

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

Case Caption: June Shew, et al.,  v. Dannel P. Malloy, et al.	District Court or Agency: US District Court of Conn.	Judge: Covello
	Date the Order or Judgment Appealed from was Entered on the Docket: 1/30/2014	District Court Docket No.: 3:13CV739
	Date the Notice of Appeal was Filed: 1/31/2014	Is this a Cross Appeal? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

<b>Attorney(s) for Appellant(s):</b>  <input checked="" type="checkbox"/> Plaintiff  <input type="checkbox"/> Defendant	Counsel's Name: Address: Telephone No.: Fax No.: E-mail: Brian Stapleton 11 Martine Avenue, Suite 750, White Plains, New York 10606 Tel. No.: (914) 798-5470/Fax No.: (914) 798-5401 Email: bstapleton@goldbergsegalla.com
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<b>Attorney(s) for Appellee(s):</b>  <input type="checkbox"/> Plaintiff  <input checked="" type="checkbox"/> Defendant	Counsel's Name: Address: Telephone No.: Fax No.: E-mail: Maura Murphy Osborne 55 Elm Street P.O. Box 120 Hartford, CT 06141-0120 Tel. No.: (860) 808-5020/Fax No.: (860) 808-5347
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Has Transcript Been Prepared?  Not applicable	Approx. Number of Transcript Pages: Not applicable	Number of Exhibits Appended to Transcript: Not applicable	Has this matter been before this Circuit previously? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>  If Yes, provide the following:  Case Name:  2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)
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**ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.**

**ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.**

**PART A: JURISDICTION**

1. <u>Federal Jurisdiction</u>	2. <u>Appellate Jurisdiction</u>
U.S. a party  <input checked="" type="checkbox"/> Federal question (U.S. not a party)  Diversity  Other (specify): _____	<input checked="" type="checkbox"/> Final Decision  Interlocutory Decision Appealable As of Right  Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))  Other (specify): _____

**IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.**

**PART B: DISTRICT COURT DISPOSITION (Check as many as apply)**

<u>1. Stage of Proceedings</u>	<u>2. Type of Judgment/Order Appealed</u>	<u>3. Relief</u>
<input checked="" type="checkbox"/> Pre-trial During trial After trial	Default judgment Dismissal/FRCP 12(b)(1) lack of subj. matter juris. Dismissal/FRCP 12(b)(6) failure to state a claim Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	Dismissal/other jurisdiction Dismissal/merit Judgment / Decision of the Court <input checked="" type="checkbox"/> Summary judgment Declaratory judgment Jury verdict Judgment NOV Directed verdict Other (specify):
		Damages: <input type="checkbox"/> Sought: \$ _____ Granted: \$ _____ Denied: \$ _____
		<input checked="" type="checkbox"/> Injunctions: Preliminary Permanent <input checked="" type="checkbox"/> Denied

**PART C: NATURE OF SUIT (Check as many as apply)**

<u>1. Federal Statutes</u>	<u>2. Torts</u>	<u>3. Contracts</u>	<u>4. Prisoner Petitions</u>
Antitrust Bankruptcy Banks/Banking Civil Rights Commerce, Energy Commodities <input checked="" type="checkbox"/> Other (specify): <u>Challenging Conn. Law</u>	Freedom of Information Act Immigration Labor OSHA Securities Tax	Admiralty/ Maritime Assault / Defamation FELA Products Liability Other (Specify):	Civil Rights Habeas Corpus Mandamus Parole Vacate Sentence Other
<u>5. Other</u> Forfeiture/Penalty Real Property Treaty (specify): _____ Other (specify): _____	<u>6. General</u> Arbitration Attorney Disqualification Class Action Counsel Fees Shareholder Derivative Transfer	<u>7. Will appeal raise constitutional issue(s)?</u> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Will appeal raise a matter of first impression? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

1. Is any matter relative to this appeal still pending below? Yes, specify: \_\_\_\_\_  No
2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:
- (A) Arises from substantially the same case or controversy as this appeal? Yes  No
- (B) Involves an issue that is substantially similar or related to an issue in this appeal?  Yes  No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name: <small>New York State Rifle And Pistol Association, et al. v. Andrew M. Cuomo</small>	Docket No. <b>14-37</b>	Citation:	Court or Agency: <b>Second Circuit</b>
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Name of Appellant: **New York State Rifle And Pistol Association, Inc., et al.**

Date: <b>February 14, 2014</b>	Signature of Counsel of Record: <b>s/ Brian Stapleton</b>
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**NOTICE TO COUNSEL**

**Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:**

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

**PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.**

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

**ADDENDUM “A”**

**Description of the Nature of the Action**

Plaintiffs challenge Connecticut’s recent firearm legislation known as the Act Concerning Gun Violence Prevention and Childrens’ Safety (“the Act”). Plaintiffs’ position is that certain provisions of the Act violate their rights under the United States Constitution. Plaintiffs argue that the Act’s ban on certain commonly-possessed firearms—which the Act defines as “assault weapons”—violates their right “to keep and bear arms” under the Second Amendment to the United States Constitution. Similarly, Plaintiffs argue that the Act’s ban on certain standard gun magazines and the ten-round limit for self defense in the home violates their rights under the Second Amendment. Plaintiffs’ position is that the only appropriate constitutional level of scrutiny that applies here is the strict scrutiny analysis. The individual plaintiffs also assert the Act prohibits the general population from possessing assault weapons and large capacity magazines but creates an exception for certain state, local, or military personnel. The individual plaintiffs maintain that this violates the Equal Protection Clause of the United States Constitution.

Plaintiffs also argue that certain provisions of the Act are unconstitutionally vague. Finally, Plaintiffs seek permanent injunctive relief.

**The District Court’s Holding Below/The Result Below**

The district court (1) denied Plaintiffs’ Motion for Summary Judgment; (2) granted Defendants’ Cross Motion for Summary Judgment; and (3) denied as moot Plaintiffs’ Motion for Preliminary Injunction.

Specifically, the district court concluded that the Connecticut legislation bans firearms in common use. The district court also recognized that “millions of Americans commonly possess firearms that have magazines which hold more than ten cartridges. It concluded that “the firearms and magazines at issue are ‘in common use’ within the meaning of Heller and, presumably, used for lawful purposes.” The district court also concluded that, “as in Heller II, the court is ‘reasonably certain the prohibitions do not impose a substantial burden’ upon the core right protected by the Second Amendment.” As such, the district court further concluded that intermediate scrutiny is the appropriate standard in this case. In applying intermediate scrutiny, the district court concluded that [t]he evidence suggests that there is a substantial governmental interest in restricting both assault weapons and LCMs.” The district court stated: “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.’”

The district court rejected the individual plaintiffs’ claim under the Equal Protection Clause of the United States Constitution. It concluded that “plaintiffs have not met the threshold requirement of demonstrating that they are similarly situated to the exempted personnel in the legislation.” The district court also concluded that none of the portions of the Act that plaintiffs challenged are unconstitutionally vague.

The district court denied Plaintiffs’ Motion for a Preliminary Injunction as moot. Notably, the district court did not address Plaintiffs’ request for a permanent injunction.

### **Notice of Appeal & District Court Docket Sheet**

Plaintiffs provide the Notice of Appeal entered January 31, 2014 and the District Court’s docket sheet as Exhibits A & B, respectively.

**The January 30, 2014 District Court Order**

Plaintiffs provide the January 30, 2014 Order of the United District Court of Connecticut (Covello, J.) as Exhibit C.

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

**ADDENDUM “B”**

**List of Proposed Issues and Applicable Standard of Review**

Issue 1: Whether the Act’s ban of commonly-possessed firearms—referred to in the Act as assault weapons—violates Plaintiffs’ Second Amendment rights?

Standard of Review: The Second Circuit reviews de novo legal conclusions, including its interpretation of federal statutes and determinations regarding their constitutionality. *United States v. Weingarten*, 632 F.3d 60, 63 (2d Cir. 2011).

The standard of review for a law that infringes upon the Second Amendment, which is a fundamental right, requires application of the strict scrutiny standard. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3036 (2010); *Clark v. Jeter*, 486 U.S. 456, 461 (1988); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 17, 33 (1973).

Issue 2: Whether the Act’s ban on standard firearm magazines—referred to in the Act as large capacity magazines—and the ten-round load limit violates Plaintiffs’ Second Amendment rights?

Standard of Review: The Second Circuit reviews de novo legal conclusions, including its interpretation of federal statutes and determinations regarding their constitutionality. *United States v. Weingarten*, 632 F.3d 60, 63 (2d Cir. 2011).

The standard of review for a law that infringes upon the Second Amendment, which is a fundamental right, requires application of the strict scrutiny standard. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3036 (2010); *Clark v. Jeter*, 486 U.S. 456, 461 (1988); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 17, 33 (1973).

Issue 3: Whether the district court erred by applying intermediate scrutiny, instead of strict scrutiny, to the Act to determine that the Act does not violate the core protection of the Second Amendment, that is the right of law-abiding, responsible citizens to use arms in defense of hearth and home?

Standard of Review: The Second Circuit reviews de novo legal conclusions, including its interpretation of federal statutes and determinations regarding their constitutionality. *United States v. Weingarten*, 632 F.3d 60, 63 (2d Cir. 2011).

Issue 4: Whether the Act violates the Equal Protection Clause of the United States Constitution by imposing felony penalties on ordinary Connecticut citizens for possession and transfer of the subject firearms and magazines, and providing exceptions for (1) members and employees of various state or local agencies; (2) a “person who retires or is otherwise separated from service” from specified governmental and private entities; and (3) persons in the military?

Standard of Review: The Second Circuit reviews de novo legal conclusions, including its interpretation of federal statutes and determinations regarding their constitutionality. *United States v. Weingarten*, 632 F.3d 60, 63 (2d Cir. 2011).

Issue 4: Whether the following definitions in the Act are unconstitutionally vague: (1) “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”; (2) “Any of the following semiautomatic shotguns, or copies of duplicates thereof with the capability of any such shotguns, that were in production prior to or on the effective date of this section”; (3) the inaccurately named firearms set forth in CONN. GEN. STAT. § 53-202a(1)(A)-(D); (4) the Act’s provisions on the modification, alteration, or assembly of magazines and components; and (5) the Act’s prohibiting an ammunition feeding device that “has a capacity of . . . more than” ten rounds of ammunition?

Standard of Review: The Second Circuit reviews de novo legal conclusions, including its interpretation of federal statutes and determinations regarding their constitutionality. *United States v. Weingarten*, 632 F.3d 60, 63 (2d Cir. 2011).

Issue 5: Whether Plaintiffs are entitled to permanent injunctive relief?

Standard of Review: The Second Circuit reviews de novo an award of summary judgment that denies injunctive relief. *Noel v. N.Y.C. Taxi & Limousine Comm’n*, 687 F.3d 63, 68 (2d Cir. 2012).