seen as substantially burdening the core right to self-defense protected by the Second Amendment such that heightened scrutiny is appropriate, then no more than intermediate scrutiny need be applied. As this Court found in *Kachalsky v. County of Westchester*, strict scrutiny is not appropriate where, as here, the restriction at issue does not severely burden the “core” protection of self-defense in the home. 701 F.3d 81, 93 (2d Cir. 2012). As noted in the State Defendants’ brief, the Act’s prohibition on assault weapons and large-capacity magazines leaves residents of Connecticut with myriad other firearms from which to choose for their self-defense needs. (*See* State Def. Br. at 58-59, 64.) Thus, as the District Court

rightly found, “the prohibitions do not impose a substantial burden’ upon the *core right* protected by the Second Amendment.” *Shew v. Malloy*, No. 3:13CV739 (AVC), 2014 WL 346859, at *7 (D. Conn. Jan. 30, 2014) (emphasis in original) (quoting *Heller v. Dist. of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (“*Heller II*”). Prohibitions like those at issue here, which do not substantially burden the “right of law-abiding, responsible citizens to use arms in defense of hearth and home,” warrant intermediate scrutiny, if heightened scrutiny is appropriate at all. *See Kachalsky*, 701 F.3d at 93 (quoting *Heller*, 554 U.S. at 634-35, and holding that “applying less than strict scrutiny when the regulation does not burden the ‘core’ protection of self-defense in the home makes eminent sense in this context and is in line with the approach taken by our sister circuits”).

Even under intermediate scrutiny, the Act’s ban on assault weapons and large-capacity magazines easily passes constitutional muster. As the District Court correctly found, the Act’s prohibition on assault weapons and large-capacity magazines is at least substantially related to the government’s compelling interest in controlling crime and promoting public safety by reducing the lethality of crimes committed with firearms.

II. PROHIBITING ACCESS TO ASSAULT WEAPONS AND LARGE-CAPACITY MAGAZINES IS SUBSTANTIALLY RELATED TO THE COMPELLING GOVERNMENTAL INTEREST OF PROTECTING POLICE OFFICERS AND THE GENERAL PUBLIC FROM HARM

Assault weapons and large-capacity magazines are designed to increase the lethal firepower available to a shooter. This increased lethality poses significant risks to the public, warranting the prohibitions imposed by the Act.

A. Assault Weapons Are Characterized by Military-Style Features and Designed to be Efficiently Lethal in Combat

Assault weapons are instruments of war designed to kill as many people as possible as efficiently as possible.⁴ According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), “assault weapons were designed for rapid fire, close quarter shooting at human beings. . . . They are mass produced mayhem.”⁵

The Act, building on previous legislation, expands the definition of assault weapons to include 183 specifically enumerated semiautomatic firearms. *See* Conn. Gen. Stat. § 53-202a(1)(B)-(D).⁶ These enumerated weapons are civilian semiautomatic versions of military artillery and accordingly have military features useful in combat but inappropriate and unnecessary for lawful civilian purposes.

(JA-1026 ¶¶ 20, 22-24, 26-28; *see also* JA-1396 ¶ 11; JA-1402 ¶ 41.) In addition

⁴ Brady Center, *On Target: The Impact of the 1994 Federal Assault Weapon Act*, 3 (2004) (“[Assault weapons] were specifically designed for military use in order to kill greater numbers of people more effectively.”).

⁵ ATF, U.S. Dep’t of the Treasury, *Assault Weapons Profile* 19 (1994).

⁶ In addition, the Act bans an individual from possessing parts of an assault weapon that can be rapidly put together to form a whole assault weapon. *See* Conn. Gen. Stat. § 53-202a(1)(A)(ii).

to these specifically delineated firearms, the Act defines an assault weapon as any semiautomatic centerfire rifle or semiautomatic pistol that has a fixed magazine with the ability to accept more than ten rounds, i.e., a large-capacity magazine. Conn. Gen. Stat. § 53-202a(1)(E)(ii), (v). Large-capacity magazines, which facilitate the rapid firing of large numbers of rounds without the need to reload, “are particularly designed and most suitable for military and law enforcement applications.” (JA-1283; *see also* JA-1180 (noting that “firearms with the ability to expel large amounts of ammunition quickly . . . have military purposes and are a crime problem”).)

The Act also defines an assault weapon as a semiautomatic firearm that can accept a detachable magazine and has at least one military-style feature. Conn. Gen. Stat. § 53-202a(1)(E)(i). This stricter one-feature test (as compared to the two-feature test embodied in Connecticut’s previous gun legislation) seeks to remedy the problem of “copycat” firearms that have avoided the prior two-feature test by simply eliminating one of the prohibited features. (*See* JA-1713 ¶¶ 16-17; *see also* JA-1403 ¶ 46; JA-1409 ¶ 72; JA-1899; JA-1902-03.) The features included in the one-feature test are designed for combat purposes.⁷ While other banned features, such as a grenade launcher, are equally inapplicable for sport or

⁷ ATF Assault Weapons Profile at 20.

self-defense, the following are examples of military-style features banned by the Act:

- *pistol grips or thumbhole stocks*. Allow a shooter to spray-fire from the hip position, whereas a sport shooter aims from the shoulder for precision;⁸
- *folding or telescoping stocks*. Allow a shooter to make a large and powerful weapon much more compact, and therefore more concealable;⁹
- *barrel shrouds*. Protect a shooter's hands from burns caused by the heat generated by firing multiple rounds in rapid succession and stabilizing the barrel with a free hand;¹⁰
- *flash suppressors*. Allow a shooter to remain concealed when shooting at night.¹¹

The increased firepower of assault weapons' military-style features and large-capacity magazines heighten the risk of multiple gunshot wounds and severe penetrating trauma resulting in more critical injuries to targets and bystanders alike.¹² Accordingly, assault weapons, as defined in the Act, have no legitimate

⁸ Appellee's Statutory Addendum, *Heller v. District of Columbia*, No. 10-7036 (D.C. Cir. June 21, 2013), ECF No. 78-4.

⁹ (JA-1713 ¶ 18; JA-1370 ¶ 34.)

¹⁰ Christopher S. Koper, Jerry Lee Center of Criminology, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, 7 (2004) [*hereinafter*, *Updated Assessment*].

¹¹ *Id.* at 8.

¹² Dianne Feinstein et al., U.S. Senate, *Assault Weapons Ban of 2013* 4 (2013) [*hereinafter* *Assault Weapons Ban of 2013*] available at http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=dd2252a0-db96-45cc-96a8-493a2e348c6d (citing Dr. James Madara, executive vice president and CEO, American Medical Association).

use in recreation, sport or hunting,¹³ and can wreak havoc if used for self-defense.¹⁴

In this vein, Hartford Police Chief James C. Rovella stated that he and many other Chiefs of Police believe that “assault weapons and [large-capacity magazines] pose a real and serious threat to the public and law enforcement, and *are not necessary, or even suitable, for reasonable home and self defense by civilians.*” (JA-1366 ¶ 8 (emphasis added).)¹⁵ As Philadelphia Police Commissioner and President of the MCCA Charles Ramsey observed, “[i]n the major cities of our nation, these weapons are tools of violent crime and death.”¹⁶

¹³ ATF Assault Weapons Profile at 20; *see also* ATF, *Report and Recommendations of the ATF Working Group on the Importability of Certain Semi-Automatic Rifles* (July 6, 1989) (survey of 935 hunting guides found sportsmen do not use assault weapons); U.S. Dep’t of Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* 38 (1998) (ATF study confirming same).

¹⁴ *See Police Fear a Future of Armored Enemies*, USA Today, Mar. 3, 1997. The combat-ready design of assault weapons makes them dangerous for use in self-defense. According to the executive director of the Fraternal Order of Police, Jim Pasco, “[a]n AK-47 fires a military round. In a conventional home with dry-wall walls, I wouldn’t be surprised if it went through six of them.” *Id.* As a further illustration, the Bushmaster XM-15 is marketed as having ““an effective range of 300 meters and [the ability] to pierce most body armor.”” (JA-1880 (citation omitted).) It is difficult to imagine any non-fanciful self-defense scenario—within the home or without—that would require the ability to shoot 300 meters and pierce body armor.

¹⁵ Chief Rovella noted that assault weapons typically take a .223 caliber round, “which could easily pass through the walls of many dwellings and result in shooting of unintended victims such as family members, passers-by or neighbors.” (JA-1370 ¶ 39.) This is of particular concern in cities such as Hartford, where many people reside in close proximity to each other. Chief Rovella further explained that average citizens typically are not trained to handle the stress inherent in gun confrontations, and would likely react by using assault weapons recklessly, firing disproportionate and imprecisely aimed rounds. (JA-1370-71 ¶ 40.) Chief Rovella therefore believes that shotguns, which remain readily available under the Act, are better suited to self-defense within the home. (JA-1371 ¶ 43.)

¹⁶ *Assault Weapons Ban of 2013* at 4.

B. Assault Weapons Pose Special Dangers to Law Enforcement Personnel

Law enforcement personnel occupy the front lines in the fight against gun violence, confronting criminals armed with these tools of violent crime and death every day.¹⁷ Assault weapons enable criminals to shoot through police body armor, terrorize neighborhoods, and suppress or thwart a police response. (State Def. Brief at 43.) For these reasons, assault weapons are overwhelmingly the firearms of choice for gang members and drug dealers, and police regularly encounter assault weapons in drug busts.¹⁸ Assault weapons make up a larger share of guns used in murders of police officers than they do in other gun crimes presumably because their greater firepower and combat-ready features are particularly well-suited for pitched gun battles with similarly armed law enforcement personnel.¹⁹ Police officers protect our communities from the most dangerous and violent elements in society; as a consequence they are exposed to the brutally violent brunt of these weapons designed for military use. Tellingly,

¹⁷ There is evidence of a criminal preference for purchasing assault weapons. *Updated Assessment* at 17-18. A 1998 study of young adult handgun buyers in California found that buyers with minor criminal histories were more than twice as likely than other buyers to purchase assault pistols. Additionally, 6.6% of handgun buyers charged with a previous gun offense bought assault weapons and 10% of buyers with two or more serious violent offenses bought assault pistols. The same study found that assault pistol purchasers were more likely to be arrested subsequent to their purchases than were other gun purchasers.

¹⁸ Int'l Ass'n of Chiefs of Police, *Legislative Agenda for the 113th Congress, January 2013-January 2015*, at 7 (2013), available at <http://www.theiacp.org/Portals/0/pdfs/IACP113thLegislativeAgendaFINAL.pdf>.

¹⁹ *Updated Assessment* at 87.

one study revealed that one in five law enforcement officers slain in the line of duty is killed with an assault weapon.²⁰

According to a leading expert on the impact of assault weapons on crime, a ban on assault weapons should have an even bigger impact on the frequency of police officer gun murders than gun murders of civilians because police officers more frequently confront violent criminals wielding such weapons.²¹ This is increasingly true in the mass shooting context, as since the massacre at Columbine High School in 1999, law enforcement protocol has required most front-line officers to engage shooters, rather than wait for better-equipped SWAT units. (JA-1713 ¶ 15.) Most ordinary police officers do not wear or have immediate access to body armor strong enough to stop the rounds from assault weapons like the AR-15, and will be seriously outgunned in these situations. (*Id.*)

While Appellants and *amici* claim that the Violent Crime Control and Law Enforcement Act of 1994, commonly referred to as the federal assault weapons ban, was ineffective at promoting public safety (*e.g.*, ILE *Amici* (as defined *infra* Part III) Br. at 13), it in fact had a real and substantial impact on the number of gun crimes involving assault weapons. Based on a study of six major cities during the period the federal assault weapons ban was in place, the proportion of gun crimes

²⁰ Violence Policy Center, “*Officer Down*”: *Assault Weapons and the War on Law Enforcement*, 5 (2003) (relying on annual data provided by the Federal Bureau of Investigation between January 1998 and January 2001), *available at* <https://www.vpc.org/studies/officer%20down.pdf>.

²¹ *Updated Assessment* at 97.

involving assault weapons decreased by at least 17% while police recoveries of assault weapons in those cities decreased by at least 28%.²² Local police agencies around the country reported similar experiences after the federal assault weapons ban expired in 2004—37% of local police agencies reported noticeable increases in criminals' use of assault weapons following the ban's expiration.²³

A decade after the federal assault weapons ban expired, far too many law enforcement agents are being murdered with guns, including assault weapons. In 2011, gunfire surpassed traffic fatalities as the leading cause of on-duty police officer death.²⁴ Troublingly, the number of police officers killed by firearms

²² Christopher S. Koper, *America's Experience with the Federal Assault Weapons Ban, 1994-2004: Key Findings and Implications*, in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, ch. 12, at 163 (Daniel W. Webster & Jon S. Vernick, eds., 2013) [*hereinafter*, *America's Experience*]. (JA-1671.) The measurable and substantive impact of the federal assault weapons ban in curbing assault weapons crime is even more compelling when considered in light of the gun industry's response to the debate of the ban, as well as the exemptions and loopholes built into in the law. For example, the gun industry responded to Congress's debate of the ban with a surge in production of assault weapons. *Id.* at 162. Importantly, the federal assault weapons ban contained an exemption for all assault weapons manufactured before the effective date of the ban. Estimates suggest that by the date the ban took effect there were more than 1.5 million privately owned assault weapons in the United States. *Id.* at 160-61. The "grandfathering" exemption meant all 1.5 million of those assault weapons could be legally owned and transferred.

²³ Police Executive Research Forum, *Guns and Crime: Breaking New Ground By Focusing on the Local Impact*, May 2010, *available at* http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=40f529c9-edf2-4492-a424-348412b283c2.

²⁴ Jake Matthews, *For Lives and Liberty: Banning Assault Weapons in America*, Harvard University Institute Of Politics, www.iop.harvard.edu/lives-and-liberty-banning-assault-weapons-america.

increased in each of the last three years.²⁵ Just as the federal assault weapons ban had a positive impact in decreasing the number of crimes using assault weapons during its tenure, the Act's ban on assault weapons is likely to have a real impact in decreasing the number of law enforcement injuries and deaths caused by such weapons.

C. Assault Weapons Have Been Used in Mass Shootings in Numbers Disproportionately Large Compared to Their Proportion of Total Firearms

Assault weapons and large-capacity magazines have been employed in highly publicized mass shootings for decades in the United States.²⁶ In more than 25% of mass shootings, defined by the FBI as incidents involving the death of four or more people, the gunmen used assault weapons; in another 48%, the gunmen used other types of semi-automatic handguns, typically also equipped with large-capacity magazines.²⁷

Between 2009 and 2013, mass shooting incidents involving assault weapons resulted in an average of 14.8 people shot, compared to 6.8 people injured in

²⁵ *Id.* (“In 2009, 49 police officers died from gunfire, a 24% increase from 2008. In 2010, 61 officers were shot and killed, a 37% increase from 2009. And in 2011, 68 officers died from gunfire.”)

²⁶ *See Updated Assessment* at 14-19. For lists and descriptions of the mass shootings involving assault weapons and large-capacity magazines, see *id.* at 14. Since 2007, there have been at least 15 incidents in which parties armed with assault weapons have killed or wounded eight or more people. *America's Experience* at 157-58.

²⁷ Mark Follman, Gavin Aronsen, and Deanna Pan, *A Guide to Mass Shootings in America*, Mother Jones, <http://www.motherjones.com/politics/2012/07/mass-shootings-map> (last updated May 24, 2014).

incidents not involving assault weapons.²⁸ Mass shootings carried out with assault weapons resulted in an average eight deaths, compared to incidents without assault weapons, which resulted in an average of 5.1 deaths.²⁹ Another study of all 110 mass shooting incidents between January 2009 and January 2014 found that, when assault weapons and large-capacity magazines were involved, there was a 156% increase in the number of people shot and a 63% increase in the number of deaths compared to mass shooting incidents that did not involve assault weapons or large-capacity magazines.³⁰

D. Large-Capacity Magazines Allow a Shooter to Target Victims Continuously Without Reloading

Large-capacity magazines make it easier for shooters to injure and kill greater numbers of people, including law enforcement personnel, in a very short period of time. Former Chief of the Los Angeles Police Department and current Police Commissioner of the City of New York William Bratton described large-capacity magazines as “weapons of war,” “designed to kill as many people as possible in the shortest period of time,” which “simply do not belong in untrained

²⁸ Mayors Against Illegal Guns, Analysis of Recent Mass Shootings 1 (2013), *available at* <http://3gbwir1ummda16xrhf4do9d21bsx.wpengine.netdna-cdn.com/wp-content/uploads/2014/07/analysis-of-recent-mass-shootings.pdf>.

²⁹ *Id.*

³⁰ Everytown for Gun Safety, Analysis of Recent Mass Shootings 4 (July 17, 2014), *available at* <http://3gbwir1ummda16xrhf4do9d21bsx.wpengine.netdna-cdn.com/wp-content/uploads/2014/07/analysis-of-recent-mass-shootings.pdf>.

civilian hands.”³¹ In this vein, large-capacity magazines do not serve a legitimate self-defense purpose. As Chief Rovella stated, “In my 32 years in law enforcement I am not aware of a single incident in Hartford, or even Connecticut, in which a responsible gun owner fired more than ten rounds for protection during a criminal attack.” (JA-1369 ¶ 32.)

Large-capacity magazines pose an excessive danger to society and law enforcement personnel in particular because they increase collateral damage and can lead to extended firefights. Large-capacity magazines allow a shooter to fire twenty, fifty, or even one hundred rounds before having to reload. A recent study showed that large-capacity magazines play an outsized role in gun deaths of law enforcement personnel; while large-capacity magazines are used in an estimated 13% to 26% of all gun crimes, they are used in 31% to 41% of gun murders of police officers.³²

An investigation into the types of firearms recovered by police revealed that the federal assault weapons ban directly and substantially curbed criminals’ access to large-capacity magazines.³³ Data from the Criminal Firearms Clearinghouse in

³¹ Joanna Molloy, *Ex-NYPD top cop Bill Bratton pushing for overdue ban on assault-weapon ammo clips*, NY Daily News, May 19, 2011, available at <http://www.nydailynews.com/news/crime/ex-nypd-top-bill-bratton-pushing-overdue-ban>.

³² *America’s Experience* at 162.

³³ David S. Fallis, *Data indicate drop in high-capacity magazines during federal gun ban*, Washington Post, January 10, 2013, available at <http://www.washingtonpost.com/investigations/data-point-to-drop-in-high-capacity->

Virginia have shown that the rate at which law enforcement recovered firearms with large-capacity magazines began to drop around 1998, four years after the federal ban was instituted. The rate of recovery continued to drop to a low of 9% in 2004, the year the federal ban expired.³⁴ From 2005 to 2010, the rate of recovered firearms with large-capacity magazines increased steadily to 20% of all firearms recovered.³⁵ Garen Wintemute, head of the Violence Prevention Research Program at the University of California at Davis School of Medicine, admitted that despite his skepticism about the federal assault weapons ban's efficacy, the collected data provided "about as clear an example as we could ask for of evidence that the ban was working."³⁶

Given the federal ban's measurable and substantial impact on reducing the number of large-capacity magazines in the hands of criminals and lowering the percentage of police officer deaths involving large-capacity magazines, the Act's prohibition of large-capacity magazines is likely to save the lives of Connecticut law enforcement personnel and therefore serves the important governmental interest of protecting police officers.

magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-11e2-a6a6-aabac85e8036_story.html. (See also JA-1689; JA-1694.)

³⁴ Fallis, *supra* n.33.

³⁵ *Id.*

³⁶ *Id.*

E. Large-Capacity Magazines Can Be Particularly Dangerous to Law Enforcement Personnel in the Context of Mass Shootings

Large-capacity magazines have been used in at least half of the mass shooting incidents since 2009, including six mass shootings in 2011 and 2012. Large-capacity magazines turn the perpetrators of these incidents into “killing machines.”³⁷ As first responders, law enforcement personnel must run towards these killing machines to neutralize the threat. At Fort Hood, Texas, Maj. Nidal Mailk Hasan killed thirteen people and wounded dozens more using the largest-capacity handgun he could find and a thirty-round magazine. Soldier witnesses testified that their colleagues could only attempt to rush Hasan while he was reloading, although he was ultimately stopped when he was shot by two armed policemen.³⁸ In Tucson, Arizona, Jared Loughner emptied his thirty-three round magazine in just thirty seconds, killing six people and injuring thirteen more. Loughner was only tackled by bystanders after he emptied his clip and attempted to reload.³⁹

In Aurora, Colorado, James Holmes used forty and one hundred round magazines to kill twelve individuals and injure fifty-eight more.⁴⁰ In that incident,

³⁷ Mark Follman and Gavin Aronsen, “A Killing Machine”: *Half of All Mass Shooters Used High-Capacity Magazines*, Mother Jones, January 30, 2013, <http://www.motherjones.com/politics/2013/01/high-capacity-magazines-mass-shootings>.

³⁸ Matt Pearce, *Gun’s magazine shaped the pace of Colorado theater massacre*, LA Times, July 22, 2010, available at <http://articles.latimes.com/2012/jul/22/nation/la-na-nn-theater-shooting-magazine-20120722/2>.

³⁹ *Id.*

⁴⁰ *Id.*

police officers arrived on the scene within ninety seconds of emergency calls.⁴¹ Even with this incredibly quick police response, a federal law enforcement official reported that Holmes' large-capacity magazine equipped AR-15 jammed, forcing him to switch to another weapon before he could fire again.⁴² Given the size of the magazines in Holmes' possession at the time of his rampage, it is easy to imagine that many more than twelve individuals, including numerous police officers, could have been gunned down if his magazine had not jammed.

While estimates of the likely impact of the Act's ban of large-capacity magazines are difficult to calculate, evidence suggests that a ban of large-capacity magazines on the federal level might produce as much as a 5% decrease in shootings overall.⁴³ In addition to lives saved, estimates of the full societal cost (medical, criminal justice and other governmental and private costs) could be as high as \$1 million per shooting.⁴⁴ In 2012, 112 people were killed by firearms in Connecticut.⁴⁵ Even a small reduction in the number of gun murders and non-fatal shootings in Connecticut would make a real difference in the number of lives

⁴¹ Trevor Hughes, *First responders praised for speed, caring in Colo. Shooting*, USA Today, July 22, 2012, available at <http://usatoday30.usatoday.com/news/nation/story/2012-07-22/aurora-police-praise-first-responders/56422078/1>.

⁴² Pearce, *supra* n.38.

⁴³ *America's Experience* at 167.

⁴⁴ *Id.*

⁴⁵ FBI, *Crime in the United States, Table 20, Murder by State, Types of Weapon*, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/20tabledatadecpdf/table_20_murder_by_state_types_of_weapons_2012.xls.

saved, including the lives of those who serve and protect as law enforcement personnel.⁴⁶ This certainly constitutes a compelling governmental interest.

III. THE ILE AMICI'S ARGUMENTS CONCERNING THE ACT'S EFFECTIVENESS AND CLARITY FAIL

The *amici curiae*, the International Law Enforcement Educators and Trainers Association, the Law Enforcement Legal Defense Fund, and the Law Enforcement Action Network (collectively, the “ILE *Amici*”) contend that the Act is not warranted because, *inter alia*, criminals rarely use assault weapons and large-capacity magazines to commit crimes. They also claim that the Act is vague and fails to provide sufficient guidance to police officers. As explained below, the ILE *Amici* are wrong.

A. Data and Studies Cited by the ILE *Amici* Are Unpersuasive

The ILE *Amici* attempt to support their position that the Act will disserve law enforcement and the public with data regarding assault weapons’ prevalence in gun crimes and police officer murders. (ILE *Amici* Br. at 10-11.) Based on a study more than two decades old, the ILE *Amici* claim that assault weapons have been used in “only a small fraction of gun crimes . . . [a]bout 2% according to most studies and no more than 8%.” (*Id.* at 10.) However, these statistics, even if reliable twenty years later, say nothing about the *lethality* of gun crimes when

⁴⁶ See *America’s Experience* at 167. Even if a ban on assault weapons and large-capacity magazines results as in as low as a 1% reduction in shootings, it will save real lives. This small reduction would amount to as many as 650 lives saved annually across the country. *Id.*

assault weapons are used. As shown above, regardless of their frequency, it is indisputable that gun crimes that involve assault weapons are drastically more deadly and devastating than those that do not.

Moreover, the ILE *Amici's* statistics undermine their own argument. The ILE *Amici* claim that assault weapons account for roughly 2% of the gun stock in the United States. (ILE *Amici* Br. at 11.) Thus, their contention that assault weapons are used in 2% to 8% of crimes actually indicates that they are used in a disproportionately large share of gun crimes. Even when viewed most favorably, their statistics merely evidence *proportionate* use. Further, as noted below, other data suggest that assault weapons in fact accounted for less than 1% of the civilian gun stock in 1994, which demonstrates that even the ILE *Amici's* lowest-end number illustrates disproportionate use of assault weapons in gun crimes. In any event, “[s]imply because a threat is a rare occurrence does not mean it is not real or significant.” (JA-1704 ¶ 45.)⁴⁷

Finally, the ILE *Amici* and others cite to a survey in which the majority of police officers participating believed that assault weapons bans are ineffective. (ILE *Amici* Br. at 14; *Amicus* Br. of Alabama, et al. at 13-14.) Respectfully,

⁴⁷ The Pink Pistols’ argument that banning the firearms at issue will not reduce the threat that criminals pose to law enforcement officials suffers from this same logical fallacy. The Pink Pistols rely on data purporting to demonstrate that officers are 72 times more likely to be killed by other weapons or by automobiles. (Pink Pistols *Amicus* Br. at 18-19.) Even if true, these statistics merely demonstrate that there are vastly more conventional firearms and automobiles in the United States than there are assault weapons.

subjective concerns are no substitute for hard facts. Even if the surveys and statements cited by *amici* were credited, the issue is whether assault weapons *actually* endanger law enforcement personnel and the public, not whether selected police officers and organization members believe this to be true.⁴⁸ Despite accounting for less than 1% of civilian gun stock, assault weapons accounted for up to 16% of killings of law enforcement officers in 1994 and more than 20% of police officer deaths from 1998-2001. (State Def. Br. at 39; JA-1702 ¶ 25.) Similarly, although large-capacity magazines represented approximately 21% of the civilian magazine stock in 1994, they were used in between 31% and 41% of gun murders of police. (State Def. Br. at 40.) Simply, the data demonstrate that these weapons—which were designed “to shoot multiple human targets very rapidly”—“are preferred by criminals and place law enforcement officers at

⁴⁸ The ILE *Amici* additionally quote the stated *belief* of the New York State Sheriffs’ Association (“NYSSA”) that assault weapons bans do not reduce gun violence and that New York’s similar legislation will not make New Yorkers safer. (ILE *Amici* Br. at 14-15.) Far from being a neutral or independent source, the NYSSA have advocated to overturn the New York legislation, co-authoring an *amicus* brief along with two of the ILE *Amici* in *Nojay v. Cuomo*. See Brief for *Amici Curiae* New York State Sheriffs’ Association et al., *Nojay v. Cuomo*, No. 14-0036 (2d Cir. filed Jan. 15, 2014). Regardless, the NYSSA’s subjective views conflict with objective data indicating that assault weapons bans are effective. (*Supra* Part II.B.) Moreover, the ILE *Amici*’s reference to the Police Benevolent Association of the New York State Troopers, Inc.’s “concern” that police officers who continue to use assault weapons will be delegitimized because the Act “demoniz[es]” these weapons is unpersuasive. (ILE *Amici* Br. at 15-16.) First, prohibiting civilian use of certain firearms is not the same as “demonizing” them—Connecticut has simply taken the position that these weapons are dangerous and should be used only by police and military professionals, not unlike the many items (such as explosives, toxic chemicals, and medicines) that governments commonly restrict to experts. Second, the Act *expressly allows* police officers and military personnel to continue to possess assault weapons. Conn. Gen. Stat § 53-202c(b)(2). It is perplexing how police officers’ continued *lawful* use could be viewed with suspicion.

particular risk because of their high firepower.” *Heller II*, 670 F.3d at 1262-63 (citations omitted).⁴⁹

B. The ILE *Amici*’s Concerns that the Act is Vague are Unfounded

The ILE *Amici* argue that the Act provides unclear guidance to law enforcement as to which firearms are banned, and that this will lead to inconsistent arrests and wasted police and prosecutorial resources.⁵⁰ This argument reflects a misunderstanding of how police operate, underestimates police officers’ ability to train, seek guidance, and exercise judgment, and fails to consider the significant law enforcement and societal resources that will be saved by curbing the prevalence of dangerous assault weapons.

Connecticut police officers have operated under a similar assault weapons ban for twenty years, and there is no evidence that they have been unable to make reasoned and accurate determinations when faced with weapons they do not

⁴⁹ What is more, police department funding has not kept pace with the rate at which criminals have acquired assault weapons in recent decades, and many police officers spend their own money to purchase assault weapons for on-duty use. (JA-1372 ¶ 48; JA-1704 ¶ 40.) That police officers have felt compelled to spend personal funds to keep themselves safe on the job casts serious doubt on surveys and statements purporting to show that police officers do not think the Act will afford them greater safety. (*E.g.*, ILE *Amici* Br. at 14.)

⁵⁰ Plaintiffs have only appealed with respect to two of the six provisions they challenged for vagueness in the District Court: Conn. Gen. Stat § 53-202a(1)(B)-(D) (“copies or duplicates thereof with the capability of” the enumerated weapons) and § 53-202w(a)(1) (ammunition feeding devices that “can be readily restored or converted to accept” more than ten rounds). (Appellants Br. at 56-60.) In as much as the ILE *Amici* attempt to argue for the vagueness of provisions that Appellants did not challenge for vagueness on appeal, their efforts are entirely inappropriate. *See Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 82 (2d Cir. 2013) (*amicus* briefs should not “inject[] new issues into an appeal”), *cert. denied*, 134 S. Ct. 1921 (2014).

immediately recognize. Far from making erratic arrests based on snap judgments, officers who encounter unfamiliar weapons take reasonable steps to gain full information, typically by calling the state police Special Licensing and Firearms Unit, headquarters, or another member of their department with more knowledge about firearms. (JA-1373 ¶ 58; JA-1705 ¶ 51.) In this regard, the Act is not unlike laws prohibiting drugs or counterfeit currency, where suspicious items are not always immediately identifiable as contraband. Moreover, police most often encounter assault weapons in conjunction with arrests made on other grounds. (JA-1705 ¶ 51.) In these common cases, officers have ample time to research whether potentially ambiguous weapons are prohibited.

The ILE *Amici* fail to appreciate that many existing laws have complicated frameworks yet have proven entirely workable, and that police officers, through routine training, understand what conduct is prohibited when new laws are passed. The Act presents even less of a concern in this respect, since it merely updates a regime that is similar in many respects to the one Connecticut police officers have worked under for twenty years. And regardless of any law's clarity, police officers make judgments every day. The ILE *Amici's* concern that Connecticut police officers may have to judge whether certain guns are prohibited evinces a surprising lack of confidence in their own members' ability to deploy their training and judgment in difficult situations, let alone situations where they have ample

guidance. (*See ILE Amici Br.* at 26-27.) That lack of confidence is something the MCCA simply does not share.

Additionally, the *ILE Amici's* suggestion that the Act will waste law enforcement and prosecutorial resources is mere speculation and irrelevant. (*ILE Amici Br.* 28-30.) For one, the *ILE Amici* fail to consider the enormous societal costs that assault weapons create. Even if the Act were to cost more fiscal resources than it would save—which has been far from established on this facial challenge—Connecticut is amply justified in choosing to expend additional resources to attempt to prevent further tragedies like Newtown. The cost of enforcement simply is not a factor when determining whether a law is constitutional. *See Maher v. Roe*, 432 U.S. 464, 479 (1977) (“Our cases uniformly have accorded the States a wider latitude in choosing among competing demands for limited public funds.”); *cf. DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346 (2006) (“State policymakers . . . retain broad discretion to make policy decisions concerning state spending in different ways depending on their perceptions of wise state fiscal policy and myriad other circumstances.”) (citations omitted). If it were, few laws would pass muster. Moreover, nothing could be more emblematic of states’ police powers under the Tenth Amendment than deciding how to allocate their own law enforcement resources. *Cf., e.g., id.; McLaughlin v. Florida*, 379 U.S. 184, 191 (1964) (explaining that states receive “the widest discretion” in

determining whether to focus their resources on certain problems rather than others). Respectfully, the Court should defer to Connecticut's judgment in this respect.

Second, putting aside the reality that the cost of tragedies such as Newtown cannot begin to be monetized, assault weapons place a real burden on Connecticut taxpayers, even outside the mass shooting context.⁵¹ For example, as discussed above, the spray from an assault weapon is more likely to strike more people and inflict multiple wounds than shots from more conventional firearms. If they survive, gunshot victims frequently incur costs for medical care and rehabilitation, and potentially suffer lost income. These costs are passed to taxpayers when gunshot victims, who are overwhelmingly poor, cannot afford them. (JA-1373 ¶ 55.) Additionally, Connecticut cities have “expended countless hours training for situations involving assault weapons, procuring resources that will allow us to respond to criminals with assault weapons such as body armor, and obtaining our own assault weapons.” (JA-1701 ¶ 16; *see also* JA-1367 ¶ 14.) This includes for example purchasing more expensive “threat level III” protective vests, since the bullets from assault rifles such as the AR-15 can penetrate more standard “threat

⁵¹ Among the myriad direct costs of Newtown is the approximate \$45 million cost of repairing the school. And estimates suggest that building a new school will cost significantly more. Richard Weizel, *Connecticut town mulls fate of Sandy Hook school months after massacre*, Reuters, May 3, 2013, available at <http://www.reuters.com/article/2013/05/04/us-usa-shooting-newtown-idUSBRE94302420130504>.

level II” vests. (JA-1704 ¶ 44; *see also* JA-1367 ¶ 14.) Although the Act will not prevent all criminal use of assault weapons and large-capacity magazines, like the federal assault weapons ban, it will make this less common and in turn ultimately help conserve police resources.

CONCLUSION

The Connecticut legislature acted constitutionally in limiting access to assault weapons and large-capacity magazines. This action was based on substantial and convincing evidence that such prohibitions would promote public safety and dramatically reduce the lethality of crime committed with firearms. The Act’s prohibition of assault weapons and large-capacity magazines does not substantially burden any fundamental right, and therefore no level of heightened scrutiny should apply, but at most, intermediate scrutiny should apply. The Act serves the most compelling of governmental interests—protecting Connecticut’s citizens and law enforcement—and does so via means that are substantially and sensibly related to accomplishing that end. Moreover, arguments by *amici* that the Act will be ineffective and is fatally vague fail because they rely on limited and irrelevant data and ignore the ability of law enforcement to interpret and apply the law. Therefore, *Amicus* respectfully submits that the decision of the District Court upholding the Act should be affirmed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure, the foregoing brief is in 14-Point Times Roman proportional font and contains 6,937 words and thus is in compliance with the type-volume limitation set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure.

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