14-319-CV

To Be Argued By:
MAURA MURPHY OSBORNE
Assistant Attorney General

IN THE

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 Connecticut; DORA B. SCHRIRO, in her official capacity

(Defendants-Appellees continued on next page)

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

BRIEF OF DEFENDANTS-APPELLEES WITH SPECIAL APPENDIX

GEORGE JEPSEN
ATTORNEY GENERAL

Perry Zinn-Rowthorn
Deputy Attorney General
Gregory T. D'Auria
Solicitor General
Maura Murphy Osborne
Michael K. Skold
Assistant Attorneys General
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel. (860) 808-5020
Fax (860) 808-5347
maura.murphyosborne@ct.gov

(continued from cover)

as Commissioner of the Connecticut Department of Emergency Services and Public Protection; DAVID I. COHEN, in his official capacity as State's Attorney for the Stamford/Norwalk Judicial District, Geographic Areas Nos. 1 and 20; JOHN C. SMRIGA, in his official capacity as State's Attorney for the Fairfield Judicial District, Geographical Area No. 2; STEPHEN J. SEDENSKY III, in his official capacity as State's Attorney for the Danbury Judicial District, Geographical Area No. 3; MAUREEN PLATT, in her official capacity as State's Attorney for the Waterbury Judicial District, Geographical Area No.4; KEVIN D. LAWLOR, in his official capacity as State's Attorney for the Ansonia/Milford Judicial District, Geographical Areas Nos. 5 and 22; MICHAEL DEARINGTON, in his official capacity as State's Attorney for the New Haven Judicial District, Geographical Areas Nos. 7 and 23; PETER A. MCSHANE, in his official capacity as State's Attorney for the Middlesex Judicial District, Geographical Area No. 9; MICHAEL L. REGAN, in his official capacity as State's Attorney for the New London Judicial District, Geographical Area Nos. 10 and 21; PATRICIA M. FROEHLICH, in her official capacity as State's Attorney for the Windham Judicial District, Geographical Area No. 11; GAIL P. HARDY, in her official capacity as State's Attorney for the Hartford Judicial District, Geographical Areas Nos. 12, 13, and 14; BRIAN PRELESKI, in his official capacity as State's Attorney for the New Britain Judicial District, Geographic Areas Nos. 15 and 17; DAVID SHEPACK, in his official capacity as State's Attorney for the Litchfield Judicial District, Geographical Area No. 18; and MATTHEW C. GEDANSKY, in his official capacity as State's Attorney for the Tolland Judicial District, Geographic Area No. 19,

Defendants-Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

Public Acts

STATEMENT OF THE ISSUES

1. Whether Connecticut may restrict access to a small subset of military-style semiautomatic firearms and large capacity ammunition magazines, consistent with the Second Amendment?

2. Whether Connecticut's restrictions on military-style firearms and large capacity magazines provide a reasonable person with sufficient notice of the prohibitions on firearms and magazines?

STATEMENT OF THE CASE

On April 4, 2013, the Connecticut General Assembly enacted and Governor Dannel P. Malloy signed into law Public Act 13-3 ("the Act"), strengthening and updating Connecticut's restrictions on military-style assault weapons and prohibiting possession of large capacity magazines capable of holding more than ten rounds of ammunition. On May 22, 2013, Plaintiffs filed suit challenging the constitutionality of the Act on the grounds that it violates the Second Amendment and their rights to equal protection and due process. (JA-34). On June 11, 2013, Plaintiffs amended their complaint (JA-83) to claim that: (1) the bans on large capacity magazines and assault weapons violate the Second Amendment (Counts I and II); (2) the exemptions for law enforcement officers and members of the military violate the Equal Protection Clause (Counts III and IV); and (3) various provisions of the Act violate the Due Process Clause because they are unconstitutionally vague (Count V). The parties cross moved for summary judgment. On January 30, 2014, the district court (Covello, J.) ruled that the Act did not violate Plaintiffs' constitutional rights and entered judgment for the

Defendants on all counts. *Shew v. Malloy*, -- F. Supp.2d --, 2014 WL 346859 (D. Conn. Jan. 30, 2014) (Special Appendix "SA-" 1-18).

Plaintiffs appeal the district court's decision as to Counts I and II, and have abandoned their equal protection claims in Counts III and IV. Plaintiffs have also abandoned most of their facial vagueness claims contained in Count V, and now only challenge two clauses of the Act as unconstitutionally vague.

STATEMENT OF THE FACTS

A. The AR-15 and Other Firearms Covered by The Act Are Military-Style Assault Weapons

Connecticut has banned military-style assault weapons for twenty years. The Act updates that legislation to keep pace with the evolving militarization of the civilian gun market over the past two decades. The AR-15—which is the centerpiece of Plaintiffs' challenges here—is the quintessential military-style assault weapon targeted by the Act.

The AR-15 originally was manufactured as a selective-fire rifle that could be fired on full automatic, burst fire, or semiautomatic at the option of the user. The United States military adopted the original AR-15 as the M-16, and deployed it as the primary combat weapon for American soldiers during the Vietnam War. Colt Manufacturing

Company retained the AR-15 trademark for its semiautomatic version of the rifle, which it began selling to the civilian market in 1963. (JA-1026 at ¶¶20-21; JA-144 ¶5).

The AR-15 is virtually identical to the M-16, except for the fact that it can only fire on semiautomatic. (JA-1026 ¶¶20-21). That is not a meaningful distinction in practice; while it takes just under two seconds to empty a 30-round magazine on full automatic, it takes just five seconds to empty the same magazine on semiautomatic. *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1263 (D.C. Cir. 2011), quoting Testimony of Brian J. Siebel, Brady Center to Prevent Gun Violence, at 1 (Oct. 1, 2008) (JA-2089). In fact, the United States Army trains its soldiers to use their M-16s on the semiautomatic setting whenever possible, as the Army considers semiautomatic to be more effective than full automatic for the vast majority of military applications. (JA-2099-2100[1]).

Colt and other gun manufacturers soon recognized the broader commercial potential of these military-style weapons. Beginning in the 1980s, they began to heavily market and promote the AR-15, and

---

[1] A complete copy of the United States Army's M-16/M-4 Training Manual is available online at http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/fm3_22x9.pdf. (last viewed August 7, 2014).

variations of it, to civilians. (JA-2035-2086). Like the AR-15, many of these weapons were based on military designs and had military-style features that were intended for combat situations and for killing the enemy. (JA-2041-43; *see* JA-1026-1027 ¶¶20, 22-24, 26-28).

The misuse of these weapons for violent criminal purposes began soon after their debut in the civilian gun market. A string of mass shootings across the United States in which the shooter used military-style semiautomatic weapons began in the mid-1980s, and has continued unabated. These mass killers used their weapons exactly as they were intended to be used: to kill large numbers of people in a short period of time. (JA-1396 ¶15).

B. Federal, State and Local Regulatory Responses

As the unique dangers of civilian use of modern military weaponry became evident, several jurisdictions across the United States took action to regulate or ban them. In 1989, the federal Bureau of Alcohol, Tobacco and Firearms ("ATF") used its authority under the Gun Control Act of 1968 to block the importation of various foreign-made semiautomatic rifles with military features on the ground that such weapons are not suitable for sporting purposes. *See* 18 U.S.C. §

925(d)(3); *id.* 922(l) (JA-997-1022) (which generally bars the importation of firearms that are not "particularly suitable for or readily adaptable to sporting purposes."); *see also* (JA-1403 ¶46 n.19). The ATF concluded that these foreign-made firearms are "designed and intended to be particularly suitable for combat" and "military applications," and "for killing or disabling the enemy." (JA-1096; JA-1101-04; JA-1107; *see also* JA-1145-46; JA-1152-54; JA-1179-80).

In 1994, Congress went a step further and imposed a complete ban on assault weapons ("the federal ban"). The federal ban defined an assault weapon in part as any semiautomatic weapon having two or more of a similar list of military features that are useful in military and criminal applications, but that are unnecessary in shooting sports or for self defense. 18 U.S.C. § 921(a)(30)(B)-(D) (repealed); *id.* § 922(v)(1) (repealed) (JA-997-1022; *see also* JA-1321-24). The federal ban also prohibited the possession of large capacity magazines. 18 U.S.C. § 921(a)(31)(A) (repealed); *id.* 18 U.S.C. § 922(w)(1) (repealed).

In 1998, ATF followed suit and added the ability to accept a large-capacity magazine made for a military rifle to the list of disqualifying features for imported semiautomatic rifles because large capacity

magazines "are attractive to certain criminals" and "cannot fairly be characterized as sporting rifles."[2] (JA-1179-1181; JA-1403 ¶46 n.19).

Several state and local jurisdictions also adopted their own assault weapon regulations during this time period. The City of Los Angeles adopted the nation's first ban in February, 1989, and California adopted the first statewide ban later that year. (JA-1361 n.20). Other states and large cities followed suit with similar restrictions. (JA-1356-63).

C. Connecticut's Assault Weapons Ban

1. The 1993 Ban

Like many other jurisdictions, Connecticut citizens have directly experienced the adverse effects of assault weapons, and their elected leaders have taken steps to restrict these weapons since they entered the civilian market. In the late 1980s and early 1990s, Connecticut experienced an epidemic of gang violence and drug-related crime in which assault weapons played a prominent role. During that period,

---

[2] The federal ban expired by its own terms in 2004, and has not been renewed. However, ATF still views the previously banned assault weapons as "nonsporting," and the restrictions on importing such weapons into the United States remain in effect. *See* http://www.atf.gov/firearms/faq/saws-and-lcafds.html#expiration-importation (last viewed August 10, 2014).

criminals—and gangs in particular—increasingly turned to assault weapons as the weapon of choice to commit crime, or to simply intimidate rival gangs and innocent citizens and terrorize neighborhoods. (JA-1711-12 ¶¶7-11).

In response to these threats and the advocacy of local law enforcement, the General Assembly adopted Connecticut's first assault weapon ban in 1993. 1993 Conn. Pub. Acts 93-306 (Reg. Sess.). The 1993 ban defined an assault weapon as: (1) "Any selective-fire firearm capable of fully automatic, semiautomatic or burst fire at the option of the user;" (2) any one of a list of 67 specifically enumerated military-style semiautomatic rifles; or (3) "[a] part or combination of parts designed or intended to convert a firearm into an assault weapon, or any combination of parts from which an assault weapon may be rapidly assembled if those parts are in the possession or under the control of the same person." (JA-867 § 1(a)).

A year later, the General Assembly expanded registration requirements to all private sales of handguns as a way to address the problem of "straw purchasers" who purchased large numbers of handguns and resold them to criminals. (JA-1712 ¶12; *see* 1994 Conn.

Spec. Acts 94-1, § 1 (July 1994 Sp. Sess.)). Although these laws reduced gang- and drug-related gun violence in the cities most affected by it, they had gaps that diminished their broader impact. (JA-1712 ¶¶12-13). Most notable among them was the fact that the 1993 ban defined assault weapons primarily by make and model only, and did not include a generic definition that focused on the weapons' military features. As a result, gun manufacturers circumvented the 1993 ban by adopting minor cosmetic changes to a weapon and renaming it, or in some instances by simply changing the weapon's name without making any physical changes at all. (JA-1712 ¶13; JA-1713 ¶¶16-17; JA-1403 ¶¶46, 72; JA-1881).

2. The 2001 Amendments

In 2001, the General Assembly attempted to fix this loophole by adopting a generic "features" test that closely paralleled the definition of assault weapon in the 1994 federal ban. *See* 2001 Conn. Pub. Acts 01-130, § 1 (JA-949-960). Like the federal ban and Connecticut's 1993 ban, the 2001 features test did not prohibit all semiautomatic firearms, or even a significant portion of them. Rather, it prohibited a small subset of semiautomatic weapons with detachable magazines and two

or more military-style features that are useful in military and criminal applications, but that are unnecessary in shooting sports or for self defense. (JA-949, § 1(a)(3) and (4); *see* JA-1396 ¶1; JA-1402 ¶41; JA-1409 ¶72; JA-1321-1324).

Although the two-feature test strengthened Connecticut's assault weapons ban, it still permitted manufacturers to sell what otherwise would be a banned firearm by simply removing one of the prohibited military features, thereby circumventing the law's intended purpose to eliminate military-style weaponry from the civilian gun market. (JA-1713 ¶¶16-17; JA-1403 ¶46; JA-1409 ¶72). Unlike the federal ban, moreover, neither the 1993 ban nor the 2001 amendments prohibited large capacity magazines, which is the most dangerous military-style feature of all assault weapons. (JA-1641; JA-1714 ¶20).

3. Public Act 13-3

Following the 2001 amendments, the United States continued to experience a rash of mass public shootings in which the perpetrator used an assault weapon, large capacity magazines, or both. (JA-1397 ¶16). And, as it had in the early 1990s, Connecticut citizens once again

directly experienced the horrific and tragic consequences that these weapons and large capacity magazines can have.

On the morning of December 14, 2012, a shooter shot his way into the Sandy Hook Elementary School in Newtown, Connecticut, and murdered twenty innocent schoolchildren and six adults using a Bushmaster version of the AR-15 assault rifle equipped with ten 30-round magazines. In carrying out these horrific acts, the shooter used his assault rifle to fire 154 rounds on his victims in less than 5 minutes.[3] (JA-2032-33; JA-962-969).

In response to these senseless acts, the Governor of Connecticut established the Sandy Hook Advisory Commission comprised of various "experts in different areas, including education, mental health, law enforcement and emergency response," to evaluate an appropriate

---

[3] There have been several other high profile public shootings in Connecticut that involved the use of assault weapons, large capacity magazines or both. They include: (1) a mass shooting on August 3, 2010 at the Hartford Beer Distributors in which a gunman used two pistols equipped with large capacity magazines to kill 8 people and wound 2 others; (2) a mass shooting on March 6, 1998, in which the gunman used a 9mm Glock pistol with a large capacity magazine to kill 4 people; and (3) an incident on December 30, 2004 in which the shooter used an assault rifle to kill Newington Police Officer Peter Lavery. (JA-1979-81; JA-2025-2030).

legislative response to the Newtown shooting. (JA-977). After receiving testimony and evidence at seven hearings, the Commission found "that firearm lethality is correlated to capacity," that "a life could be lost every few seconds" in a spree killing, and "that types of ammunition and magazines currently available can pose a distinct threat to safety in private settings as well as places of assembly." (JA-979-80). Based on those findings, the Commission recommended, *inter alia*, that the General Assembly "[i]nstitut[e] a ban on the sale, possession, or use of any magazine or ammunition feeding device in excess of 10 rounds except for military and police use." (JA-980). The Governor similarly proposed a ban on large capacity magazines that "unsafely and unnecessarily increase the destructive power of firearms," and a strengthening of the existing assault weapons ban. (JA-991-995).

The General Assembly also established its own bipartisan Legislative Task Force and held public hearings about the Newtown mass shooting.[4] The legislature's Public Safety Committee similarly

---

[4] The Legislative Task Force's website contains useful information about its membership, hearings, and recommendations. *See* http://www.cga.ct.gov/asaferconnecticut/ (last viewed August 10, 2014).

held its own public hearing, and received public comments and written testimony about proposed regulatory responses.

The General Assembly passed the Act following this extensive bipartisan legislative effort. The Act is a comprehensive step towards stemming gun violence in Connecticut. It includes regulations on a variety of topics, including long guns, (JA-849-854 §§1-5); ammunition, (JA-857-860 §§14-17; JA-874-880, §§32-40); firearm storage, (JA-886 §§54-56); mental health, (JA-854 §8, JA-855 §§10-11, JA-887-88 §§57-58, JA-891-905 §§64-79); and school safety, (JA-906-914 §§80-96). It also establishes a deadly weapon offender registry, (JA-860-63 §§18-22), and increases the penalties for certain gun-related offenses, (JA-880-86 §§42-50, 52-53).

While all of these provisions serve the central purpose of the Act—to reduce gun violence—the focal point of the legislature's response to the Newtown tragedy is the Act's "stronger restriction on the assault weapons that have been used in these mass shootings and a limitation on the large-capacity magazines." (JA-967). In the legislature's view, such restrictions were necessary because assault weapons are "excessively dangerous weapons" and are "weapon[s] of war . . . [that

were] originally designed for the battlefield and for mass killings." (JA-963). "[T]he number of bullets that can be fired so quickly" from large capacity magazines are "what enables mass destruction," and the "common thread" in mass killings in this country is "these assault weapons with high-capacity rounds that can shoot multiple rounds in a minute, weapons that are meant for war to defend our country . . . ." (JA-969).

a. The Assault Weapons Ban

In relevant part, the Act broadens the existing definition of assault weapon to include a number of additional specifically enumerated semiautomatic centerfire rifles, semiautomatic pistols, and semiautomatic shotguns. *See* Conn. Gen. Stat. § 53-202a(1)(B)-(D). As a result of the Act, there are now 183 assault weapons that are prohibited by make and model in Connecticut. These weapons are semiautomatic versions of military firearms used by modern professional militaries around the world, and they all have military features that are useful in combat but inappropriate and unnecessary for lawful civilian purposes. (JA-1026 ¶¶20, 22-24, 26-28; *see* JA-1396 ¶11; JA-1402 ¶41).

A majority of the enumerated weapons are based on, and are in fact semiautomatic variations of, the original AR-15/M-16 and AK-47 military designs. (JA-1027 ¶¶22-23, 26-27). Most of the other enumerated weapons are variations of a small number of unique military designs that are not of a general "type" like the AR-15 and AK-47. (JA-1027 ¶¶24, 26). As a result, the number of different basic designs of firearms prohibited under the enumerated weapons provisions is much smaller than the number of listed makes and models suggests.

In addition to identifying these specific weapons, the law now prohibits 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. *Id.*, § 53-202a(1)(E)(ii), (v) (SA-22). It also provides that any semiautomatic centerfire rifle or semiautomatic pistol that has an ability to accept a detachable magazine need only have one of the statutorily enumerated military-style features to qualify as an assault weapon (instead of the two feature requirement that existed previously), and amended the number

and type of those prohibited features.[5] *Id.*, § 53-202a(1)(E)(i), (iv) (SA-22-23). This latter change was designed to remedy the problem of "copycat" firearms that avoided the 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 Act permits the continued possession of an assault weapon by an individual who lawfully possessed it prior to the Act's effective date, provided that the individual applied for a certificate of possession to the Department of Emergency Services and Public Protection ("DESPP") by January 1, 2014, and possesses the firearm in compliance with other statutory restrictions. Conn. Gen. Stat. § 53-202d(a), (f); (SA-29-30). Importantly, moreover, the Act also continues to permit eligible individuals to possess any otherwise lawful firearms—including the vast majority of semiautomatic handguns, rifles, and shotguns—that do not fall within the Act's definition of assault weapon. As a result, there are more than one thousand different firearms that remain available to

---

[5] Rimfire semiautomatic rifles, which are generally less powerful than centerfire rifles, continue to be regulated under the two-feature test set forth in the 2001 Act. Conn. Gen. Stat. § 53-202a(1)(E)(ix) (SA-23); *see also* P.A. 13-220, § 3 (JA-921).

Connecticut citizens for lawful purposes such as sport shooting, hunting, and self defense. (JA-1027 ¶¶29-32; *see* JA-1714 ¶21).[6]

b. The Large Capacity Magazine Ban

The Act also prohibits the importation, purchase, or possession of large capacity magazines, which the Act defines as "any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition . . . ." Conn. Gen. Stat. § 53-202w(a)(1) (SA-47), *see also* P.A. 13-3 § 1(a)(1), (b), (c) (JA-917). As with assault weapons, the Act permits any person who lawfully possessed a large capacity magazine prior to April 5, 2013, to continue doing so as long as he or

---

[6] The Act also exempts law enforcement officers and members of the military from several provisions. *See* Conn. Gen. Stat. § 53-202b(b)(1) (SA-25); Conn. Gen. Stat. § 53-202c(b) (SA-27); Conn. Gen. Stat. § 53-202d(a)(1)(B), (2)(B) (SA-29); Conn. Gen. Stat. § 53-202d(d) (SA-30). In the district court below, Plaintiffs argued that these exemptions violate equal protection. The district court rightly rejected those claims. *Shew v. Malloy*, 2014 WL 346859 at *9-11 (SA-6-7). Plaintiffs have not raised or briefed their equal protection claims in this Court, and have therefore abandoned them on appeal. *Schaefer v. Town of Victor*, 457 F.3d 188, 208 n.24 (2d Cir. 2006). Further, although one of the *amici* has attempted to resurrect these equal protection arguments through the guise of its Second Amendment analysis, it is wholly inappropriate for it to have done so. *See, e.g., Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 82 (2d Cir. 2013) (holding that amicus briefs are "not a method for injecting new issues into an appeal, at least in cases where the parties are competently represented by counsel").

she declared possession of the magazine to DESPP by January 1, 2014. Conn. Gen. Stat. § 53-202w(e)(4) (SA-48), Conn. Gen. Stat. § 53-202x(a)(1) (SA-50); *see also* P.A. 13-3 § 1(e)(4), § 2(a), (f). (JA-919).

STANDARD OF REVIEW

This Court reviews the grant of summary judgment *de novo,* "examining the evidence in the light most favorable to, and drawing all inferences in favor of, the non-movant." *Sheppard v. Beerman,* 317 F.3d 351, 354 (2d Cir. 2003).

SUMMARY OF ARGUMENT

The Act restricts a relatively small subset of dangerous and unusual military-style weapons that numerous jurisdictions, including Connecticut, have restricted since their appearance in the civilian market. The weapons prohibited by the Act are expressly excluded from the scope of the Second Amendment right established by the Supreme Court in *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008) ("*Heller*"). The uncontested evidence demonstrates that those weapons are disproportionately used in crime—and in particular the most serious kinds of crime—relative to their market presence. The evidence also demonstrates that those weapons are not commonly possessed

among American gun owners, and that those individuals who do possess them do not commonly use them for the core Second Amendment purpose of self defense. Under *Heller*, therefore, the weapons prohibited by the Act are not entitled to any protection under the Second Amendment, and this Court should uphold the Act and proceed no further on Plaintiffs' Second Amendment claims.

Even if this Court concludes that the prohibited weapons are entitled to some degree of Second Amendment protection, heightened scrutiny is not appropriate. This Court has held that heightened scrutiny applies only if the law substantially burdens a Second Amendment right. The Act does not do so. To the contrary, it restricts only a small subset of firearms that account for at most 2% of the civilian gunstock in this country. It leaves untouched more than one thousand alternative firearms and magazines—including hundreds of semiautomatic handguns, rifles and shotguns—that Connecticut citizens may possess for self defense in the home and in public. The availability of these ample alternatives for self defense—which the majority of gun owners select over the highly dangerous weapons

prohibited by the Act—renders the burden insignificant and precludes application of heightened scrutiny.

If this Court chooses to apply heightened scrutiny analysis, it should follow its own precedent and uphold the Act under intermediate scrutiny. The State clearly has an important governmental interest in ending gun violence and death. The Act is substantially related to that governmental interest because it bans a small subset of firearms and large capacity magazines that not only are disproportionately selected by criminals for use in gun crime, but that also result in more shots being fired, more victims being shot, and more instances of death compared to gun crimes in which other less dangerous weapons are used. The legislature reasonably relied upon substantial evidence to conclude that banning these weapons will reduce the lethality and injuriousness of gun crime in Connecticut without unnecessarily limiting the right of Connecticut citizens to possess other lawful firearms and magazines for self defense. That legislative judgment is entitled to deference, and must be upheld.

Plaintiffs argue for an unsupported absolutist interpretation of their Second Amendment rights that elevates their personal preferences

for particular firearms above any societal concerns for public safety and civility. No other constitutional right enjoys such categorical and unqualified protections. This Court should reject Plaintiffs' interpretation as a wholesale distortion of the Second Amendment, of the interpretation of that Amendment in *Heller*, and of every other case that has interpreted the right since *Heller*.

Finally, Plaintiffs' contrived claims of facial vagueness, which they mostly abandoned on appeal, also lack merit. The Act provides a reasonable person with sufficient guidance about the restrictions contained in the Act, and it is not facially vague under any applicable standard.

ARGUMENT

I. THE ACT DOES NOT VIOLATE THE SECOND AMENDMENT

A. The Analytical Framework For Second Amendment Claims After *Heller* And *McDonald*

In *Heller* and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) ("*McDonald*"), the Supreme Court announced for the first time that the

Second Amendment[7] guarantees an individual right to possess a handgun in the home for the purpose of self defense. *Heller*, 554 U.S. at 573, 628-29, 636. The Court did not elaborate on the full scope of the Second Amendment, nor did it express what level of scrutiny should apply to laws that burden the rights protected by it. *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) *cert. denied,* 133 S. Ct. 1806 (2013). However, the Court did reaffirm that many firearm regulations remain valid because they are consistent with individual Second Amendment rights. *Heller*, 554 U.S. at 626-29; *McDonald*, 130 S. Ct. at 3046-47.

Since *Heller* and *McDonald*, lower courts "have filled the analytical vacuum" with a familiar two-step framework that courts routinely use to analyze claims involving other constitutional rights. *See Kachalsky*, 701 F.3d at 93; *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 194 (5th Cir. 2012) *cert. denied,* 134 S. Ct. 1364 (2014) (*"NRA v. BATFE"*) (citing cases).

---

[7] The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed." U.S. Const. amend. II. (SA-53).

First, as with all other constitutional rights, the Court's first task is to determine whether the law imposes a burden on conduct falling within the Second Amendment. *See Kachalsky*, 701 F.3d at 89. If no burden is found, then the analysis is at an end. *E.g., United States v. Staten*, 666 F.3d 154, 159 (4th Cir. 2011) *cert. denied,* 132 S. Ct. 1937 (2012).

Second, if the law does burden conduct within the scope of the Second Amendment, the Court must then determine which level of scrutiny applies. *Kachalsky*, 701 F.3d at 93. The level of scrutiny will turn upon the nature of the Second Amendment conduct being regulated and the degree of the burden imposed by the law. *United States v. Decastro,* 682 F.3d 160, 166 (2d. Cir. 2012) *cert. denied,* 133 S. Ct. 838 (2013); *see United States v. Chester,* 628 F.3d 673, 682 (4th Cir. 2010); *Heller v. D.C.*, 670 F.3d 1244, 1257 (D.C. Cir. 2011) ("*Heller II*"); *United States v. Chovan,* 735 F.3d 1127, 1138 (9th Cir. 2013); *see also Anderson v. Celebrezze*, 460 U.S. 780, 786-89 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992).

With regard to the first step of determining whether the Second Amendment is even implicated, *Heller* established several "important

limitation[s]" to the Second Amendment that remove certain weapons and conduct from its guarantee. *Heller*, 554 U.S. at 627. Of particular relevance here, the Second Amendment does not prohibit longstanding restrictions on the possession of certain firearms. Nor does it protect those weapons that are "dangerous and unusual," or that are not "'in common use at the time' for lawful purposes like self-defense." *Id.* at 623-28; *see United States v. Zaleski*, 489 F. App'x 474, 475 (2d Cir. 2012), *cert. denied,* 133 S. Ct. 554 (2012). The assault weapons and magazines at issue here fall within these limitations that *Heller* established are outside of the Second Amendment. *See People v. James*, 94 Cal. Rptr. 3d 576, 585-86 (Cal. App. 2009). Consequently, this Court need proceed no further in its analysis.

If the Court determines that the Act burdens conduct falling within the scope of the Second Amendment, it must then determine the appropriate level of scrutiny based upon the nature of the Second Amendment conduct burdened and the degree of the burden. This Court's precedents establish that "heightened scrutiny is triggered only by those restrictions that (like the complete prohibition on handgun possession in the home 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)." *Decastro*, 682 F.3d at 166; *accord Kwong v. Bloomberg*, 723 F.3d 160, 167 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 2696 (2014); *Kachalsky*, 701 F.3d at 93. A burden is not substantial, and therefore does not require heightened scrutiny, "if adequate alternatives remain for law-abiding citizens to acquire a firearm for self-defense." *Decastro*, 682 F.3d at 168 (emphasis added).

The uncontested facts in this case demonstrate that the Act does not significantly burden conduct falling within the scope of the Second Amendment because it leaves more than one thousand alternative firearms and magazines for law-abiding citizens to acquire and possess for self defense. The facts also demonstrate that the overwhelming majority of gun owners actually select those alternative firearms instead of the weapons prohibited by the Act, which account for at most 2% of the civilian gun stock in this country. Consequently, while some firearms and magazines are undisputedly affected by the Act, any burden on actual conduct protected by the Second Amendment is minimal at best. Heightened scrutiny is therefore inappropriate.

If the Court determines that the Act does substantially burden conduct falling within the scope of the Second Amendment, then "some form of heightened scrutiny" is appropriate. *Kachalsky*, 701 F.3d at 93. As in other constitutional contexts, the level of scrutiny that applies under the Second Amendment depends on the nature and extent of the burden on protected conduct. *Heller II*, 670 F.3d at 1257; *Chovan,* 735 F.3d at 1138; *see also Anderson*, 460 U.S. at 786-89; *Burdick*, 504 U.S. at 433-34. Courts that have applied heightened scrutiny to laws like the Act consistently have applied intermediate scrutiny, and have had no difficulty upholding them. *See Heller II*, 670 F.3d at 1261-64; *New York State Rifle and Pistol Ass'n, Inc. v. Cuomo,* 990 F.Supp.2d 349, 371 (W.D.N.Y. December 31, 2013) *appeal docketed sub nom Nojay v. Cuomo*, 14-0036-cv(L) (2d Cir. Jan. 3, 2014) ("*NYSRPA*"); *Colorado Outfitters Ass'n v. Hickenlooper,* -- F. Supp. 2d --, 2014 WL 3058518, *20 (D. Col. June 26, 2014); *Fyock v. City of Sunnyvale,* -- F. Supp. 2d --, 2014 WL 984162, *10 (N.D.Cal. March 5, 2014) (denying preliminary injunctive relief because large capacity magazine ban imposed only minimal burden on Second Amendment rights); *Kolbe v. O'Malley*,-- F. Supp. 2d --, Civil No. CCB-13-2841, 2014 U.S. Dist. LEXIS 110976, *66-

67 (D.Md August 12, 2014) (upholding Maryland's ban on assault weapons and large capacity magazines). In fact, no court has found an assault weapon ban or large capacity magazine ban to violate the Second Amendment, under any level of scrutiny. Accordingly, based on this Court's precedent and the authority of other courts, the Court should uphold the Act even under a heightened scrutiny analysis.

B. The Second Amendment Does Not Protect Military-Style Assault Weapons And Large Capacity Magazines

No constitutional right is absolute, and the Second Amendment is no exception to that rule. Indeed, *Heller* itself acknowledged that "[l]ike most rights, the right secured by the Second Amendment is not unlimited," and that there are "important limitation[s]" to the scope of the right that leave substantial room for the government to legislate in the public interest. *Heller*, 554 U.S. at 626-28. Three of the limitations expressly adopted in *Heller* are dispositive here.

First, *Heller* recognized that longstanding restrictions on the possession and use of certain firearms remain valid and do not fall within the scope of the Second Amendment. *Id.* at 626-27 and n.26. The Court reaffirmed that assurance in *McDonald*, emphasizing that the Second Amendment "does not imperil every law regulating firearms"

and that "[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment." *McDonald*, 130 S. Ct. at 3046-47.

Second, *Heller* held that the Second Amendment guarantee "extends only to certain types of weapons," and that it certainly does not encompass a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 623, 626, citing *United States v. Miller*, 307 U.S. 174, 178-82 (1939). In particular, it does not protect weapons that are recognized as abnormally "dangerous and unusual." *Id.* at 627. The Court stressed that this includes many weapons that are "most useful in military service," and specifically highlighted the M-16 assault rifle as one such weapon. *Id.* Importantly, the Court emphasized that this limitation applies even though it may mean that citizens must resort to other "small arms" for their own defense, *id.* at 627, and that, unlike in the colonial or revolutionary era, average citizens no longer have a right to possess the most lethal and sophisticated weapons that modern day technology allows. *Id.*; *compare id. at 624-25* ("In the colonial and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense of person and

home were one and the same.") *with id. at 627-28* ("But the fact that modern developments have limited the degree of fit between the prefatory clause and the protected right cannot change our interpretation of the right.").

Third, the *Heller* Court explained that the Second Amendment only protects those weapons that are "'in common use at the time' for lawful purposes like self-defense." *Id.* at 624, quoting *Miller*, 307 U.S. at 179. It "does not protect those weapons not typically possessed by law-abiding citizens" for such purposes. *Id.* at 625 (emphasis added).

The Act's bans on assault weapons and large capacity magazines fall within each of these limitations. The Act is a reasonable and logical extension of a twenty-year old Connecticut statute that mirrors analogous laws that have existed for decades in other jurisdictions. Like those laws, and unlike the laws at issue in *Heller* and *McDonald*, the Act does not prohibit an entire class of firearms, such as all conventional handguns that are the "quintessential self-defense weapon." *Heller*, 554 U.S. at 629. Nor does it even ban an entire subset of a class of firearms, such as all semiautomatic handguns or all semiautomatic rifles. Rather, it bans a small group of firearms within

those subsets. That group consists of military-style firearms and magazines that are unusually dangerous and that "are designed to enhance their capacity to shoot multiple human targets very rapidly." *Heller II*, 670 F.3d at 1262. Such weapons have no utility for legitimate self defense, and are not actually used for such purposes in practice. Consequently, they simply are not within the right secured by the Second Amendment.

1. The Banned Assault Weapons and Magazines are Unusually Dangerous, and Have Been Restricted or Banned Outright In Many Jurisdictions For Much Of Their Existence

Every firearm is potentially dangerous, particularly when in the hands of violent, inexperienced, or suicidal individuals. But not all arms are equally dangerous. A grim history of death and injury teaches that the assault weapons and large capacity magazines banned in Connecticut are especially dangerous, and are thus appropriately singled out for greater restriction. These firearms and magazines are disproportionately used in crime relative to their market presence, and feature prominently in some of the most serious types of crime like homicides, mass shootings, and killings of law enforcement officers. The expert relied upon by both Plaintiffs and Defendants in the district

court, Dr. Christopher Koper, concluded that, when these weapons are used in gun crime incidents, more shots are fired, more victims are wounded, and there are more wounds per victim. This in turn leads to more injuries, more lethal injuries, and higher rates of death than crimes involving more conventional firearms.

a. Assault Weapons and Large Capacity Magazines Are Designed For Combat, and Have the Same Killing Capacity as Modern Military Weapons

The devastating effects of assault weapons and large capacity magazines are unsurprising, as the banned weapons were designed precisely for the military purpose of killing human beings in combat situations. Most of the weapons enumerated by name or type in the Act are civilian versions of the M-16 or AK-47, which are the most prolific military weapons in the world and continue to be used by many nations for military purposes today. (JA-1026-1027 ¶¶20, 22-24, 26-27). Like all other military weapons, the M-16 was designed for the primary purpose of killing large numbers of people as quickly as possible. (JA-1026 ¶21). It is precisely for that reason that the Supreme Court highlighted the M-16 as exemplifying a "dangerous and unusual" weapon that falls

outside of the scope of the right secured by the Second Amendment. *Heller*, 554 U.S. at 627; *see Zaleski*, 489 Fed. App'x at 475.

The AR-15 is identical to the M-16 for purposes of the Second Amendment, and its possession is not entitled to constitutional protection for the same reasons. Although it has been modified for sale in the civilian market, the modern AR-15 is based on the M-16 design, and has the same military features such as pistol grips, folding or telescoping stocks, and flash suppressors. It also has many of the same component parts, which are interchangeable with those used in the M-16. (*See* JA-1026 ¶21; *Staples v. United States*, 511 U.S. 600, 603 (1994)).

The only functional difference between an M-16 and AR-15 is that the AR-15 fires on semiautomatic only, and cannot fire on full automatic. (JA-1026 ¶¶20-21; JA-1712 ¶14). That is not a meaningful distinction for constitutional purposes; while it takes just under two seconds to empty a 30-round magazine on full automatic, it takes just five seconds to empty the same magazine on semiautomatic. *Heller II*, 670 F.3d at 1263; *see also* (JA-2089).

Perhaps more importantly for purposes of the "dangerous and unusual" inquiry, the United States Army generally considers the M-16 to be more dangerous and effective as an instrument of war when it is fired on semiautomatic than when it is fired on full automatic. According to the United States Army M16/M4 training manual, "[t]he most important firing technique during fast-moving, modern combat is rapid semiautomatic fire. It is the most accurate technique of placing a "large volume of fire," (JA-2099), and "is superior to automatic fire in all measures: shots per target, trigger pulls per hit, and time to hit." (JA-2100). It also is "the most effective volume of fire in a target area while conserving ammunition," and "is the most accurate means of delivering suppressive fire." (JA-2100). By contrast, "[a]utomatic or burst fire is inherently less accurate than semiautomatic fire" (JA-2103) and "rapidly empties ammunition magazines." (JA-2116). Even for trained soldiers, automatic fire "is rarely effective" and rarely used. (JA-2116).

Given these realities, the Army instructs its soldiers that the automatic and burst fire techniques "may not apply to most combat engagements," that "M16 rifles and M4 carbines should normally be employed in the semiautomatic fire mode," and that soldiers should not

fire on full automatic whenever "[t]argets may be effectively engaged using semiautomatic fire." (JA-2104). Contrary to Plaintiffs' unsupported assertions, therefore, as a practical matter the AR-15 is identical to the M-16 for the vast majority of modern combat situations in which the M-16 may be deployed. *See also Heller II*, 670 F.3d at 1263 (noting that it is "difficult to draw meaningful distinctions between the AR-15 and the M-16").

Although it is common-sense that weapons with the same killing capacity as modern military weapons are too dangerous for the public sphere, the military features of such weapons dispel any possible doubt. Every firearm that qualifies as an assault weapon under Connecticut law has one or more military features that enhance its killing capacity. (JA-1027 ¶28). For example, features like a pistol grip, forward pistol grip and thumbhole stock allow shooters to steady the weapon during rapid firing, easily shift from target to target, and make it easier to spray bullets from the hip or fire the weapon with only one hand. (JA-1713 ¶18; JA-1370 ¶35). A folding or telescoping stock allows a shooter to make a large and powerful weapon much more compact, and therefore more concealable. (JA-1713 ¶18; JA-1370 ¶34). A shroud

promotes prolonged rapid firing by dispersing the heat generated when the weapon is fired, allowing the shooter to hold the weapon without being burned. (JA-1713 ¶18; JA-1370 ¶36). A flash suppressor suppresses the flash caused by the firing of the weapon, and thereby helps a shooter avoid detection by police in a dark environment. (JA-1713 ¶18; JA-1370 ¶37). And a grenade or flare launcher allows a shooter to launch grenades or flares at his enemy. (JA-1712 ¶14; JA-1713 ¶18; JA-1370 ¶38).

All of these features are designed to "serv[e] specific, combat-functional ends," and their "net effect . . . is a capability for lethality—more wounds, more serious, in more victims—far beyond that of firearms in general, including other semiautomatic guns." (JA-1322-24; JA-1712 ¶¶14-15; JA-1714 ¶¶19-20; JA-1367, ¶¶17-18; JA-1370 ¶¶34-38; JA-1700 ¶12; JA-1701 ¶18). And they serve no purpose whatsoever in legitimate home or self defense. (JA-1711 ¶6; JA-1714 ¶20; JA-1370 ¶¶39-40, 44; JA-1700 ¶10).

Large capacity magazines pose an even greater danger to public health and safety, in part because they can be and are used with assault weapons and non-assault weapons alike. (JA-1400 ¶28). Like

assault weapons, "magazines capable of holding large amounts of ammunition, regardless of type, are particularly designed and most suitable for military and law enforcement applications." (JA-1283-84; *see* JA-1146; JA-1181). That is because they facilitate the rapid firing of large numbers of rounds without having to reload. (JA-1712-13 ¶¶14-15; JA-1714 ¶20; JA-1367 ¶¶17-18, JA-1369 ¶ ¶27-29; JA-1701 ¶18; JA-1702-03 ¶¶29-32; *see* JA-1323); *see also Heller II*, 670 F.3d at 1263. Not only does this allow a shooter to inflict more casualties in a shorter period of time, it also allows them to lay down suppressing fire and more effectively hold-off an initial response by law enforcement or bystanders. (JA-1701 ¶18; JA-1713 ¶15; JA-1714 ¶20; JA-1367 ¶17). As even Plaintiffs concede, forcing a criminal to stop firing to change out magazines can be critical to intervention efforts by law enforcement and bystanders in the vicinity, and has been an important factor in the disruption of some mass shootings. (JA-1702-03 ¶¶30-32; JA-1712 ¶¶14-15, 20; JA-1369 ¶¶29-30; JA-2002; JA-2214 ¶¶18-19; *see also* JA-241-244) (discussing impacts of delays in firing caused by magazine changes)).

As the Commission that examined the Newtown shooting found, therefore, the lethality and utility of a firearm in crime is directly "correlated to capacity." (JA-980). While large capacity magazines may be useful and appropriate on the battlefield, they "pose a distinct threat to safety in private settings as well as places of assembly." (*Id.* at 979).

b. Civilian Use of Assault Weapons Has Been Regulated Or Banned Outright For Much Of The Time These Weapons Have Been In Existence

Unsurprisingly, the United States government and various state and local governments have placed restrictions on these weapons and magazines ever since they became prevalent in the civilian gun market during the 1980s. (JA-2040). As far back as 1989, for example, ATF prohibited the importation of various foreign-made semiautomatic rifles with military features based on its determination that such weapons are not suitable for sporting purposes, and are instead "designed and intended to be particularly suitable for combat," for "military applications," and "for killing or disabling the enemy." (JA-1145-46; JA-1152-54; JA-1179-80; *see also* JA-1104 (noting that "[t]he criminal misuse of semiautomatic assault rifles is a matter of significant public concern and was an important factor in the decision to suspend their

importation"); JA-1126 (noting that "Assault weapons were designed for rapid fire, close quarter shooting at human beings. That is why they were put together the way they were. You will not find these guns in a duck blind or at the Olympics. They are mass produced mayhem.")).

Following ATF's lead, numerous jurisdictions across the United States, including the federal government, have imposed restrictions on assault weapons and large capacity magazines because they are unusually dangerous, and have no place in the public sphere. Like ATF's importation ban, many of these laws have been in effect ever since assault weapons began to proliferate in the civilian gun market and the unique dangers posed by them became apparent to law enforcement, the public and lawmakers. *See* 18 U.S.C. § 921(a)(30)(B)-(D) (repealed); *id.* § 922(v)(1) (repealed); JA-1356-63 n.20).

c. The Evidence Demonstrates That Assault Weapons and Large Capacity Magazines are Used Disproportionately In Crime, and That They Result In More Injuries and More Serious Injuries Than Other Weapons

The data supports the conclusion of these local, state and federal governments that assault weapons and large capacity magazines are

too dangerous for the public sphere. The evidence demonstrates, for example, that assault weapons and large capacity magazines are used disproportionately in gun crime—and especially the most serious types of gun crime like murder, mass shootings and killing of law enforcement—relative to their presence in the civilian gun stock. (JA-1395 ¶7; JA-1396 ¶14; JA-1398 ¶18; JA-1399 ¶24; JA-1400 ¶30; JA-1413 ¶¶87-88). Specifically, although assault weapons represented less than 1% of the civilian gun stock in 1994, they were used in between 2% and 8% of all gun crimes at that time. (JA-1396 ¶17; JA-1404 ¶47). That is at least twice as frequently—and perhaps more than eight times as frequently—as one would expect based on their market presence. The numbers are even more remarkable for the most serious types of crime; assault weapons account for up to 6% of murders, up to 16% of killings of law enforcement officers,[8] and 42% of mass public shootings.[9]

---

[8] Some studies place the percentage of killings of law enforcement in which an assault weapon was used at as high as 20%. (JA-1702 ¶25; JA-1368 ¶23; JA-1819).

[9] The FBI defines a mass shooting as a shooting in which 4 or more people are killed. http://www.fbi.gov/stats-services/publications/serial-murder/serial-murder-1#two (last viewed August 10, 2014). Although assault weapons account for a smaller percentage of all mass shootings compared to public mass shootings, the number still is substantially

(JA-1398 ¶19; JA-1399 ¶22; *see also* JA-1984-2000). Similarly, although large capacity magazines represented only about 21% of the civilian magazine stock in 1994, (JA-1556-1669), they were used in between 31% and 41% of gun murders of police and more than 50% of all mass public shootings. (JA-1400 ¶¶30-31; *see also generally* JA-1813-41; JA-1928-1976). The utility of these weapons and magazines in crime is further illustrated by the fact that individuals with criminal histories—and especially those with long and violent criminal histories—purchase them much more frequently than law-abiding citizens. (JA-1399 ¶25).

But the dangerousness of these weapons is not just exemplified by their disproportionate use in crime or attractiveness to criminals. Perhaps more importantly, their rapid fire capability invariably results in significantly more injuries, and injuries of greater severity, than other more conventional firearms. Specifically, studies demonstrate that the gunshot victimization rate in mass public shootings in which the perpetrator used an assault weapon was more than 33% higher than the rate in non-assault weapon cases. (JA-1399 ¶23; *id.* at 2695 ¶¶12-14). Similarly, the fatality rate in mass public shootings with a

---

disproportionate to their presence in the gun market. (*See* JA-1398 ¶19).

large capacity magazine was roughly 33% higher than in non-large capacity magazine cases, and the number of individuals shot but not killed was almost four times higher. (JA-1401 ¶33). And, more generally, crimes committed with large capacity magazines result in substantially more shots fired, more victims wounded, and more gun shots per victim than do crimes that do not involve large capacity magazines. (JA-1395 ¶8; JA-1396 ¶13; JA-1401-02 ¶¶35-38; JA-1409 ¶75; JA-1411 ¶81; JA-1413 ¶88). That is significant in terms of public health and safety, as victims are 63% more likely to die when they receive more than one gunshot wound. (JA-1402 ¶38).

The evidence, which Plaintiffs do not meaningfully contest, also points to an intensifying problem of mass shootings involving assault weapons and large capacity magazines. One group examined all mass shootings (public and non-public) that occurred between 2009 and 2013. In that short four year period, there were 52 mass shootings in which there were 460 gunshot victims, and 323 victims killed. (JA-1984-2000). That equates to over 1 mass killing per month somewhere in the United States. (JA-1984). In those 52 shootings, incidents that involved assault weapons and/or large capacity magazines resulted in 135%

more people shot and 57% more deaths compared to incidents in which the perpetrator used more conventional weaponry. (*Id.*). Plaintiffs do not dispute these data, but rather dismiss the incidents of mass public shootings as rare and thereby unworthy of a legislative response. (*See, e.g., id.* at 2530; Pl. Br. at 48).

It is not the functional capabilities of assault weapons alone that matter to these killers. Unlike conventional weapons that lack a military look, the very military use and origins of these firearms can attract pseudo-commando mass killers who perceive themselves to be "at war with the society." (JA-2274). Such individuals may seek out military weapons and attire to further their personal war in which they specifically target what society values most, its children.[10] (*Id.*). Assault weapon manufacturers play into this soldier fantasy by emphasizing the military features of their weapons and their utility in

---

[10] Although the appearance and military connotations of assault weapons are not why the legislature banned them, the Supreme Court made clear in *Heller* that such a rationale would be constitutionally unproblematic. *See Heller*, 554 U.S. at 627, citing, *inter alia*, 4 Blackstone 148-49 (1769) ("the offence of riding or going armed, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land")); *see also, e.g., Olympic Arms v. Magaw*, 91 F. Supp. 2d 1061, 1074 (E.D. Mich. 2000), *aff'd*, 301 F.3d 384 (6th Cir. 2002).

the battlefield. For example, Bushmaster, which manufactures the Bushmaster XM-15, markets its assault weapon to the civilian population by emphasizing that the XM-15 "fires . . . the same round used in the Colt M-16 (the standard military rifle)" and "is the semiautomatic version of the M-16. This round has an effective range of 300 meters and can pierce most body armor." (JA-1880; *see also generally* JA-2035-2082 (discussing militarization of the civilian gun market since the 1980s)). This military-grade, armor-piercing, Bushmaster XM-15 rifle was used to kill 20 first graders in Newtown, Connecticut on December 14, 2012.

Law enforcement officers, and especially law enforcement executives such as chiefs of police, are particularly concerned about the unique dangers of assault weapons and large capacity magazines, and in particular their ability to shoot through police body armor, terrorize neighborhoods, and suppress or thwart a police response. (*See* JA-1711 ¶6, JA-1712 ¶¶14-15; JA-1709 ¶¶19-20; JA-1367 ¶¶17-18, JA-1370 ¶¶34-40, 44; JA-1700 ¶10, 13-16; JA-1702 ¶26; JA-1703 ¶¶33-36; JA-1704-05 ¶¶44-47). Such concerns are more than justified given that there have been incidents in which criminals were able to use these

weapons and magazines to fire more than a thousand rounds on responding officers. (JA-1367 ¶18; JA-1701 ¶21).

In light of the unique and real dangers posed by these weapons, those courts that have addressed this precise question have properly concluded that assault weapons and large capacity magazines are not covered by the Second Amendment at all, and that the government may take steps to remove them from the public sphere without any constitutional concern. In doing so, those courts properly have accorded deference to the legislative judgments regarding the dangerousness and legitimate civilian utility (or lack thereof) of these weapons.

In *People v. James*, 94 Cal. Rptr. 3d 576, 585-86 (Cal. App. 2009), for example, the California Court of Appeal applied *Heller* to California's longstanding assault weapons ban, and held that "*Heller* does not extend Second Amendment protection to assault weapons." *Id.* at 586. In doing so, the court noted that, "[a]s [*Heller*] makes clear, the Second Amendment right does not protect possession of military M-16 rifle. . . . Likewise, it does not protect the right to possess assault weapons . . . [because they] ha[ve] such a high rate of fire and capacity

for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings." *Id.* at 585. "[L]ike machine guns, [they] are not in common use by law-abiding citizens for lawful purposes and likewise fall within the category of dangerous and unusual weapons that the government can prohibit for individual use." *Id.* at 586.

Similarly, in *Heller II* the district court deferred to the legislature's finding that assault weapons and large capacity magazines are "military-style weapons of war, made for offensive military use," are "disproportionately likely to be used by criminals," and "are not generally recognized as particularly suitable or readily adaptable to sporting [or self-defense] purposes." *Heller II*, 698 F. Supp. 2d at 193. The court further noted that such weapons "are unusually dangerous because they place law enforcement officers at a particularly grave risk due to their high firepower." *Id.* at 194. Based on these findings, the court concluded that "assault weapons and large capacity ammunition feeding devices constitute weapons that are not in common use, are not

typically possessed by law-abiding citizens for lawful purposes and are 'dangerous and unusual' within the meaning of *Heller*." *Id.* at 194.[11]

The evidence discussed above supports these courts' determinations. Based on that evidence, this Court should reach a similar conclusion regarding the dangerousness of assault weapons and large capacity magazines prohibited by the Act, and affirm the district court's judgment.

2. *Assault Weapons and Large Capacity Magazines Are Not Commonly Used For Purposes Protected By The Second Amendment*

In *Heller,* the Supreme Court limited the scope of Second Amendment protection to those weapons that are "'in common use at the time' for lawful purposes like self-defense." *Heller*, 554 U.S. at 624, quoting *Miller*, 307 U.S. at 179. It "does not protect those weapons not typically possessed by law-abiding citizens" for such purposes. *Id.* at 625 (emphasis added). By limiting the scope of conduct protected by the Second Amendment in this way, the Court once again reaffirmed the

---

[11] On appeal, the D.C. Circuit declined to consider the district court's determination that assault weapons and large capacity magazines are not protected by the Second Amendment because there was no question that the bans survived constitutional scrutiny even if they were protected. *Heller II*, 670 F.3d at 1261.

validity of traditional restrictions on especially dangerous weapons, like those banned by Connecticut's twenty year ban on assault weapons. To state a cognizable Second Amendment claim under *Heller*, therefore, Plaintiffs must demonstrate that assault weapons and large capacity magazines are both commonly owned, and that they are typically used for the core Second Amendment purpose of self defense. Plaintiffs failed to adduce any material facts to make such a showing at the district court.

a. Assault Weapons Are Not Commonly Owned

Assault weapons are not "commonly owned," even if by Plaintiffs' estimation they are growing in popularity—a reason in itself for the legislature to act now to stem the flow of these weapons into Connecticut. Indeed, the overwhelming majority of gun owners who keep and bear arms in their home for self defense elect not to own these weapons. Although Plaintiffs recited abstract numbers about the manufacture of assault weapons over the past 25 years—and particularly the AR-15 rifle which receives much of Plaintiffs' focus—such numbers lack context and do not reflect the rarity of these weapons within the existing gun stock, or even among gun owners.

The number of firearms and gun ownership rates are somewhat imprecise, but an accepted range of civilian firearms in the United States is somewhere between 270-310 million.[12] The evidence suggests that there were approximately 1.5 million privately owned assault weapons in circulation in 1994, which represented less than 1% of the total civilian gun stock at that time. (JA-1398 ¶17; JA-1404 ¶47). Although Plaintiffs speculate that there are approximately 3.97 million AR-15 type rifles presently in the United States, (*see* JA-144 ¶5; JA-146 ¶11), that number also represents just over 1% of the current gun stock. And while the NRA estimates that assault weapons more broadly account for roughly 2% of the current civilian gun stock, (JA-2251), even that miniscule market presence does not remotely equate to "common" ownership, however that term conceivably may be understood. (JA-2252).

The rarity of assault weapon ownership among the civilian populace is further underscored by the fact that Plaintiffs' 3.97 million number for AR-15 rifles does not represent the number of people who

---

[12] http://www.pewresearch.org/fact-tank/2013/06/04/a-minority-of-americans-own-guns-but-just-how-many-is-unclear/ (last viewed August 8, 2014).

own these weapons, but instead represents the number of assault weapons that have been produced. By Plaintiffs' own admission, individuals who own assault weapons on average own more than two of them. (JA-164). In addition, thousands of assault weapons do not make it into the legal civilian gun market, and are instead purchased by law enforcement agencies at the federal, state and local level, or are bought through "straw purchases" and then smuggled out of the country for use in illicit activity. *See, e.g.,* Colby Goodman, *Update on U.S. Firearms Trafficking to Mexico Report,* pp. 5, 9 (Apr. 2011).[13] So while the number of assault weapons produced is miniscule in the context of the overall civilian gun stock, the number of individual owners of assault weapons is even smaller.

b. Assault Weapons and Large Capacity Magazines Are Not Appropriate For, Or Commonly Used In, Self Defense

Second, even if this Court were to assume that assault weapons and large capacity magazines are commonly owned, Plaintiffs adduced no evidence that they are actually used for self defense, much less that

[13] Available at http://www.wilsoncenter.org/sites/default/files/update_us_firearms_trafficking_to_mex.pdf (last viewed August 8, 2014).

they are typically used for that protected purpose. (JA-2241 (noting that "significant market presence does not necessarily translate into heavy reliance by American gun owners on those magazines for self-defense"). Indeed, for all of Plaintiffs' emphasis on self defense with firearms generally, there is a telling absence of any evidence, even anecdotal, describing situations in which an individual actually used an assault weapon or fired more than 10 rounds in legitimate self defense.

Instead, Plaintiffs rely almost exclusively on their own conclusory, self-serving affidavits and unsupported opinions about which weapons they subjectively believe will be effective and appropriate in their imagined extreme self defense scenarios. (*See, e.g.*, JA-247-280; JA-2603, *see also* JA-156; JA-159 (discussing surveys of subjective reasons that assault weapon owners purchase their weapons)). Plaintiffs also rest their claim of unconstitutional infringement on unsupported opinions of purported experts who primarily speculate about weapons and features that are indispensable for self defense in the home—a topic clearly beyond any expertise they may legitimately possess. (JA-290-91; JA-754; JA-766). Fundamentally, Plaintiffs and their experts conflate their beliefs and the sense of comfort they derive from their

possession of these extremely dangerous weapons with evidence of the actual efficacy of these weapons for self defense—a showing that might pertain to their constitutional claim but which was not made below. The district court correctly declined to find the personal preferences of a small number of gun owners alone as a basis for a constitutional claim, and this Court should affirm that judgment.

Contrary to Plaintiffs' unsupported assertions, the Connecticut legislature was entitled to reasonably determine that assault weapons and large capacity magazines are not commonly used for self defense, or even suitable for that purpose. (*See, e.g.*, JA-1711 ¶6; JA-1714 ¶¶20; JA-1370 ¶¶39-40, ¶44; JA-1700 ¶10, ¶13; JA-1701 ¶16; JA-1702 ¶26; JA-1703 ¶¶33-36; JA-1704-05 ¶¶44-47; *see also* JA-1396 ¶11; JA-1402 ¶41). Indeed, a fact-based analysis shows that lawful individuals almost never fire 10 or more rounds in their home, in any situation. An analysis of the NRA's own reports of firearm use in self defense, both within the home and elsewhere, "demonstrated that in 50% of all cases, two or fewer shots were fired, and the average number of shots fired across the entire data sample was about two." (JA-2243; *see* http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-

encounters-with-data-tables (last viewed August 8, 2014) (JA-2185-2190). An updated analysis of the NRA reports for the period June 2010 to May 2013 likewise indicates that individuals fired on average only 2.1 bullets when using a firearm in self defense. And in only 1 out of the 298 studied incidents—much less than 1%—did the defender fire more than seven bullets. (JA-2196 ¶¶12-15).

Further, most of the incidents in the NRA reports involved conventional handguns, without any suggestion that any assault pistols, rifles or shotguns were used. *See* http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/ (last viewed August 8, 2014) ("Handguns were used in 78% of incidents while long guns were used in 13%; in the balance the type of firearm was not reported"). A recent study on justifiable homicides similarly showed that in only 4.5% of the self defense situations involving the defensive use of a firearm did the defender use a rifle, whether assault or non-assault. (JA-2138). Plaintiffs have made the AR-15 the centerpiece of their case, and the available data, which Plaintiffs do not meaningfully dispute, illustrates how infrequently such weapons are actually used in legitimate and justifiable self defense.

Consistent with the record in this case, those courts that have examined the civilian use of assault weapons and large capacity magazines for home or self defense have found evidence of such uses to be lacking. *See Hightower v. City of Boston*, 693 F.3d 61, 66, 71 & n.7 (1st Cir. 2012) (noting that "large capacity weapons" with the capacity to carry more than ten rounds are not "of the type characteristically used to protect the home"); *Heller II*, 698 F. Supp. 2d at 193-94 (noting that the banned weapons and magazines do not have "any legitimate use as self-defense weapons" and that they "in fact increase the danger to law-abiding users and innocent bystanders if kept in the home or used in self-defense situations") (internal quotation marks omitted); *Heller II*, 670 F.3d at 1263-64 (noting that "high-capacity magazines are dangerous in self-defense situations because the tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.") (internal quotation marks omitted). This Court should reach a similar conclusion.

C. Even If The Act Implicates Second Amendment Rights, It Is Constitutional

Even if this Court determines that the Act burdens conduct falling within the scope of the Second Amendment and reaches the second part of the post-*Heller* two-part inquiry, the Act still should be upheld because it does not substantially burden Second Amendment conduct, and because it satisfies even heightened scrutiny. *Kwong*, 723 F.3d at 167-69; *Kachalsky*, 701 F.3d at 93-100; *Decastro*, 682 F.3d at 164-68.

Many courts since *Heller* and *McDonald*, including this one, have upheld gun regulations under the two-part inquiry. Plaintiffs ignore or misapply these precedents, and base their arguments on a misreading of the language and holdings of *Heller* and *McDonald*. *See Kachalsky*, 701 F.3d at 93 (upholding New York's "proper cause" requirement for "full-carry concealed-handgun" permit at second step of two-party inquiry); *United States v. Marzzarella*, 614 F.3d 85, 99 (3d Cir. 2010) *cert. denied,* 131 S. Ct. 958 (2011) (upholding prohibition on obliterated serial numbers at second step of two-part inquiry); *Masciandaro,* 638 F.3d 458, 474 (4th Cir. 2011) *cert. denied,* 132 S.Ct. 756 (2011) (upholding prohibition on possession of loaded firearm in national park at second step of two-part inquiry); *Woollard v. Gallagher,* 712 F.3d

865, 882 (4th Cir. 2013) *cert. denied,* 134 S.Ct. 422 (2013) (upholding "good and substantial reason" for handgun "carry permits" at second step of two-part inquiry); *NRA v. BATFE,* 700 F.3d at 211 (upholding prohibition on handgun sales to persons under 21 years of age at second step of two-part inquiry); *Chovan,* 735 F.3d at 1141 (upholding law prohibiting firearm possession by domestic violence misdemeanants at second step of two-part inquiry); *Heller II,* 670 F.3d at 1264 (upholding D.C. ban on assault weapons and large capacity magazines at second part of two-part inquiry); *see also NYSRPA,* 990 F.Supp.2d at 371 (upholding New York's ban on assault weapons and large capacity magazines at second part of two-part inquiry); *Colorado Outfitters Ass'n,* 2014 WL 3058518, *18 (upholding Colorado's ban on large capacity magazines at second part of two-part inquiry); *Fyock,* 2014 WL 984162, *9 (finding City of Sunnyvale's ban on large capacity magazines likely constitutional at second part of two-part inquiry and denying preliminary injunctive relief).

Under the two-part inquiry, once a court determines that conduct falling within the Second Amendment is affected by a law, it then considers what, if any, degree of heightened scrutiny should apply to

that regulation. This Court has declined to apply heightened scrutiny in cases where the challenged regulation does not impose a substantial burden on Second Amendment conduct. *Decastro*, 682 F.3d at 166. It should do the same here. The Act does not substantially burden Plaintiffs' Second Amendment rights because it affects only a small subset of weapons, and leaves untouched more than one thousand alternative firearms that citizens may lawfully possess for self defense.

Even if this Court finds some level of heightened scrutiny should apply because the law imposes a substantial burden on Second Amendment conduct, the Court must then determine the appropriate level of heightened scrutiny based on the nature of the Second Amendment conduct affected and the degree of any burden imposed on it that is traceable to the Act. *Heller II*, 670 F.3d at 1257; *Chovan,* 735 F.3d at 1138; *see also Anderson*, 460 U.S. at 786-89; *Burdick*, 504 U.S. at 433-34. The majority of cases that proceed to this step of the post-*Heller* two-part inquiry apply intermediate scrutiny, even when the regulation affects conduct in the home or completely prohibits firearm possession. *Kachalsky*, 701 F.3d at 89, 97-99; *Drake, v. Filko*, 724 F.3d 426, 431-35 (3d. Cir. 2013) *cert denied*, 134 S. Ct. 2134 (2014); *Woollard,*

712 F.3d at 876; *Marzzarella*, 614 F. 3d at 89; *Chovan,* 735 F.3d at 1136-37; *but see Peruta v. County of San Diego,* 742 F.3d 1144, 1170 (9th Cir. 2014) (rejecting application of intermediate scrutiny and striking down as *per se* invalid a county's prohibition on concealed carry permits outside the home). This Court should similarly apply, at most, intermediate scrutiny.

1. Under This Court's Precedents, The Act Should Be Upheld Without Any Application of Heightened Scrutiny

In this Court, heightened scrutiny is reserved only for those laws that impose a "substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes)." *Decastro*, 682 F.3d at 166 (emphasis added); *accord Kwong*, 723 F.3d at 167; *Kachalsky*, 701 F.3d at 93; *see also Kampfer v. Cuomo,* 2014 WL 49961, *5-6 (N.D.N.Y Jan. 7, 2014) (finding no substantial burden on Second Amendment rights imposed by New York SAFE Act). The availability, indeed abundance, of other lawful alternative firearms and magazines is dispositive of Plaintiffs' claim that the Act must be subjected to heightened scrutiny. *Kachalsky,* 701 F.3d at 93 (selecting

heightened scrutiny because "unlike *Decastro,* there are no alternative options for obtaining a license to carry a handgun.").

A "law that regulates the availability of firearms is not a substantial burden on the right to keep and bear arms if adequate alternatives remain for law-abiding citizens to acquire a firearm for self-defense." *Decastro*, 682 F.3d at 168. Under this Court's precedent, gun regulations are not subject to heightened scrutiny, and must be upheld when there are "ample alternative means of acquiring firearms for self-defense purposes." *Id.*; *see id.* at 166-68 and n.5. Here, there are ample alternative means to acquiring lawful firearms that permit a person the ability to engage in self defense with a firearm in the home.

The Act does not prohibit Plaintiffs from purchasing or possessing any non-semiautomatic firearms (with the exception of one enumerated pump-action rifle – the Remington 7615, (SA-21)), and it restricts only a small subset of semiautomatic firearms that the record establishes are not necessary, or even suitable, for lawful self defense. There are more than one thousand semiautomatic and non-semiautomatic firearms that remain legal to purchase and possess in Connecticut, both in the home and in public. That includes numerous varieties of rifles and shotguns.

It also includes more than four hundred different kinds of handgun, JA-1027 ¶¶29-32, which is the "quintessential self-defense weapon." *Heller*, 554 U.S. at 629. Plaintiffs do not dispute that these lawful alternative firearms are both adequate and suitable for home and self defense. (*See* JA-1027 ¶¶29-32; JA-1711 ¶6; JA-1714 ¶21; JA-1704 ¶37; JA-1371 ¶¶42-43). In fact, Plaintiffs conceded below that they are. (JA-289-90) (Plaintiffs' expert stating that the thousands of firearms that remain legal in Connecticut "function in essentially identical ways as the banned firearms—*i.e.*, they can accept detachable magazines . . . , can be fired just as fast, and can fire rounds that are, shot-for-shot, just as lethal as rounds fired from banned firearms")).

The large capacity magazine ban likewise does not "substantially" or even minimally burden Plaintiffs' Second Amendment right to self defense because it is not typical, appropriate, or necessary for individuals to fire more than 10 rounds in lawful self defense. (JA-788-89). Even if more than ten rounds were necessary, moreover, the law affords Plaintiffs the alternative of possessing multiple magazines. If readily changing magazines for some reason is not feasible, an individual could simply make use of a second or third loaded firearm,

which several of the individual plaintiffs admit they possess. (JA-789). Plaintiffs concede the availability of these alternatives. (JA-289). Plaintiffs' speculation about rare or improbable attack scenarios, Pl. Br. at 25, *see also* JA-286, simply cannot be the basis for finding a "substantial burden" on a constitutional right.

Moreover, the negligible constitutional burden imposed by the Act is lessened further still when considered in the context of Connecticut's entire firearm regulatory scheme. *See, e.g., Burdick*, 504 U.S. at 435-39, 441 (considering election scheme as a whole to determine extent of burden on First Amendment right). Connecticut's regulatory scheme provides ample avenues through which citizens may purchase and obtain permits to carry the thousands of lawful firearms and magazines that are available to them. (JA-1080-84).

In sum, therefore, the Act only marginally impacts Plaintiffs' ability to obtain and possess firearms and magazines for lawful home and self defense. The D.C. Circuit held in *Heller II* that such restrictions do not rise to the level of a "substantial burden" because they do not "prevent a person from keeping a suitable and commonly used weapon for protection in the home or for hunting, whether a

handgun or a non-automatic long gun." *Heller II*, 670 F.3d at 1262. Nor do they "effectively disarm individuals or substantially affect their ability to defend themselves" with sufficient ammunition or magazines. *Id.* at 1262.[14] This Court should therefore follow its own precedent and conclude that heightened scrutiny is inappropriate in this case because the Act provides "ample alternative means of acquiring" firearms and magazines for self defense purposes.

2. If Heightened Scrutiny Applies, The Appropriate Level of Heightened Scrutiny Is Intermediate Scrutiny

Even if this Court finds, or assumes, that the Act imposes a substantial burden on conduct falling within the scope of the Second Amendment, and therefore proceeds to apply heightened scrutiny, the Act should nonetheless be upheld. The level of scrutiny to apply depends on the nature and extent of the burden on the right at issue. *Heller II*, 670 F.3d at 1261; *see Anderson*, 460 U.S. at 786-89; *Burdick*, 504 U.S. at 433-34. In this case, the Court should at most apply intermediate scrutiny because the Act's restrictions on dangerous

---

[14] *See also Kolbe,* 2014 U.S. Dist. LEXIS 110976, *42 (expressing "serious[] doubts that the banned assault long guns are commonly possessed for lawful purposes, particularly self-defense in the home....").

military-style weaponry—which are owned by a minute fraction of gun owners and are not actually used for self defense—do not implicate the core of the Second Amendment right announced in *Heller*, and because they only minimally burden the right to self defense in the home.

First, the nature of the purportedly protected Second Amendment conduct at issue in this case is Plaintiffs' claimed right to possess extremely dangerous military-style weapons that function in a manner nearly identical to the M-16 rifle used by the United States military. If the Second Amendment protects such conduct at all—and it does not for the reasons discussed above—possession of these weapons falls at the extreme boundaries of the right. Indeed, *Heller* held that the "core" protections of the Second Amendment apply to a person's right to possess a handgun, which the Court described as the "quintessential" weapon for self defense in the home. *Heller*, 554 U.S. at 629. Assault weapons plainly are not like ordinary handguns, and they are not the quintessential weapon that Americans have chosen for self defense in the home. To the contrary, they are infrequently owned or used for such purposes, and are akin to the M-16 and other military weapons that *Heller* establishes are outside of the Second Amendment entirely.

Id. at 627. To the extent that possession of these military-style weapons is protected at all, therefore, it certainly does not fall at the core of the Second Amendment.

This conclusion is reinforced by *Heller*'s consideration of the types of weapons that were "in common use *at the time,*" the Second Amendment was enacted. *Id.* at 624-25 quoting *Miller*, 307 U.S. at 179 (emphasis added). The military-style weapons that have been marketed and sold in the civilian gun market for the past thirty years have a killing capacity that the drafters of the Second Amendment and the citizens who enacted it did not conceive. There simply is no historical analogue to the AR-15 that can be said to have been "commonly used" by Americans at the time the Second Amendment was adopted. The qualitative difference in the killing capacity of an AR-15 with a thirty round magazine as compared to the rifle or musket that was commonly owned and used in the 18th century counsels against finding possession of these weapons should be accorded the highest degree of constitutional protection. If possession and use of these weapons falls within a constitutional guarantee at all, therefore, they do not implicate the core protections of the Second Amendment.

Second, regardless of whether possession of the prohibited military-style assault weapons and magazines implicates the core of the Second Amendment, intermediate scrutiny still would apply because the Act's impact on Plaintiffs' ability to bear arms in self defense is insignificant at best. As discussed above, Plaintiffs still may possess more than one thousand alternative firearms and magazines, and their ability to bear arms in self defense is barely impacted at all. Because the Act does not affect conduct at the core of the Second Amendment, and because any burden imposed by it is negligible, intermediate scrutiny is the appropriate level of heightened scrutiny.

This conclusion is supported further still by nearly every other Court of Appeals that has applied heightened scrutiny to gun regulations since *Heller* and *McDonald*. *See e.g. Drake,* 724 F.3d at 436-40; *Schrader v. Holder,* 704 F.3d 980, 989-91 (D.C. Cir 2013)(applying intermediate scrutiny to 18 U.S.C. § 922(g)(1)'s lifetime ban on firearm possession by common law misdemeanants); *Woollard,* 712 F.3d at 876 (applying intermediate scrutiny to Maryland's "good and substantial reason" requirement for a handgun carry permit); *see also Colorado*

Outfitters Ass'n, 2014 WL 3058518 *15 (applying intermediate scrutiny to large capacity magazine ban); *Fyock,* 2014 WL 984162 *7 (same).

Even more on point, those courts that have applied heightened scrutiny to assault weapon or large capacity magazine bans and other firearm prohibitions have almost universally concluded intermediate scrutiny is appropriate for laws that substantially burden Second Amendment rights, even when the law applies in the home. *Kachalsky*, 701 F.3d at 93 n.17, 96-97; *Kwong*, 723 F.3d at 167-69; *Marzzarella*, 614 F. 3d at 84 (prohibition on unmarked firearms that applies in the home); *Colorado Outfitters Ass'n,* 2014 WL 3058518 *15 (large capacity magazine ban that applies in the home); *Fyock,* 2014 WL 984162 *7 (same).

In *Heller II,* the D.C. Circuit applied intermediate scrutiny analysis to assault weapon and large capacity magazine bans that are analogous to those here. *Heller II*, 670 F.3d at 1261-62.[15] The *Heller II* Court upheld those bans because the core Second Amendment right was

---

[15] *Heller II* elected to analyze such claims under intermediate scrutiny despite its conclusion that the bans do not substantially burden any Second Amendment rights. *See Heller II*, 670 F.3d at 1261-62. As discussed above, however, this Court's precedents establish that such laws are not subject to any heightened scrutiny at all.

only questionably implicated, and even if core rights were implicated by the law, the burden it imposed was not substantial. *Heller II*, 670 F.3d at 1262 ("[a]lthough we cannot be confident the prohibitions impinge at all upon the core right protected by the Second Amendment, we are reasonably certain the prohibitions do not impose a substantial burden upon that right."); *see also Wilson v. Cnty. of Cook*, 943 N.E.2d 768, 775-77 (Ill. App. Ct. 2011), *aff'd in part and rev'd in part on other grounds* 968 N.E.2d 641 (Ill. 2012); *see also Kolbe v. O'Malley*, 2014 U.S. Dist. LEXIS 110976, *48 (relying on *Heller II* to conclude that intermediate scrutiny is the correct standard to apply in a challenge to Maryland's analogous assault weapon and large capacity magazine bans).

In *Kachalsky*, this Court expressly cited *Heller II* as being "in line with [its] approach" for using intermediate scrutiny to analyze laws that implicate Second Amendment interests. *Kachalsky*, 701 F.3d at 93, n.17. Given these precedents and the fact that the Act does not even approach the level of a severe burden on conduct falling within the core of the Second Amendment, the Court should apply intermediate scrutiny if it determines that heightened scrutiny is appropriate.

3. The Act Satisfies Intermediate Scrutiny

To survive intermediate scrutiny under the Second Amendment in this Circuit, an act must be shown to be "substantially related to the achievement of an important governmental interest." *Kachalsky*, 701 F.3d at 96-97 (citing *Masciandaro*, 638 F. 3d at 471, *United States v. Skoien,* 614 F.3d 638, 641-642 (7th Cir. 2010) *cert. denied*, 131 S. Ct. 1674 (2011); *see also Chovan*, 735 F.3d at 1139; *Chester*, 628 F.3d. at 683. Intermediate scrutiny requires only that the fit between the governmental objective and the challenged regulation be substantial, not perfect. *Kachalsky,* 701 F.3d at 97. Moreover, a gun regulation need not address every facet of the gun violence problem to be upheld under intermediate scrutiny; and "need not strike at all evils at the same time," as "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *NRA v. BATFE*, 700 F.3d at 211, quoting *Buckley v. Valeo*, 424 U.S. 1, 105 (1976); *see also Kachalsky*, 701 F.3d at 98-99.

The Act easily survives scrutiny under this properly formulated intermediate scrutiny framework. *See Heller II*, 670 F.3d at 1261-64; *see also Kolbe*, 2014 U.S. Dist. LEXIS 110976, *66-67.

a. Connecticut Has A Compelling State Interest In Reducing Gun Death And Injury

There is no dispute that Connecticut has an important and indeed compelling governmental interest in regulating firearms to reduce and stop gun violence. *Kachalsky*, 701 F.3d at 96-97. Public safety and crime prevention undoubtedly are compelling governmental objectives. *Id.* at 97; *see also, Decastro*, 682 F.3d at 166-68 and n.5; *Robertson v. City & Cnty. of Denver*, 874 P.2d 325, 333 (1994); *Benjamin v. Bailey*, 234 Conn. 455, 464-72, 662 A.2d 1226 (1995); *Arnold v. Cleveland*, 67 Ohio St. 3d 35, 48 (1993); *Richmond Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681, 688 (2d Cir. 1996); *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 282 (E.D.N.Y. 1995); *Kasler v. Lockyer*, 2 P.3d 581, 585-92 (Cal. 2000); *Olympic Arms v. Buckles*, 301 F.3d 384, 389-90 (6th Cir. 2002); *Cincinnati v. Langan*, 94 Ohio App. 3d 22, 25-26 and n.1 (1994); *Citizens for a Safer Cmty. v. City of Rochester*, 164 Misc. 2d 822, 835 (Sup. Ct. 1994). Since the first prong of the intermediate scrutiny analysis is unquestionably met, the Court need only assess whether the challenged provisions of the Act are substantially related to these interests.

b. The Act Is Substantially Related To Connecticut's Interest In Reducing Gun Death And Injury

The Act will reduce the lethality and injuriousness of gun crime incidents in Connecticut when they regrettably do occur. Restricting access to dangerous assault weapons and large capacity magazines will also slow the pace of the encroaching militarization of the Connecticut civilian gun market, thereby protecting local law enforcement and civilians. The Act's weapon and magazine provisions are targeted to eliminate particularly dangerous firearms and magazines that are disproportionately used in crime, pose a grave threat to law enforcement, and have been used in horrific acts of violence in Connecticut and elsewhere.

In adopting these measures, the legislature acted reasonably to advance the State's compelling public safety interests while at the same time protecting the rights of responsible law abiding citizens to possess other less dangerous firearms and magazines for lawful self defense in the home. The Act's provisions are likely to advance the goals that the legislature set out to achieve, and it should be upheld accordingly.

Under this Court's precedent, the legislative judgments on how best to address gun violence and crime are not easily second-guessed. This Court has already determined that "[i]t is the legislature's job, not ours, to weigh conflicting evidence and make policy judgments." in this area of gun regulation. *Kachalsky*, 701 F.3d at 99. Thus, the parties do not come to this Court entitled to equal weight regarding their policy choices, preferences and interpretation of the available empirical data. The Defendants have an established and respected "substantial role" in regulating the use and possession of firearms, and they "enjoy[] a fair degree of latitude" in that regard. *Id.* at 96. Defendants, unlike Plaintiffs, have acknowledged expertise in making policy choices in this area: "[i]n the context of firearm regulation, the legislature is 'far better equipped than the judiciary' to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Id.* at 97, quoting *Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 665 (1994). Consequently, this Court should accord "substantial deference to the predictive judgments of [the legislature]," and should not second guess the legislature's discretionary policy judgments or the manner in which

it has weighed competing evidence over the wisdom and likely success of a regulatory measure. *Id.*

However, even without this required deference to legislative judgments, the Act still survives intermediate scrutiny because of the overwhelming evidence adduced by the Defendants that demonstrates the Act will advance Connecticut's goals of protecting law enforcement, reducing gun crime deaths and injuries. *Woollard,* 712 F.3d at 882. Specifically, the evidence demonstrates that the Act advances the State's goals because it will: (1) reduce the number of crimes in which these uniquely dangerous and lethal weapons are used; and (2) thereby reduce the lethality and injuriousness of gun crime when it does occur. (JA-1395 ¶10; JA-1410 ¶¶76-77). Such impacts, which are not genuinely contested by Plaintiffs, will represent lives saved and injuries prevented, and will result in substantial benefits and cost savings to society more broadly. (*Id.*; JA-1372 ¶53).

First, the evidence demonstrates that crimes committed with assault weapons and large capacity magazines are likely to decrease substantially with the ban, especially if it is allowed to operate over the long-run. The only comprehensive academic study of the analogous

federal ban indicates that the criminal use of assault weapons declined significantly after the federal ban was enacted, independently of trends in gun crime. (JA-1404 ¶¶49-51). The study specifically found that assault weapon crimes declined between 17% and 72% across six major cities examined during the post-ban period. (JA-1404 ¶49). Those local findings were consistent with patterns found in national data, which show that assault weapons, as a percentage of total crime gun traces, fell 70% from 1992-93 to 2001-02, a downward trend that did not begin until the year the federal ban was enacted. (JA-1404 ¶50). Based on those findings, the study's author estimated that the federal ban on assault weapons likely prevented approximately 2,900 assault weapon crimes for each year it was in operation. (JA-1405 ¶53).

The evidence also demonstrates that the federal ban reduced the use of large capacity magazines in gun crime, and that it would have had an even more substantial impact in that regard had it not been allowed to expire in 2004. (JA-1405-06 ¶¶55-58). Specifically, the use of large capacity magazines in crime initially increased when the federal ban went into effect, due in large part to a massive stock of grandfathered and imported magazines that the ban did not outlaw.

After the ban was implemented and in place for some time, however, the study found that the trend in crimes with large-capacity magazines may indeed have been dropping by the early 2000s, just as the ban was set to expire. (*Id.*).

Although the data available at the time of the federal study was too limited to draw any firm conclusions in that regard, (JA-1405 ¶56), a later investigation by the *Washington Post* confirmed that the federal ban did reduce the use of large capacity magazines in gun crime. Using more current data on the use of large capacity magazines in crime in Virginia, the *Washington Post* investigation found that between 1994 and 2004, the period the federal ban was in effect, the share of crime guns with large capacity magazines declined by roughly 31% to 44% in that jurisdiction, and subsequently more than doubled after the ban expired. (JA-1406 ¶57; JA-1690-93; JA-1694-97). The evidence therefore demonstrates that the federal ban had a substantial impact on the use of these dangerous weapons and magazines in crime, and likely would have had more of an impact in the long-run had it not been allowed to expire. (JA-1404-06 ¶¶49-57).

The Act is likely to have a greater effect than the analogous federal ban because there are fewer opportunities for circumvention. Unlike the federal ban's two-feature test, under Connecticut's strengthened law a firearm qualifies as an assault weapon if it has just one of the prohibited military features. Conn. Gen. Stat. § 53-202a(1)(F). That change is likely to substantially limit—if not eliminate—the ability of gun manufacturers to quickly adopt minor or cosmetic changes to their firearms that make them technically legal, but that circumvent the purpose and effect of the law to remove military style assault weapons from civilian use. (JA-1409 ¶72; JA-1713 ¶¶16-17; *see also, e.g.,* JA-1775; JA-1900; JA-1902-03; JA-1886-88). In doing so, the Act is likely to further reduce the availability of weapons with military-style characteristics considered conducive to criminal applications in Connecticut, and to further reduce the use of such weapons in crime. (JA-1409 ¶72).

Connecticut's large capacity magazine ban likewise is more robust than the federal ban, and is likely to be more effective more quickly. (JA-1409 ¶73). The federal ban allowed individuals to sell and transfer millions of grandfathered and imported large capacity magazines even

after the ban went into effect. By contrast, the Act prohibits any individual who possesses a grandfathered large capacity magazine from selling or transferring it. Importantly, moreover, large capacity magazines generally may not be imported into the state after the Act's effective date, including those produced before the effective date of the Act. *Id.*, § 23(b), (d), (f); *see* JA-1409 ¶73. Although these changes will not completely eliminate the lag in effectiveness created by the grandfather provision in Connecticut's law, they likely will minimize it and thereby reduce the time it otherwise would take for the benefits of the large capacity magazine ban to manifest. (JA-1409 ¶73). And even if Connecticut's grandfather provision does delay the effectiveness of the law, the evidence demonstrates that such a delay is temporary and that the criminal use of large capacity magazines will decline over the long-run. (JA-1405-06 ¶¶55-58; JA-1409 ¶74; JA-1690-92; JA-1694-97).

Second, any reduction in the criminal use of assault weapons and large capacity magazines is likely to have a substantial impact on public health and safety. As discussed above, when those weapons and magazines are used they result in more shots fired, more victims wounded, and more wounds per victim than do gun crimes committed

with more conventional firearms. (JA-1395 ¶8; JA-1396 ¶13; JA-1399 ¶23; JA-1401 ¶¶33, 35-38; JA-1409 ¶75; JA-1412 ¶81, JA-1413 ¶¶88). Such impacts are important, as the evidence demonstrates that a person is 63% more likely to die if she receives two or more gunshot wounds than if she is shot just once. (JA-1401 ¶38). By reducing the number of crimes in which assault weapons and large capacity magazines are used and forcing criminals to use less lethal weapons and magazines, the Act could potentially prevent a substantial number of gunshot wounds in Connecticut on an annual basis. It also could reduce the lethality and injuriousness of those shootings that do occur by reducing the number of wounds per victim. (JA-1407 ¶¶60-61). And it will reduce the ability of criminals to intimidate and terrorize entire neighborhoods, and enhance the safety of law enforcement and their ability to disrupt crime while it is happening. (JA-1711 ¶7; ¶¶ 9-10).

Indeed, the federal study discussed above found that, had the federal ban been allowed to operate long enough to meaningfully reduce the number of large capacity magazines in circulation, it could have reduced the number and lethality of gunshot victimizations by up to 5%. Although that may be a small percentage, applied on a national scale it

correlates to 3,241 fewer people being wounded or killed as a result of gun crime every year. (JA-1407 ¶61). Even if the Act's effect will not be that substantial, even a smaller reduction in the number and lethality of gunshot victimizations would yield significant societal benefits, especially for the victims and their friends and families.[16] (*Id.*).

Plaintiffs' attempts to dispute and minimize these points are totally unpersuasive. Plaintiffs do not genuinely contest these facts with evidence to the contrary[17] but instead ignore them or rely on their own self-serving and unsupported submissions, self-interested policy positions, and preferred views as to the wisdom of Connecticut's bans

---

[16] Apart from the inherent benefits of reducing the number and lethality of gunshot injuries, such reductions also could have a substantial impact on reducing a variety of societal costs associated with gun violence—including the costs for medical care, criminal justice, and other government and private costs (both tangible and intangible)—which have been estimated to reach as much as $1 million per shooting. (JA-1407 ¶¶62-63).

[17] As they did in the district court below, Plaintiffs continue to cherry pick isolated statements from Dr. Koper's studies and rely on outdated statements from his earlier reports that do not reflect the current data or Dr. Koper's conclusions based on it. (*See* Pl. Br. at 44-52). Indeed, Dr. Koper submitted an affidavit below in which he made clear that not only have Plaintiffs grossly mischaracterized his works, but that, in his expert opinion, the Act likely will achieve its goals and probably do so more quickly than the federal ban that he studied. (JA-1395 ¶10; JA-1410-13 ¶¶76-88).

and the utility of these weapons and magazines. (*See generally, e.g.*, JA-283-94). Even if Plaintiffs' beliefs and speculation were material to the legal issues that were before the district court—which they were not—the court appropriately declined to deem them sufficient to defeat Defendants' amply supported motion for summary judgment.

This Court's precedent makes clear that the legislature's policy determinations are entitled to wide latitude and deference in this area, and that they must be upheld when supported by substantial evidence. Indeed, the Court's only role is "to assure that, in formulating its judgments, [the legislature] has drawn reasonable inferences based on substantial evidence." *Kachalsky*, 701 F.3d at 97, 99-100; *see also Heller II*, 670 F.3d at 1262-64, 1269 (granting summary judgment under directly analogous circumstances despite virtually identical evidence and arguments of plaintiffs). Thus, even if Plaintiffs had adduced any "studies and data challenging" the Defendants' evidence—which they did not—that still is not sufficient to override the legislature's judgment and invalidate a piece of landmark legislation. *Kachalsky,* 701 F.3d at 99-100; *see also, e.g., United States v. Chester*, 514 Fed. App'x 393, 395 (4th Cir. 2013) (affirming grant of summary judgment on Second

Amendment challenge despite the existence of disputed evidence); *Woollard*, 712 F.3d 865, 881-82 (same); *NRA v. BATFE*, 700 F.3d at 210-11 (same). This Court's only role is "to assure that, in formulating its judgments, [the legislature] has drawn reasonable inferences based on substantial evidence." *Kachalsky*, 701 F.3d at 97; *see Heller II*, 670 F.3d at 1269. The Connecticut legislature clearly had a substantial basis to reach the policy decision it did. Firearms regulations should not be struck down under the Second Amendment unless "'the lack of constitutional authority to pass [the] act in question is clearly demonstrated.'" *Kachalsky*, 701 F.3d at 100-01, quoting *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2579 (2012). Plaintiffs have failed to clearly demonstrate the Act violates their Second Amendment rights, and the decision of the district court should be affirmed.

4. Neither Heller Nor Any Other Precedent Supports Plaintiffs' Absolutist Interpretations Of The Second Amendment

Plaintiffs' arguments that strict scrutiny or no scrutiny should apply here are unavailing. Plaintiffs essentially contend that the Act is either *per se* unconstitutional or subject to strict scrutiny because the Act: (1) applies in the home, (Pl. Br. at 35-37); (2) is a "flat ban" on

possession of certain "affected firearms," (Pl. Br. at 29-33); and (3) is a content-based restriction on exercise of Second Amendment protected conduct, (Pl Br. at 39-41). Each of these arguments lack merit, and conflict with the weight of authority discussed above in which courts repeatedly have applied less than strict scrutiny to laws that prohibit certain types of firearms and certain people from possessing firearms, both in the home and in public.

First, the location of a firearm regulation's application plainly is not dispositive of what level of scrutiny should apply. The relevant scrutiny inquiry instead turns on the nature and magnitude of the burden. *See Heller II*, 670 F.3d at 1261. Indeed, numerous firearm regulations apply in the home, including safe storage requirements, age limitations, training requirements, maintenance requirements, felon-possession prohibitions, serial number requirements, misdemeanant prohibitions, straw purchase prohibitions, registration requirements, permitting fees, and theft reporting requirements. Not only are these reasonable regulations not automatically subject to strict scrutiny simply because they apply in the home, many of them are in fact "presumptively constitutional" under *Heller*. *Heller*, 554 U.S. at 626-27

and n.26. Plaintiffs' bright line "in the home" distinction is unworkable, ignores precedent, and distorts the level of scrutiny methodology that courts have developed since *Heller*.

This Court's precedents are not to the contrary. While this Court noted in *Kachalsky* that "Second Amendment guarantees are at their zenith within the home," *Kachalsky,* 701 F.3d at 89, it expressly declined to adopt the bright line "in the home" rule that Plaintiffs advance here. *See id.* at 93 ("...we have no occasion to decide what level of scrutiny should apply to laws that burden the "core" Second Amendment protection identified in *Heller*..."). In applying intermediate scrutiny to the law at issue in that case, moreover, *Kachalsky* expressly relied on numerous cases in other circuits that applied intermediate scrutiny to laws that restrict the possession of certain firearms in the home, indicating that such a rule would not apply. *See id.* at 93 and n.17. And in *Decastro*, this Court applied less than intermediate scrutiny to a law that prohibited the possession of certain firearms (those acquired "outside the state") both in the home and in public. *Decastro*, 682 F.3d at 166-68 and n.15; *see also Kwong*, 723 F.3d at 167-69 (analyzing regulation on firearm possession in the

home under intermediate scrutiny for sake of argument, but implying that law properly should have been analyzed under standard set forth in *Decastro*). All of these precedents refute Plaintiffs bright line "in the home" rule.

Second, Plaintiffs' claim that the Act must be categorically struck down because it is a "flat ban" on a class of firearms also is unavailing. Neither *Heller, McDonald,* nor any other case supports Plaintiffs' proposition that government simply cannot ban any kind of firearm. Of course, Plaintiffs conveniently ignore the fact that the ATF has banned importation of many different firearms for decades. (*See, e.g.*, JA-1108; JA-1181; JA-1287). Plaintiffs also fail to place the Act in its true context when making their *per se* unconstitutional argument. As a factual matter, the Act does not ban an entire category or class of firearms like the blanket handgun ban at issue in *Heller*. Indeed, at least 98% of all handguns and long guns—including the vast majority of semiautomatics within each of those classes of firearm—are completely unaffected by the challenged provisions of the Act. Moreover, even if the Act were a ban on the scale that Plaintiffs suppose, their dogmatic interpretation of the Second Amendment conflicts with all of the

applicable precedents of this Court and is not supported by any of their own. It also conflicts with *Heller* itself, which clearly stated that some types weapons may be banned consistent with the Second Amendment. *Heller*, 554 U.S. at 626-27 and n.26, *see also Kolbe v. O'Malley*, 2014 U.S. Dist. LEXIS 110976, *50-51 (rejecting plaintiffs' argument that Maryland's ban on assault weapons and large capacity magazines is *per se* unconstitutional).

Further, Plaintiffs' absolutist interpretation of their Second Amendment rights stands in stark contrast to the framework that courts consistently have adopted for analyzing longstanding fundamental rights, none of which are absolute, including bans that burden the core of those fundamental rights. In the core First Amendment context of political association and voting rights, for example, the Supreme Court has rejected an approach that would require the application of strict scrutiny each time the core right of ballot access or voting rights is impinged, even when the desired conduct mode of political association is completely prohibited. *Anderson*, 460 U.S. at 786-89; *Burdick*, 504 U.S. at 433-34. Where "[voter] rights are subjected to 'severe' restrictions, the regulation must be 'narrowly

drawn to advance a state interest of compelling importance.'" *Burdick,* 504 U.S. at 434 (quoting *Norman v. Reed,* 502 U.S. 279, 289 (1992)). "But when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Burdick,* 504 U.S. at 434 (quoting *Anderson,* 460 U.S. at 788). Thus, Plaintiffs' automatic application of strict scrutiny (or higher) each time a regulation affects conduct at the core of a right, no matter how minimally, must be rejected as unworkable and at odds with precedent in other equally important constitutional rights. *See, e.g., FEC v. Beaumont*, 539 U.S. 146, 148 (2003) ("The time to consider the difference between a ban and a limit is when applying scrutiny at the level selected, not in selecting the standard of review itself.").

Third, this Court already has rejected the wholesale importation of First Amendment jurisprudence into its Second Amendment analysis. *Kachalsky*, 701 F.3d at 91-92 ("We are hesitant to import substantive First Amendment principles wholesale into Second Amendment jurisprudence. Indeed, no court has done so."). Plaintiffs offer no

persuasive explanation or analysis why this Court should deviate from that approach and adopt their tortured "content-based" analogy to force substantive First Amendment principles into this Second Amendment context. To the extent this Court is inclined to do so, however, it should follow those other courts that have analogized similar laws to reasonable time, place and manner restrictions that require only intermediate scrutiny. *See Heller II*, 670 F.3d at 1262; *Marzzarella*, 614 F.3d at 97.

Because the Act restricts dangerous and unusual military-style weapons and magazines that are not commonly owned or used for self defense and therefore does not implicate Second Amendment rights at all; and because, even if constitutional rights are burdened by the Act, the burden is either minimal or passes constitutional scrutiny, this Court should affirm the decision of the district court dismissing Plaintiffs' Counts I and II and uphold the Act as constitutional under the Second Amendment.

II. THE ACT IS NOT UNCONSTITUTIONALLY VAGUE

This Court consistently has refused to consider facial vagueness claims outside of the First Amendment context. Even in the First

Amendment context, moreover, this Court has considered facial vagueness challenges only if the statute at issue reaches a "substantial" amount of constitutionally protected conduct. The Act does not implicate the First Amendment, and it does not reach a substantial amount of protected conduct under the Second Amendment for the reasons discussed above. The Court should therefore reject Plaintiffs' facial vagueness challenges to the Act without consideration.

To the extent that the Court is inclined to entertain these claims, they lack merit because the challenged provisions survive scrutiny under the applicable "vague in all applications" test. Further, although the Court should not apply the only slightly less stringent "permeated with vagueness" test described by a minority of three justices in *City of Chicago v. Morales*, 527 U.S. 41, 55 (1999), the challenged provisions easily pass that test as well. The Court should reject Plaintiffs' facial vagueness claims accordingly.

A. Plaintiffs' Facial Vagueness Challenges Are Barred Because The Act Does Not Implicate the First Amendment and Does Not Reach A Substantial Amount of Conduct Protected By The Second Amendment

Plaintiffs have brought a pre-enforcement facial vagueness challenge to the Act. It is well established that "[f]acial challenges are generally disfavored" because they "often rest on speculation" and "run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Dickerson v. Napolitano*, 604 F.3d 732, 741 (2d Cir. 2010) (quotation marks omitted).

Given these concerns, this Court consistently has held that facial vagueness challenges are permitted only if they implicate conduct protected by the First Amendment. *United States v. Venturella*, 391 F.3d 120, 134 (2d Cir. 2004); *see United States v. Rybicki*, 354 F.3d 124, 129 (2d Cir. 2003) (collecting cases). In doing so, this Court has made clear that "vagueness challenges that do not involve the First Amendment must be examined in light of the specific facts of the case at

hand and not with regard to the statute's facial validity." *United States v. Nadi*, 996 F.2d 548, 550 (2d Cir. 1993) (emphasis added). Even in the First Amendment context, moreover, this Court has held that facial vagueness challenges "may go forward only if the challenged regulation 'reaches a substantial amount of constitutionally protected conduct.'" *Farrell v. Burke*, 449 F.3d 470, 496 (2d Cir. 2006) (emphasis added), quoting *Kolender v. Lawson*, 461 U.S. 352, 358 n.8 (1983).

This case does not implicate the First Amendment. For the reasons discussed above, moreover, the Act also does not reach a substantial amount of conduct protected by the Second Amendment. Plaintiffs' facial vagueness claims are therefore categorically barred.

Plaintiffs attempt to avoid this conclusion by citing to the plurality opinion in *Morales*, in which only three justices expressed their belief that facial vagueness claims may be brought outside of the First Amendment when the law at issue burdens other fundamental rights. (*See* Pl. Br. at 53). Although this Court has on occasion acknowledged that opinion, it is not controlling law, and this Court has never followed it despite having had numerous opportunities to do so. To the contrary, in several published opinions and summary orders

since *Morales,* this Court has adhered to its longstanding limitation of facial vagueness claims to the First Amendment context. *See, e.g., Arriaga v. Mukasey*, 521 F.3d 219, 223 (2d Cir. 2008); *Venturella*, 391 F.3d at 134. Indeed, in its most recent opinion on this issue the Court acknowledged *Morales*, but declined to follow it and instead reaffirmed that the "threshold question" in determining whether a facial vagueness challenge is permissible "is whether the[] claim properly can be understood as arising under the First Amendment." *Dickerson*, 604 F.3d at 742-45 (2d Cir. 2010).

Plaintiffs have provided no analysis or explanation to demonstrate why this Court should deviate from its longstanding jurisprudence and follow a three justice plurality opinion that is not controlling law. Even if the Court is inclined to abandon its prior precedents and expand the class of cases in which facial vagueness claims may be brought, however, Plaintiffs' facial vagueness claims remain barred because the Act does not reach a substantial amount of conduct protected by the Second Amendment. *See Farrell*, 449 F.3d at 496. The Court should proceed no further on these claims.

B. Even If The Court Considers Plaintiffs' Facial Vagueness Claims, They Lack Merit Because The Challenged Provisions Are Not Vague In All Of Their Applications

A statute is not unconstitutionally vague simply because some of its terms require interpretation, or because it requires citizens to take steps to ensure their compliance with it. Indeed, many statutory schemes impose similar burdens, particularly those that relate to public safety. To succeed on their claims, therefore, Plaintiffs bear the heavy burden to show that the Act has no "core" at all, and that it is vague in all of its applications. They cannot do so. The language of the Act is comprehensible and clearly covers a substantial amount of core conduct. This Court must affirm the judgment accordingly.

1. The "vague in all applications" Standard Applies

This Court recently stated the correct legal standard that governs facial vagueness claims under the First Amendment: "A facial vagueness challenge will succeed only when the challenged law can never be validly applied." *Vermont Right to Life Comm., Inc. v. Sorrell*, 12-2904-CV, 2014 WL 2958565 at *7 (2d Cir. July 2, 2014). Although facial vagueness challenges are not even permissible outside of the First Amendment, this Court has made clear that the same standard would

apply even if such claims could be brought in other constitutional contexts. *United States v. Farhane*, 634 F.3d 127, 138-39 (2d Cir. 2011) *cert. denied,* 132 S. Ct. 833 (2011). Indeed, this Court recently held that the "no set of circumstances" standard applies to facial challenges under the Second Amendment in particular outside of the vagueness context. *Decastro*, 682 F.3d at 163, 168.

Because their vagueness claims plainly fail under this stringent standard, Plaintiffs again ask this Court to disregard its existing precedents and follow the plurality opinion in *Morales*, in which only three justices expressed their belief that a slightly less demanding "permeated with vagueness" test should apply to laws that: (1) implicate fundamental rights; (2) impose criminal liability; and (3) lack a *scienter* requirement. (*See* Pl. Br. at 53). This Court should not do so for at least two reasons.

First, the "permeated with vagueness" standard enunciated by the plurality in *Morales* garnered the votes of only three justices, only one of whom remains on the Court. By contrast, a plurality of three justices—two of whom remain on the Court today—rejected that standard and would have adhered to the "no set of circumstances" test

identified in *United States v. Salerno*, 481 U.S. 739, 745 (1987). *See Morales*, 527 U.S. at 111 (Thomas, J. dissenting); *id.* at 79-81 (Scalia, J. dissenting); *see also id.* at 69 (O'Connor, J. and Breyer, J. concurring) (concurring in judgment but not joining part III of plurality opinion in which plurality enunciated the "permeated with vagueness" standard); *id.* (Kennedy, J. concurring) (same). Consequently, the plurality opinion in *Morales* plainly is not controlling law. *Rybicki*, 354 F.3d at 131. As other Circuit courts have done, therefore, this Court should adhere to its established standards in this area and apply the "vague in all applications" test unless and until a majority of the Supreme Court directs it to do otherwise. That is especially true given that this case does not implicate the type of First Amendment conduct that ordinarily is required to bring a facial vagueness claim in the first place. *See, e.g., S.D. Myers, Inc. v. City & Cnty. of San Francisco*, 253 F.3d 461, 467 (9th Cir. 2001) ("we will not reject *Salerno* . . . until a majority of the Supreme Court clearly directs us to do so"); *Alphonsus v. Holder*, 705 F.3d 1031, 1042 n.10 (9th Cir. 2013) (adhering to *S.D. Myers'* rejection of *Morales* in favor of *Salerno*); *Horton v. City of St. Augustine, Fla.*, 272 F.3d 1318, 1330 (11th Cir. 2001) (acknowledging that *Salerno* "has been

subject to a heated debate in the Supreme Court," but holding that it remains the standard for deciding facial vagueness claims even after *Morales*); *United States v. Comstock*, 627 F.3d 513, 518 (4th Cir. 2010) (acknowledging *Morales*, but holding that facial vagueness challenges must fail if the statute has a plainly legitimate sweep).[18]

Second, even if the plurality opinion in *Morales* controlled, Plaintiffs have not established that the criteria for applying the *Morales* standard are satisfied here. Specifically, the plurality in *Morales* indicated that the "permeated with vagueness" test would apply only if, *inter alia*, the statute at issue imposes criminal penalties without a

---

[18] Plaintiffs' reliance on Supreme Court precedents that involved substantive constitutional challenges rather than vagueness challenges is inapposite, and does not inform the vagueness analysis in this case. (*See* Pl. Br. at 54-55). Even if those cases were relevant, moreover, this Court expressly has held that *Salerno's* "no set of circumstances" test would apply to a substantive facial challenge under the Second Amendment. *Decastro*, 682 F.3d at 163, 168. Moreover, the cases that Plaintiffs cite specifically have been limited to the narrow constitutional contexts in which they arose, and therefore have no bearing on this case. *See, e.g., Alphonsus v. Holder*, 705 F.3d 1031, 1042 n.10 (9th Cir. 2013) (limiting *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 895 (1992) to the abortion context); *Bowen v. Kendrick*, 487 U.S. 589, 602 (1988) (discussing standard that applies to substantive facial challenges under the Establishment Clause in particular); *id.* at 627 n.1 (Blackmun, J. dissenting) (agreeing with majority's departure from *Salerno* because of the Court's pre-*Salerno* framework for assessing facial substantive challenges under the Establishment Clause in particular).

scienter requirement. *Morales*, 527 U.S. at 55 (plurality). Although the statutes at issue in this case do not explicitly contain such a requirement, it is well established under state law that a *scienter* requirement may exist in a criminal statute even if it is not expressly stated. *See State v. Swain*, 245 Conn. 442, 454 (1998). In such circumstances, "[w]hether or not a statutory crime requires *mens rea* or *scienter* as an element of the offense is largely a question of legislative intent" under state law. *Id.*

No state appellate court has addressed whether the criminal provisions implicated by the Act include a *scienter* requirement, and they certainly have not held that the statutes at issue lack such a requirement. Moreover, Plaintiffs have not provided any explanation or analysis to demonstrate that such a requirement does not exist in the challenged statutes.[19] Given the substantial uncertainty about whether

---

[19] Plaintiffs baldly cite a single trial court case in which the court held that Connecticut's original assault weapon ban, which has since been significantly amended on two separate occasions, did not include a *mens rea* requirement. (Pl. Br. at 54, citing *State v. Egan*, CR 10251945, 2000 WL 1196364 (Conn. Super. Ct. July 28, 2000)). Even assuming that the trial court's conclusion in *Egan* applies to the substantially revised statutes at issue here, the court in that case simply concluded that it "considers . . . the assault weapons ban to be police regulatory statutes and will not infer a *mens rea* element . . . where one is not

this facial challenge is even permissible, and whether *Morales* carries any weight in this context, this Court should not reach out to apply *Morales* to these unsettled and unbriefed questions of state law.

2. *The Act Provides Reasonable Gun Owners Notice Of Prohibited Conduct And Therefore Must Be Upheld Regardless Of Which Standard Applies*[20]

Regardless of which vagueness standard applies, the challenged provisions of the Act are constitutional. Under the "vague in all applications" test, for example, Plaintiffs bear the heavy burden to "establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987) (emphasis added); *see Decastro*, 682 F.3d at 163. Under this standard, "a facial

---

stated." *Egan*, 2000 WL 1196364 at *4. It did not engage in any meaningful analysis of the legislative intent, which is the touchstone for determining whether a criminal statute contains an implicit *mens rea* requirement. *Swain*, 245 Conn. at 454.

[20] Plaintiffs challenged six separate portions of the Act on vagueness grounds in the district court below. Plaintiffs have only argued two of those challenges in their brief to this Court, and have therefore abandoned their remaining vagueness challenges on appeal. *Schaefer v. Town of Victor*, 457 F.3d 188, 208 n.24 (2d Cir. 2006). To the extent that the *amici* seek to resurrect those abandoned claims in their own briefs, any such attempt is wholly inappropriate and the Court should not consider it. *See Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 82 (2d Cir. 2013) (holding that *amicus* briefs are "not a method for injecting new issues into an appeal, at least in cases where the parties are competently represented by counsel").

challenge fails where 'at least some' constitutional applications exist." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 457 (2008), quoting *Schall v. Martin,* 467 U.S. 253, 264 (1984). It simply is not enough for Plaintiffs to "posit some application not clearly defined by the legislation." *Richmond Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681, 685 (2d Cir. 1996).

The "permeated with vagueness" test presumably is intended to be less stringent than the no set of circumstances test, but only marginally so. Indeed, at least one court has stated that even that standard requires "a party [to] show, at a minimum, that the challenged law would be vague in the vast majority of its applications . . . ." *Doctor John's, Inc. v. City of Roy*, 465 F.3d 1150, 1157 (10th Cir. 2006) (emphasis added).

Under either standard, moreover, it is well established that the constitution "does not require meticulous specificity," as "language is necessarily marked by a degree of imprecision." *Thibodeau v. Portuondo*, 486 F.3d 61, 66 (2d Cir. 2007) (quotation marks omitted). Nor does it require "mathematical certainty" or "perfect clarity and precise guidance . . . ." *United States v. Williams*, 553 U.S. 285, 304

(2008); *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972). "Rather, it requires only that the statutory language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *United States v. Coppola,* 671 F.3d 220, 235 (2d Cir. 2012) (internal quotation marks omitted). In determining whether that is the case, courts must interpret words in the statutes according to their commonly understood meanings. *Sellan v. Kuhlman*, 261 F.3d 303, 311 (2d Cir. 2001).

a. The "Copies Or Duplicates" Language Is Not Vague

The Act prohibits certain enumerated firearms and any "copies or duplicates thereof with the capability of" those enumerated firearms. Conn. Gen. Stat. § 53-202a(1)(B)-(D) (SA-21-22). That language is readily comprehensible, and other courts have squarely rejected facial challenges to it. *See Wilson v. Cnty. of Cook*, 968 N.E.2d 641, 651-53 (2012). This Court should do so as well.

First, the "copies and duplicates" language plainly is not facially vague when considered in the context of the statute as a whole. *See Commack Self-Serv. Kosher Meats, Inc. v. Hooker*, 680 F.3d 194, 213 (2d Cir. 2012). That language refers applies only to the specifically

enumerated assault weapons identified by make and model in General Statutes § 53-202a(1)(B)-(D) (SA-21-22). With one exception, all of those enumerated firearms also satisfy the Act's features test. (JA-1027 ¶28; JA-1090 ¶11). Consequently, any firearm that is a copy or duplicate with the same capability of those enumerated firearms almost certainly will be prohibited under the features-test as well. (JA-1027 ¶28; JA-1090 ¶11). In the vast majority of cases, therefore, a person who is concerned that a firearm may be a prohibited "copy or duplicate" need only consult the features-test—which Plaintiffs do not challenge as being vague—to determine whether the firearm is prohibited. To the extent that a firearm theoretically may fall within the "copy of duplicate" language and somehow not satisfy the features test, that will be an extremely rare case. (JA-1090 ¶11). As other courts correctly have held, therefore, the challenged language is not facially vague under any conceivable standard when considered in the context of the statute as a whole. *See Wilson*, 968 N.E.2d at 652-53 ("copies and duplicates" language not vague because other provisions in the statute "would also put an individual on notice whether a particular weapon is banned based on the specific characteristics of the weapon").

Remarkably, Plaintiffs continue to base their arguments to the contrary on *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 253 (6th Cir. 1994). But *Springfield Armory* unequivocally supports the constitutionality of the challenged language. In *Springfield Armory*, the Sixth Circuit held that language defining an assault weapon as any of the enumerated firearms with "slight modifications or enhancements" was unconstitutionally vague. In doing so, however, it expressly relied on the lack of a features test or other provision that defined an assault weapon by "function or capability," or by "generic type or category of weapon." *Id.* at 252. In fact, the court specifically stated that any vagueness concerns in such language could be avoided by simply "provid[ing] a general definition of the type of weapon banned," and cited the federal ban's features test as one example. *Id.* at 253. That is precisely what Connecticut did through the Act and the 2001 amendments, and *Springfield Armory* therefore has no application here. *See Wilson*, 968 N.E.2d at 652-53.

Second, even standing alone, the phrase "copies or duplicates . . . with the capability of" the enumerated firearms is not facially vague based on the commonly understood meanings of those words. *Sellan* v.

Kuhlman, 261 F.3d 303, 311 (2d Cir. 2001). The word "copy" means "a version of something that is identical or almost identical to the original."[21] The word "duplicate" means something that is "exactly the same as something else" or that is "made as an exact copy of something else."[22] Applying these commonly understood meanings, to be a copy or duplicate a firearm must essentially be a reproduction of, and basically identical to, one of the listed firearms. (JA-1091 ¶13). Such an interpretation provides more than sufficient guidelines for the public and law enforcement alike, and plainly would cover an exact replica or "any imitations or reproductions of those weapons made by that manufacturer or another." *Wilson*, 968 N.E.2d at 652; (JA-1090 ¶10; JA-1881).

Contrary to Plaintiffs' assertions, moreover, the statute's additional requirement that the copies or duplicates must also have the same "capability" as the enumerated weapons clarifies the statute's meaning even further. Specifically, it makes clear that the copies or duplicates cannot simply look and feel the same as the firearms upon

---

[21] http://www.merriam-webster.com/dictionary/copy (last viewed August 10, 2014).

[22] http://www.merriam-webster.com/dictionary/duplicate (last viewed August 10, 2014).

which they are based, but must have the same functional abilities as those firearms. That added requirement reduces further still the risk for arbitrary enforcement.

The cases upon which Plaintiffs rely are inapposite. Those cases involved far more ambiguous terms such as "version" and "slight modifications or enhancements." Moreover, they did not contain the same qualifying language that the firearm must have the same functional "capability" as the firearm upon which they are based. (*See* Pl. Br. at 56-57, citing *Springfield Armory*, 29 F.3d at 252-53; *NYSRPA*, 2013 WL 6909955 at *24; *Robertson v. City & County of Denver*, 874 P.2d 325, 334-35 (Colo. 1994)).

b. The "Readily Restored Or Converted To Accept" Language Is Not Vague

Connecticut law defines a large capacity magazines as an ammunition feeding device that can accept, or that "can be readily restored or converted to accept," more than ten rounds of ammunition. Conn. Gen. Stat. § 53-202w(a)(1), (SA-47). This language likewise is clear and unambiguous, and provides more than sufficient guidelines to the public and law enforcement alike.

The word "readily" is commonly understood to mean "quickly and easily."[23] The word "restore" commonly is understood to mean "to return (something) to an earlier or original condition by repairing it, cleaning it, etc."[24] And the word "converted" commonly is understood to mean "to change from one form or use to another."[25] Taking these common sense definitions, the phrase "can be readily restored or converted to accept" means a magazine that has been only temporarily modified to hold 10 rounds or less, and which an ordinary person can quickly and easily change to accept more than 10 rounds of ammunition. (JA-1092 ¶22). One obvious example would be if a gun owner were to simply insert a dowel plug into a 15-round magazine to temporarily limit the number of rounds that it can accept. Such a magazine could be "readily restored or converted" back to its 15-round capacity by the gun owner simply removing the dowel plug, which an ordinary person can do in mere seconds. (*Id.* at ¶23).

---

[23] http://www.merriam-webster.com/dictionary/readily (last viewed August 10, 2014).

[24] http://www.merriam-webster.com/dictionary/restore (last viewed August 10, 2014).

[25] http://www.merriam-webster.com/dictionary/convert (last viewed August 10, 2014).

The clarity of the challenged language is reinforced by the legislature's description of what an large capacity magazine is not; it is not a magazine that has been "permanently altered" so that it cannot accept more than 10 rounds. Conn. Gen. Stat. § 53-202w(a)(1)(A), (SA-47). The word "permanently" is commonly understood to mean "not temporary or changing," "continuing or enduring without fundamental or marked change."[26] Reading that language in conjunction with the "readily restored or converted" language, it is clear that the legislature intended to prohibit those magazines whose capacity is only temporarily limited to 10 rounds or less, and that an ordinary person can quickly and easily modify to accept more than 10 rounds. (JA-1092 ¶¶22-24); *see Coal. of New Jersey Sportsmen, Inc. v. Whitman*, 44 F. Supp. 2d 666, 680-81 (D.N.J. 1999) *aff'd*, 263 F.3d 157 (3d Cir. 2001); *United States v. Carter*, 465 F.3d 658, 663-64 (6th Cir. 2006); *United States v. Drasen*, 845 F.2d 731, 737-38 (7th Cir. 1998); *United States v. M-K Specialties Model M-14 Machinegun Serial No. 1447797*, 424 F. Supp. 2d 862, 872 (N.D. W. Va. 2006); *United States v. Catanzaro*, 368 F. Supp. 450, 452-54 (D. Conn. 1973).

---

[26] http://www.merriam-webster.com/dictionary/permanently (last viewed August 10, 2014).

Plaintiffs' concerns[27] that a gunsmith with specialized knowledge or tools may be able to make some conversions faster and more easily than an ordinary person, and that an ordinary person theoretically could be prosecuted for possessing a magazine that only a gunsmith can readily convert, are purely speculative and unlikely to materialize. (*See* JA-1092 ¶¶22-24 (noting that DESPP will consider a magazine to be "permanently altered," and thus not a large capacity magazine, if it requires the services of a gunsmith to convert to an large capacity magazine)). More importantly, Plaintiffs' concerns are irrelevant in this facial vagueness challenge. Because application of the statute will be clear and unambiguous as-applied to the array of conversions that an ordinary person can quickly make without technical expertise or tools—such as the dowel plug example discussed above—the statute is neither vague in all of its applications nor permeated with vagueness. In the unlikely and theoretical event that an ordinary civilian is prosecuted in the future for possessing a magazine that only an expert gunsmith with specialized knowledge and tools can readily convert, that hypothetical person's recourse is to bring an as-applied vagueness challenge in the

---

[27] *See* Pl. Br. at 58-59, citing *Peoples Rights Organization, Inc. v. City of Columbus*, 152 F.3d 522, 537 (6th Cir. 1998).

context of that future prosecution. Plaintiffs may not, however, bring a facial vagueness challenge based on an unlikely possibility that theoretically could apply in a distinct minority of the statute's applications. Accordingly, the district court's determination that the Act does not violate Plaintiffs' due process rights protected by the Fourteenth Amendment should be affirmed in its entirety.

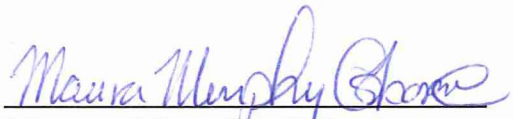
CONCLUSION

For the foregoing reasons, the Defendants' respectfully submit that the decision of the district court rejecting Plaintiffs' Second and Fourteenth Amendment claims should be affirmed.

Respectfully submitted,

DEFENDANTS
DANNEL P. MALLOY, et al.

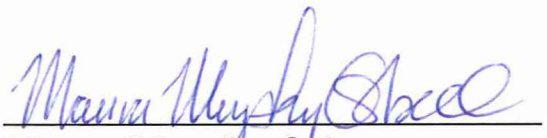
GEORGE JEPSEN
ATTORNEY GENERAL

BY: 

Maura Murphy Osborne
Michael K. Skold
Assistant Attorneys General
Federal Bar No. ct19987
Federal Bar No. ct28407
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347
Maura.MurphyOsborne@ct.gov
Michael.Skold@ct.gov

CERTIFICATION OF COMPLIANCE WITH RULE 32(A)(7)

I hereby certify that this brief complies with the type-volume limitations of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure in that this brief contains 20,660 words[28], excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32 (a)(6) because it has been prepared in a monospaced typeface (courier new) with 10.5 or fewer characters per inch.



Maura Murphy Osborne
Assistant Attorney General

[28] On July 22, 2014, Defendants were granted leave to file a brief of up to 22,000 words.

CERTIFICATION OF SERVICE

I hereby certify that true and accurate copies of the foregoing brief were filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

Maura Murphy Osborne
Assistant Attorney General

14-319-CV

IN THE

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 Connecticut; DORA B. SCHRIRO, in her official capacity

(Defendants-Appellees continued on next page)

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

SPECIAL APPENDIX

(continued from cover)

as Commissioner of the Connecticut Department of Emergency Services and Public Protection; DAVID I. COHEN, in his official capacity as State's Attorney for the Stamford/Norwalk Judicial District, Geographic Areas Nos. 1 and 20; JOHN C. SMRIGA, in his official capacity as State's Attorney for the Fairfield Judicial District, Geographical Area No. 2; STEPHEN J. SEDENSKY III, in his official capacity as State's Attorney for the Danbury Judicial District, Geographical Area No. 3; MAUREEN PLATT, in her official capacity as State's Attorney for the Waterbury Judicial District, Geographical Area No.4; KEVIN D. LAWLOR, in his official capacity as State's Attorney for the Ansonia/Milford Judicial District, Geographical Areas Nos. 5 and 22; MICHAEL DEARINGTON, in his official capacity as State's Attorney for the New Haven Judicial District, Geographical Areas Nos. 7 and 23; PETER A. MCSHANE, in his official capacity as State's Attorney for the Middlesex Judicial District, Geographical Area No. 9; MICHAEL L. REGAN, in his official capacity as State's Attorney for the New London Judicial District, Geographical Area Nos. 10 and 21; PATRICIA M. FROEHLICH, in her official capacity as State's Attorney for the Windham Judicial District, Geographical Area No. 11; GAIL P. HARDY, in her official capacity as State's Attorney for the Hartford Judicial District, Geographical Areas Nos. 12, 13, and 14; BRIAN PRELESKI, in his official capacity as State's Attorney for the New Britain Judicial District, Geographic Areas Nos. 15 and 17; DAVID SHEPACK, in his official capacity as State's Attorney for the Litchfield Judicial District, Geographical Area No. 18; and MATTHEW C. GEDANSKY, in his official capacity as State's Attorney for the Tolland Judicial District, Geographic Area No. 19,

Defendants-Appellees

SPECIAL APPENDIX TABLE OF CONTENTS

2014 WL 346859
Only the Westlaw citation is currently available.
United States District Court,
D. Connecticut.

June SHEW, et al., plaintiffs,
v.
Dannel P. MALLOY, et al., defendants.

Civil No. 3:13CV739 (AVC). | Jan. 30, 2014.

Synopsis

Background: Individuals, firearm dealers, and firearms advocacy organizations brought action for declaratory judgment against, inter alia, state governor, seeking a determination as to the constitutionality of Connecticut's recent gun control legislation, "An Act Concerning Gun Violence Prevention and Children's Safety," prohibiting ownership of numerous semiautomatic firearms. Parties cross-moved for summary judgment.

Holdings: The District Court, Alfred V. Covello, J., held that:

[1] District Court would apply intermediate scrutiny in determining constitutionality of the challenged Act;

[2] under intermediate scrutiny, the Act was not unconstitutional with respect to the Second Amendment;

[3] the Act did not violate Equal Protection Clause; and

[4] challenged provisions of the Act were not unconstitutionally vague.

Plaintiffs' motion for summary judgment denied; defendants' motion for summary judgment granted.

Attorneys and Law Firms

Brian T. Stapleton, Goldberg Segalla, White Plains, NY, Stephen P. Halbrook, Stephen P. Halbrook, Ph.D., Fairfax, VA, for plaintiffs.

Maura Murphy–Osborne, Perry A. Zinn Rowthorn, attorney General's Office, Michael Skold, Office of The Attorney General, Hartford, CT, for defendants.

Opinion

RULING ON THE PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND THE PARTIES' CROSS–MOTIONS FOR SUMMARY JUDGMENT

ALFRED V. COVELLO, District Judge.

***1** This is an action for a declaratory judgment seeking a determination as to the constitutionality of Connecticut's recent gun control legislation, which made several changes to the state's regulation of firearms. The plaintiffs [1] have filed a motion for a preliminary injunction (Doc. 14) and a motion for summary judgment [2] (Doc. 60). The defendants [3] have filed a crossmotion for summary judgment (Doc. 78).

The instant action follows the enactment of Conn. P.A. 13–3, entitled "An Act Concerning Gun Violence Prevention and Children's Safety" (hereinafter "the legislation"), which became effective on April 4, 2013. It was thereafter amended by Public Act 13–220. [4]

The present action is brought pursuant to 28 U.S.C. §§ 2201, 2202, 42 U.S.C. § 1983 and equitable common law principles concerning injunctions. The issues presented are whether the legislation: 1) violates the plaintiffs' right under the Second Amendment to the U.S. Constitution to keep and bear arms; [5] 2) violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; [6] and 3) contains portions that are unconstitutionally vague. [7]

At the outset, the court stresses that the federal judiciary is only "vested with the authority to interpret the law ... [and] possess[es] neither the expertise nor the prerogative to make policy judgments." *Nat'l Fed'n of Indep. Bus. v. Sebelius,* —— U.S. ——, 132 S.Ct. 2566, 2579, 183 L.Ed.2d 450 (2012). Determining "whether regulating firearms is wise or warranted is not a judicial question; it is a political one." *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo,* —— F.Supp.2d ——, ——, 2013 WL 6909955 at *1 (W.D.N.Y. Dec. 31, 2013) (hereinafter "*NYSRPA* "). The Connecticut General Assembly has made a political decision in passing the recent gun control legislation.

The court concludes that the legislation is constitutional. While the act burdens the plaintiffs' Second Amendment rights, it is substantially related to the important governmental

interest of public safety and crime control.[8] With respect to the equal protection cause of action, while the legislation does not treat all persons the same, it does not treat similarly situated persons disparately. Finally, while several provisions of the legislation are not written with the utmost clarity, they are not impermissibly vague in all of their applications and, therefore, the challenged portions of the legislation are not unconstitutionally vague.

Therefore, the plaintiffs' motion for summary judgment is DENIED and the defendants' cross-motion for summary judgment is GRANTED. The plaintiffs' motion for preliminary injunction is DENIED as moot.[9]

FACTS

An examination of the pleadings, exhibits, memoranda, affidavits and the attachments thereto, discloses the following undisputed material facts:

On July 1, 2013, the Connecticut General Assembly passed Conn. P.A. 13–3, prohibiting, *inter alia,* the ownership of numerous semiautomatic firearms.[10] The act followed the events of December 14, 2012, in Newtown, Connecticut, where a lone gunman entered a grade school and shot and killed 26 individuals, including 20 school children.

***2** Building on previous legislation,[11] the definitional scope for an assault weapon has been expanded, including additional semiautomatic firearms.[12] However, the legislation does not prohibit bolt action rifles or revolvers,[13] nor most shotguns, all of which, subject to regulation, remain authorized.[14] Further, much of the legislation is not the subject of this litigation.[15]

Assault Weapons

The legislation defines an assault weapon as any of a number of specifically listed makes and models[16] of semiautomatic centerfire rifles, semiautomatic pistols, or semiautomatic shotguns (collectively, hereinafter "semiautomatic firearms") "or copies or duplicates thereof with the capability of" such, that were in production prior to or on April 4, 2013.[17] In addition, the legislation bans an individual from possessing parts of an assault weapon that can be "rapidly" put together as a whole assault weapon.[18]

The legislation further provides that a firearm can qualify as an assault weapon even if it is not specifically listed in the statute as long as it meets one of several criteria. This is sometimes referred to as the "one-feature" test.[19] Under this test, an assault weapon is "[a] semiautomatic, centerfire rifle that has an ability to accept a detachable magazine" and has either:

> (I) A folding or telescoping stock;
>
> (II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing;
>
> (III) A forward pistol grip;
>
> (IV) A flash suppressor; or
>
> (V) A grenade launcher or flare launcher....[20]

A semiautomatic pistol with a detachable magazine[21] and a semiautomatic shotgun[22] that include similar features are also considered assault weapons.[23] Finally, a semiautomatic, centerfire rifle that has a fixed magazine with the ability to accept more than ten rounds or that has an overall length of less than thirty inches, as well as a shotgun with the ability to accept a detachable magazine or a revolving cylinder are prohibited as assault weapons.[24]

Large Capacity Magazines

The June amendment[25] also prohibits, with certain exceptions, "large capacity magazines" (hereinafter "LCMs"). The legislation defines LCMs to be "any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition, but does not include: (A) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of ammunition, (B) a .22 caliber tube ammunition feeding device, (C) a

tubular magazine that is contained in a lever-action firearm, or (D) a magazine that is permanently inoperable."[26]

Exceptions

*3 The legislation, however, is not an outright ban with respect to the enumerated firearms because many of its provisions contain numerous exceptions. For example, a person is exempt if they "lawfully possesse[d] an assault weapon" before April 4, 2013, the effective date of the legislation, and "appl [ied] by January 1, 2014 to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon."[27] In addition, LCMs may be possessed, purchased, or imported by "[m]embers or employees of the Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States for use in the discharge of their official duties or when off duty."[28] Finally, the legislation allows exempt personnel "who retire[ ] or [are] otherwise separated from service" an extension of time to declare lawfully possessed assault weapons and LCMs used in the discharge of their duties.[29] Any person who is not exempted and "possesses an assault weapon ... shall be guilty of a class D felony...."[30]

On May 22, 2013, in response to the legislation, the plaintiffs filed the complaint in this action.

STANDARD

A motion for summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c).

Summary judgment is appropriate if, after discovery, the nonmoving party "has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). "The burden is on the moving party to demonstrate the absence of any material factual issue genuinely in dispute.' " *Am. Int'l Group, Inc. v. London Am. Int'l Corp.,* 664 F.2d 348, 351 (2d Cir.1981) (quoting *Heyman v. Commerce and Indus. Ins. Co.,* 524 F.2d 1317, 1319–20 (2d Cir.1975)).

A dispute concerning a material fact is genuine "if evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Aldrich v. Randolph Cent. Sch. Dist.,* 963 F.2d 520, 523 (2d Cir.1992) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). The court must view all inferences and ambiguities in a light most favorable to the nonmoving party. *See Bryant v. Maffucci,* 923 F.2d 979, 982 (2d Cir.1991), *cert. denied,* 502 U.S. 849, 112 S.Ct. 152, 116 L.Ed.2d 117 (1991). "Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper." *Maffucci,* 923 F.2d at 982.

DISCUSSION

I. *Second Amendment Challenge*

*4 The plaintiffs first argue that assault weapons and LCMs are commonly possessed for self-defense in the home. Specifically, the plaintiffs argue that "[t]he firearms and magazines that Connecticut bans are lawfully manufactured (many in Connecticut itself) and are lawfully purchased by millions of Americans after passing" national and state-required background checks. The plaintiffs argue that the banned firearms and magazines "are in common use by ... millions of law-abiding citizens for self-defense, sport, and hunting." The plaintiffs state that the new restrictions are not the national norm[31] and are "anything but long-standing."

The defendants respond that the plaintiffs' "absolutist interpretation" of the Second Amendment conflicts with the established framework of cases decided by the U.S. Supreme Court and the U.S. Court of Appeals for the Second Circuit. Specifically, the defendants argue that the assault weapons and magazines at issue in this case are outside this established framework.[32] The defendants argue that "the Act only marginally impacts Plaintiffs' ability to obtain firearms and magazines for lawful home and self defense." The defendants argue that "Connecticut's regulatory scheme provides ample avenues through which citizens may purchase and obtain permits to carry the thousands of lawful firearms and magazines that are available to them, including four different permit options that most law-abiding citizens should have no difficulty obtaining."

Recent Second Amendment jurisprudence within the second circuit has produced a two-part approach for determining the constitutionality of gun related legislation. *Kachalsky v. Cnty. of Westchester,* 701 F.3d 81, 88 (2d Cir.2012) *cert. denied,* —— U.S. ——, 133 S.Ct. 1806, 185 L.Ed.2d 812 (U.S.2013); *U.S. v. Decastro,* 682 F.3d 160, 166 (2d Cir.2012) *cert. denied,* —— U.S. ——, 133 S.Ct. 838, 184 L.Ed.2d 665 (U.S.2013).[33]

[1] First, the court determines if the provision in question impinges upon a Second Amendment right. That is, whether the regulated firearms or magazines are commonly used for lawful purposes and, if they are, whether the legislation substantially burdens a Second Amendment right. If so, the court's second step is to determine and apply the appropriate level of scrutiny.[34] *See Heller v. D.C.,* 670 F.3d 1244, 1261 (D.C.Cir.2011) ("*Heller II*") (finding that the court must "ask first whether a particular provision impinges upon a right protected by the Second Amendment; if it does, then we go on to determine whether the provision passes muster under the appropriate level of constitutional scrutiny").

Second Amendment jurisprudence is currently evolving, and the case law is sparse. *See District of Columbia v. Heller,* 554 U.S. 570, 636, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) (noting that *Heller* "represents the [Supreme] Court's first in-depth examination of the Second Amendment, [and] one should not expect it to clarify the entire field ..."). *Id.*[35] The second circuit thereafter recognized that *Heller* "raises more questions than it answers." *Kachalsky v. Cnty. of Westchester,* 701 F.3d 81, 88 (2d Cir.2012).[36]

***5** **[2]** What the *Heller* court did make clear, however, is that weapons that are "in common use at the time" are protected under the Second Amendment. *Heller,* 554 U.S. at 627, 128 S.Ct. 2783.[37] The court explained that the determination is "fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons." *Heller,* 554 U.S. at 627, 128 S.Ct. 2783 (citing *U.S. v. Miller,* 307 U.S. 174, 179, 59 S.Ct. 816, 83 L.Ed. 1206 (1939)).[38] Whether legislation substantially burdens a Second Amendment right is heavily dependent on the firearms in question being in "common use."

Heller also concluded that regulations rendering firearms in the home inoperable at all times "makes it impossible for citizens to use them for the *core lawful purpose* of self-defense and is hence unconstitutional." *Id.* at 630, 128 S.Ct. 2783 (emphasis added).

In *Heller II,* a case determining the constitutionality of a District of Columbia amendment "promulgated in effort to cure constitutional deficits that the Supreme Court had identified in *Heller,*" the U.S. Court of Appeals for the District of Columbia Circuit thought "it clear enough in the record that semiautomatic rifles and magazines holding more than ten rounds are indeed in common use.' " *Heller II,* 670 F.3d 1244, 1261 (D.C.Cir.2011).[39] However, the court could not "be certain whether these weapons are commonly used or are useful specifically for self-defense or hunting and therefore whether the prohibitions of certain semi-automatic rifles and magazines holding more than ten rounds meaningfully affect the right to keep and bear arms." *Heller II,* 670 F.3d at 1261.

The Connecticut legislation here bans firearms in common use. Millions of Americans possess the firearms banned by this act for hunting and target shooting. *See Heller II,* 670 F.3d 1244, 1261 (finding "[a]pproximately 1.6 million AR–15s alone have been manufactured since 1986, and in 2007 this one popular model accounted for 5.5 percent of all firearms, and 14.4 percent of all rifles, produced in the U.S. for the domestic market").[40]

Additionally, millions of Americans commonly possess firearms that have magazines which hold more than ten cartridges.[41] *See Heller II,* 670 F.3d at 1261 (finding that "fully 18 percent of all firearms owned by civilians in 1994 were equipped with magazines holding more than ten rounds, and approximately 4.7 million more [of] such magazines were imported into the United States between 1995 and 2000)."[42]

[3] The court concludes that the firearms and magazines at issue are "in common use" within the meaning of *Heller* and, presumably, used for lawful purposes. The legislation here bans the purchase, sale, and possession of assault weapons and LCMs, subject to certain exceptions, which the court concludes more than minimally affect the plaintiffs' ability to acquire and use the firearms, and therefore levies a substantial burden on the plaintiffs' Second Amendment rights. Accordingly, the court must proceed to the next step of the analysis and determine which level of scrutiny applies.

A. *Levels of Scrutiny*

*6 [4] Cases that involve challenges to the constitutionality of statutes often discuss what have become known as "levels of scrutiny." The "traditionally expressed levels" are strict scrutiny, intermediate scrutiny, and rational basis review. *D.C. v. Heller,* 554 U.S. 570, 634, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). Levels of scrutiny have developed because "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them" and are not subject to the whims of future legislatures or judges. *Id.* at 634–35, 128 S.Ct. 2783. By applying the proper level of scrutiny to challenged legislation, courts are more likely to apply a uniform analysis to their review of such legislation.

[5] "[A] government practice or statute which restricts 'fundamental rights' or which contains 'suspect classifications' is to be subjected to 'strict scrutiny' and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available." *Regents of University of California v. Bakke,* 438 U.S. 265, 357, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978); *see also Abrams v. Johnson,* 521 U.S. 74, 82, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997) (noting that, under strict scrutiny, the challenged regulation must be "narrowly tailored to achieve a compelling government interest").

[6] In order to survive intermediate scrutiny, a law must be "substantially related to an important governmental objective." *Clark v. Jeter,* 486 U.S. 456, 461, 108 S.Ct. 1910, 100 L.Ed.2d 465 (1988). Historically, intermediate scrutiny has been applied to content-neutral restrictions that place an incidental burden on speech, disabilities attendant to illegitimacy, and discrimination on the basis of sex. *U.S. v. Virginia,* 518 U.S. 515, 568, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996).

[7] [8] Under rational basis review, a statute will be upheld "so long as it bears a rational relation to some legitimate end." *Romer v. Evans,* 517 U.S. 620, 631, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996); *Vacco v. Quill,* 521 U.S. 793, 799, 117 S.Ct. 2293, 138 L.Ed.2d 834 (1997). Rational basis is typically applied "[i]n areas of social and economic policy" when a statutory classification "neither proceeds along suspect lines nor infringes fundamental constitutional rights." *F.C.C. v. Beach Commc'ns, Inc.,* 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993).

B. *The Appropriate Level of Scrutiny*

The plaintiffs argue that the legislation "implicates the possession of firearms inside the home, where [the second circuit] recognizes that Second Amendment rights are at their zenith." Specifically, the plaintiffs argue that "a higher standard than intermediate scrutiny applies to prohibitions on possession of firearms and magazines in the home." The plaintiffs argue that "like the handgun ban in *Heller,* the ban on common firearms and magazines here is categorically void under the Second Amendment. Alternatively, and at a minimum, since the Act prohibits [the] exercise of a fundamental right in the home, it must be evaluated by the highest levels of scrutiny." Regardless, the plaintiffs argue, the legislation would neither pass intermediate scrutiny nor strict scrutiny.

*7 The defendants respond that "[a]lthough the protections of the Second Amendment may be at their apex in the home, neither *Heller, McDonald, Kachalsky,* nor any other case establishes a bright line rule for which Plaintiffs advocate."

The *Heller* majority suggested that laws implicating the Second Amendment should be reviewed under one of the two traditionally expressed levels [43] of heightened scrutiny: intermediate scrutiny or strict scrutiny.

Two recent second circuit decisions, *Kachalsky v. Cnty. of Westchester,* 701 F.3d 81 (2d Cir.2012) and *U.S. v. Decastro,* 682 F.3d 160 (2d Cir.2012), have addressed the issue of determining the applicable standard to gun restrictions under the Second Amendment. The second circuit concluded that "[h]eightened scrutiny is triggered only by those restrictions that 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)." *Decastro,* 682 F.3d at 166; *see also Kachalsky,* 701 F.3d at 93 (finding that with the "core" protection of self-defense in the home, "some form of heightened scrutiny [is] appropriate").

[9] Unlike the law struck down in *Heller,* the legislation here does not amount to a complete prohibition on firearms for selfdefense in the home. Indeed, the legislation does not prohibit possession of the weapon cited as the "quintessential selfdefense weapon" in *Heller,* i.e., the handgun. In other words, "the prohibition of [assault weapons] and large-capacity magazines does not effectively disarm individuals or substantially affect their ability to defend themselves." *Heller II,* 670 F.3d at 1262. The challenged legislation provides alternate access to similar firearms and does not categorically ban a universally recognized [44] class of firearms. [45]

Here, as in *Heller II,* the court is "reasonably certain the prohibitions do not impose a substantial burden" upon the *core right*[46] protected by the Second Amendment. *Heller II,* 670 F.3d at 1262. Thus, the court concludes that intermediate scrutiny is the appropriate standard in this case.[47]

C. *Intermediate Scrutiny Applied*

The plaintiffs argue that the legislation "comes nowhere near" being substantially related to the achievement of an important governmental objective. Specifically, the plaintiffs argue that the "repetitive use of the word 'assault weapon' fails to address how banning any defined feature would reduce crime in any manner." The plaintiffs, citing *United States v. Chester,* 628 F.3d 673, 683 (4th Cir.2010), argue that "[t]he government must do more than offer 'plausible reasons why' a gun restriction is substantially related to an important government goal." According to the plaintiffs, the defendants "must also 'offer sufficient evidence to establish a substantial relationship between' the restriction and that goal to determine whether the restriction 'violated the Second Amendment by application of the intermediate scrutiny test.' "

***8** The defendants respond that "the government has a compelling interest in protecting public health and safety by eliminating assault weapons and LCMs from the public sphere." Specifically, the defendants argue that "[t]he evidence demonstrates that the Act is substantially related to that goal because it will: (1) reduce the number of crimes in which these uniquely dangerous and lethal weapons are used; and (2) thereby reduce the lethality and injuriousness of gun crime when it does occur." The defendants argue that the plaintiffs "completely ignore all of the evidence and justifications discussed above, and again rely almost exclusively on their own self-serving and unsupported submissions, self-interested policy positions, and preferred views as to the wisdom of Connecticut's bans and the utility of these weapons and magazines."

[10] Under intermediate scrutiny, "a regulation that burdens a plaintiff's Second Amendment rights 'passes constitutional muster if it is substantially related to the achievement of an important governmental interest.' " *Kwong v. Bloomberg,* 723 F.3d 160, 168 (2d Cir.2013) (citing *Kachalsky v. Cnty. of Westchester,* 701 F.3d 81, 96 (2d Cir.2012)).

[11] **[12]** As the second circuit has noted, "[s]ubstantial deference to the predictive judgments of [the legislature] is warranted ... [and][t]he Supreme Court has long granted deference to legislative findings that are beyond the competence of courts." *Kachalsky,* 701 F.3d at 96 (2d Cir.2012) (citing *Holder v. Humanitarian Law Project,* 561 U.S. 1, 130 S.Ct. 2705, 2727, 177 L.Ed.2d 355 (2010)).[48] Governmental separation of powers requires the court to declare legislative acts unconstitutional only if "the lack of constitutional authority to pass [the] act in question is clearly demonstrated." *Kachalsky,* 701 F.3d at 101 (2d Cir.2012) (citing *United States v. Harris,* 106 U.S. 629, 635, 1 S.Ct. 601, 27 L.Ed. 290 (1883)). "The regulation of firearms is a paramount issue of public safety, and recent events in this circuit are a sad reminder that firearms are dangerous in the wrong hands." *Osterweil v. Bartlett,* 706 F.3d 139, 143 (2d Cir.2013). The legislature is "far better equipped than the judiciary" to make delicate political decisions and policy choices "concerning the dangers in carrying firearms and the manner to combat those risks." *Kachalsky,* 701 F.3d at 85 (citing *Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 665, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994)).

[13] Accordingly, the court must only "assure that, in formulating its judgments,[Connecticut] has drawn reasonable inferences based on substantial evidence." *Id.* at 97 (citing *Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 665, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994)). However, to survive intermediate scrutiny, "the fit between the challenged regulation and the asserted objective [need only] be reasonable, not perfect." *United States v. Marzzarella,* 614 F.3d 85, 98 (3d Cir.2010).

[14] Connecticut's General Assembly made its legislative judgment concerning assault weapon and LCM possession after the mass-shooting at Sandy Hook Elementary School. The decision to prohibit their possession was premised on the belief that it would have an appreciable impact on public safety and crime prevention.[49]

***9** The evidence suggests that there is a substantial governmental interest in restricting both assault weapons and LCMs.[50] "Far from being simply 'cosmetic,' [pistol grips, barrel shrouds, and LCMs] ... all contribute to the unique function of any assault weapon to deliver extraordinary firepower." *Heller II,* 670 F.3d at 1264;[51] *see also* Testimony of Brian J. Siebel at 2. The assault weapon features increase a firearm's "lethalness" and are therefore related to a

compelling interest of crime control and public safety.[52] For example, with respect to LCMs, the evidence suggests that limiting the number of rounds in a magazine promotes and is substantially related to the important governmental interest in crime control and safety.[53] *Heller II,* 670 F.3d at 1264 (finding "that large-capacity magazines tend to pose a danger to innocent people and particularly to police officers....").

The court concludes that Connecticut has a substantial governmental interest in public safety and crime prevention.[54] This conclusion is not unique to Connecticut, and courts in other states have recognized the constitutionality of similar gun control legislation.[55]

Connecticut has carried its burden of showing a substantial relationship between the ban of certain semiautomatic firearms and LCMs and the important governmental "objectives of protecting police officers and controlling crime." *Heller II,* 670 F.3d at 1264. The relationship need not fit perfectly. Obviously, the court cannot foretell how successful the legislation will be in preventing crime. Nevertheless, for the purposes of the court's inquiry here, Connecticut, in passing the legislation, has drawn reasonable inferences from substantial evidence. As such, the legislation survives intermediate scrutiny and is not unconstitutional with respect to the Second Amendment.

II. ***Equal Protection Cause of Action***

The plaintiffs next challenge the legislation as a violation of the Equal Protection Clause of the Fourteenth Amendment because it prohibits the general population from possessing assault weapons and LCMs but creates an exception for certain state, local, or military personnel (hereinafter "exempt personnel"). Specifically, the plaintiffs cite Conn. P.A. 13–220, § 1(d)(1), which they state allows exempt personnel to "have all the magazines and 'assault weapons' they want, even for personal use when off duty.' "[56] The plaintiffs argue that "[t]he unconstitutional provisions here discriminating in favor of selected classes may not simply be excised from the Act, because the Act does not make it a crime for the favored classes to possess the subject firearms and magazines."

The defendants respond that the plaintiffs have not satisfied their burden of presenting evidence comparing themselves to individuals that are "similarly situated in all material aspects" and that "[c]ommon sense dictates that they cannot plausibly do so." Specifically, the defendants argue that differences between the general public and members of law enforcement (and the military) are "obvious and even pronounced," because these officers receive professional training and are called on "to actively engage and apprehend dangerous criminals." The defendants argue that these differences apply even after work hours because law enforcement officers are "never 'truly off-duty,' and have a professional obligation to respond to emergencies or criminal activity whenever and wherever they arise."[57]

***10** The plaintiffs reply that "[w]hile an off-duty exemption may be warranted for officers who may be 'compelled to perform law enforcement functions in various circumstances,' *Silveira v. Lockyer,* 312 F.3d 1052, 1089 (9th Cir.2002), that does not apply to military members and the other exempted persons who have no such duties."

The provisions at issue in the legislation impose felony penalties on most citizens for the possession and transfer of the subject firearms and magazines. However, exempt personnel may possess assault weapons and LCMs "for use in the discharge of their official duties or when off duty."[58] The legislation allows exempt personnel "who retire[ ] or [are] otherwise separated from service" an extension of time to declare lawfully possessed assault weapons and LCMs used in the discharge of their duties.[59]

[15] The Equal Protection Clause of the Fourteenth Amendment commands that no state shall "deny to any person within its jurisdiction, the equal protection of the laws." *Plyler v. Doe,* 457 U.S. 202, 210, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). However, as the Supreme Court has explained, the equal protection clause does not forbid classifications. *Nordlinger v. Hahn,* 505 U.S. 1, 10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992) (noting that "most laws differentiate in some fashion between classes of persons"). "It simply keeps governmental decisionmakers from treating differently persons *who are in all relevant respects alike.*" *Id.; see also Silveira v. Lockyer,* 312 F.3d 1052, 1088 (9th Cir.2002) (finding that "[f]irst, in order for a state action to trigger equal protection review at all, that action must treat similarly situated persons disparately"); *City of Cleburne, Tex. v. Cleburne Living Center,* 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (emphasis added).

Some courts have concluded that a Second Amendment analysis, as conducted here in section I, is sufficient to assess the alleged burdening of Second Amendment rights and have

declined to conduct a separate equal protection analysis.[60] Many courts subjected the equal protection challenge to rational basis review.[61] *Kwong v. Bloomberg,* 723 F.3d 160, 164 (2d Cir.2013) (finding a "geographic classification was not suspect, the statute itself did not burden a fundamental right, and the legislative classification bore a rational relation to legitimate interest").[62] In *Silveira v. Lockyer,* the court recognized the "similarly situated" requirement in an equal protection cause of action when analyzing a similar off-duty officer provision, but ostensibly omitted it in its analysis because the provision was "easily resolved" under rational basis review. *Silveira,* 312 F.3d at 1089 (9th Cir.2002).[63]

[16] Notwithstanding, the plaintiffs have not met the threshold requirement of demonstrating that they are similarly situated to the exempted personnel in the legislation.

The court concludes that law enforcement, unlike the general public, often confront organized groups of criminals with the most dangerous weaponry. Furthermore, the differences between the general public and law enforcement are similar to the differences between the public and members of the military, if not even more pronounced.

***11** The charge of protecting the public, and the training that accompanies that charge, is what differentiates the exempted personnel from the rest of the population. Hence, the court agrees with the defendants that law enforcement should not be expected to apprehend criminals without superior or comparable firepower, but should only be accorded this advantage when "compelled to perform law enforcement functions." *Silveira,* 312 F.3d at 1089. Similarly, members of the military and government agency personnel who use the otherwise banned firearms and magazines in the course of their employment should also have an advantage while maintaining public safety even if not technically "on the clock."

While not perfectly crafted, the court concludes that the challenged provisions only allow for the use of assault weapons and LCMs for law enforcement or for similar public safety purposes. The court reads the provisions in question to mean that exempted personnel may use assault weapons and LCMs for use in the discharge of their official duties whether on or off duty.[64] In addition, the extension of time to declare the assault weapons and LCMs is consistent with other provisions that allowed non-exempt personnel to declare their LCMs and firearms that were lawfully possessed before the legislation came into effect.[65]

The court concludes that the plaintiffs have failed to prove the threshold requirement that the statute treats differently persons who are in all relevant aspects alike. Thus, these provisions do not violate the Equal Protection Clause of the Fourteenth Amendment.

III. *Void–for–Vagueness Cause of Action*

Finally, the plaintiffs argue that portions of the legislation are unconstitutionally vague. Specifically, the plaintiffs argue that the gun and magazine bans here "impose severe criminal penalties but include no scienter elements." The plaintiffs argue that they are "entitled to challenge it both facially and as applied."

The defendants respond that "[a] statute is not unconstitutionally vague simply because some of its terms require interpretation, or because it requires citizens to take steps to ensure their compliance with it." Specifically, the defendants argue that the plaintiffs cannot meet their burden of showing "the Act has no 'core' at all." The defendants further argue that the "the Act is comprehensible, and clearly covers a substantial amount of core conduct." The defendants state that "there is a wide array of readily available information that gun owners can use to determine, factually, whether their weapons and magazines fall within the Act's proscriptions."

[17] **[18]** The notion that a statute is void for vagueness is a concept derived from the notice requirement of the due process clause. *Cunney v. Bd. of Trustees of Vill. of Grand View, N.Y.,* 660 F.3d 612, 620 (2d Cir.2011). It is a basic principle of due process that a statute is unconstitutionally vague if its prohibitions are not clearly defined. *Id.; Arriaga v. Mukasey,* 521 F.3d 219, 222 (2d Cir.2008); *Grayned v. City of Rockford,* 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972).

***12** **[19]** "[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense (1) with sufficient definiteness that ordinary people can understand what conduct is prohibited and (2) in a manner that does not encourage arbitrary and discriminatory enforcement." *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 498, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982)

(quoting *Kolender v. Lawson,* 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983)).

[20] **[21]** "The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment." *Village of Hoffman Estates,* 455 U.S. at 498, 102 S.Ct. 1186. Specifically, vagueness in statutes with criminal penalties is tolerated less than vagueness in those with civil penalties because of the severity of the potential consequences of the imprecision. *Id.* [66]

[22] All statutes, however, need not be crafted with "meticulous specificity," as "language is necessarily marked by a degree of imprecision." *Thibodeau v. Portuondo,* 486 F.3d 61, 66 (2d Cir.2007) (quoting *Grayned,* 408 U.S. at 110, 92 S.Ct. 2294).

Here, the issue is whether the following five provisions survive a facial [67] challenge for vagueness: 1) the pistol grip; 2) copies or duplicates; 3) assault weapons; 4) modification, alteration, or assembly of magazines and components; and 5) magazines with the capacity to accept more than ten rounds. With a facial challenge, the plaintiffs "must establish that *no set of circumstances exists under which the Act would be valid.*" *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) (emphasis added); *see also Village of Hoffman Estates,* 455 U.S. at 494–95, 102 S.Ct. 1186 (1982); *Richmond Boro Gun Club, Inc. v. City of New York,* 97 F.3d 681, 684 (2d Cir.1996).

A. *Grip*

The plaintiffs argue that every rifle and shotgun meets the definition of an "assault weapon" under Conn. Gen.Stat. § 53–202a(1)(E)(i)(II), (vi)(II). Specifically, the plaintiffs argue that the "provision is vague because it applies or does not apply to every rifle and shotgun depending on how it is being held, but fails to give notice of any assumption that it is being held in a specific manner." [68]

The defendants respond that "[c]ourts must interpret statutes both to avoid absurd results and constitutional infirmity." Specifically, the defendants contend that "[t]he language at issue obviously exists to prohibit any grip that results in any finger in addition to the trigger finger being directly below the action of the weapon when it is held in the normal firing position, which is horizontal." As such, the defendants argue that the plaintiffs cannot "challenge the law as facially vague based on their ridiculous scenario."

The relevant provision of the act provides that it is unlawful to possess a firearm that has: "[a]ny grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing." Conn. Gen.Stat. § 53–202a(1)(E)(i)(II).

***13** **[23]** **[24]** A "cardinal function" in interpreting a statute is to "ascertain and give effect to the intent of the legislature." *Kuhne v. Cohen & Slamowitz, LLP,* 579 F.3d 189, 193 (2d Cir.2009) *certified question accepted,* 13 N.Y.3d 791, 887 N.Y.S.2d 539, 916 N.E.2d 434 (2009) and *certified question withdrawn,* 14 N.Y.3d 786, 899 N.Y.S.2d 118, 925 N.E.2d 920; (quoting *Tom Rice Buick–Pontiac v. Gen. Motors Corp.,* 551 F.3d 149, 154 (2d Cir.2008)). [69] "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." *Slamowitz, LLP,* 579 F.3d at 193.

[25] The court interprets the language to prohibit a scenario in which the weapon is in the normal horizontal firing position. Therefore, the provision covers some, if not most applications. [70] Hence, the challenge fails because the provision is only plausibly vague when applied to a specific use of the weapon. *See Richmond Boro Gun Club, Inc.* 97 F.3d at 685 (finding "[a]lthough application of this standard might, in some cases, be ambiguous, it was sufficient to cover [other cases] and, thus, to preclude a facial vagueness challenge"). The provision is not impermissibly vague in all its applications and, as such, it is not unconstitutionally vague.

B. *"Copies or Duplicates"*

The plaintiffs next argue that an ordinary person is expected to know the features of 183 named models in order to know whether a specific firearm is lawful, as well as be expected to 1) "be intimately familiar with" each of the listed models of rifles, pistols, and 1 model of shotgun, 2) "know which versions of the listed models were in production prior to the effective date of April 4, 2013," 3) know whether a gun "is a 'copy' or 'duplicate' of any one of these named models" and 4) know whether a gun "has 'the capability of any such' listed firearm." Specifically, the plaintiffs argue that "[o]rdinary

people and police officers have no such knowledge of the design history of these scores of firearms."

The defendants respond that when "properly considered in the broader context of the statute as a whole, it is unlikely that any individual will ever need to know whether a firearm is a 'copy or duplicate' because all but one of the specifically enumerated weapons has the requisite military features to qualify as an assault weapon under the applicable features test." Specifically, the defendants argue that "[i]n the vast majority of circumstances, an individual need only physically examine his or her weapon and then read the statute to determine whether it is prohibited." The defendants also state that "the terms 'copy' and 'duplicate' are not vague on their face because they are readily understandable based on their commonly understood meanings." The defendants argue that the "[p]laintiffs' claim that ordinary individuals have no way of knowing the 'production date' of their firearm is simply wrong," because if the firearm does not have a serial number it was either produced before 1968 or it is unlawful to possess under federal law.

***14** The relevant provisions of the legislation provide that a weapon is an assault weapon if it is "[a]ny of the following specified [semiautomatic firearms], or copies or duplicates thereof with the capability of any such [semiautomatic firearms], that were in production prior to or on April 4, 2013." [71] The statute goes on to list numerous firearm models.

[26] In analyzing statutory text, the court "presume[s] that it speaks consistently with the commonly understood meaning of [its] term[s]." *Sellan v. Kuhlman,* 261 F.3d 303, 311 (2d Cir.2001) (citing *Walters v. Metropolitan Ed. Enters., Inc.,* 519 U.S. 202, 207, 117 S.Ct. 660, 136 L.Ed.2d 644 (1997)). "A 'copy' is defined as 'an imitation, or reproduction of an original work.' A 'duplicate' is defined to include 'either of two things that exactly resemble or correspond to each other.' " *Id.* (internal citations omitted). [72]

The Supreme Court of Illinois, in *Wilson v. Cnty. of Cook,* concluded that "[a] person of ordinary intelligence would understand that [the section with the "copies or duplicates" language] includes the specific weapons listed and any imitations or reproductions of those weapons made by that manufacturer or another. When read together with the listed weapons, the provision is not vague." *Wilson v. Cnty. of Cook,* 360 Ill.Dec. 148, 968 N.E.2d 641, 652–53 (2012).

In *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo,* —— F.Supp.2d ——, 2013 WL 6909955 (W.D.N.Y. Dec. 31, 2013), however, the court found that a provision [73] of the New York Penal Law regulating "semiautomatic *version[s]* of an automatic rifle, shotgun or firearm" was "excessively vague, as an ordinary person cannot know whether any single semiautomatic pistol is a *'version'* of an automatic one." *Id.* at ——, 2013 WL 6909955 at *24 (emphasis added).

[27] Here, the "copies or duplicates" language is not vague, and is more clear than the "version" language that was the subject of the *NYSRPA* case. Not only must a firearm be exactly the same or an imitation of a listed firearm under the current legislation, it must be the functional equivalent. As such, the provision does not leave a person without knowledge of what is prohibited and the language at issue is not unconstitutionally vague.

C. *Assault Weapons*

The plaintiffs next argue that the legislation "lists 'assault weapons' by reference to 183 different names," but in many cases the listed names "do not correspond to the names that are actually engraved on the specific firearms," which leaves a person "without knowledge of what is prohibited." Specifically, the plaintiffs argue that "[w]hile the validity of all the listed names cannot be litigated in this case, the court should declare that, consistent with due process, the Act's prohibitions may not be applied to firearms that are not engraved with precise names listed in the Act."

The defendants respond that "an individual does not need to know whether a firearm is included by name in the enumerated firearms provisions to determine whether it is banned. With the exception of the Remington 7615, all of the specifically enumerated weapons have the requisite action-type and military features that qualify them as an assault weapon under the applicable features test." The defendants also respond that "even if the existence of the generic features test were not dispositive—which it is—Plaintiffs' claim lacks merit because most guns have identifying information engraved directly on the gun." [74]

***15** The legislation defines an assault weapon as "any of the following specified semiautomatic firearms: Algimec Agmi; Armalite AR–180; ... the following specified semiautomatic centerfire rifles ...:(i) AK–47; (ii) AK–74; ... the following specified semiautomatic pistols ...:(i) Centurion 39 AK; (ii)

Draco AK–47; ... the following semiautomatic shotguns ...: All IZHMASH Saiga 12 Shotguns...." [75]

[28] The legislation's "generic features test" [76] provides notice as to what weapons qualify as an assault weapon, with the exception of the Remington 7615. The specific list of firearms, which includes the Remington 7615, essentially provides further clarification to owners of such weapons, if there were any doubt as to whether their weapon passed the generic features test. Thus, the court concludes that, when read together with the listed banned features of Conn. Gen.Stat. § 53–202a(1)(E)(i)(I)-(V), (iv)(I)-(IV) and (vi)(I)-(II), the provision does not leave a person without knowledge of what is prohibited and the provision is not unconstitutionally vague.

D. ***Modification, Alteration, or Assembly***

The plaintiffs argue "[t]he Act's definition of an 'assault weapon' as a collection of unassembled parts involves components that an ordinary person may not even recognize as firearm-related." [77] Specifically, the plaintiffs argue that "[o]ne must be intimately familiar with 183 listed firearms, must be able to identify all of the parts thereof, and must know that combinations of some parts may be 'rapidly assembled' into 67 firearms under three other categories."

The defendants respond that these claims lack merit because "the Second Circuit and numerous district courts have made clear that the applicable standard for assessing facial vagueness is actually the reverse of what Plaintiffs propose; a law survives a facial vagueness challenge if there are any conceivable applications of it." Specifically, the defendants argue that "[t]he term 'rapidly' is commonly understood to mean 'happening in a short amount of time' or 'happening quickly.' " The defendants state that "[t]he challenged language exists to prevent an individual from circumventing the ban by disassembling their weapon, only to rapidly reassemble it back into an assault weapon when they wish to use it."

Relevant provisions of the legislation provide that an "[a]ssault weapon means: ... A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in subparagraph (A)(i) of this subdivision, or *any combination of parts* from which an assault weapon, as defined in subparagraph (A)(i) of this subdivision, may be *rapidly* assembled if those parts are in the possession or under the control of the same person; ... "Large capacity magazine" means any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be *readily restored or converted* to accept, more than ten rounds of ammunition, but does not include (A) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of ammunition...." [78]

***16 [29]** The Connecticut legislature did not have to specify the exact amount of time in which a weapon could be "rapidly assembled." [79] Such precision is not always possible due to the confines of the English language. "The Constitution does not require impossible standards." *United States v. Petrillo,* 332 U.S. 1, 7, 67 S.Ct. 1538, 91 L.Ed. 1877 (1947). [80]

Assault weapons and LCMs, broken into parts, which can be restored to their entirety without much effort, are "clear[ly] what the ordinance as a whole prohibits." *Grayned v. City of Rockford,* 408 U.S. 104, 110, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). The court concludes that this challenged provision provides fair warning to a person of ordinary intelligence as to the prohibited conduct and, therefore, it is not unconstitutionally vague.

E. ***Capacity to Accept More than Ten Rounds***

The plaintiffs finally argue that many rifles and shotguns have tubular magazines in which cartridges are inserted one behind the other. [81] Specifically, the plaintiffs argue that the capacity of firearms "to accept cartridges in tubular magazines varies with the length of the rounds inserted therein." That is, the plaintiffs argue that the act is vague as to whether a magazine that accepts ten or less standard cartridges but more than ten smaller, non-standard rounds is unlawful.

The defendants respond that "[a]lthough it is true that the maximum capacity of tubular magazines can vary, Plaintiffs claim nevertheless lacks merit." Specifically, the defendants argue that "[a]n individual therefore need only locate and read the firearm's specifications to determine if the firearm can accept more than ten of any of its standard rounds.... If the magazine can accept more than ten of any standard round, it is clearly prohibited." The defendants further argue that very few tubular magazines would be "impacted by the ambiguity that Plaintiffs posit," and "[b]ecause the ten round limit will be clear and unambiguous in virtually all of its applications, therefore, it is not facially vague."

The legislation explicitly states that "[l]arge capacity magazine' means any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition, but does not include: (A) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of ammunition, (B) a .22 caliber tube ammunition feeding device, (C) a tubular magazine that is contained in a lever-action firearm, or (D) a magazine that is permanently inoperable...." [82] The legislation states that an "[a]ssault weapon means: ... (E) Any semiautomatic firearm regardless of whether such firearm is listed in subparagraphs (A) to (D), inclusive, of this subdivision, and regardless of the date such firearm was produced, that meets the following criteria: ... (ii) A semiautomatic, centerfire rifle that has a fixed magazine with the ability to accept more than ten rounds...." [83]

*17 **[30]** Here, the court concludes that this provision of the legislation, if applied to standard cartridges, is not impermissibly vague in all its applications and, as such, it is not unconstitutionally vague. [84]

IV. *CONCLUSION*

For the foregoing reasons, the plaintiffs' motion for summary judgment (document no. 60) is DENIED; the defendants' cross motion for summary judgment (document no. 78) is GRANTED; and the plaintiffs' motion for preliminary injunction (document no. 14) is DENIED as moot.

1 The named plaintiffs are June Shew, Mitchell Rocklin, Stephanie Cypher, Peter Owens, Brian McClain, Stephen Holly, Hiller Sports, LLC, MD Shooting Sports, LLC, the Connecticut Citizens' Defense League, and the Coalition of Connecticut Sportsmen.

2 The motion requests declaratory judgment and permanent injunctive relief.

3 The named defendants are Dannel Malloy, Kevin Kane, Reuben Bradford, David Cohen, John Smriga, Stephen Sedensky III, Maureen Platt, Kevin Lawlor, Michael Dearington, Peter McShane, Michael Regan, Patricia Froehlich, Gail Hardy, Brian Preleski, David Shepack, and Matthew Gedansky.

4 The amendment covered, *inter alia,* "large capacity magazines," and became effective June 18, 2013.

5 The Second Amendment provides: "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

6 The Fourteenth Amendment provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

7 With respect to this constitutional doctrine, the plaintiffs object to the following specific terms in numerous provisions of the legislation: 1) a grip allowing a non-trigger finger to be below the action when firing, Conn. Gen.Stat. § 53–202a(1)(E)(i)(II), (vi)(II); 2) "copies or duplicates" with the capability of other firearms in production by the effective date, Conn. Gen.Stat. § 53–202a(1); 3) inaccurately named firearms, Conn. Gen.Stat. § 53–202a(1)(A)–(D); and 4) the modification, alteration, or assembly of magazines and components.

8 Insofar as the court concludes that the weapons and magazines regulated are commonly used for lawful purposes, and that the legislation impinges upon a Second Amendment right, the analysis warrants intermediate rather than strict scrutiny.

9 Because the court grants the defendants' motion for summary judgment, the plaintiffs' motion for preliminary injunction is rendered moot.

10 Citing Conn. Gen.Stat. § 53–202a(A)–(D), the defendants state "[a]s a result of the Act, there are now 183 assault weapons that are prohibited by make and model in Connecticut."

11 In 1993, the Connecticut General Assembly passed Conn. 1993, P.A. 93–306, which prohibited possessing, selling, or transporting, what the Act defined as "assault weapons," with limited exceptions.

12 Assault weapon is a term of common modern usage, without a universal legal definition. It is generally defined as "any of various automatic or semiautomatic firearms." *See* "assault weapon" *Merriam–Webster.com,* Merriam–Webster 2011. An "assault rifle" is generally defined as "a gun that can shoot many bullets quickly and that is designed for use by the military." *See* "assault rifle" *Merriam–Webster.com,* Merriam–Webster 2011.

13 Bolt action rifles are not semiautomatic. Revolvers, which use multiple chambers and a single barrel, are also not semiautomatic.

14 The legislation prohibits roughly 2.5% of the gun stock in the United States. Professor Laurence Tribe, in testimony before the Senate Judiciary Committee stated that "depending upon the definition of assault weapon, assault weapons represent 15% of all semi-automatic guns owned in the U.S., which in turn represent about 15% of all firearms owned in the U.S." That is, 15% of 15%, or 2.5%. *See* Prepared Testimony by Laurence H. Tribe, exhibit 61 at p. 24.

15 For example, not contested is Section 66 of Public Act 13–3, which "established a task force to study the provision of behavioral health services in the state with particular focus on the provision of behavioral health services for persons sixteen to twenty-five years of age, inclusive." Conn. P.A. 13–3, § 66(a), eff. April 4, 2013; as amended by Conn.2013 P.A. 13–220.

16 For example, AK–47 rifles, Centurion 39 AK pistols, and IZHMASH Saiga 12 shotguns are among the specifically listed firearms.

17 *See* Conn. Gen.Stat. § 53–202a(1)(B)-(D).

18 In other words, a person cannot shield an assault weapon from violating the act by simply breaking it down into parts that can be put back together rapidly. *See* Conn. Gen.Stat. § 53–202a(1)(A)(ii).

19 *See* Conn. Gen.Stat. § 53–202a(1)(E). The one-feature test is a change from the 1993 Act which employed a two-feature test whereby it prohibited firearms that had at least two listed features.

20 Conn. Gen.Stat. § 53–202a(1)(E)(i)(I)-(V).

21 This type of pistol qualifies as an assault weapon if it has any of the following features: "(I) an ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip; (II) A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer; (III) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that encloses the barrel; or (IV) A second hand grip." Conn. Gen.Stat. § 53–202a(1)(E)(iv)(I)–(IV).

22 This type of shotgun qualifies as an assault weapon if it has both "i) a folding or telescoping stock and ii) any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing." Conn. Gen.Stat. § 53–202a(1)(C)(i)-(ii).

23 *See* Conn. Gen.Stat. § 53–202a(1)(E)(ii)-(viii).

24 *See* Conn. Gen.Stat. § 53–202a(1)(E)(ii), (iii), (vii) and (viii).

25 Conn. P.A. 13–220.

26 *See* Conn. P.A. 13–220, § 1(a)(1). By way of clarification, the court notes that Connecticut has yet to codify this section of the law. The plaintiffs make numerous references in their briefing to "Conn. Gen.Stat. 53–202p" and its various subsections. Presumably the plaintiffs are citing the law using LexisNexis's internal citation, which provides the text as "P.A. 13–220, s.1, at CGS 53–202p." At the bottom of the page, in the Editor's Notes, Lexis states: "[t]he placement of this section is not final" and "this section should be referenced by its Public Act citation, found in the legislative history following the statute text." The court will refer to this section by its Public Act citation.

27 *See* Conn. Gen.Stat. § 53–202D(a)(2).

28 Conn. P.A. 13–220 § 1(d)(1).

29 *See e.g.* Conn. P.A. 13–220 §§ 2(a)(2) and 7(a)(2).

30 *See* Conn. Gen.Stat. § 53–202c(a). The legislation also provides that "[a]ny person who, within [Connecticut], distributes, transports or imports into the state, keeps for sale, or offers or exposes for sale, or who gives any assault weapon, except as provided by sections 52–202a to 53–202k, inclusive, shall be guilty of a class C felony and shall be sentenced to a term of imprisonment of which two years may not be suspended or reduced by the court." Conn. Gen.Stat. § 53–202b(a)(1).

31 The plaintiffs state that "the laws of most states and federal law have no restrictions on magazine capacity or the number of rounds that may be loaded in a magazine, nor do they restrict guns that some choose to call assault weapons.' "

32 The defendants state that 1) "[t]he Act is a reasonable and logical extension of a twenty-year old Connecticut statute that mirrors analogous laws that have existed for decades in other jurisdictions," and thus a longstanding restriction on the possession of certain firearms; 2) "the Act does not prohibit an entire class of firearms, like all conventional handguns that are the 'quintessential

self-defense weapon' ... [n]or does it even ban all semiautomatic firearms;" and 3)the act "bans a tiny subset of unusually dangerous military-style weapons and magazines that 'are designed to enhance their capacity to shoot multiple human targets very rapidly.' "

33 Other circuits have taken a similar approach to the Second Amendment. *See e.g., Heller v. D.C.,* 670 F.3d 1244, 1261 (D.C.Cir.2011) ("*Heller II* "); *Ezell v. City of Chicago,* 651 F.3d 684, 701–04 (7th Cir.2011); *U.S. v. Chester,* 628 F.3d 673, 680 (4th Cir.2010); *U.S. v. Reese,* 627 F.3d 792, 800–01 (10th Cir.2010); *U.S. v. Marzzarella,* 614 F.3d 85, 89 (3d Cir.2010).

34 See *Infra* Part I.A., discussing constitutional levels of scrutiny.

35 *Heller* struck down as violative of the Second Amendment, a D.C. statute that banned hand gun possession in one's home, as well as a "prohibition against rendering any lawful firearm in the home operable for the immediate purpose of self-defense". *Id.* In a subsequent case, the Supreme Court held that the right to keep and bear arms is "fully applicable to the States" through the Fourteenth Amendment. *McDonald v. City of Chicago,* —— U.S. ——, 130 S.Ct. 3020, 3026, 177 L.Ed.2d 894 (2010).

36 *Heller* "declined to announce the precise standard of review applicable to laws that infringe the Second Amendment right because the laws at issue ... would be unconstitutional [u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights.' " *Decastro,* 682 F.3d at 165 (quoting *Heller,* 554 U.S. at 628–629, 128 S.Ct. 2783).

37 The *Heller* court did not, however, identify what "time" it meant when it used the phrase "in common use at the time." *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo,* —— F.Supp.2d ——, ——, 2013 WL 6909955 at *9 (W.D.N.Y. Dec. 31, 2013) (hereinafter "*NYSRPA* ").

38 Furthermore, the Supreme Court emphasized that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Heller,* 554 U.S. at 626–27, 128 S.Ct. 2783. The Supreme Court also stated that "[l]ike most rights, the Second Amendment right is not unlimited." *Id.* at 570, 128 S.Ct. 2783. Thus, the Supreme Court logically concluded that "[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment." *McDonald,* 130 S.Ct. at 3047; *see also Kachalsky,* 701 F.3d at 89 (concluding that *McDonald* reaffirmed *Heller's* assurances that Second Amendment rights are far from absolute and that many longstanding handgun regulations are "presumptively lawful").

39 Similarly, the *NYSRPA* court found that the statistics provided by the parties on the popularity and percentage of ownership of assault weapons paint very different pictures and "leave many questions unanswered." *NYSRPA,* —— F.Supp.2d at ——, 2013 WL 6909955 at *10. Since *Heller* did not elaborate on what time it meant "when it held that protected weapons are those that are in common use at the time', ... it is anomalous that a weapon could be unprotected under the Second Amendment one moment, then, subject only to the whims of the public, garner protection in the next moment." *Id.* Even so, a firearm must also be possessed for lawful purposes, and the *NYSRPA* court found "[o]n this point, too, the parties [were] deeply divided." *Id.* at ——, 2013 WL 6909955 at *11.

40 The AR–15 type rifle, which is an assault weapon under the legislation, is the leading type of firearm used in national matches and in other matches sponsored by the congressionally established Civilian Marksmanship Program. Plaintiffs' SOF, ¶¶ 123–124. In 2011, AR–15s accounted for at least 7% of all firearms and 18% of all rifles made in the U.S. for the domestic market that year. *See* Declaration of Mark Overstreet at 2–4 ("Overstreet Decl."). Additionally, "the banned features are commonly found (either individually or in combination) on AR–15 type modern sporting rifles." *See* Declaration of Paul Hiller at 3.

41 Numerous rifle designs utilize magazines with a capacity of more than ten cartridges including the M1 Carbine, AR–15, and Ruger Mini–14 series, and, in recent decades, the trend in semiautomatic pistols has been to those designed to hold ten rounds or more. *See* Mark Overstreet Decl. at 5–6

42 *Heller II* went on to conclude that "[t]here may well be some capacity above which magazines are not in common use but, if so, the record is devoid of evidence as to what that capacity is; in any event, that capacity surely is not ten." *Heller II,* 670 F.3d at 1261.

43 "If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect." *Heller,* 554 U.S. at 628 n. 27, 128 S.Ct. 2783.

44 See *supra,* note 12.

45 *See e.g., New York State Rifle & Pistol Ass'n, Inc. v. Cuomo,* —— F.Supp.2d ——, ——, 2013 WL 6909955 at *13 (W.D.N.Y. Dec. 31, 2013) (finding New York's Gun Act "applies only to a subset of firearms with characteristics New York State has determined to be particularly dangerous and unnecessary for self-defense").

46 See *supra* p. ——.

47 Several factors support this conclusion, which were identified in *NYSRPA:* "First, although addressing varied and divergent laws, courts throughout the country have nearly universally applied some form of intermediate scrutiny in the Second Amendment context ... Second, application of strict scrutiny would appear to be inconsistent with the Supreme Court's holdings in *Heller* and *McDonald,* where the Court recognized several presumptively lawful regulatory measures' ... [and third,] First Amendment jurisprudence provides a useful guidepost in this arena" (because free speech is "susceptible to several standards of scrutiny, depending on the type of law challenged and the type of speech at issue"). *NYSRPA,* —— F.Supp.2d at ——, 2013 WL 6909955 at *12.

48 The *Kachalsky* court elaborated and stated that "[s]tate regulation under the Second Amendment has always been more robust than of other enumerated rights," and there is a "general reticence to invalidate the acts of our elected leaders." *Kachalsky,* 701 F.3d at 100.

49 As evidenced in the legislative record: "At the end of that unimaginable day, we learned that we had lost 20 elementary school children and 6 teachers and administrators. They were killed with a weapon of war, a semi-automatic assault rifle, the platform of which —was originally designed for the battlefield and mass killings...." The legislature recognized that "access to guns is a big part of the public health challenges in our country today." *See* Connecticut Senate Session Transcript for April 3, 2013.

50 Christopher S. Koper, states that it is his "considered opinion, based on [his] nineteen years as a criminologist studying firearms generally and [his] detailed study of the federal assault weapon ban in particular, that Connecticut's bans on assault weapons and large-capacity magazines, and particularly its ban on LCMs, have the potential to prevent and limit shootings in the state over the long-run." Koper Aff. at 17.

51 Finding that "[a]lthough semi-automatic firearms, unlike automatic M–16s, fire only one shot with each pull of the trigger, semi-automatics still fire almost as rapidly as automatics...." *Heller II,* 670 F.3d at 1264 (internal quotation marks and citations omitted).

52 *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo,* —— F.Supp.2d at ——, 2013 WL 6909955 at *15 (finding that, although the merits of the judgment remain to be seen, substantial evidence supports the finding that the "banned features are usually dangerous, commonly associated with military combat situations, and are commonly found on weapons used in mass shootings" and that "military features of semiautomatic assault weapons are designed to enhance the capacity to shoot multiple human targets rapidly").

53 This is because limiting rounds in a magazine means that a shooter has to pause periodically to change out his magazine, reducing the amount of rounds fired and limiting the shooters capability of laying "suppressing fire" that can frustrate the efforts of responding law enforcement. *See* Mello Aff. at ¶¶ 18, 30; Sweeney Aff. at ¶¶ 15, 20; *NYSRPA,* —— F.Supp.2d at ——, 2013 WL 6909955 at *17 (finding the link between the ban on large capacity magazines and the state's interest in public safety is strong due to evidence suggesting that banning LCMs "will prevent shootings and save lives").

54 Other courts have also found that the states have "substantial, indeed compelling, governmental interests" in public safety and crime prevention. *Schenck v. Pro–Choice Network,* 519 U.S. 357, 376, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997); *Schall v. Martin,* 467 U.S. 253, 264, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984); *Hodel v. Va. Surface Mining & Reclamation Ass'n,* 452 U.S. 264, 300, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981); *Bloomberg,* 723 F.3d 160, 168 (2d Cir.2013); *Woollard v. Gallagher,* 712 F.3d 865, 877 (4th Cir.2013) *cert. denied,* —— U.S. ——, 134 S.Ct. 422, 187 L.Ed.2d 281 (U.S.2013); *Kachalsky v. County of Westchester* 701 F.3d at 97 (2d Cir.2012); *Heller II,* 670 F.3d at 1264; *Kuck v. Danaher,* 600 F.3d 159, 166 (2d Cir.2010); *NYSRPA,* —— F.Supp.2d at ——, 2013 WL 6909955 at *15.

55 *See* D.C.Code §§ 7–2502.02 and 7–2506.01; N.Y. Penal Law § 265.00.

56 Conn. P.A. 13–220, § 1(d)(1).

57 The defendants also state that "members of the military are not similarly situated to the general public because they are governed by applicable federal and military laws, which the State appropriately chose not to contravene or even encroach upon." With respect to military personnel, the plaintiffs state that "the exemption could have been limited to duty purposes" and being compelled to perform law enforcement functions

"does not apply to military members and other exempted persons who have no such duties."

58 *See* Conn. P.A. 13–220 § 1(d)(1); Conn. Gen.Stat. § 53–202c(b)(2). Several provisions do not read exactly this way, but are nearly the same. For example, part of one provision reads: "... for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty." Conn. P.A. 13–3, § 23(d)(2).

59 *See e.g.* Conn. P.A. 13–220 §§ 2(a)(2) and 7(a)(2).

60 *See Woollard v. Gallagher,* 712 F.3d 865, 873 n. 4 (4th Cir.2013) (declining to conduct a separate equal protection analysis for Maryland's "good-and-substantial-reason requirement" for obtaining a handgun permit, because the equal protection claim was "essentially a restatement of [the] Second Amendment claim").

61 In applying constitutional scrutiny to a legislative classification or distinction, if it "neither burdens a fundamental right nor targets a suspect class, we will uphold [the classification or distinction] so long as it bears a rational relation to some legitimate end." *Romer v. Evans,* 517 U.S. 620, 631, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996); *see also Vacco v. Quill,* 521 U.S. 793, 799, 117 S.Ct. 2293, 138 L.Ed.2d 834 (1997).

62 *See also Coal. of New Jersey Sportsmen, Inc. v. Whitman,* 44 F.Supp.2d 666, 685 (D.N.J.1999) *aff'd,* 263 F.3d 157 (3d Cir.2001) (applying rational basis review with respect to an equal protection cause of action in a case concerning an assault weapons ban); *National Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives,* 700 F.3d 185, 211–12 (5th Cir.2012) (applying rational basis review to a firearm regulation because it did not "impermissibly interfere with the exercise of a fundamental right").

63 The *Silveira* court concluded that "[i]t is manifestly rational for at least most categories of peace officers to possess and use firearms more potent than those available to the rest of the populace in order to maintain public safety." *Silveira,* 312 F.3d at 1089.

64 In fact, § 6(b)(1) of P.A. 13–3 states that "nor shall any provision in sections 53–202a to 53–202k, inclusive, as amended by this act, prohibit the possession or use of assault weapons by sworn members of these agencies when on duty and when the possession or use is within the scope of such member's duties." Conn. P.A. 13–220, § 6(b)(1). It would be absurd to require the use of an assault weapon to be within the scope of the member's duties when "on duty" but allow for recreational use by members of these agencies while "off duty." Likewise, another provision does not require exempt personnel to declare possession with "respect to a large capacity magazine used for official duties." P.A. 13–3 § 2(a)(2).

65 *See e.g.* Conn. P.A. 13–220 §§ 2(a)(2) and 7(a)(2); *see also* P.A. 13–3 § 24(a).

66 The court recognizes that in *City of Chicago v. Morales,* 527 U.S. 41, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) (Stevens, J.), a plurality of the U.S. Supreme Court set forth a "permeated with vagueness test" for criminal laws with no *mens rea* requirement. For these statutes, when "vagueness permeates the text of such a law, it is subject to facial attack." *Morales,* 527 U.S. at 55, 119 S.Ct. 1849. The second circuit has not declared a preference for this so-called "permeated with vagueness" test or the "impermissibly vague in all its applications" test recognized in *U.S. v. Rybicki,* 354 F.3d 124, 129 (2d Cir.2003). The court's conclusions here, however, are the same whether applying the *Morales* test or the "vague in all applications test."

67 The defendants challenge the provisions discussed below on "on their face" and "as applied." "Challenges mounted "pre-enforcement," that is, before the plaintiffs have been charged with a crime under the legislation, are properly labeled as a 'facial challenge.' " *Richmond Boro Gun Club, Inc. v. City of New York,* 97 F.3d 681, 685 (2d Cir.1996).

68 The plaintiffs argue that "[w]aterfowl shotguns are typically fired vertically when ducks are flying over a blind. When pointed upward for firing, all four fingers are directly below the action of the shotgun." The plaintiffs argue, "[b]y contrast, a rifle with some types of pistol grips or thumbhole stocks (depending on the configuration), when held at an angle downward to fire at a deer in a valley, may be tilted sufficiently that the non-trigger fingers are not directly below the action."

69 However, where a court finds it necessary, "general terms should be so limited in their application as not to lead to an absurd consequence." *United States v. Fontaine,* 697 F.3d 221, 228 (3d Cir.2012) The court should "presume that the legislature intended exceptions to its language, which would avoid absurd results." *Id.* (quoting *United States v. Kirby,* 74 U.S. 482, 486–87, 7 Wall. 482, 19 L.Ed. 278 (1868)) (internal quotation marks omitted).

70 While the vertical firing position may be "normal" for certain activities, such as duck hunting, it is not the

overall normal firing position. Ideally, the legislation would have included a more descriptive statement than "when firing." The California penal code includes such a statement when it provides the phrase "[n]ormal firing position with barrel horizontal" in its chapter on "Unsafe Handguns" and related definitions. *See* Cal.Penal Code § 31900–31910.

71 Conn. Gen.Stat. § 53–202a(1)(B), (C) and (D).

72 The *Kuhlman* court found that the "copies or duplicates' language was added to the Ordinance in order to prevent manufacturers from simply changing the name of the specified weapons to avoid criminal liability." *Kuhlman,* 261 F.3d at 311.

73 New York Penal Law § 265.00(22)(c)(viii).

74 Specifically, the defendants argue that "most individuals will be able to determine whether their firearm is prohibited simply by locating the make and model engravings that most firearms have;" and if no such engravings exist, by the firearms serial number, calling the manufacturer, calling a federally licensed firearms dealer, or calling the Special Licensing and Firearms Unit at the Department of Emergency Services and Public Protection.

75 *See* Conn. Gen.Stat. § 53–202a(1)(A)-(D).

76 For example, these provisions provide that a semiautomatic centerfire rifle with a thumbhole stock (the generic feature) qualifies as an assault weapon. *See* Conn. Gen.Stat. § 53–202a(1)(E)(i)(I)-(V), (iv)(I)-(IV), (vi)(I)-(II).

77 The plaintiffs state that several provisions in the act refer to the potential to "restore," "convert," "assemble" or "alter" magazines or parts in any given way. The plaintiffs also state other provisions place the adverbs "readily" and "rapidly" to modify these verbs.

78 *See* Conn. Gen.Stat. § 53–202a(1)(A)(ii); Conn. P.A. No. 13–220(a)(1).

79 *See e.g., Coal. of New Jersey Sportsmen, Inc. v. Whitman,* 44 F.Supp.2d 666, 681 (D.N.J.1999) *aff'd,* 263 F.3d 157 (3d Cir.2001) (concluding that "[s]urely the Legislature, intent on reaching assault weapons which could be altered in minor ways or disassembled to avoid the purview of the other assault weapon definitions, did not have to specify in hours and minutes and with reference to specific tools and degrees of knowledge the parameters of what readily assembled' means").

80 *See also U.S. v. Catanzaro,* 368 F.Supp. 450, 454 (D.Conn.1973) (finding that the phrase "which may be readily restored to fire" was not unconstitutionally vague *in se* and that it did not fail to provide fair warning to a person of ordinary intelligence that the item which is the subject matter of this indictment was a "firearm" within the terms of the National Firearms Act).

81 The plaintiffs state that, for the same reasons, § 530–202a(1)(E)(ii), providing that "the definition of 'assault weapon' includes: 'A semiautomatic', centerfire rifle that has a fixed magazine with the ability to accept more than ten rounds ..." is also unconstitutionally vague.

82 Conn. P.A. 13–220, § 1(a)(1).

83 *See* Conn. Gen.Stat. § 53–202a(1)(A)(ii).

84 *See e.g., Coal. of New Jersey Sportsmen, Inc. v. Whitman,* 44 F.Supp.2d 666, 680 (D.N.J.1999) *aff'd,* 263 F.3d 157 (3d Cir.2001) (finding "the possibility of shorter, non-standard shells, which may or may not be in existence ... is irrelevant when the statute's prohibition clearly encompasses the standard shells intended for the magazine").

End of Document

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al., plaintiffs,	:	
v.	:	CASE NO. 3:13CV739(AVC)
DANNEL P. MALLOY, et al. defendants.	:	

JUDGMENT

This action having come before the court for consideration of the parties' cross motions for summary judgment, and

The court having considered the motions and the full record of the case, and having granted the defendants' motion for summary judgment and denied the plaintiff's motion on January 30, 2014, it is hereby,

ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the defendants.

Dated at Hartford, Connecticut, this 30th day of January, 2014 at Hartford, Connecticut.

ROBIN TABORA, Clerk

By: S/S
Renee Alexander
Deputy Clerk

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202

§ 53-202. Machine guns

Effective: July 1, 2011
Currentness

(a) As used in this section: (1) "Machine gun" shall apply to and include a weapon of any description, loaded or unloaded, which shoots, is designed to shoot or can be readily restored to shoot automatically more than one projectile, without manual reloading, by a single function of the trigger, and shall also include any part or combination of parts designed for use in converting a weapon into a machine gun and any combination of parts from which a machine gun can be assembled if such parts are in the possession of or under the control of a person. (2) "Crime of violence" shall apply to and include any of the following-named crimes or an attempt to commit any of the same: Murder, manslaughter, kidnapping, sexual assault and sexual assault with a firearm, assault in the first or second degree, robbery, burglary, larceny and riot in the first degree. (3) "Projectile" means any size bullet that when affixed to any cartridge case may be propelled through the bore of a machine gun.

(b) Any person who possesses or uses a machine gun in the perpetration or attempted perpetration of a crime of violence shall be imprisoned not less than ten years nor more than twenty years.

(c) Any person who (1) possesses or uses a machine gun for an offensive or aggressive purpose, or (2) notwithstanding the provisions of subdivision (3) of subsection (h) of this section, transfers, sells or gives a machine gun to a person under sixteen years of age, including the temporary transfer of a machine gun to such person for use in target shooting or on a firing or shooting range or for any other purpose, shall be fined not more than one thousand dollars or imprisoned not less than five years nor more than ten years or be both fined and imprisoned.

(d) The possession or use of a machine gun shall be presumed to be for an offensive or aggressive purpose: (1) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun was found; or (2) when in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any state or federal court of record of the United States of America, its territories or insular possessions; or (3) when the machine gun is of the kind described in subsection (g) hereof and has not been registered as therein required; or (4) when empty or loaded projectiles of any caliber which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof.

(e) The presence of a machine gun in any room, boat or vehicle shall be presumptive evidence of the possession or use of the machine gun by each person occupying such room, boat or vehicle.

(f) Each manufacturer shall keep a register of all machine guns manufactured or handled by the manufacturer. Such register shall show the model and serial number, and the date of manufacture, sale, loan, gift, delivery or receipt, of each machine gun, the name, address and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given

or delivered. Upon demand, any manufacturer shall permit any marshal or police officer to inspect such manufacturer's entire stock of machine guns, and parts and supplies therefor, and shall produce the register, herein required, for inspection. Any person who violates any provision of this subsection shall be fined not more than two thousand dollars.

(g) Each machine gun in this state adapted to use projectiles of any caliber shall be registered in the office of the Commissioner of Emergency Services and Public Protection within twenty-four hours after its acquisition and, thereafter, annually, on July first. Blanks for registration shall be prepared by said commissioner and furnished upon application. To comply with this subsection, the application as filed shall show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which the gun was acquired. The registration data shall not be subject to inspection by the public. Any person who fails to register any gun as required hereby shall be presumed to possess the same for an offensive or aggressive purpose. The provisions of this subsection shall not apply to any machine gun which has been registered under the provisions of subsection (f) and which is still in the actual possession of the manufacturer.

(h) No provision of this section shall apply to: (1) The manufacture of machine guns for sale or transfer to the United States government, to any state, territory or possession of the United States or to any political subdivision thereof or to the District of Columbia; (2) the possession of a machine gun rendered inoperable by welding of all critical functioning parts and possessed as a curiosity, ornament or keepsake; or (3) a machine gun acquired, transferred or possessed in accordance with the National Firearms Act, as amended, [1] provided such machine gun shall be subject to the provisions of subsection (g) of this section.

Credits

(1949 Rev., § 8509; 1963, P.A. 652, § 10, July 2, 1963; 1976, P.A. 76-336, § 19; 1977, P.A. 77-614, § 486, eff. Jan. 1, 1979; 1984, P.A. 84-200; 2000, P.A. 00-99, § 118, eff. Dec. 1, 2000; 2001, P.A. 01-195, § 69, eff. July 11, 2001; 2009, P.A. 09-62, § 1; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011.)

Notes of Decisions (3)

Footnotes

1 26 U.S.C.A. § 5801 et seq.

C. G. S. A. § 53-202, CT ST § 53-202

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202a

§ 53-202a. Assault weapons: Definitions

Effective: June 18, 2013
Currentness

As used in this section and sections 53-202b to 53-202k, inclusive:

(1) "Assault weapon" means:

(A) (i) Any selective-fire firearm capable of fully automatic, semiautomatic or burst fire at the option of the user or any of the following specified semiautomatic firearms: Algimec Agmi; Armalite AR-180; Australian Automatic Arms SAP Pistol; Auto-Ordnance Thompson type; Avtomat Kalashnikov AK-47 type; Barrett Light-Fifty model 82A1; Beretta AR-70; Bushmaster Auto Rifle and Auto Pistol; Calico models M-900, M-950 and 100-P; Chartered Industries of Singapore SR-88; Colt AR-15 and Sporter; Daewoo K-1, K-2, Max-1 and Max-2; Encom MK-IV, MP-9 and MP-45; Fabrique Nationale FN/FAL, FN/LAR, or FN/FNC; FAMAS MAS 223; Feather AT-9 and Mini-AT; Federal XC-900 and XC-450; Franchi SPAS-12 and LAW-12; Galil AR and ARM; Goncz High-Tech Carbine and High-Tech Long Pistol; Heckler & Koch HK-91, HK-93, HK-94 and SP-89; Holmes MP-83; MAC-10, MAC-11 and MAC-11 Carbine type; Intratec TEC-9 and Scorpion; Iver Johnson Enforcer model 3000; Ruger Mini-14/5F folding stock model only; Scarab Skorpion; SIG 57 AMT and 500 series; Spectre Auto Carbine and Auto Pistol; Springfield Armory BM59, SAR-48 and G-3; Sterling MK-6 and MK-7; Steyr AUG; Street Sweeper and Striker 12 revolving cylinder shotguns; USAS-12; UZI Carbine, Mini-Carbine and Pistol; Weaver Arms Nighthawk; Wilkinson "Linda" Pistol;

(ii) A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in subparagraph (A)(i) of this subdivision, or any combination of parts from which an assault weapon, as defined in subparagraph (A)(i) of this subdivision, may be rapidly assembled if those parts are in the possession or under the control of the same person;

(B) Any of the following specified semiautomatic centerfire rifles, or copies or duplicates thereof with the capability of any such rifles, that were in production prior to or on April 4, 2013: (i) AK-47; (ii) AK-74; (iii) AKM; (iv) AKS-74U; (v) ARM; (vi) MAADI AK47; (vii) MAK90; (viii) MISR; (ix) NHM90 and NHM91; (x) Norinco 56, 56S, 84S and 86S; (xi) Poly Technologies AKS and AK47; (xii) SA 85; (xiii) SA 93; (xiv) VEPR; (xv) WASR-10; (xvi) WUM; (xvii) Rock River Arms LAR-47; (xviii) Vector Arms AK-47; (xix) AR-10; (xx) AR-15; (xxi) Bushmaster Carbon 15, Bushmaster XM15, Bushmaster ACR Rifles, Bushmaster MOE Rifles; (xxii) Colt Match Target Rifles; (xxiii) Armalite M15; (xxiv) Olympic Arms AR-15, A1, CAR, PCR, K3B, K30R, K16, K48, K8 and K9 Rifles; (xxv) DPMS Tactical Rifles; (xxvi) Smith and Wesson M&P15 Rifles; (xxvii) Rock River Arms LAR-15; (xxviii) Doublestar AR Rifles; (xxix) Barrett REC7; (13-3) Beretta Storm; (13-3i) Calico Liberty 50, 50 Tactical, 100, 100 Tactical, I, I Tactical, II and II Tactical Rifles; (13-3ii) Hi-Point Carbine Rifles; (13-3iii) HK-PSG-1; (13-3iv) Kel-Tec Sub-2000, SU Rifles, and RFB; (13-3v) Remington Tactical Rifle Model 7615; (13-3vi) SAR-8, SAR-4800 and SR9; (13-3vii) SLG 95; (13-3viii) SLR 95 or 96; (13-3ix) TNW M230 and M2HB; (xl) Vector Arms UZI; (xli) Galil and Galil Sporter; (xlii) Daewoo AR 100 and AR 110C; (xliii) Fabrique Nationale/FN 308 Match and L1A1 Sporter; (xliv) HK USC; (xlv) IZHMASH Saiga AK; (xlvi) SIG Sauer 551-A1, 556, 516, 716 and M400 Rifles; (xlvii) Valmet M62S, M71S and M78S; (xlviii) Wilkinson Arms Linda Carbine; and (xlix) Barrett M107A1;

(C) Any of the following specified semiautomatic pistols, or copies or duplicates thereof with the capability of any such pistols, that were in production prior to or on April 4, 2013: (i) Centurion 39 AK; (ii) Draco AK-47; (iii) HCR AK-47; (iv) IO Inc. Hellpup AK-47; (v) Mini-Draco AK-47; (vi) Yugo Krebs Krink; (vii) American Spirit AR-15; (viii) Bushmaster Carbon 15; (ix) Doublestar Corporation AR; (x) DPMS AR-15; (xi) Olympic Arms AR-15; (xii) Rock River Arms LAR 15; (xiii) Calico Liberty III and III Tactical Pistols; (xiv) Masterpiece Arms MPA Pistols and Velocity Arms VMA Pistols; (xv) Intratec TEC-DC9 and AB-10; (xvi) Colefire Magnum; (xvii) German Sport 522 PK and Chiappa Firearms Mfour-22; (xviii) DSA SA58 PKP FAL; (xix) I.O. Inc. PPS-43C; (xx) Kel-Tec PLR-16 Pistol; (xxi) Sig Sauer P516 and P556 Pistols; and (xxii) Thompson TA5 Pistols;

(D) Any of the following semiautomatic shotguns, or copies or duplicates thereof with the capability of any such shotguns, that were in production prior to or on April 4, 2013: All IZHMASH Saiga 12 Shotguns;

(E) Any semiautomatic firearm regardless of whether such firearm is listed in subparagraphs (A) to (D), inclusive, of this subdivision, and regardless of the date such firearm was produced, that meets the following criteria:

(i) A semiautomatic, centerfire rifle that has an ability to accept a detachable magazine and has at least one of the following:

(I) A folding or telescoping stock;

(II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing;

(III) A forward pistol grip;

(IV) A flash suppressor; or

(V) A grenade launcher or flare launcher; or

(ii) A semiautomatic, centerfire rifle that has a fixed magazine with the ability to accept more than ten rounds; or

(iii) A semiautomatic, centerfire rifle that has an overall length of less than thirty inches; or

(iv) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the following:

(I) An ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip;

(II) A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer;

(III) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that encloses the barrel; or

(IV) A second hand grip; or

(v) A semiautomatic pistol with a fixed magazine that has the ability to accept more than ten rounds; or

(vi) A semiautomatic shotgun that has both of the following:

(I) A folding or telescoping stock; and

(II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing; or

(vii) A semiautomatic shotgun that has the ability to accept a detachable magazine; or

(viii) A shotgun with a revolving cylinder; or

(ix) Any semiautomatic firearm that meets the criteria set forth in subdivision (3) or (4) of subsection (a) of section 53-202a of the general statutes, revision of 1958, revised to January 1, 2013; or

(F) A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, of this subdivision, or any combination of parts from which an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, of this subdivision, may be assembled if those parts are in the possession or under the control of the same person;

(2) "Assault weapon" does not include (A) any firearm modified to render it permanently inoperable, or (B) a part or any combination of parts of an assault weapon, that are not assembled as an assault weapon, when in the possession of a licensed gun dealer, as defined in subsection (f) of section 53-202f, or a gunsmith who is in the licensed gun dealer's employ, for the purposes of servicing or repairing lawfully possessed assault weapons under sections 53-202a to 53-202k, inclusive;

(3) "Action of the weapon" means the part of the firearm that loads, fires and ejects a cartridge, which part includes, but is not limited to, the upper and lower receiver, charging handle, forward assist, magazine release and shell deflector;

(4) "Detachable magazine" means an ammunition feeding device that can be removed without disassembling the firearm action;

(5) "Firearm" means a firearm, as defined in section 53a-3;

(6) "Forward pistol grip" means any feature capable of functioning as a grip that can be held by the nontrigger hand;

(7) "Lawfully possesses" means, with respect to an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of this subdivision, (A) actual possession that is lawful under sections 53-202b to 53-202k, (B) constructive possession pursuant to a lawful purchase transacted prior to or on April 4, 2013, regardless of whether the assault weapon was delivered to the purchaser prior to or on April 4, 2013, which lawful purchase is evidenced by a writing sufficient to indicate that (i) a contract for sale was made between the parties prior to or on April 4, 2013, for the purchase of the assault weapon, or (ii) full or partial payment for the assault weapon was made by the purchaser to the seller of the assault weapon prior to or on April 4, 2013, or (C) actual possession under subparagraph (A) of this subdivision, or constructive possession under subparagraph (B) of this subdivision, as evidenced by a written statement made under penalty of false statement on such form as the Commissioner of Emergency Services and Public Protection prescribes;

(8) "Pistol grip" means a grip or similar feature that can function as a grip for the trigger hand; and

(9) "Second hand grip" means a grip or similar feature that can function as a grip that is additional to the trigger hand grip.

Credits

(1993, P.A. 93-306, § 1; 2001, P.A. 01-130, § 1; 2013, P.A. 13-3, § 25, eff. April 4, 2013; 2013, P.A. 13-220, §§ 3, 4, 21, eff. June 18, 2013.)

Notes of Decisions (15)

C. G. S. A. § 53-202a, CT ST § 53-202a

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202b

§ 53-202b. Sale or transfer of assault weapon prohibited. Exemptions. Olympic pistols. Regulations. Class C felony

Effective: June 18, 2013
Currentness

(a) (1) Any person who, within this state, distributes, transports or imports into the state, keeps for sale, or offers or exposes for sale, or who gives any assault weapon, except as provided by sections 53-202a to 53-202k, inclusive, shall be guilty of a class C felony and shall be sentenced to a term of imprisonment of which two years may not be suspended or reduced by the court.

(2) Any person who transfers, sells or gives any assault weapon to a person under eighteen years of age in violation of subdivision (1) of this subsection shall be sentenced to a term of imprisonment of six years, which shall not be suspended or reduced by the court and shall be in addition and consecutive to the term of imprisonment imposed under subdivision (1) of this subsection.

(b) The provisions of subsection (a) of this section shall not apply to:

(1) The sale of assault weapons to: (A) The Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States; (B) a sworn and duly certified member of an organized police department, the Division of State Police within the Department of Emergency Services and Public Protection or the Department of Correction, a chief inspector or inspector in the Division of Criminal Justice, a salaried inspector of motor vehicles designated by the Commissioner of Motor Vehicles, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection pursuant to section 26-5, or a constable who is certified by the Police Officer Standards and Training Council and appointed by the chief executive authority of a town, city or borough to perform criminal law enforcement duties, pursuant to a letter on the letterhead of such department, division, commissioner or authority authorizing the purchase and stating that the sworn member, inspector, officer or constable will use the assault weapon in the discharge of official duties, and that a records check indicates that the sworn member, inspector, officer or constable has not been convicted of a crime of family violence, for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty, (C) a member of the military or naval forces of this state or of the United States, or (D) a nuclear facility licensed by the United States Nuclear Regulatory Commission for the purpose of providing security services at such facility, or any contractor or subcontractor of such facility for the purpose of providing security services at such facility;

(2) A person who is the executor or administrator of an estate that includes an assault weapon for which a certificate of possession has been issued under section 53-202d which is disposed of as authorized by the Probate Court, if the disposition is otherwise permitted by sections 53-202a to 53-202k, inclusive;

(3) The transfer of an assault weapon for which a certificate of possession has been issued under section 53-202d, by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary who is eligible to possess the assault weapon;

(4) The sale of a semiautomatic pistol that is defined as an assault weapon in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a that the Commissioner of Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under this subdivision, and for which the purchaser signs a form prescribed by the commissioner and provided by the seller that indicates that the pistol will be used by the purchaser primarily for target shooting practice and events. The Commissioner of Emergency Services and Public Protection shall adopt regulations, in accordance with chapter 54, [1] to designate semiautomatic pistols that are defined as assault weapons in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a that may be sold pursuant to this subdivision, provided the use of such pistols is sanctioned by the International Olympic Committee and USA Shooting, or any subsequent corresponding governing board for international shooting competition in the United States.

Credits

(1993, P.A. 93-306, § 2; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-3, § 26, eff. April 4, 2013; 2013, P.A. 13-220, § 5, eff. June 18, 2013.)

Notes of Decisions (5)

Footnotes

1 C.G.S.A. § 4-166 et seq.

C. G. S. A. § 53-202b, CT ST § 53-202b

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202c

§ 53-202c. Possession of assault weapon prohibited. Exemptions. Class D felony

Effective: June 18, 2013
Currentness

(a) Except as provided in section 53-202e, any person who, within this state, possesses an assault weapon, except as provided in sections 53-202a to 53-202k, inclusive, and 53-202*o*, shall be guilty of a class D felony and shall be sentenced to a term of imprisonment of which one year may not be suspended or reduced by the court, except that a first-time violation of this subsection shall be a class A misdemeanor if (1) the person presents proof that such person lawfully possessed the assault weapon (A) prior to October 1, 1993, with respect to an assault weapon described in subparagraph (A) of subdivision (1) of section 53-202a, or (B) on April 4, 2013, under the provisions of sections 53-202a to 53-202k, inclusive, in effect on January 1, 2013, with respect to an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a, and (2) the person has otherwise possessed the assault weapon in compliance with subsection (f) of section 53-202d.

(b) The provisions of subsection (a) of this section shall not apply to the possession of assault weapons by: (1) The Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States, (2) a sworn and duly certified member of an organized police department, the Division of State Police within the Department of Emergency Services and Public Protection or the Department of Correction, a chief inspector or inspector in the Division of Criminal Justice, a salaried inspector of motor vehicles designated by the Commissioner of Motor Vehicles, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection pursuant to section 26-5, or a constable who is certified by the Police Officer Standards and Training Council and appointed by the chief executive authority of a town, city or borough to perform criminal law enforcement duties, for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty, (3) a member of the military or naval forces of this state or of the United States, or (4) a nuclear facility licensed by the United States Nuclear Regulatory Commission for the purpose of providing security services at such facility, or any contractor or subcontractor of such facility for the purpose of providing security services at such facility.

(c) The provisions of subsection (a) of this section shall not apply to the possession of an assault weapon described in subparagraph (A) of subdivision (1) of section 53-202a by any person prior to July 1, 1994, if all of the following are applicable:

(1) The person is eligible under sections 53-202a to 53-202k, inclusive, to apply for a certificate of possession for the assault weapon by July 1, 1994;

(2) The person lawfully possessed the assault weapon prior to October 1, 1993; and

(3) The person is otherwise in compliance with sections 53-202a to 53-202k, inclusive.

(d) The provisions of subsection (a) of this section shall not apply to the possession of an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a by any person prior to April 5, 2013, if all of the following are applicable:

(1) The person is eligible under sections 53-202a to 53-202k, inclusive, to apply for a certificate of possession for the assault weapon by January 1, 2014;

(2) The person lawfully possessed the assault weapon on April 4, 2013, under the provisions of sections 53-202a to 53-202k, inclusive, in effect on January 1, 2013; and

(3) The person is otherwise in compliance with sections 53-202a to 53-202k, inclusive.

(e) The provisions of subsection (a) of this section shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon, or the trustee of a trust that includes an assault weapon, for which a certificate of possession has been issued under section 53-202d if the assault weapon is possessed at a place set forth in subdivision (1) of subsection (f) of section 53-202d or as authorized by the Probate Court.

(f) The provisions of subsection (a) of this section shall not apply to the possession of a semiautomatic pistol that is defined as an assault weapon in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a that the Commissioner of Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under subdivision (4) of subsection (b) of section 53-202b that is (1) possessed and transported in accordance with subsection (f) of section 53-202d, or (2) possessed at or transported to or from a collegiate, Olympic or target pistol shooting competition in this state which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms, provided such pistol is transported in the manner prescribed in subsection (a) of section 53-202f.

Credits

(1993, P.A. 93-306, § 3;2002, P.A. 02-120, § 5, eff. June 7, 2002; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-3, § 27, eff. April 4, 2013; 2013, P.A. 13-220, § 6, eff. June 18, 2013.)

Notes of Decisions (7)

C. G. S. A. § 53-202c, CT ST § 53-202c

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202d

§ 53-202d. Certificate of possession of assault weapon. Certificate of transfer of assault weapon to gun dealer. Circumstances where possession of assault weapon authorized

Effective: June 18, 2013
Currentness

(a) (1) (A) Except as provided in subparagraph (B) of this subdivision, any person who lawfully possesses an assault weapon, as defined in subparagraph (A) of subdivision (1) of section 53-202a, prior to October 1, 1993, shall apply by October 1, 1994, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by October 1, 1994, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to the state to the Department of Emergency Services and Public Protection, for a certificate of possession with respect to such assault weapon.

(B) No person who lawfully possesses an assault weapon pursuant to subdivision (1), (2) or (4) of subsection (b) of section 53-202c shall be required to obtain a certificate of possession pursuant to this subdivision with respect to an assault weapon used for official duties, except that any person described in subdivision (2) of subsection (b) of section 53-202c who purchases an assault weapon, as defined in subparagraph (A) of subdivision (1) of section 53-202a, for use in the discharge of official duties who retires or is otherwise separated from service shall apply within ninety days of such retirement or separation from service to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.

(2) (A) Except as provided in subparagraph (B) of this subdivision, any person who lawfully possesses an assault weapon, as defined in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a, on April 4, 2013, under the provisions of sections 53-202a to 53-202k, inclusive, in effect on January 1, 2013, or any person who regains possession of an assault weapon as defined in any provision of said subparagraphs pursuant to subsection (e) of section 53-202f, or any person who lawfully purchases a firearm on or after April 4, 2013, but prior to June 18, 2013, that meets the criteria set forth in subdivision (3) or (4) of subsection (a) of section 53-202a of the general statutes, revision of 1958, revised to January 1, 2013, shall apply by January 1, 2014, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by January 1, 2014, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to the state to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon. Any person who lawfully purchases a semiautomatic pistol that is defined as an assault weapon in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a that the Commissioner of Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under subdivision (4) of subsection (b) of section 53-202b shall apply within ninety days of such purchase to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.

(B) No person who lawfully possesses an assault weapon pursuant to subdivision (1), (2) or (4) of subsection (b) of section 53-202c shall be required to obtain a certificate of possession pursuant to this subdivision with respect to an assault weapon used for official duties, except that any person described in subdivision (2) of subsection (b) of section 53-202c who purchases an assault weapon, as defined in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a

for use in the discharge of official duties who retires or is otherwise separated from service shall apply within ninety days of such retirement or separation from service to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.

(3) Any person who obtained a certificate of possession for an assault weapon, as defined in subparagraph (A) of subdivision (1) of section 53-202a, prior to April 5, 2013, that is defined as an assault weapon pursuant to any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a shall be deemed to have obtained a certificate of possession for such assault weapon for the purposes of sections 53-202a to 53-202k, inclusive, and shall not be required to obtain a subsequent certificate of possession for such assault weapon.

(4) The certificate of possession shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth and thumbprint of the owner, and any other information as the department may deem appropriate.

(5) The department shall adopt regulations, in accordance with the provisions of chapter 54,[1] to establish procedures with respect to the application for and issuance of certificates of possession pursuant to this section. Notwithstanding the provisions of sections 1-210 and 1-211, the name and address of a person issued a certificate of possession shall be confidential and shall not be disclosed, except such records may be disclosed to (A) law enforcement agencies and employees of the United States Probation Office acting in the performance of their duties, and (B) the Commissioner of Mental Health and Addiction Services to carry out the provisions of subsection (c) of section 17a-500.

(b) (1) No assault weapon, as defined in subparagraph (A) of subdivision (1) of section 53-202a, possessed pursuant to a certificate of possession issued under this section may be sold or transferred on or after January 1, 1994, to any person within this state other than to a licensed gun dealer, as defined in subsection (f) of section 53-202f, or as provided in section 53-202e, or by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary who is eligible to possess the assault weapon.

(2) No assault weapon, as defined in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a, possessed pursuant to a certificate of possession issued under this section may be sold or transferred on or after April 5, 2013, to any person within this state other than to a licensed gun dealer, as defined in subsection (f) of section 53-202f, or as provided in section 53-202e, or by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary who is eligible to possess the assault weapon.

(c) Any person who obtains title to an assault weapon for which a certificate of possession has been issued under this section by bequest or intestate succession shall, within ninety days of obtaining title, apply to the Department of Emergency Services and Public Protection for a certificate of possession as provided in subsection (a) of this section, render the assault weapon permanently inoperable, sell the assault weapon to a licensed gun dealer or remove the assault weapon from the state.

(d) Any person who moves into the state in lawful possession of an assault weapon, shall, within ninety days, either render the assault weapon permanently inoperable, sell the assault weapon to a licensed gun dealer or remove the assault weapon from this state, except that any person who is a member of the military or naval forces of this state or of the United States, is in lawful possession of an assault weapon and has been transferred into the state after October 1, 1994, may, within ninety days of arriving in the state, apply to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.

(e) If an owner of an assault weapon sells or transfers the assault weapon to a licensed gun dealer, such dealer shall, at the time of delivery of the assault weapon, execute a certificate of transfer and cause the certificate of transfer to be mailed or delivered to the Commissioner of Emergency Services and Public Protection. The certificate of transfer shall contain: (1) The date of sale or transfer; (2) the name and address of the seller or transferor and the licensed gun dealer, their Social Security numbers or motor vehicle operator license numbers, if applicable; (3) the licensed gun dealer's federal firearms license number and seller's permit number; (4) a description of the assault weapon, including the caliber of the assault weapon and its make, model and serial number; and (5) any other information the commissioner prescribes. The licensed gun dealer shall present such dealer's motor vehicle operator's license or Social Security card, federal firearms license and seller's permit to the seller or transferor for inspection at the time of purchase or transfer. The Commissioner of Emergency Services and Public Protection shall maintain a file of all certificates of transfer at the commissioner's central office.

(f) Any person who has been issued a certificate of possession for an assault weapon under this section may possess the assault weapon only under the following conditions:

(1) At that person's residence, place of business or other property owned by that person, or on property owned by another person with the owner's express permission;

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets;

(3) While on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range;

(4) While on the premises of a licensed shooting club;

(5) While attending any exhibition, display or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms;

(6) While transporting the assault weapon between any of the places set forth in this subsection, or to any licensed gun dealer, as defined in subsection (f) of section 53-202f, for servicing or repair pursuant to subsection (c) of section 53-202f, provided the assault weapon is transported as required by section 53-202f;

(7) With respect to a nonresident of this state, while transporting a semiautomatic pistol that is defined as an assault weapon in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a that the Commissioner of Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under subdivision (4) of subsection (b) of section 53-202b, into or through this state in order to attend any exhibition, display or educational project described in subdivision (5) of this subsection, or to participate in a collegiate, Olympic or target pistol shooting competition in this state which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms, provided (A) such pistol is transported into or through this state not more than forty-eight hours prior to or after such exhibition, display, project or competition, (B) such pistol is unloaded and carried in a locked carrying case and the ammunition for such pistol is carried in a separate locked

container, (C) such nonresident has not been convicted of a felony in this state or of an offense in another state that would constitute a felony if committed in this state, and (D) such nonresident has in his or her possession a pistol permit or firearms registration card if such permit or card is required for possession of such pistol under the laws of his or her state of residence.

Credits

(1993, P.A. 93-306, § 4; 1994, July Sp.Sess., P.A. 94-1, § 19, eff. July 7, 1994; 1998, P.A. 98-129, § 8; 2011, P.A. 11-51, § 170, eff. July 1, 2011; 2012, P.A. 12-177, § 3; 2013, P.A. 13-3, § 28, eff. April 4, 2013; 2013, P.A. 13-220, §§ 7, 8, eff. June 18, 2013.)

Notes of Decisions (1)

Footnotes

1 C.G.S.A. § 4-166 et seq.

C. G. S. A. § 53-202d, CT ST § 53-202d

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202e

§ 53-202e. Relinquishment of assault weapon to law enforcement agency

Effective: June 15, 2012
Currentness

Any individual may arrange in advance to relinquish an assault weapon to a police department or the Department of Emergency Services and Public Protection. The assault weapon shall be transported in accordance with the provisions of section 53-202f.

Credits
(1993, P.A. 93-306, § 5; 2012, June 12 Sp.Sess., P.A. 12-2, § 115, eff. June 15, 2012.)

C. G. S. A. § 53-202e, CT ST § 53-202e
Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202f

§ 53-202f. Transportation and transfer of assault weapon. Authorized actions of gun dealer, manufacturer, pawnbroker or consignment shop operator

Effective: October 1, 2013
Currentness

(a) While transporting an assault weapon between any of the places set forth in subdivisions (1) to (6), inclusive, of subsection (f) of section 53-202d, no person shall carry a loaded assault weapon concealed from public view or knowingly have, in any motor vehicle owned, operated or occupied by such person (1) a loaded assault weapon, or (2) an unloaded assault weapon unless such weapon is kept in the trunk of such vehicle or in a case or other container which is inaccessible to the operator of such vehicle or any passenger in such vehicle. The provisions of this subsection shall not apply to a member, inspector, officer or constable that possesses an assault weapon pursuant to subdivision (2) of subsection (b) of section 53-202c. Any person who violates the provisions of this subsection shall be guilty of a class E felony.

(b) Any licensed gun dealer, as defined in subsection (f) of this section, who lawfully possesses an assault weapon pursuant to section 53-202d, in addition to the uses allowed in section 53-202d, may transport the assault weapon between dealers or out of the state, display the assault weapon at any gun show licensed by a state or local governmental entity or sell the assault weapon to a resident outside the state. Any transporting of the assault weapon allowed by this subsection must be done as required by subsection (a) of this section.

(c) (1) Any licensed gun dealer, as defined in subsection (f) of this section, or a federally-licensed firearm manufacturer may take possession of any assault weapon for the purposes of servicing or repair from any person to whom has been issued a certificate of possession for such weapon pursuant to sections 53-202a to 53-202k, inclusive.

(2) Any licensed gun dealer may transfer possession of any assault weapon received pursuant to subdivision (1) of this subsection to a gunsmith for purposes of accomplishing service or repair of the same. Such transfers are permissible only to the following persons:

(A) A gunsmith who is in the licensed gun dealer's employ; or

(B) A gunsmith with whom the dealer has contracted for gunsmithing services, provided the gunsmith receiving the assault weapon holds a dealer's license issued pursuant to Chapter 44, commencing with Section 921, of Title 18 of the United States Code and the regulations issued pursuant thereto.

(d) Not later than December 31, 2013, any person who lawfully possessed an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a on April 4, 2013, which was lawful under the provisions of sections 53-202a to 53-202k, inclusive, in effect on January 1, 2013, may transfer possession of the assault weapon

to a licensed gun dealer within or outside of this state for sale outside of this state, and may transport the assault weapon to such dealer for the purpose of making such transfer, without obtaining a certificate of possession under section 53-202d.

(e) Not later than October 1, 2013, any licensed gun dealer, pawnbroker licensed under section 21-40, or consignment shop operator, as defined in section 21-39a, may transfer possession of an assault weapon to any person who (1) legally possessed the assault weapon prior to or on April 4, 2013, (2) placed the assault weapon in the possession of such dealer, pawnbroker or operator prior to or on April 4, 2013, pursuant to an agreement between such person and such dealer, pawnbroker or operator for the sale of the assault weapon to a third person, and (3) is eligible to possess a firearm on the date of such transfer.

(f) The term "licensed gun dealer", as used in sections 53-202a to 53-202k, inclusive, means a person who has a federal firearms license and a permit to sell firearms pursuant to section 29-28.

Credits

(1993, P.A. 93-306, § 6; 2013, P.A. 13-3, § 29, eff. April 4, 2013; 2013, P.A. 13-220, § 9, eff. June 18, 2013; 2013, P.A. 13-258, § 29.)

C. G. S. A. § 53-202f, CT ST § 53-202f

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202g

§ 53-202g. Report of loss or theft of assault weapon or other firearm. Penalty

Effective: October 1, 2013
Currentness

(a) Any person who lawfully possesses an assault weapon under sections 53-202a to 53-202k, inclusive, or a firearm, as defined in section 53a-3, that is lost or stolen from such person shall report the loss or theft to the organized local police department for the town in which the loss or theft occurred or, if such town does not have an organized local police department, to the state police troop having jurisdiction for such town within seventy-two hours of when such person discovered or should have discovered the loss or theft. Such department or troop shall forthwith forward a copy of such report to the Commissioner of Emergency Services and Public Protection. The provisions of this subsection shall not apply to the loss or theft of an antique firearm as defined in section 29-37a.

(b) Any person who fails to make a report required by subsection (a) of this section within the prescribed time period shall commit an infraction and be fined not more than ninety dollars for a first offense and be guilty of a class C felony for any subsequent offense, except that, if such person intentionally fails to make such report within the prescribed time period, such person shall be guilty of a class B felony. Any person who violates subsection (a) of this section for the first offense shall not lose such person's right to hold or obtain any firearm permit under the general statutes.

Credits

(1993, P.A. 93-306, § 7; 2007, P.A. 07-163, § 1; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-3, § 12, eff. April 4, 2013; 2013, P.A. 13-3, § 50.)

C. G. S. A. § 53-202g, CT ST § 53-202g
Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202h

§ 53-202h. Temporary transfer or possession of assault weapon for transport to out-of-state event

Currentness

The provisions of subsection (a) of section 53-202b and subsection (a) of section 53-202c shall not apply to the temporary transfer or possession of an assault weapon, for which a certificate of possession has been issued pursuant to section 53-202d, for purposes of transporting such weapon to and from any shooting competition or exhibition, display or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms, which competition, exhibition, display or educational project is held outside this state.

Credits
(1993, P.A. 93-306, § 10.)

C. G. S. A. § 53-202h, CT ST § 53-202h
Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202i

§ 53-202i. Circumstances in which manufacture, transportation or temporary transfer of assault weapons not prohibited

Effective: June 18, 2013
Currentness

Nothing in sections 53-202a to 53-202k, inclusive, shall be construed to prohibit a federally-licensed firearm manufacturer engaged in the business of manufacturing assault weapons in this state from (1) manufacturing or transporting assault weapons in this state for sale within this state in accordance with subdivision (1) of subsection (b) of section 53-202b or for sale outside this state, or (2) transporting and temporarily transferring assault weapons to and from a third party for the sole purpose of permitting the third party to perform a function in the manufacturing production process.

Credits

(1993, P.A. 93-306, § 11; 2013, P.A. 13-3, § 30, eff. April 4, 2013; 2013, P.A. 13-220, § 10, eff. June 18, 2013.)

C. G. S. A. § 53-202i, CT ST § 53-202i

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202j

§ 53-202j. Commission of a class A, B or C felony with an assault weapon: Eight-year nonsuspendable sentence

Currentness

Any person who commits any class A, B or C felony and in the commission of such felony uses, or is armed with and threatens the use of, or displays, or represents by his words or conduct that he possesses an assault weapon, as defined in section 53-202a, shall be imprisoned for a term of eight years, which shall not be suspended or reduced and shall be in addition and consecutive to any term of imprisonment imposed for conviction of such felony.

Credits
(1993, P.A. 93-306, § 8.)

C. G. S. A. § 53-202j, CT ST § 53-202j
Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202k

§ 53-202k. Commission of a class A, B or C felony with a firearm: Five-year nonsuspendable sentence

Currentness

Any person who commits any class A, B or C felony and in the commission of such felony uses, or is armed with and threatens the use of, or displays, or represents by his words or conduct that he possesses any firearm, as defined in section 53a-3, except an assault weapon, as defined in section 53-202a, shall be imprisoned for a term of five years, which shall not be suspended or reduced and shall be in addition and consecutive to any term of imprisonment imposed for conviction of such felony.

Credits
(1993, P.A. 93-306, § 9.)

Notes of Decisions (73)

C. G. S. A. § 53-202k, CT ST § 53-202k
Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202*l*

§ 53-202*l*. Armor piercing and incendiary .50 caliber ammunition: Definition. Sale or transfer prohibited. Class D felony

Effective: October 1, 2013
Currentness

(a) For the purposes of this section:

(1) "Armor piercing bullet" means (A) any .50 caliber bullet that (i) is designed for the purpose of, (ii) is held out by the manufacturer or distributor as, or (iii) is generally recognized as having a specialized capability to penetrate armor or bulletproof glass, including, but not limited to, such bullets commonly designated as "M2 Armor-Piercing" or "AP", "M8 Armor-Piercing Incendiary" or "API", "M20 Armor-Piercing Incendiary Tracer" or "APIT", "M903 Caliber .50 Saboted Light Armor Penetrator" or "SLAP", or "M962 Saboted Light Armor Penetrator Tracer" or "SLAPT", or (B) any bullet that can be fired from a pistol or revolver that (i) has projectiles or projectile cores constructed entirely, excluding the presence of traces of other substances, from tungsten alloys, steel, iron, brass, bronze, beryllium copper or depleted uranium, or (ii) is fully jacketed with a jacket weight of more than twenty-five per cent of the total weight of the projectile, is larger than .22 caliber and is designed and intended for use in a firearm, and (iii) does not have projectiles whose cores are composed of soft materials such as lead or lead alloys, zinc or zinc alloys, frangible projectiles designed primarily for sporting purposes, or any other projectiles or projectile cores that the Attorney General of the United States finds to be primarily intended to be used for sporting purposes or industrial purposes or that otherwise does not constitute "armor piercing ammunition" as defined in federal law. "Armor piercing bullet" does not include a shotgun shell.

(2) "Incendiary .50 caliber bullet" means any .50 caliber bullet that (A) is designed for the purpose of, (B) is held out by the manufacturer or distributor as, or (C) is generally recognized as having a specialized capability to ignite upon impact, including, but not limited to, such bullets commonly designated as "M1 Incendiary", "M23 Incendiary", "M8 Armor-Piercing Incendiary" or "API", or "M20 Armor-Piercing Incendiary Tracer" or "APIT".

(b) Any person who knowingly distributes, transports or imports into the state, keeps for sale or offers or exposes for sale or gives to any person any ammunition that is an armor piercing bullet or an incendiary .50 caliber bullet shall be guilty of a class D felony, except that a first-time violation of this subsection shall be a class A misdemeanor.

(c) Any person who knowingly transports or carries a firearm with an armor piercing bullet or incendiary .50 caliber bullet loaded shall be guilty of a class D felony.

(d) The provisions of subsections (b) and (c) of this section shall not apply to the following:

(1) The sale of such ammunition to the Department of Emergency Services and Public Protection, police departments, the Department of Correction or the military or naval forces of this state or of the United States for use in the discharge of their official duties;

(2) A sworn and duly certified member of the Department of Emergency Services and Public Protection or a police department when transporting or carrying a firearm with an armor piercing bullet or incendiary .50 caliber bullet loaded;

(3) A person who is the executor or administrator of an estate that includes such ammunition that is disposed of as authorized by the Probate Court; or

(4) The transfer of such ammunition by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary who is eligible to possess such ammunition.

(e) If the court finds that a violation of this section is not of a serious nature and that the person charged with such violation (1) will probably not offend in the future, (2) has not previously been convicted of a violation of this section, and (3) has not previously had a prosecution under this section suspended pursuant to this subsection, it may order suspension of prosecution in accordance with the provisions of subsection (h) of section 29-33.

Credits

(2001, P.A. 01-130, § 2;2003, P.A. 03-19, § 122, eff. May 12, 2003; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-3, § 32;2013, P.A. 13-220, § 17.)

C. G. S. A. § 53-202*l*, CT ST § 53-202l

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202m

§ 53-202m. Circumstances when assault weapons exempt from limitations on transfers and registration requirements

Effective: June 18, 2013
Currentness

Notwithstanding any provision of the general statutes, sections 53-202a to 53-202*l*, inclusive, shall not be construed to limit the transfer or require the registration of an assault weapon as defined in subdivision (3) or (4) of subsection (a) of section 53-202a of the general statutes, revision of 1958, revised to January 1, 2013, provided such firearm was legally manufactured prior to September 13, 1994.

Credits
(2001, P.A. 01-130, § 3; 2013, P.A. 13-220, § 11, eff. June 18, 2013.)

C. G. S. A. § 53-202m, CT ST § 53-202m
Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202n

§ 53-202n. Possession of specified assault weapon permitted under certain circumstances. Notice requirement

Effective: July 1, 2011
Currentness

(a) For the purposes of subsection (a) of section 53-202c, this section and section 53-202*o*, "specified assault weapon" means any of the following firearms: Auto-Ordnance Thompson type, Avtomat Kalashnikov AK-47 type, or MAC-10, MAC-11 and MAC-11 Carbine type.

(b) The provisions of subsection (a) of section 53-202c shall not apply to any person who (1) in good faith purchased or otherwise obtained title to a specified assault weapon on or after October 1, 1993, and prior to May 8, 2002, in compliance with any state and federal laws concerning the purchase or transfer of firearms, (2) is not otherwise disqualified or prohibited from possessing such specified assault weapon, and (3) has notified the Department of Emergency Services and Public Protection in accordance with subsection (c) of this section prior to October 1, 2003, that he or she possesses such specified assault weapon.

(c) A person complies with the notice requirement of subdivision (3) of subsection (b) of this section if such person provides the Department of Emergency Services and Public Protection with: (1) A copy of the proof of purchase for such specified assault weapon, and (2) one of the following: (A) A copy of state form DPS-3 with respect to such specified assault weapon, (B) a copy of federal ATF Form 4473 with respect to such specified assault weapon, or (C) a sworn affidavit from such person that such specified assault weapon was purchased in compliance with any state and federal laws concerning the purchase or transfer of firearms; except that, if such person does not have a copy of the proof of purchase for such specified assault weapon, such person may satisfy the requirement of subdivision (1) of this subsection by, not later than January 1, 2003, providing such information as the department may require on a form prescribed by the department together with a sworn affidavit from such person that such specified assault weapon was purchased in compliance with any state and federal laws concerning the purchase or transfer of firearms.

(d) Any person who is a member of the military or naval forces of this state or of the United States and is unable to meet the notice requirements of subdivision (3) of subsection (b) and of subsection (c) of this section by October 1, 2003, because such person is or was on official duty outside this state, may file such notice within ninety days of returning to the state.

(e) As proof that a person has complied with the notice requirement of this section and that such notice has been received by the Department of Emergency Services and Public Protection, the department shall issue a certificate of possession for such specified assault weapon. Such certificate shall contain a description of the firearm that identifies it uniquely, including all identification marks, and the full name, address and date of birth of the owner.

Credits
(2002, P.A. 02-120, § 3, eff. June 7, 2002; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011.)

C. G. S. A. § 53-202n, CT ST § 53-202n
Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202*o*

§ 53-202*o*. Affirmative defense in prosecution for possession of specified assault weapon

Effective: April 4, 2013
Currentness

(a) In any prosecution for a violation of section 53-202c based on the possession by the defendant of a specified assault weapon, it shall be an affirmative defense that the defendant (1) in good faith purchased or otherwise obtained title to such specified assault weapon on or after October 1, 1993, and prior to May 8, 2002, in compliance with any state and federal laws concerning the purchase or transfer of firearms, (2) is not otherwise disqualified or prohibited from possessing such specified assault weapon, and (3) has possessed such specified assault weapon in compliance with subsection (f) of section 53-202d.

(b) In any such prosecution, if such defendant proves such affirmative defense by a preponderance of the evidence, the specified assault weapon shall be returned to such defendant upon such defendant notifying the Department of Emergency Services and Public Protection in accordance with subdivision (3) of subsection (b) and of subsection (c) of section 53-202n and obtaining a certificate of possession, provided such notification is made not later than October 1, 2003.

Credits
(2002, P.A. 02-120, § 4, eff. June 7, 2002; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-3, § 31, eff. April 4, 2013.)

C. G. S. A. § 53-202*o*, CT ST § 53-202o
Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202w

§ 53-202w. Large capacity magazines. Definitions. Sale, transfer or possession prohibited. Exceptions

Effective: June 18, 2013
Currentness

(a) As used in this section and section 53-202x:

(1) "Large capacity magazine" means any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition, but does not include: (A) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of ammunition, (B) a .22 caliber tube ammunition feeding device, (C) a tubular magazine that is contained in a lever-action firearm, or (D) a magazine that is permanently inoperable;

(2) "Lawfully possesses", with respect to a large capacity magazine, means that a person has (A) actual and lawful possession of the large capacity magazine, (B) constructive possession of the large capacity magazine pursuant to a lawful purchase of a firearm that contains a large capacity magazine that was transacted prior to or on April 4, 2013, regardless of whether the firearm was delivered to the purchaser prior to or on April 4, 2013, which lawful purchase is evidenced by a writing sufficient to indicate that (i) a contract for sale was made between the parties prior to or on April 4, 2013, for the purchase of the firearm, or (ii) full or partial payment for the firearm was made by the purchaser to the seller of the firearm prior to or on April 4, 2013, or (C) actual possession under subparagraph (A) of this subdivision, or constructive possession under subparagraph (B) of this subdivision, as evidenced by a written statement made under penalty of false statement on such form as the Commissioner of Emergency Services and Public Protection prescribes; and

(3) "Licensed gun dealer" means a person who has a federal firearms license and a permit to sell firearms pursuant to section 29-28.

(b) Except as provided in this section, on and after April 5, 2013, any person who, within this state, distributes, imports into this state, keeps for sale, offers or exposes for sale, or purchases a large capacity magazine shall be guilty of a class D felony. On and after April 5, 2013, any person who, within this state, transfers a large capacity magazine, except as provided in subsection (f) of this section, shall be guilty of a class D felony.

(c) Except as provided in this section and section 53-202x: (1) Any person who possesses a large capacity magazine on or after January 1, 2014, that was obtained prior to April 5, 2013, shall commit an infraction and be fined not more than ninety dollars for a first offense and shall be guilty of a class D felony for any subsequent offense, and (2) any person who possesses a large capacity magazine on or after January 1, 2014, that was obtained on or after April 5, 2013, shall be guilty of a class D felony.

(d) A large capacity magazine may be possessed, purchased or imported by:

(1) The Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States;

(2) A sworn and duly certified member of an organized police department, the Division of State Police within the Department of Emergency Services and Public Protection or the Department of Correction, a chief inspector or inspector in the Division of Criminal Justice, a salaried inspector of motor vehicles designated by the Commissioner of Motor Vehicles, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection pursuant to section 26-5, or a constable who is certified by the Police Officer Standards and Training Council and appointed by the chief executive authority of a town, city or borough to perform criminal law enforcement duties, for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty;

(3) A member of the military or naval forces of this state or of the United States;

(4) A nuclear facility licensed by the United States Nuclear Regulatory Commission for the purpose of providing security services at such facility, or any contractor or subcontractor of such facility for the purpose of providing security services at such facility;

(5) Any person who is sworn and acts as a policeman on behalf of an armored car service pursuant to section 29-20 in the discharge of such person's official duties; or

(6) Any person, firm or corporation engaged in the business of manufacturing large capacity magazines in this state that manufactures, purchases, tests or transports large capacity magazines in this state for sale within this state to persons specified in subdivisions (1) to (5), inclusive, of this subsection or for sale outside this state, or a federally-licensed firearm manufacturer engaged in the business of manufacturing firearms or large capacity magazines in this state that manufactures, purchases, tests or transports firearms or large capacity magazines in this state for sale within this state to persons specified in subdivisions (1) to (5), inclusive, of this subsection or for sale outside this state.

(e) A large capacity magazine may be possessed by:

(1) A licensed gun dealer;

(2) A gunsmith who is in a licensed gun dealer's employ, who possesses such large capacity magazine for the purpose of servicing or repairing a lawfully possessed large capacity magazine;

(3) A person, firm, corporation or federally-licensed firearm manufacturer described in subdivision (6) of subsection (d) of this section that possesses a large capacity magazine that is lawfully possessed by another person for the purpose of servicing or repairing the large capacity magazine;

(4) Any person who has declared possession of the magazine pursuant to section 53-202x; or

(5) Any person who is the executor or administrator of an estate that includes a large capacity magazine, or the trustee of a trust that includes a large capacity magazine, the possession of which has been declared to the Department of Emergency Services and Public Protection pursuant to section 53-202x, which is disposed of as authorized by the Probate Court, if the disposition is otherwise permitted by this section and section 53-202x.

(f) Subsection (b) of this section shall not prohibit:

(1) The transfer of a large capacity magazine, the possession of which has been declared to the Department of Emergency Services and Public Protection pursuant to section 53-202x, by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary;

(2) The transfer of a large capacity magazine to a police department or the Department of Emergency Services and Public Protection;

(3) The transfer of a large capacity magazine to a licensed gun dealer in accordance with section 53-202x; or

(4) The transfer of a large capacity magazine prior to October 1, 2013, from a licensed gun dealer, pawnbroker licensed under section 21-40, or consignment shop operator, as defined in section 21-39a, to any person who (A) possessed the large capacity magazine prior to or on April 4, 2013, (B) placed a firearm that such person legally possessed, with the large capacity magazine included or attached, in the possession of such dealer, pawnbroker or operator prior to or on April 4, 2013, pursuant to an agreement between such person and such dealer, pawnbroker or operator for the sale of the firearm to a third person, and (C) is eligible to possess the firearm on the date of such transfer.

(g) If the court finds that a violation of this section is not of a serious nature and that the person charged with such violation (1) will probably not offend in the future, (2) has not previously been convicted of a violation of this section, and (3) has not previously had a prosecution under this section suspended pursuant to this subsection, it may order suspension of prosecution in accordance with the provisions of subsection (h) of section 29-33.

Credits

(2013, P.A. 13-3, § 23, eff. April 4, 2013; 2013, P.A. 13-220, § 1, eff. June 18, 2013.)

Notes of Decisions (1)

C. G. S. A. § 53-202w, CT ST § 53-202w

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202x

§ 53-202x. Declaration of possession of large capacity magazine. Regulations

Effective: June 18, 2013
Currentness

(a) (1) Except as provided in subdivision (2) of this subsection, any person who lawfully possesses a large capacity magazine prior to January 1, 2014, shall apply by January 1, 2014, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by January 1, 2014, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to the state to the Department of Emergency Services and Public Protection to declare possession of such magazine. Such application shall be made on such form or in such manner as the Commissioner of Emergency Services and Public Protection prescribes.

(2) No person who lawfully possesses a large capacity magazine pursuant to subdivision (1), (2), (4) or (5) of subsection (d) of section 53-202w shall be required to declare possession of a large capacity magazine pursuant to this section with respect to a large capacity magazine used for official duties, except that any such person who retires or is otherwise separated from service who possesses a large capacity magazine that was purchased or obtained by such person for official use before such person retired or separated from service shall declare possession of the large capacity magazine within ninety days of such retirement or separation from service to the Department of Emergency Services and Public Protection. No person that lawfully possesses a large capacity magazine pursuant to subdivision (6) of subsection (d) of section 53-202w shall be required to declare possession of such large capacity magazine.

(b) In addition to the application form prescribed under subsection (a) of this section, the department shall design or amend the application forms for a certificate of possession for an assault weapon under section 53-202d or for a permit to carry a pistol or revolver under section 29-28a, a long gun eligibility certificate under section 29-37p, an eligibility certificate for a pistol or revolver under section 29-36f or any renewal of such permit or certificate to permit an applicant to declare possession of a large capacity magazine pursuant to this section upon the same application.

(c) The department may adopt regulations, in accordance with the provisions of chapter 54, [1] to establish procedures with respect to applications under this section. Notwithstanding the provisions of sections 1-210 and 1-211, the name and address of a person who has declared possession of a large capacity magazine shall be confidential and shall not be disclosed, except such records may be disclosed to (1) law enforcement agencies and employees of the United States Probation Office acting in the performance of their duties, and (2) the Commissioner of Mental Health and Addiction Services to carry out the provisions of subsection (c) of section 17a-500.

(d) Any person who moves into the state in lawful possession of a large capacity magazine shall, within ninety days, either render the large capacity magazine permanently inoperable, sell the large capacity magazine to a licensed gun dealer or remove the large capacity magazine from this state, except that any person who is a member of the military or naval forces of this state or of the United States, is in lawful possession of a large capacity magazine and has been transferred into the state after January

1, 2014, may, within ninety days of arriving in the state, apply to the Department of Emergency Services and Public Protection to declare possession of such large capacity magazine.

(e) (1) If an owner of a large capacity magazine transfers the large capacity magazine to a licensed gun dealer, such dealer shall, at the time of delivery of the large capacity magazine, execute a certificate of transfer. For any transfer prior to January 1, 2014, the dealer shall provide to the Commissioner of Emergency Services and Public Protection monthly reports, on such form as the commissioner prescribes, regarding the number of transfers that the dealer has accepted. For any transfer on or after January 1, 2014, the dealer shall cause the certificate of transfer to be mailed or delivered to the Commissioner of Emergency Services and Public Protection. The certificate of transfer shall contain: (A) The date of sale or transfer; (B) the name and address of the seller or transferor and the licensed gun dealer, and their Social Security numbers or motor vehicle operator license numbers, if applicable; (C) the licensed gun dealer's federal firearms license number; and (D) a description of the large capacity magazine.

(2) The licensed gun dealer shall present such dealer's federal firearms license and seller's permit to the seller or transferor for inspection at the time of purchase or transfer.

(3) The Commissioner of Emergency Services and Public Protection shall maintain a file of all certificates of transfer at the commissioner's central office.

(f) Any person who declared possession of a large capacity magazine under this section may possess the large capacity magazine only under the following conditions:

(1) At that person's residence;

(2) At that person's place of business or other property owned by that person, provided such large capacity magazine contains not more than ten bullets;

(3) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets;

(4) While on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range;

(5) While on the premises of a licensed shooting club;

(6) While transporting the large capacity magazine between any of the places set forth in this subsection, or to any licensed gun dealer, provided (A) such large capacity magazine contains not more than ten bullets, and (B) the large capacity magazine is transported in the manner required for an assault weapon under subdivision (2) of subsection (a) of section 53-202f; or

(7) Pursuant to a valid permit to carry a pistol or revolver, provided such large capacity magazine (A) is within a pistol or revolver that was lawfully possessed by the person prior to April 5, 2013, (B) does not extend more than one inch below the bottom of the pistol grip, and (C) contains not more than ten bullets.

(g) Any person who violates the provisions of subsection (f) of this section shall be guilty of a class C misdemeanor.

Credits

(2013, P.A. 13-3, § 24, eff. April 4, 2013; 2013, P.A. 13-220, § 2, eff. June 18, 2013.)

Footnotes

1 C.G.S.A. § 4-166 et seq.

C. G. S. A. § 53-202x, CT ST § 53-202x

Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly effective on or before July 1, 2014.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Amendment II. Right to Bear Arms

U.S.C.A. Const. Amend. II

Amendment II. Right To Bear Arms

Currentness

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Notes of Decisions (311)

U.S.C.A. Const. Amend. II, USCA CONST Amend. II
Current through P.L. 113-125 (excluding P.L. 113-121) approved 6-30-14

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENTXIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 113-125 (excluding P.L. 113-121) approved 6-30-14

End of Document