UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al.	:	
Plaintiffs	:	**CIVIL ACTION NO.**
	:	**3:13-CV-00739-AVC**
	:	
v.	:	
	:	
DANNEL P. MALLOY, et al.	:	
Defendants	:	**October 11, 2013**

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Defendants, Dannel P. Malloy, Kevin T. Kane, Reuben F. Bradford, David I. Cohen, John C. Smriga, Stephen J. Sedensky III, Maureen Platt, Kevin D. Lawlor, Michael Dearington, Peter A. McShane, Michael L. Regan, Patricia M. Froehlich, Gail P. Hardy, Brian Preleski, David Shepack, and Matthew C. Gedansky, (collectively "Defendants"), hereby move for summary judgment for the reasons set forth in their accompanying memorandum of law, Local Rule 56a(1) Statement, Exhibits and Affidavits.

Respectfully Submitted,

DEFENDANTS
DANNEL P. MALLOY, et al.

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CERTIFICATION

I hereby certify that on October 11, 2013, a copy of the foregoing Defendants' Motion for Summary Judgment was filed electronically. Notice of this filing will be sent by electronic mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Maura Murphy Osborne
Maura Murphy Osborne

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al.	:	**No. 3:13-CV-0739 (AVC)**
Plaintiffs,	:	
	:	
v.	:	
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DANNEL P. MALLOY, et al.	:	
***Defendants*.**	:	**OCTOBER 11, 2013**

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The Defendants, Dannel P. Malloy, Kevin T. Kane, Reuben F. Bradford, David I. Cohen, John C. Smriga, Stephen J. Sedensky III, Maureen Platt, Kevin D. Lawlor, Michael Dearington, Peter A. McShane, Michael L. Regan, Patricia M. Froehlich, Gail P. Hardy, Brian Preleski, David Shepack, and Matthew C. Gedansky (collectively "Defendants") hereby file, pursuant to Fed. R. Civ. P. 56, their memorandum of law in support of their motion for summary judgment and in opposition to Plaintiffs' motion for summary judgment (Doc. No. 60). For the reasons set forth below, and in Defendants' Local Rule 56a(1) Statement, Exhibits and Affidavits, Defendants are entitled to summary judgment on all five counts in Plaintiffs' amended complaint (Doc. No. 10) because the challenged Act does not implicate or burden Plaintiffs' Second Amendment rights, does not violate the Equal Protection Clause of the Fourteenth Amendment and is not unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment.

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SUMMARY OF ARGUMENT

Deaths and injuries caused by firearms in the United States each year are epidemic. There are over 31,000 firearm-related deaths and 75,000 firearm-related injuries annually, and in many instances the victim is an innocent child. Military-style assault weapons and large capacity magazines substantially contribute to these numbers, and have been a menace to public safety and law enforcement from the moment they became prevalent in the civilian gun market over thirty years ago. Since that time they have been disproportionately used in gun crime relative to their presence in the civilian gun market, and, in particular, in the most serious types of crime. They also are exceedingly destructive and dangerous instruments that cause substantially more injuries, and more serious injuries, than other conventional kinds of weaponry. And they are not necessary, or arguably even suitable, for legitimate self defense.

The Connecticut General Assembly recognized the significant threat to public safety posed by these dangerous military-style weapons when it adopted Connecticut's original assault weapon ban in 1993 ("the 1993 ban"). Like other bans that have existed for decades at the federal, state and local level, the 1993 ban prohibited only a tiny subset of dangerous military-style semiautomatic weapons, and thus did not restrict law-abiding citizens' ability to exercise their Second Amendment right to keep and bear arms in self defense. To the contrary, Connecticut citizens have always enjoyed robust rights to possess firearms that in many respects exceed what the Second Amendment requires.

Since the adoption of the 1993 law, the civilian gun market has become increasingly militarized and focused on dangerous military-style firearms. Recent events in this state and others illustrated a clear need to strengthen the law to better protect the public from the threat posed by these weapons. The legislature passed an Act Concerning Gun Violence Prevention And Children's Safety, Public Act 13-3 as amended by Public Act 13-220 ("the Act") (Exhs. 1

and 2), in response to those events. The Act strengthens Connecticut's existing assault weapon ban by prohibiting semiautomatic firearms that have any one of a number of listed military features and by banning the possession of large capacity magazines ("LCMs"), which are the most dangerous feature of any assault weapon. As under the 1993 ban, the Act continues to recognize the Second Amendment rights of law-abiding citizens, and leaves untouched more than one thousand firearms that individuals may possess for lawful self defense.

Sadly, even with the enactment of the Act, gun crime has and will continue, and Defendants do not contend the Act resolved the multitude of social, cultural and economic factors that underlie the gun violence crisis in this state and others. But the Act will make a substantial difference in reducing the harms of gun violence when it does occur. Specifically, the evidence demonstrates that the Act's strengthened prohibition on assault weapons and the newly enacted prohibition on LCMs will reduce the number of those dangerous weapons and magazines used in gun crime, and thereby substantially reduce the number and lethality of gunshot victimizations in this state. Such impacts are significant and meaningful, and represent lives saved, injuries prevented and families preserved. Not all of the benefits of the Act will be capable of being captured in statistics, moreover, and it will have immeasurable intangible benefits to the victims spared and their friends and families.

Notwithstanding Connecticut's long history of regulating assault weapons and the grave threat posed by these dangerous and destructive weapons, Plaintiffs ask this Court to invalidate the Act. In their view, the Second Amendment is an exalted right that stands above all others in our constitutional democracy. Plaintiffs' absolutist interpretation of the Second Amendment has no basis in history, tradition, Supreme Court precedent, or the language of the Second

Amendment. Indeed, it contravenes binding Supreme Court and Second Circuit precedents, all of which unequivocally support the constitutionality of the Act.

Not only are Plaintiffs' claims in this case contrary to law, they also have no basis in facts that are material to the constitutionality of the Act. The most that Plaintiffs have demonstrated is that they have strong personal desires to possess and sell exceedingly dangerous military-style weaponry. But constitutional rights are not created by subjective desires, and cases are not decided on imagined and speculative needs. They are decided on facts supported by actual evidence, and Plaintiffs have presented virtually none.

Contrary to Plaintiffs' assertions, the record in this case demonstrates that the Act is a reasonable extension of a longstanding regulatory scheme that has been in existence for twenty years, and that it will meaningfully reduce the number and lethality of gunshot victimizations in this state. The weapons and magazines covered by the Act are abnormally dangerous and destructive, and have no utility in legitimate self defense. The legislature's attempt to eradicate them from the public sphere is both reasonable and constitutional, and the Court must uphold it.

FACTUAL BACKGROUND[1]

A. History of the AR-15 and Other Military-Style Assault Weapons

The central focus of Plaintiffs' claims is the AR-15 assault rifle, which 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

[1] Defendants hereby incorporate their Local Rule 56(a)(1) statement as if fully set forth herein.

semiautomatic version of the rifle, which it began selling to the civilian market in 1963. (Delehanty Aff. at ¶¶20-21; Overstreet Decl. at ¶5, Doc. No. 15-15).

The AR-15 is virtually identical to the M-16, except for the fact that it can only fire on semiautomatic. (Delehanty Aff. at ¶¶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) (Exh. 53 (Siebel Testimony)). In fact, the United States Army considers the M-16 to be far more effective as an instrument of war when it is fired on semiautomatic than when it is fired on full automatic. (*See* Exh. 54 at pp.7.8—7.13 (Army Training Manual)[2]).

Beginning in the 1980s, Colt and other gun manufacturers began to heavily market and promote military-style weapons like the AR-15, and variations of it, to the civilian gun market. (*See generally* Exh. 52 (VPC "Militarization Report")). 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. (*Id.* at 2, 4; *see* Delehanty Aff. at ¶¶20, 22-24, 26-28).

Predictably, it did not take long for the harmful effects of these weapons to materialize in the public arena. Starting in 1984, a string of mass shootings occurred across the United States in which the shooter used military-style semiautomatic weapons to do exactly what they were designed to do; kill large numbers of people in a short period of time. Those incidents were the

[2] 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.

first to raise public concern about the accessibility of this kind of high powered military-style weaponry. (*See* Koper Aff. at ¶15).

B. Regulatory Responses

Several jurisdictions across the United States took steps to regulate or ban these weapons as soon as their unique dangers became evident. For example, the Gun Control Act of 1968 generally bars the importation of firearms that are not "particularly suitable for or readily adaptable to sporting purposes." 18 U.S.C. § 925(d)(3); *id.* 922(l) (Exh. 9); *see* Koper Aff. at ¶46 n.19. In 1989, the federal Bureau of Alcohol, Tobacco and Firearms ("ATF") used its authority under that provision 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, and are instead "designed and intended to be particularly suitable for combat" and "military applications," and "for killing or disabling the enemy." (Exh. 17 at 1, 6-8, 12 (1989 ATF Study); *see* Exh. 19 at 2-3, 9-11, 36-37 (1998 ATF Study); *see also* Exh. 17 at 9 (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")).

Congress subsequently imposed a complete ban on assault weapons in 1994 ("the federal ban"), in which it 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) (Exh. 9); *see* Exh. 21 at 17-20 (H.R. Rep. 103-489 (1994)). 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 LCMs "are attractive to certain criminals" and "cannot fairly be characterized as sporting rifles."[3] (Exh. 19 at 36-38; Koper Aff. at ¶46 n.19).

Several state and local jurisdictions also adopted their own assault weapon bans 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. (Exh. 22 at 25 n.20 (Comparative Evaluation)). Other states and large cities followed suit, including but not limited to Hawaii, Maryland, Massachusetts, Minnesota, New Jersey, New York, Virginia, the District of Columbia, Boston, Chicago, Cleveland, Columbus, New York, and San Francisco. (*Id.* at 20-27).

C. Connecticut's Assault Weapons Ban

1. The 1993 Ban

Connecticut was among the first of these jurisdictions to adopt an assault weapon ban in response to its own unique experiences. 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, 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 terrorize neighborhoods. (Sweeney Aff. at ¶¶7-11).

[3] 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 visited September 10, 2013).

In response to that violence and the advocacy of local law enforcement, the General Assembly adopted Connecticut's first assault weapon ban in 1993. *See generally* Public Act 93-306, §1(a) (Exh. 3). 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." *Id.*, § 1(a).

One year after passage of the 1993 ban, the General Assembly adopted other regulations designed to reduce gun violence, including a requirement that all private sales of handguns be registered with the State to limit the number of "straw purchasers" who purchased large numbers of handguns and resold them to criminals. (Sweeney Aff. at ¶12; *see* P.A. 94-1, § 1 (July 1994 Sp. Sess.)). Although the combination of these laws helped reduce gang- and drug-related gun violence in the cities most affected by it, the 1993 ban had weaknesses that limited its broader impact. (Sweeney Aff. at ¶¶12-13). Most notable among them was the fact that it 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, manufacturers were able to avoid the purpose and spirit of the law by adopting minor cosmetic changes to the weapon and calling it something else, or in some instances by simply changing the weapon's name without making any physical changes at all. (Sweeney Aff. at ¶13, 16-17; Koper Aff. at ¶¶46, 72; Exh. 42 at 5 (Brady Report "On Target" (discussing Intratec TEC-9))).

2. The 2001 Amendments

In an effort to strengthen the law and close these loopholes, the General Assembly amended the definition of assault weapon in 2001 to include a generic "features" test that closely paralleled the assault weapon definition used in the 1994 federal ban. *See* P.A. 01-130, § 1 (Exh. 4). 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 an extremely 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. P.A. 01-130, § 1(a)(3) and (4); *see* Koper Aff. at ¶¶11, 41, 72; Exh. 21 at 17-20.

Although the two-feature test strengthened Connecticut's assault weapons ban, like its federal counterpart 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 public sphere. (*See* Sweeney Aff. at ¶¶16-17; Koper Aff. at ¶¶46, 72). Unlike the federal ban, moreover, neither the 1993 ban nor the 2001 amendments prohibited large capacity magazines, which is the most dangerous feature of all assault weapons. (Exh. 29 at 80 (Koper 2004); Sweeney Aff. at ¶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, an LCM, or both. (Koper Aff. at ¶16). And, as it had in the early 1990s, Connecticut once again directly experienced the horrific and tragic consequences that these weapons and LCMs can have.

On the morning of December 14, 2012, a shooter broke 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 weapon to fire 154 rounds on his victims in less than 5 minutes.[4] (*See* Exh. 51 (3/28/2013 Connecticut State Police Press Release); Exh. 5 (Senate Session Transcript for 04/03/2013, Remarks of Senator Donald Williams and Senator Edward Meyer)).

In response to these senseless acts, the Governor established a Sandy Hook Advisory Commission comprised of various "experts in different areas, including education, mental health, law enforcement and emergency response," to evaluate an appropriate legislative response to the Newtown shooting. (Exh. 7 at 4 (Commission Report)). After receiving testimony and evidence at seven different 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." (*Id.* at 6-7). 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." (*Id.* at 7). The Governor similarly proposed a ban on high capacity magazines

[4] There have been several other high profile incidents in Connecticut that involved the use of assault weapons, LCMs 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. (Exh. 47 (VPC Mass Shooting Chart); Exh. 50).

that "unsafely and unnecessarily increase the destructive power of firearms," and a strengthening of the existing assault weapons ban. (Exh. 8 (Governor's Proposal)).

The General Assembly also established its own bipartisan Legislative Task Force, which held a number of public hearings on a variety of issues raised by the Newtown shooting.[5] The legislature's Public Safety Committee likewise held its own public hearing, at which it received public comments and written testimony about a variety of proposed regulatory responses.

The General Assembly passed the Act following this extensive bipartisan legislative effort. The Act is a comprehensive attempt to stem gun violence in this state. It includes regulations on a variety of topics, including long guns, P.A. 13-3, §§ 1-5, ammunition, *id.*, §§ 14-17, 32-40, firearm storage, *id.*, §§ 54-56, mental health, *id.*, §§ 8, 10-11, 57-58, 64-79, and school safety. *Id.*, §§ 80-96. It also establishes a deadly weapon offender registry, *id.*, §§ 18-22, and increases the penalties for certain gun-related offenses. *Id.*, §§ 42-50, 52-53.

While all of these provisions are important components of the Act, 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." (Exh. 5 (04/03/2013 Senate Session Transcript, Remarks of Senator Donald Williams)). 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." (*See id.*; *id.*, Remarks of Senator Martin Looney). "[T]he number of bullets that can be fired so quickly" from large capacity magazines

[5] The Legislative Task Force's website contains useful information about its membership, hearings, and recommendations. *See* http://www.cga.ct.gov/asaferconnecticut/ (last visited September 10, 2013).

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 . . . ." (*Id.*, Remarks of Senator Beth Bye and Senator Carlo Leone).

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 civilian semiautomatic versions of military firearms used by armies across the world, and they all have military features that are useful in combat but that are inappropriate and unnecessary for lawful civilian purposes. (Delehanty Aff. at ¶¶20, 22-24, 26-28; *see* Koper Aff. at ¶¶11, 41). A majority of the enumerated weapons are based on, and are simply semiautomatic variations of, the original AR-15/M-16 and AK-47 military designs. (Delehanty Aff. at ¶¶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. (Delehanty Aff. at ¶¶24, 26). As a result, the number of different basic designs of firearm 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.* an LCM. *Id.*, § 53-202a(1)(E)(ii), (v). 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.[6] *Id.*, § 53-202a(1)(E)(i), (iv). This latter change was designed to remedy the problem of "copycat" firearms that avoided the prior two-feature test by simply eliminating one of the prohibited features. (*See* Sweeney Aff. at ¶¶16-17; *see also* Koper Aff. at ¶¶46, 72; Exh. 43 at 2, 4-6 (VPC "On Target")).

As with prior versions of Connecticut's assault weapons ban, the Act permits an individual to continue possessing an assault weapon if he or she lawfully possessed it prior to the Act's effective date, provided that the individual applies 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). Importantly, moreover, the Act continues to permit eligible individuals to possess any otherwise lawful firearms—including the vast majority of semiautomatic firearms—that do not fall within the definition of assault weapon. As a result, there are more than one thousand different firearms that remain available to Connecticut citizens for lawful purposes such as sport shooting, hunting, and self defense. (Delehanty Aff. at ¶¶29-32; *see* Sweeney Aff. at ¶21).

The Act also contains an exemption that allows law enforcement officers to purchase assault weapons for official duties and to use them for such duties and while off-duty, and to register them. There are similar exemptions for members of the military. *See* Conn. Gen. Stat. §

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[6] 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. *See* P.A. 13-220, § 3.

53-202b(b)(1); Conn. Gen. Stat. § 53-202c(b); Conn. Gen. Stat. § 53-202d(a)(1)(B), (2)(B); Conn. Gen. Stat. § 53-202d(d).

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 . . . ." P.A. 13-3, § 23(a)(1), (b), (c). 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 they declare possession of the magazine to DESPP by January 1, 2014. *Id.*, § 23(e)(3), § 24(a), (f). The Act also provides exemptions to the LCM ban for law enforcement and members of the military. P.A. 13-220, § 1(d)(2)-(4), § 2(a)(2), (d).

D. The Present Action

In their amended complaint, Plaintiffs claim that: (1) the bans on LCMs 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). Plaintiffs filed a motion for a preliminary injunction on June 26, 2013, and several *amici* filed supporting briefs. (Doc. Nos. 14, 15, 33, 34 and 36). Pursuant to this Court's scheduling order, (Doc. No. 42), Plaintiffs filed a motion for summary judgment on the merits of their underlying cause of action on August 23, 2013, thereby rendering their motion for preliminary injunction essentially moot. (Doc. Nos. 60-62).

Defendants now oppose Plaintiffs' motion for summary judgment and cross-move for summary judgment in their favor on each of Plaintiffs' claims, and also for dismissal of Plaintiffs' motion for Preliminary Injunction because it is moot. *See USA Baseball v. City of New York*, 509 F. Supp. 2d 285, 303 (S.D.N.Y. 2007).

ARGUMENT

I. STANDARD OF REVIEW

Summary judgment is appropriate where the evidence shows that "there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party opposing summary judgment "may not rely on conclusory allegations or unsubstantiated speculation." *Brown v. Eli Lilly & Co.*, 654 F.3d 347, 358 (2d Cir. 2011) (internal quotation marks omitted). Further, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there is no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original). Thus, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* at 248; *see Weinstock v. Columbia Univ.*, 224 F.3d 33, 41 (2d Cir. 2000).

II. THE ACT DOES NOT VIOLATE THE SECOND AMENDMENT

In *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008) ("*Heller*"), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) ("*McDonald*"), the Supreme Court recognized for the first time an individual right to bear arms, and in particular the right to possess a handgun in the home for the core lawful purpose of self defense. *Heller*, 554 U.S. at 573, 628-29, 636. The Court did not

elaborate upon 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). It did make clear, however, that traditional firearm regulations continue to be valid and consistent with 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" and established a framework for analyzing Second Amendment claims. *Nat'l Rifle Ass'n of Am., Inc.* v. *Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 194 (5th Cir. 2012) (citing cases). The Second Circuit has adopted a three-step framework, under which courts must: (1) determine whether the law implicates Second Amendment rights; (2) if the law does, the court must then determine the extent of the burden and the applicable level of review; and (3) analyze whether the law satisfies the applicable standard. Plaintiffs' absolutist interpretation of the Second Amendment in this case conflicts with this established framework.

More specifically, as with all other constitutional rights the Court first must determine whether the challenged law implicates conduct that is protected by the Second Amendment. *Heller* established several "important limitation[s]" to the right that remove certain weapons and conduct from constitutional protection. *Heller*, 554 U.S. at 627. In particular, 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 (U.S. 2012). The assault weapons and magazines at issue in this case fall into each of these categories that *Heller*

established are outside of the Second Amendment. *See People* v. *James*, 94 Cal. Rptr. 3d 576, 585-86 (Cal. App. 2009).

If a Second Amendment right is implicated, then the Court must determine what level of scrutiny should apply, and whether the law withstands scrutiny under that analysis. Under recent and binding Second Circuit precedents, "heightened scrutiny is triggered only by those restrictions that (like the complete prohibition on handguns struck down in *Heller*) operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes)." *United States v. Decastro*, 682 F.3d 160, 166 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 838 (U.S. 2013); *accord Kwong v. Bloomberg*, 723 F.3d 160, 167 (2d Cir. 2013); *Kachalsky*, 701 F.3d at 93. The Second Circuit has stated the rule very clearly: 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 (emphasis added). Here, the prohibited assault weapons currently account for at most 2% of the gun stock in this country, and there are literally more than one thousand alternative firearms and magazines that remain legal and readily available to Plaintiffs for self defense. Consequently, there are ample adequate alternative firearms that remain available for law-abiding citizens in Connecticut, and *Decastro* therefore controls this case.

If the law does substantially burden a Second Amendment right, then "some form of heightened scrutiny" under the Second Amendment is appropriate. *Kachalsky*, 701 F.3d at 93. Almost without exception, courts in this circuit and others have applied intermediate scrutiny at this stage of the analysis, even to laws that restrict the possession of certain weapons in the

home. *See id.* at 93 and n.17; *Kwong*, 723 F.3d at 167-69. Indeed, the D.C. Circuit applied intermediate scrutiny to a similar assault weapon and magazine ban, and upheld the law under that standard. *Heller v. D.C.*, 670 F.3d 1244, 1261-64 (D.C. Cir. 2011) (*Heller II*). Even if this Court concludes that heightened scrutiny is required, it must do the same.

A. Assault Weapons And Large Capacity Magazines Are Not Protected By The Second Amendment

The Court made clear in *Heller* that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited," and there are several "important limitation[s]" that leave substantial room for the government to legislate in the public interest. *Heller*, 554 U.S. at 626-28. First, *Heller* made clear that the Second Amendment does not reach so far as to invalidate longstanding restrictions on the possession and use of certain firearms. *Id.* at 626-27 and n.26. The Court reaffirmed that assurance in *McDonald* and emphasized 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* made clear that Second Amendment protection "extends only to certain types of weapons", and 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, moreover, 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 627-28.

Third, 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 limitations on the Second Amendment approved by the Supreme Court in *Heller* reflect the restrictions on assault weapons and LCMs in the Act. 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, like all conventional handguns that are the "quintessential self-defense weapon." *Heller*, 554 U.S. at 629. Nor does it even ban all semiautomatic firearms. Rather, it 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." *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.

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 firearms are created equally, and they are not all 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 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 murder, mass shootings, and killings of law enforcement officers. When they are used in crime, they result in more shots fired, more victims wounded, and 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 LCMs Are Designed For Combat, and Have the Same Killing Capacity as Modern Military Weapons

The devastating effects of assault weapons and LCMs 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. (Delehanty Aff. at ¶¶20, 22-24, 26-27). Like all other military weapons, the M-16 was designed for the express purpose of killing large numbers of human beings as quickly as possible. (*Id.* at ¶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 protections afforded 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 is not protected 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* Delehanty Aff. at ¶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. (Delehanty Aff. at ¶¶20-21; *see* Pl. SJ Br. at 11; Sweeney Aff. at ¶14). But 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* Exh. 53 at 1 (Siebel Testimony).

In fact, the United States Army itself considers the M-16 to be far 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 State 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," and "is superior to automatic fire in all measures: shots per target, trigger pulls per hit, and time to hit." (Exh. 54 at pp. 7.8, 7.9 (Army manual)). 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." (*Id.* at p. 7.9). By contrast, "[a]utomatic or burst fire is inherently less accurate than semiautomatic fire" and "rapidly empties ammunition magazines." (*Id.* at pp. 7.12, 7.47). Even for trained soldiers, automatic fire "is rarely effective" and rarely used. (*Id.*).

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." (*Id.* at pp. 7.12, 7.13). 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. (Delehanty Aff. at ¶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. (Sweeney Aff. at ¶18; Rovella Aff. at ¶35). A folding or telescoping stock allows a shooter to make a large and powerful weapon much more compact, and therefore more concealable. (Sweeney Aff. at ¶18; Rovella Aff. at ¶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. (Sweeney Aff. at ¶18; Rovella Aff. at ¶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. (Sweeney Aff. at ¶18; Rovella Aff. at ¶37). And a grenade or flare launcher allows a shooter to launch grenades or flares at his enemy. (Sweeney Aff. at ¶14, 18; Rovella Aff. at ¶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." (Exh. 21 at 18-20 (H.R. Rep. 103-489); *see* Sweeney Aff. at ¶¶14-15, 19-20; Rovella Aff. at ¶¶17-18, 34-38; Mello Aff. at ¶¶12, 18). And they serve no purpose whatsoever in legitimate home or self defense. (Sweeney Aff. at ¶¶6, 20; Rovella Aff. at ¶¶39-40, 44; Mello Aff. at ¶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. (Koper Aff. at ¶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." (Exh. 20 at 10-11 (2011 ATF Study); *see* Exh. 19 at 3, 38 (1998 ATF report) (noting that "firearms with the ability to expel large amounts of ammunition quickly . . . have military purposes and are a crime problem")). That is because they facilitate the rapid firing of large numbers of rounds without having to reload. (Sweeney Aff. at ¶¶14-15, 20; Rovella Aff. at ¶¶17-18, 27-29; Mello Aff. at ¶¶18, 29-32; *see* Exh. 21 at 19; *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. (Mello Aff. at ¶18; Sweeney Aff. at ¶¶15, 20; Rovella Aff. at ¶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. (Mello Aff. at ¶¶30-32; Sweeney Aff. at ¶¶14-15, 20; Rovella Aff. at ¶¶29-30; *see* (Exh. 49 (Media Reports on Interrupted Mass Shootings); Exh. 59 at ¶¶18-19 (Zimring Decl.); *see also* Rossi Decl. at 6-10 (Doc. No. 15-5) (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." (Exh. 7 at 6-7 (Commission Report)). 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.*).

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. (*See* Exh. 52 at 1 (VPC "Militarization Report")). 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." (Exh. 17 at 1, 6-8, 12 (1989 ATF Study); *see* Exh. 19 at 2-3, 9-11, 36-37; *see also* Exh. 17 at 9 (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"); Exh. 18 at 19 (ATF 1994 Report) (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 adopted bans 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 existed ever since the unique dangers of assault weapons became apparent following their proliferation in the civilian gun market during the 1980s. *See* 18 U.S.C. 921(a)(30)(B)-(D) (repealed); *id.* § 922(v)(1) (repealed); Exh. 22 at 20-27 and n.20 (Comparative Evaluation).

c. The Evidence Demonstrates That Assault Weapons and LCMs 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 LCMs are too dangerous for the public sphere. The evidence demonstrates, for example, that assault weapons and LCMs 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 market presence. (Koper Aff. at ¶¶7, 14, 18, 24, 30, 87-88). For example, 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. (*Id.* at ¶¶17, 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,[7] and 42% of mass public shootings.[8] (*Id.* at ¶¶19, 22; *see also* Exh.

[7] Some studies place the percentage of assault weapons used in killings of law enforcement at as high as 20%. (Mello Aff. at ¶25; Rovella Aff. at ¶23; Exh. 40 at 5 (VPC "Officer Down")).

[8] 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 October 1, 2013). Although assault weapons account for a smaller percentage of all mass shootings compared to public mass shootings, the number still is substantially disproportionate to their presence in the gun market. (*See* Koper Aff. at ¶19).

48 (Mayors Study) (discussing disproportionate use of assault weapons and LCMs in all mass shootings, both public and non-public)). Similarly, although large capacity magazines represented only about 21% of the civilian magazine stock in 1994, (Exh. 29 at 18 (Koper 2004)), they were used in between 31% and 41% of gun murders of police and more than 50% of all mass public shootings. (Koper Aff. at ¶¶30-31; *see also generally* Exh. 40 (VPC "Officer Down"); Exhs. 44-46 (Mother Jones Studies)). 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. (Koper Aff. at ¶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. (*Id.* at ¶23). Similarly, the fatality rate in mass public shootings with a LCM was roughly 33% higher than in non-LCM cases, and the number of individuals shot but not killed was almost four times higher. (*Id.* at ¶33). And, more generally, crimes committed with LCMs result in substantially more shots fired, more victims wounded, and more gun shots per victim than do crimes committed without LCMs. (*Id.* at ¶¶8, 13, 35-38, 75, 81, 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. (*Id.* at ¶38).

The evidence also strongly suggests that the problem of mass shootings involving assault weapons and LCMs is intensifying. 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 victims, and 323 people killed. (Exh. 48). That equates to over 1 mass killing per month somewhere in the United States. (*Id.* at 1). 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.*).

It is not the functional capabilities of assault weapons alone that matter to these killers. Unlike conventional weapons that lack a military origin or connotation, the very military use and origins of these firearms can attract mass killers who perceive themselves to be "at war with the society." (Exh. 62). 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.[9] (*Id.*). Assault weapon manufacturers play into this soldier fantasy by emphasizing the military features of their weapons and their use by the military. 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

[9] 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).

can pierce most body armor." (Exh. 42 at 4 (Brady Report "On Target"); *see also generally* Exh. 52 (VPC "Militarization") (discussing militarization of the civilian gun market since the 1980s)). This military-grade, armor-piercing Bushmaster XM-15 was used to kill 20 first graders in Newtown ten months ago.

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* Sweeney Aff. at ¶¶6, 14-15, 19-20; Rovella Aff. at ¶¶17-18, 34-40, 44; Mello Aff. at ¶¶10, 13-16, 26, 33-36, 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. (Rovella Aff. at ¶18; Mello Aff. at ¶21).

d. Those Courts That Have Addressed the Issue Have Held That Assault Weapons and LCMs are "Dangerous and Unusual" Weapons Under *Heller*

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 LCMs 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.[10]

[10] 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.

The evidence discussed above supports these courts' determinations, and this Court should follow them.

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

In *Heller*, the Supreme Court made clear that the Second Amendment only protects 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 Second Amendment in this way, the Court once again reaffirmed the validity of traditional restrictions on especially dangerous weapons, like those banned by Connecticut's twenty year assault weapon ban, that the vast majority of law-abiding citizens do not possess or use for legitimate purposes such as self defense. To state a Second Amendment claim cognizable under *Heller*, therefore, Plaintiffs must demonstrate that assault weapons and LCMs are both commonly owned, and that they are typically used for the core Second Amendment purpose of self defense. They cannot do so.

a. Assault Weapons Are Not Commonly Owned

Assault weapons are not "commonly owned" even if by Plaintiffs' estimation they are becoming more popular, which is a reason in itself for the legislature to act now to stem the tide of these weapons in Connecticut. Although Plaintiffs recite abstract numbers about the manufacture of assault weapons over the past 25 years—and particularly the AR-15 rifle which seems to be 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 the accepted range of civilian firearms in the United States is somewhere between 270-310 million.[11] 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. (Koper Aff. at ¶¶17, 47). Although Plaintiffs speculate that there are approximately 3.97 million AR-15 type rifles presently in the United States, (*see* Pl. Exh. A, Overstreet Decl. at ¶¶5, 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 gun stock, (*see* Exh. 61 at 24-25 (Tribe Testimony)), even that miniscule market presence does not remotely equate to "common" ownership, however that term conceivably may be understood. (*See id.* at 25).

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 individuals who 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. (Pl. PI Exh. B at 13, Doc. Nos. 15-2, 3, 4). In addition, thousands of assault weapons do not make it into the civilian stock, 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.

[11] http://www.pewresearch.org/fact-tank/2013/06/04/a-minority-of-americans-own-guns-but-just-how-many-is-unclear/ (last visited October 1, 2013).

See, e.g., Colby Goodman, *Update on U.S. Firearms Trafficking to Mexico Report* 5 (Apr. 2011).[12] So while the number of assault weapons produced is miniscule in the context of the overall gun stock, the number of individual owners of assault weapons is even smaller.

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

Second, even if this Court were to assume that assault weapons and LCMs are commonly owned, Plaintiffs have adduced no evidence that they are actually used for self defense, much less that they are typically used for that purpose. (*See* Exh. 61 at 15 (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' and *amici* organizations' glorification of self defense with firearms, there is a telling absence of <u>any</u> 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 self-serving affidavits and unsupported opinions about which weapons they subjectively believe will be effective and appropriate in imagined (and often-times fantastical) self defense situations. (*See, e.g.*, Pl. PI Exhs. D-I, Doc. Nos. 15-6 through 15-11; *see also* Pl. PI Exh. B at 5, 8, Doc. No. 15-2 (discussing surveys of subjective reasons that assault weapon owners purchase their weapons)). Plaintiffs also rely on affidavits from Dr. Gary Roberts, an oral surgeon, and Dr. Gary Kleck, a criminologist, both of whom speculate about which weapons and features they believe are necessary and appropriate for self defense in the home, an area that is clearly outside their area of

[12] Available at http://www.wilsoncenter.org/sites/default/files/update_us_firearms_trafficking_to_mex.pdf (last visited October 1, 2013).

expertise. (Kleck Aff. at 7-8, Doc. No. 15-13; Roberts Aff. at 2, 14, Doc. No. 61-11).[13] Plaintiffs and their experts may sincerely hold their beliefs and take comfort from their possession of these extremely dangerous weapons and magazines in their home, but there is no actual evidence to demonstrate that their beliefs are justified or merit constitutional protection. A subjective desire to possess a weapon for self defense, no matter how sincerely held, does not establish a constitutional right.

The Connecticut legislature was entitled to reasonably determine that assault weapons and LCMs are not commonly used for self defense, or even suitable for that purpose. (*See, e.g.*, Sweeney Aff. at ¶¶6, 20; Rovella Aff. at ¶¶39-40, 44; Mello Aff. at ¶¶10, 13-16, 26, 33-36, 44-47; *see also* Koper Aff. at ¶¶11, 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." (Exh. 61 at 16-17; *see* http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables (last visited September 23, 2013) (Exh. 57)). 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—

[13] Dr. Kleck's testimony in particular is mostly irrelevant, and has repeatedly been debunked by a number of other academics. (*See generally, e.g.*, Exh. 60). Indeed, the Connecticut Superior Court disregarded Dr. Kleck's testimony entirely in a prior case challenging Connecticut's original assault weapons ban because it was "biased," was "focused on the public debate," and "did not help the inquiry of the court with respect to the legal claims." *Benjamin v. Bailey*, CV 93-0063723, at 12-13 (Conn. Super. Ct. June 30, 1994), *aff'd* 662 A.2d 1226 (Conn. 1995). (Exh. 56).

much less than 1%—did the defender fire more than seven bullets. (Exh. 58 at ¶¶12-15 (Allen Decl.)).

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 visited September 23, 2013) ("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. (Exh. 55 at 19 (VPC "Justifiable Homicide")). Plaintiffs have made the AR-15 the centerpiece of their case, and that data 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 must do so as well.

B. Even If This Court Finds That The Act Implicates The Second Amendment, It Still Must Be Upheld

Even after *Heller* and *McDonald*, courts across the country, including the Second Circuit, consistently have upheld reasonable gun control regulations that implicate protected conduct under the Second Amendment. *Kwong*, 723 F.3d at 167-69; *Kachalsky*, 701 F.3d at 93-100; *Decastro*, 682 F.3d at 164-68. Although Plaintiffs essentially ignore these precedents and implicitly ask this Court to do so too, these cases are binding on this Court and the Court must follow them. If it does, there is no question that the Act must be upheld.

1. The Act Must Be Upheld Because It Does Not "Substantially Burden" Any Second Amendment Rights, And Provides "Ample Alternative" Firearms For Self Defense

Consistent with *Heller's* instruction, the Second Circuit has concluded that the Second Amendment does not require heightened scrutiny for "any marginal, incremental or even appreciable restraint on the right to keep and bear arms . . . ." *Decastro*, 682 F.3d at 166. Rather, the Second Circuit reiterated as recently as two months ago that "the appropriate level of scrutiny under which a court reviews a statute or regulation in the Second Amendment context is determined by how substantially that statute or regulation burdens the exercise of one's Second Amendment rights." *Kwong*, 723 F.3d at 167, citing *Decastro*, 682 F.3d at 164.

Under binding Second Circuit precedents, heightened scrutiny is reserved only for those laws "that (like the complete prohibition on handguns struck down in *Heller*) operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes)." *Decastro*, 682 F.3d at 166 (emphasis added); *accord*

Kwong, 723 F.3d at 167; *Kachalsky*, 701 F.3d at 93. 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."[14] *Decastro*, 682 F.3d at 168. Such laws 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. Thus, the Second Circuit's focus appropriately is on the availability of alternative firearms for self defense, and not a party's subjective preference for a certain type of weapon.

The assault weapon ban does not "substantially burden" Plaintiffs' Second Amendment rights under these precedents. It does not prohibit them from purchasing or possessing non-semiautomatic firearms, and it restricts only a tiny subset of semiautomatic firearms that 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, which is the "quintessential self-defense weapon." *Heller*, 554 U.S. at 629; *see* Delehanty Aff. at ¶¶29-32. Plaintiffs do not, and obviously cannot, dispute that these thousands of lawful firearms are both

[14] Plaintiffs and their *amici* take issue with *Decastro's* conclusion that the availability of adequate alternative firearms is fatal to a Second Amendment claim because, in Plaintiffs' view, "*Heller* rejected the argument that handguns can be banned because long guns are available." (*See* Pl. SJ Br. at 10-11; LELDF Br. at 6; NRA Br. at 4-5). This Court obviously has no power to overrule *Decastro*, and even if it could, Plaintiffs point is inapt. The reason that the entire class of handguns could not be banned in *Heller* was because, for practical and functional reasons, long guns are not an adequate alternative for handguns, which the Court deemed to be the "quintessential self-defense weapon." *See Heller*, 554 U.S. at 629; *see Decastro*, 682 F.3d at 165-66; Volokh, *supra*, at 1456-59. Here, the Act does not ban an entire category of firearms, and instead prohibits a tiny subset of extremely dangerous weapons within each of the three main categories of modern day firearms: rifles, handguns and shotguns.

adequate and suitable for home and self defense. (*See* Delehanty Aff. at ¶¶29-32; Sweeney Aff. at ¶¶6, 21; Mello Aff. at ¶37; Rovella Aff. at ¶¶42-43; *see also* Kleck Aff. at 6-7 (admitting 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 LCM ban likewise does not "substantially burden" Plaintiffs' Second Amendment rights because, as discussed above, it is not typical, appropriate, or necessary for individuals to fire more than 10 rounds in lawful self defense. In the exceedingly rare instance in which more than 10 rounds conceivably could be necessary and appropriate, individuals clearly have several alternatives available to them. As Plaintiffs themselves concede, for example, they could use multiple smaller magazines and simply replace the magazines when they are emptied, a process that takes only seconds for most people. (Kleck Aff. at 4-5; *see also, e.g.*, Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1489 (2009) (Exh. 63) (noting that "the ability to switch magazines in seconds, which nearly all semiautomatic weapons possess, should suffice for the extremely rare instances when more rounds were needed")). If readily changing magazines for some reason is not feasible,[15] Plaintiffs again concede that the individual could simply make use of a second or third loaded firearm, which several of the individual plaintiffs admit they possess. (*See, e.g.*, Pl. PI Exhs. D-H at ¶5; *see also* Kleck Aff. at 4-5 (asserting that criminals can, and most mass shooters do, "bring multiple guns to the crimes and, therefore, can

[15] Plaintiffs allege that some of the individual plaintiffs are disabled and cannot effectively change out magazines during a criminal attack. (Am. Compl., ¶¶124-27). Even if that is true, it is not material in the context of this facial challenge. *See Decastro*, 682 F.3d at 168-69 & n.7 (noting stringent "no set of circumstances" standard for facial challenges).

continue firing without reloading even after any one gun's ammunition is expended")). Moreover, this Court should not strike down an Act based upon hypothetical situations that even Plaintiffs would be forced to concede are unlikely to occur except in the rarest of situations. Rare or improbable scenarios simply cannot be the basis for finding a "substantial burden" on a constitutional right.

As if all of these alternative firearms and magazine options were not enough, it is well established that the extent of a constitutional burden must be considered in the context of the entire regulatory scheme. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 435-39, 441 (1992) (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, including four different permit options that most law-abiding citizens should have no difficulty obtaining.[16] (Mattson Aff. at ¶¶6-10; *see id.* at ¶11 (noting that there are 197,521 Pistol Carry Permits in Connecticut)).

At the very most, therefore, the Act only marginally impacts Plaintiffs' ability to obtain firearms and magazines for lawful home and self defense. Indeed, 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

[16] In fact, in some ways Connecticut's regulatory scheme is more favorable to gun owners than other states' laws that have been upheld by the Second Circuit. *Compare, e.g.,* Conn. Gen. Stat. § 29-28 (which does not require "probable cause" to obtain a carry permit) *with* New York Penal Law § 400.00(2)(f) (which does require a special justification and was upheld by the Second Circuit in *Kachalsky*). These aspects of Connecticut's regulatory scheme demonstrate the State's respect for the rights of responsible and lawful gun owners to possess and carry firearms for self defense, and that the Act is not the wholesale assault on Second Amendment rights that Plaintiffs attempt to portray.

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; *see also Tardy v. O'Malley*, Docket No. CCB-13-2841 at 71-73 (D.Md. Oct. 1, 2013) (relying on *Heller II* to conclude that Maryland's analogous assault weapon and LCM bans likely do not impose a substantial burden on any Second Amendment rights due to the availability of other firearms and magazines for self defense) (Exh. 66 at 71-73).

That same reasoning applies equally here. As a result, the Court must uphold the Act because it provides "ample alternative means of acquiring" firearms and magazines for self-defense purposes, and because it is a reasonable firearm regulation designed to advance the State's compelling interest in protecting public safety and reducing gun violence. *Decastro*, 682 F.3d at 166-68 and n.5; *see e.g.*, *Robertson v. City & Cnty. of Denver*, 874 P.2d 325, 333 (1994); *Benjamin*, 234 Conn. 455, 464-72 (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).

2. The Act Should Be Upheld Even Under Heightened Scrutiny.

This Court should not reach the question of what level of heightened scrutiny to apply to the Act for the reasons discussed above. However, should the Court reach this stage of the analysis it must uphold the law under intermediate scrutiny. The relevant provisions of the Act

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

a. If Heightened Scrutiny Is Applied, Intermediate Scrutiny Is The Appropriate Standard

Those courts that have reached this stage of the analysis almost universally have concluded that 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. In fact, 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;[17] *see 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 Tardy*, Docket No. CCB-13-2841 at 71 (relying on *Heller II* to conclude that, "assuming that the Second Amendment applies at all, intermediate scrutiny is the correct standard" to apply in a challenge to Maryland's analogous assault weapon and LCM bans) (Exh. 66 at 71). In *Kachalsky*, the Second Circuit expressly cited *Heller II* as being "in line with [its] approach" for

[17] *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, binding precedents in this Circuit require that such laws are not subject to any heightened scrutiny at all.

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 come close to severely burdening Plaintiffs' Second Amendment rights, the Court should apply intermediate scrutiny if it determines that heightened scrutiny is appropriate.

Plaintiffs' arguments to the contrary are entirely unpersuasive. Plaintiffs and their *amici* rely on *Kachalsky* for the proposition that strict, or perhaps even a higher, form of scrutiny applies because the Act's provisions restrict an entire class of firearms both in the home and in public. (Pl. SJ Br. at 13-15; NRA Br. at 3-7; Pink Pistols Br. at 2-4, 6, 17; LELDF Br. at 4). Plaintiffs' arguments on this score are both factually and legally incorrect.

Factually, the Act does not ban an entire category of firearms like the blanket handgun ban that at issue in *Heller*. Indeed, at least 98% of all handguns and long guns—including the vast majority of semiautomatics—are completely unaffected by the challenged provisions of the Act.

Legally, *Kachalsky* does not remotely support a conclusion that all restrictions on firearm possession in the home are subject to strict scrutiny. Although the protections of the Second Amendment may be at their apex in the home, neither *Heller*, *McDonald*, *Kachalsky*, nor any other case establishes the bright line rule for which Plaintiffs advocate. Nor has any case held that strict scrutiny applies to every prohibition on any subset of firearms, regardless of how small the subset, dangerous the weapon, or how inappropriate, unnecessary, and rarely used for self defense it is.

In fact, the exact opposite is true. As discussed above, the Second Circuit expressly has applied <u>less</u> 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*). In *Kachalsky*, the Court concluded that intermediate scrutiny applied in part by relying on numerous cases in other circuits that likewise applied intermediate scrutiny to laws that restrict, and in some cases outright prohibit, the possession of certain firearms in the home.[18] *See Kachalsky*, 701 F.3d at 93 and n.17.

Plaintiffs' absolutist interpretation of the Second Amendment conflicts with all of these precedents and is not supported by any of their own. It also conflicts with *Heller* itself, which clearly stated that many longstanding gun regulations that apply both in the home and in public are "presumptively constitutional". *Heller*, 554 U.S. at 626-27 and n.26. And it stands in stark contrast to the framework that courts consistently have adopted for analyzing every other fundamental right, none of which are absolute. Indeed, Plaintiffs' bright line rule would have wide and clearly unacceptable applications to many firearms regulations that reach conduct in the home, such as safe storage laws, requirements that homeowners report theft of firearms, and other clearly legitimate regulations of gun use and possession.

b. The Act Survives Intermediate Scrutiny

Under intermediate scrutiny, the Court's task is to assess whether a law "is substantially related to the achievement of an important governmental objective." *Kachalsky*, 701 F.3d at 96-

[18] In its *amicus* brief, the NRA asks this Court to disregard these persuasive precedents, and to overrule *Kachalsky*, *Decastro* and other binding precedents in this Circuit that have interpreted *Heller* and *McDonald*. (NRA Br. at 4-5). The Court should not do so, and with regard to Second Circuit precedents obviously cannot do so.

97. Public safety and crime prevention unquestionably are compelling governmental objectives. *Id.* at 97. Accordingly, the Court need only assess whether the challenged provisions of the Act are "substantially related to these interests." *Id.*

To survive intermediate scrutiny, the fit between the governmental objective and the challenged regulation need only be substantial, not perfect. *Id.* at 97. Further, the Act "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.'" *Nat'l Rifle Ass'n*, 700 F.3d at 211, quoting *Buckley v. Valeo*, 424 U.S. 1, 105 (1976); *see Kachalsky*, 701 F.3d at 98-99.

Importantly, moreover, in circumstances such as those here courts must be cognizant of the fact that states have a "substantial role" in regulating the use and possession of firearms, and that they "enjoy[] a fair degree of latitude" in that regard. *Kachalsky*, 701 F.3d at 96. "In 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). As a result, courts must give "substantial deference to the predictive judgments of [the legislature]," and cannot 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.*

Thus, the "existence of studies and data challenging" the evidence that the State has submitted, even if Plaintiffs had adduced any (which they have not), is not enough to invalidate the legislature's judgment. *See id.* at 99-100; *see also, e.g., United States* v. *Chester*, 514 Fed. App'x 393, 395 (4th Cir. 2013) (granting summary judgment on Second Amendment challenge

despite the existence of disputed evidence); *Woollard* v. *Gallagher*, 712 F.3d 865, 881-82 (4th Cir. 2013) (same); *Nat'l Rifle Ass'n*, 700 F.3d at 210-11 (same). Rather, 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; *see Heller II*, 670 F.3d at 1269. Given the "general reticence to invalidate the acts of [our] elected leaders," moreover, 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).

The Act easily survives scrutiny under this framework. *See Heller II*, 670 F.3d at 1261-64; *see also Tardy*, Docket No. CCB-13-2841 at 71-73 (relying on *Heller II* to conclude that challenge to Maryland's analogous assault weapon and LCM bans not likely to succeed under intermediate scrutiny because the bans "do[] not affect law-abiding, responsible citizens' right to possess handguns in the home for self-defense," because plaintiffs presented "no evidence . . . that it is necessary or common for assault rifles and high capacity magazines to be used for self-defense in the home," and because there is evidence of a "reasonable fit between this prohibition and the substantial governmental interest of protecting law enforcement officers and controlling crimes, especially those involving mass tragedies, mass wounding and murder . . . .") (Exh. 66 at 71-73).

For the same reasons discussed above, *see* pp. 19-29, the government has a compelling interest in protecting public health and safety by eliminating assault weapons and LCMs from the public sphere. The 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. (Koper Aff. at ¶¶10, 76-77). Such impacts will represent lives saved and injuries prevented, and will result in substantial benefits and cost savings to society more broadly. (*Id.*; Rovella Aff. at ¶53).

First, the evidence demonstrates that crimes committed with assault weapons and large capacity magazines are likely to substantially decrease 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 substantially after the federal ban was enacted, independently of trends in gun crime. (Koper Aff. at ¶¶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. (*Id.* at ¶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. (*Id.* at ¶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. (*Id.* at ¶53).

The evidence similarly demonstrates that the federal ban reduced the use of LCMs 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. (*Id.* at ¶¶55-58). Specifically, the use of LCMs 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 cover. After the ban had a chance to

operate, 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, (*id.* at ¶56), a later investigation by the *Washington Post* confirmed that the federal ban did reduce the use of LCMs in gun crime. Using more current data on the use of LCMs 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 LCMs declined by roughly 31% to 44% in that jurisdiction, and subsequently more than doubled after the ban was allowed to expire. (*Id.* at ¶57; Exhs. 31 and 32 (Washington Post Studies)). 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 expired. (Koper Aff. at ¶¶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. (Koper Aff. at ¶72; *see* Sweeney Aff. at ¶¶16-17; *see also, e.g.*, Exh. 39 at 20 (Brady Report "Mass Produced Mayhem"); Exh. 43 at 2, 4-6 (VPC "On Target"); Exh. 42 at 10-12 (Brady Report "On Target")). 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. (Koper Aff. at ¶72).

Connecticut's LCM ban likewise is more robust than the federal ban, and is likely to be more effective more quickly. (Koper Aff. at ¶73). The federal ban allowed individuals to sell and transfer millions of grandfathered and imported LCMs even after the ban went into effect. By contrast, the Act prohibits any individual who possesses a grandfathered LCM from selling or transferring it. Importantly, moreover, LCMs 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* Koper Aff. at ¶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 LCM ban to take hold. (Koper Aff. at ¶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 LCMs will decline over the long-run. (*Id.* at ¶55-58, 74; Exhs. 31 and 32).

Second, any reduction in the criminal use of assault weapons and LCMs 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. (*Id.* at ¶¶8, 13, 23, 33, 35-38, 75, 81, 88). Such impacts are important, as the evidence demonstrates that a person is 63% more likely to die if he or she receives two or more gunshot wounds than if they receive just one. (*Id.* at ¶38). By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons and magazines, the Act could potentially

prevent a substantial number of gunshot victimizations in Connecticut on an annual basis. It also could reduce the lethality and injuriousness of those gunshot victimizations that do occur by reducing the number of wounds per victim. (*Id.* at ¶¶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. (Sweeney Aff. at ¶¶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 LCMs 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. (*Id.* at ¶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.[19] (*Id.*).

Plaintiffs' and their *amici's* attempts to dispute and minimize these points are totally unpersuasive. They 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. (*See generally, e.g.,* Kleck Aff.). Even if these submissions were material—which they are not—they are not sufficient to defeat Defendants'

[19] Apart from the inherent benefits of reducing the number and lethality of gunshot victimizations, 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. (Koper Aff. at ¶¶62-63).

amply supported motion for summary judgment here. *Kachalsky* 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 Heller II*, 670 F.3d at 1262-64, 1269 (granting summary judgment under directly analogous circumstances despite Plaintiffs' reliance on virtually identical evidence and arguments). The Connecticut legislature clearly had a substantial basis to reach the policy decision it did.

Even when Plaintiffs and their *amici* do rely on admissible evidence, they completely mischaracterize it. In particular, although Plaintiffs and their *amici* rely heavily on the study of the federal ban discussed above to support their claims that the Act will not be successful in achieving its goals, they do so by inappropriately cherry-picking selected statements from the study that do not accurately reflect the author's findings or conclusions.[20] (*See, e.g.*, Pl. SJ Rule 56(a)(1) Statement at ¶¶23-37, 39-55, 57-60; Pink Pistols Br. at 27-29; NRA Br. at 14, 19; LELDF Br. at 9-10). Indeed, the study's author, Dr. Christopher Koper, has submitted an affidavit in support of Defendants' motion in this case in which he unequivocally states that not only have Plaintiffs and their *amici* grossly mischaracterized his works, but that, in his expert

[20] Most notably, Plaintiffs and their *amici* rely on Dr. Koper's study for the proposition that the Act will not achieve any public safety goal because it is not likely to reduce overall gun crime in terms of the number of crimes committed. That assertion is dubious, particularly with regard to mass shootings. (*See* Exh. 44 at 1 (noting that 75% of mass killers obtain their weapons legally)). Even if it is accurate, however, Dr. Koper makes clear that the Act likely will reduce the number and lethality of gunshot victimizations in those gun crimes that do occur even if the number of incidents does not decline. (Koper Aff. at ¶5). That obviously is an important and worthy governmental objective, and Plaintiffs completely ignore it.

opinion, the Act in fact likely will achieve its goals and probably do so more quickly than the federal ban he studied. (Koper Aff. at ¶¶10, 76-88).

Because Plaintiffs' Second Amendment rights are not even implicated by the Act, much less substantially burdened, and because the Act easily withstands even heightened scrutiny, the Court should enter judgment for Defendants on Plaintiffs' Second Amendment claims, Counts I and II.

III. PLAINTIFFS' EQUAL PROTECTION CLAIMS FAIL AS A MATTER OF LAW

Plaintiffs' equal protection claims should be dismissed and judgment entered for the Defendants on Counts III and IV because Plaintiffs are not similarly situated to the exempted individuals, and because the exemptions in the Act have a rational basis.

A. Plaintiffs Cannot State An Equal Protection Claim Because The Challenged Provisions Do Not Treat Similarly Situated Persons Differently

It is well established that "the Equal Protection Clause is essentially a direction that all persons similarly situated should be treated alike . . . ." *Kwong*, 723 F.3d at 169. It "does not forbid classifications" in the abstract, and instead "simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." *Nordlinger* v. *Hahn*, 505 U.S. 1, 10 (1992) (emphasis added). It is therefore "axiomatic that [equal protection violations must be based on a claim] that similarly situated persons have been treated differently." *Gagliardi v. Village of Pawling*, 18 F.3d 188, 193 (2d Cir. 1994).

Importantly, Plaintiffs bear the burden to make this threshold showing. *Casciani v. Nesbitt*, 659 F. Supp. 2d 427, 446 (W.D.N.Y. 2009) *aff'd*, 392 F. App'x 887 (2d Cir. 2010). At this stage of the proceedings, where both parties have moved for summary judgment, Plaintiffs cannot rely on mere allegations; rather, they "must present evidence comparing [themselves] to

individuals that are 'similarly situated in all material respects." *Id.* (quotation marks omitted; emphasis in original). Plaintiffs have not remotely satisfied that burden.

Remarkably, Plaintiffs allege that they are similarly situated to police officers, Connecticut State Police troopers, armored car drivers, nuclear facility security personnel and members of the United States Military in the threats they face and their need to train on and use military grade weaponry. Plaintiffs' bald assertions of being similar to these individuals are nothing short of absurd, and they have not presented a shred of evidence or analysis to support their conclusory and self-serving assumptions.

Common sense dictates that they cannot plausibly do so. Most people, including these individual Plaintiffs, have no involvement with gun crime at any point in their life, do not routinely deal with criminals or suspected criminals on a daily basis during the course of their jobs, or have a need to train for those circumstances. Likewise, most people do not have a sworn duty to seek out and prevent criminal activity, and have no obligation stop it when they happen to witness it.

Even on the rare occasion when an ordinary citizen is victimized by a criminal using a gun, a circumstance Plaintiffs indicate is decreasing in likelihood, (Pl. Mot. Summ J. Exh. A, Doc No. 61-1), Plaintiffs themselves acknowledge that criminals rarely fire their gun and instead only use their weapon to threaten the victim. (Kleck Aff. at 3). Plaintiffs have adduced no evidence of actual incidents in which Connecticut citizens have used firearms to defend against criminal attacks, and certainly have provided no evidence of lawful self defense incidents in which the defender used an assault weapon or fired more than 10 shots. To the contrary, the record reflects that not only are assault weapons and large capacity magazines almost never

actually used by Connecticut citizens in actual self defense situations, they are not necessary or even suitable for self defense, especially in densely populated areas or buildings. (Mello Aff. at ¶¶10, 33-36; Rovella Aff. at ¶¶39-41; Sweeney Aff. at ¶¶6, 21-22); *see Dist. of Columbia v. Heller*, 554 U.S. 570, 629 (2008) (noting that ordinary handguns are an adequate—indeed the "quintessential"—weapon of choice for self-defense). Further, those few citizens who theoretically might use their own weapons to stop a criminal attack generally have received little to no training on how to safely and responsibly do so without causing collateral damage to themselves or innocent bystanders. As a result there is a real risk of disproportionate self defense responses and over-penetration of walls of a dwelling with ammunition such as the .223 caliber round commonly used in the AR-15 rifle and other assault weapons, particularly in densely populated areas. (Sweeney Aff. at ¶¶10, 15, 21; Rovella Aff. at ¶¶8, 39-44).

By contrast, law enforcement officers are called upon on a daily basis to actively engage and apprehend dangerous criminals, and to affirmatively combat and disrupt the most serious kinds of crime, such as drug- and gang-violence and active shooter situations. In doing so, law enforcement officers frequently must confront organized groups of criminals with the most dangerous weaponry, including assault weapons and, in some instances, body armor that can stop many types of ammunition. (Rovella Aff. at ¶¶13, 16, 18-21, 23; Mello Aff. at ¶¶21; Sweeney Aff. at ¶¶7-10). Whereas ordinary criminals rarely use their weapons when committing their crimes, when confronted by police these types of criminals frequently are more than willing to use their weapons in order to escape arrest and prosecution. (*Id.; see also* Exh. 69).

Law enforcement officers need an advantage, and should not be required or expected to apprehend dangerous criminals without superior, or at the very least comparable, firepower.

(Mello Aff. at ¶¶26, 39-40; Rovella Aff. at ¶¶14, 24, 46-48). The ability of law enforcement agencies to equip their officers has not kept pace with the growing prevalence of assault weapons. As a result, many officers must buy their own firearms for official duties because the agency cannot afford to buy one for each officer. (Mello Aff. at ¶¶38-41; Rovella Aff. at ¶¶14, 45, 48; Delehanty Aff. at ¶15). Officers must qualify with such firearms before being able to use them in the field, and receive professional training on when and how to safely use their firearms while at the same time minimizing unintended casualties and other collateral damage. (Mello Aff. at ¶¶16, 41-42, 45; Rovella Aff. at ¶¶14, 44, 49; Delehanty Aff. at ¶¶4, 6-7, 12, 15-16).

Importantly, these differences apply even after work hours. Indeed, 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. (Rovella Aff. at ¶¶45-47, 50; Mello Aff. at ¶¶39, 43; Delehanty Aff. at ¶¶16-17). In some jurisdictions in Connecticut, officers are even given portable radios to keep with them off-duty so that they can respond to radio calls for assistance on the police frequency even after work hours, (Rovella Aff. at ¶45), or in the case of specialized officers are required to respond to an incident from any location. (Delehanty Aff. at ¶¶16-17).

As several other courts have held—including the sole case upon which Plaintiffs rely—law enforcement must be permitted to carry their service weapons off-duty to carry out these responsibilities, which unquestionably serve the public's interest and advance public safety. *See Coal. of New Jersey Sportsmen, Inc. v. Whitman*, 44 F. Supp. 2d 666, 686-87 (D.N.J. 1999) *aff'd*, 263 F.3d 157 (3d Cir. 2001) (noting that "off-duty" exemption was rational because "[p]ossession of these weapons might also continue into off-duty hours, thereby necessitating the

exemption"); *Silveira v. Lockyer*, 312 F.3d 1052, 1089 (9th Cir. 2002) (holding that off-duty exemption withstood constitutional scrutiny because "off-duty officers may find themselves compelled to perform law enforcement functions in various circumstances, and that in addition it may be necessary that they have their weapons readily available").

The differences between the general public and members of the military are obvious and even more pronounced. Further, 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. The legislature simply was not required to anticipate and legislate around all potential federal and military requirements—and the various ways in which those requirements may be interpreted, applied or changed—about which members of the military must be allowed to possess which weapons, and under what circumstances and at what times they must be allowed to do so. Indeed, the Supremacy Clause likely would prevent the State from attempting to do so. *See Whitehead v. Senkowski*, 943 F.2d 230, 234 (2d Cir. 1991).

B. **The Exemptions Survive Rational Basis Review**

Even if Plaintiffs satisfied the threshold requirement to state an Equal Protection claim here—which they do not—the challenged exemptions easily satisfy constitutional scrutiny. It is well established that "a classification neither involving fundamental rights nor proceeding along suspect lines" must be analyzed under the rational basis standard of review. *Heller* v. *Doe*, 509 U.S. 312, 319-20 (1993); *see Armour* v. *City of Indianapolis*, 132 S. Ct. 2073, 2080 (2012). As discussed above, the Act does not implicate any fundamental rights under the Second

Amendment, and Plaintiffs do not claim that they are part of a suspect class.[21] The challenged exemptions therefore need only survive rational basis review.[22] *See, e.g.*, *Kwong*, 723 F.3d at 170.

Under rational basis review, the "burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." *Armour*, 132 S. Ct. at 2080-81. Because this case is now at the summary judgment stage, Plaintiffs bear the burden to adduce specific evidence that the exemptions lack any conceivable rational basis, and they cannot rest upon mere allegations. *See Casciani*, 659 F. Supp. 2d at 446. But Plaintiffs have made no such showing, through evidence **or** mere allegations. Rather, they simply quote the statutory classifications and then baldly assert they are unconstitutional, without any evidence and virtually no analysis or argument. (*See* Pl. PI Br. at 38-39; Pl. SJ Br. at 27-28). The Court should deny their Equal Protection claims on the basis of inadequate briefing alone.

Even if the Court elects to consider these claims, they plainly lack merit. Under rational basis, legislative classifications are "accorded a strong presumption of validity" and "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Heller* v. *Doe*, 509 U.S. at 319-20; *see*

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[21] Although Plaintiffs Owens and Cypher allege disabilities and that the Act uniquely impacts them because of those disabilities, (Am. Compl., ¶¶124-27), Plaintiffs have not argued that such disabilities entitle them to a stricter level of scrutiny under the Equal Protection Clause. They cannot do so because the disabled are not a suspect class under the Equal Protection clause. *Bryant v. N.Y. State Educ. Dep't*, 692 F.3d 202, 219 (2d Cir. 2012), cert. denied, 133 S. Ct. 2022 (2013).

[22] Even if the Act does implicate rights under the Second Amendment, the exemptions should be analyzed under the same level of scrutiny as the law itself. *See Kwong v. Bloomberg*, 723 F.3d 160, 175 (2d Cir. 2013) (Walker, J. concurring), citing *Ramos v. Town of Vernon*, 353 F.3d 171, 178–80 (2d Cir.2003).

Armour, 132 S. Ct. at 2080. In conducting its review, the court need only find "'plausible reasons' for [the] legislative action, whether or not such reasons underlay the legislature's action." *Beatie*, 123 F.3d at 712, citing *United States R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980). Moreover, it is well established that courts cannot "strike down a law as irrational simply because it may not succeed in bringing about the result it seeks to accomplish [or] because the problem could have been better addressed in some other way." *Id.* The exemptions in the Act clearly survive under this framework.

1. The Purchase And Possession Exemptions Have A Rational Basis

Plaintiffs first challenge the exemptions in the Act that allow certain law enforcement officers and members of the military to purchase and possess assault weapons and LCMs for official purposes and for use while "off-duty".[23] (*See* Am. Compl., ¶¶153, 159; Pl. PI Br. at 38-39; Pl. SJ Br. at 27-28). As discussed above, numerous courts—including the sole case upon which Plaintiffs rely—have held that such exemptions are rational and constitutionally permissible, both during work hours and while "off-duty." *See, e.g., Coal. of New Jersey Sportsmen*, 44 F. Supp. 2d at 686-87; *Silveira*, 312 F.3d at 1089; *see also Tardy*, Docket No. CCB-13-2841 at 74-75 (concluding that there "clearly" is a "rational basis for distinction between retired law enforcement officers and other citizens," and that "the training that they receive would be one element of that distinction") (Exh. 66 at 74-75); *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955) ("Evils in the same field may be of different dimensions and

[23] Contrary to Plaintiffs' assertions, the law enforcement exemptions only apply to sworn and duly certified members or other specifically listed individuals, not to any member or employee of a law enforcement agency. Conn. Gen. Stat. § 53-202b(b)(1), § 53-202c(b); P.A. 13-220, § 1(d)(2); *see* Am. Compl., ¶¶153-54, 159.

proportions, requiring different remedies. Or so the legislature may think"). Plaintiffs have presented no evidence, argument, or legal authority that could compel a different conclusion in this case. For the reasons discussed above, therefore, this Court should reject their claim.[24]

Plaintiffs' reliance on *Silveira* lacks merit. In *Silveira*, the statute at issue permitted law enforcement officers to initially purchase a prohibited assault weapon upon their retirement from state service. In that court's view, allowing individuals to initially purchase weapons after they left state service was not rationally related to any legitimate state interest precisely because such weapons were not purchased or used for official duties, and instead could only be used for personal purposes. *See Silveira*, 312 F.3d at 1090-91. By contrast, the Act expressly provides that law enforcement officers can only purchase an assault weapon it is for official purposes, and does not permit them to make such purchases after they retire. *See* Conn. Gen. Stat. § 53-202b(b)(1); *id.* § 53-202c(b); P.A. 13-220, § 1(d)(2)-(4). *Silveira* therefore has no application here.

2. The Certificate of Possession And Declaration of Possession Exemptions Are Rational

Plaintiffs also challenge those provisions in the law that allow law enforcement officers to apply for a certificate of possession or declare their possession of an assault weapon or

[24] To the extent that Plaintiffs claim the "off-duty" exemptions violate equal protection because they equate to a purported "personal use" exemption, the Court should reject that claim. (*See* Am. Compl., ¶¶153, 155, 159-60; Pl. PI Br. at 38-39; Pl. SJ Br. at 27-28). There is nothing in the statutory text to indicate that the law enforcement exemption allows for purely personal use of the weapons, which must be purchased for official purposes under the statute. *See* Conn. Gen. Stat. § 53-202b(b)(1); *id.* § 53-202c(b); P.A. 13-220, § 1(d)(2)-(4). Nor have Plaintiffs provided any analysis or legal authority to demonstrate that the exemptions should be interpreted so broadly. Absent any evidence of such an exemption in the text of the statute or in its application, the Court should decline to address this unclear question of state law that Plaintiffs have not even briefed. *See United Fence & Guard Rail Corp. v. Cuomo*, 878 F.2d 588, 594 (2d Cir. 1989).

magazine that they have purchased for official duties within ninety days of their retirement or separation from service, and that permit members of the military who are transferred into the state to do so within ninety days of their arrival. (*See* Am. Compl., ¶¶154-55, 160; Pl. PI Br. at 38-39; Pl. SJ Br. at 27-28). Plaintiffs again provide absolutely no evidence, and virtually no argument or analysis. The Court should reject their claims.

First, the delayed registration requirement for active law enforcement officers clearly is rational. Because any assault weapon or LCM that an officer purchases for official duties must be approved by the agency, the agency can monitor that officer's possession and use of the firearm while he or she is in active service. The State's interest in requiring the officer to register a weapon that has been purchased for official duties only arises if the officer wishes to keep the firearm or magazine after he or she retires or is separated from service. The law requires such individuals to promptly register their assault weapons or LCMs within ninety days of those events. That is eminently rational and reasonable.

So too is the related exemption for members of the military. As discussed above, the legislature legitimately has allowed members of the military to purchase and possess assault weapons and LCMs. It would make no sense to allow a soldier in Connecticut to purchase a weapon and register it after the January 1, 2014 deadline that applies to ordinary citizens, but prohibit a soldier in the same unit from registering the exact same lawfully possessed weapon simply because he or she transfers into the State after the January 1, 2014 deadline.

Plaintiffs' continued reliance on *Silveira* for this aspect of their claim again lacks merit. As discussed, the provision at issue in *Silveira* allowed law enforcement officers to initially purchase an assault weapon upon their retirement for purely personal purposes. *See Silveira*, 312

F.3d at 1090-91. The *Silveira* court declined to reach the questions of the validity of exemptions for firearms lawfully purchased during state service for official purposes could be kept after retirement or by when such a weapon must be registered. *See id.* at 1090-91 and ns. 57 and 58. Because those are the questions raised by Plaintiffs' claim, *Silveira* is inapposite.

Because Plaintiffs are not similarly situated to the persons exempted under the Act, and because the exemptions have rational bases, Defendants are entitled to summary judgment in their favor on Plaintiffs' equal protection claims, Counts III and IV.

IV. THE ACT IS NOT UNCONSTITUTIONALLY VAGUE

A. Plaintiffs Cannot Bring a Second Amendment Facial Challenge and, Even If They Could, Any Facial Challenge Should Be Dismissed Because the Act Does Not Substantially Impact Plaintiffs' Second Amendment Rights

Plaintiffs' claims that the Act is facially vague lack merit as a matter of law because the Act does not implicate the First Amendment, and because it does not substantially burden their right to keep and bear arms for self and home defense.

Plaintiffs have brought a pre-enforcement facial vagueness challenge to the Act. "Facial 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).

The Second Circuit has thus categorically rejected the type of facial challenge that Plaintiffs advance here, which seeks to invalidate a statute that "does not implicate First Amendment rights . . . ." *United States v. Venturella*, 391 F.3d 120, 134 (2d Cir. 2004), quoting

United States v. Rybicki, 354 F.3d 124, 129 (2d Cir. 2003). In doing so, it has made clear that any vagueness challenges outside of the First Amendment context can be "assessed for vagueness only . . . in light of the specific facts of the case at hand . . . ." *Id.*; *see, e.g., United States v. Farhane*, 634 F.3d 127, 138-39 (2d Cir. 2011) *cert. denied*, 132 S. Ct. 833 (2011); *Arriaga v. Mukasey*, 521 F.3d 219, 223 (2d Cir. 2008); *Begg v. Gonzales*, 156 Fed. App'x 405, 406 (2d Cir. 2005). This case does not implicate any First Amendment rights, and that is fatal to Plaintiffs' facial vagueness claims.[25]

Even if Plaintiffs' claims fell within the First Amendment exception to the general prohibition against facial vagueness challenges, they still are barred. The Second Circuit has held in the First Amendment context that facial challenges "may go forward only if the challenged regulation 'reaches a substantial amount of constitutionally protected conduct.'" *Farrell*, 449 F.3d at 496, quoting *Kolender* v. *Lawson*, 461 U.S. 352, 358 n.8 (1983) (internal citation and quotation marks omitted). For the reasons discussed above, the Act does not burden any fundamental rights under the Second Amendment, substantially or otherwise. As a result, the Court must dismiss Plaintiffs' vagueness claims without further consideration.

B. Even If The Court Considers Plaintiffs' Claim, The Act is Not Facially Vague

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.

[25] Plaintiffs ignore these binding precedents, and contend that their facial vagueness claims can proceed under the plurality decision in *City of Chicago v. Morales*, 527 U.S. 41 (1999). (Pl. SJ Br. at 29). Even if that opinion can be read to support Plaintiffs' position, neither the Second Circuit nor a majority of the Supreme Court has endorsed it. *See Rybicki*, 354 F.3d at 131-32 and n.3. Given that it represents a significant change in vagueness jurisprudence, this Court should decline to follow Plaintiffs' approach absent clear appellate instruction.

Indeed, many statutory schemes impose similar burdens, particularly those that relate to public safety. Rather, to succeed on their claims 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. Further, 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. For these reasons, as set forth more fully below, Plaintiffs' claims lack merit.

The Second Circuit has stated that, "[t]o the extent the Supreme Court has suggested that a facial challenge may be maintained against a statute that does not reach conduct protected by the First Amendment, the identified test . . . requir[es] the [plaintiff] to show 'that the law is impermissibly vague in all of its applications.'"[26] *Farhane*, 634 F.3d at 138-39 (emphasis added), quoting *Village of Hoffman Estates v. Flipside Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982). This is an extremely stringent standard under which it is not enough for Plaintiffs to simply "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). Rather, Plaintiffs bear the heavy burden to "establish that no set of circumstances exists under which the Act would be valid."

[26] Relying on *Rybicki*, 354 F.3d at 131-32, Plaintiffs contend that this Court should analyze their facial vagueness claims under both the "vague in all applications" standard discussed in *Farhane*, and the "permeated with vagueness" test set forth by the plurality in *Morales*. (Pl. SJ. Br. at 30). The Court should not do so. Although the Second Circuit did analyze a facial challenge under both standards in *Rybicki*, it did so only because it was clear that the law satisfied both standards. The Court therefore did not have to decide whether a facial challenge can in fact be brought outside of the First Amendment context, or what standard would govern such a claim if it could. *Rybicki*, 354 F.3d at 13-32. The Second Circuit subsequently answered the latter question in *Farhane*, which it decided six years after *Rybicki*. *See Farhane*, 634 F.3d at 138-39. In any event, as in *Rybicki*, the challenged provisions withstand scrutiny under both standards.

United States v. Salerno, 481 U.S. 739, 745 (1987) (emphasis added); *see Decastro*, 682 F.3d at 163. In other words, "a facial 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). If there is any application or "core" conduct that an ordinary person would know is prohibited, the statutory term is not facially vague as a matter of law. *See Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276 (E.D.N.Y. 1995) *aff'd*, 97 F.3d 681 (2d Cir. 1996).

Under this standard, the constitution "does not demand meticulous specificity in the identification of proscribed conduct." *United States* v. *Coppola*, 671 F.3d 220, 235 (2d Cir. 2012) (emphasis added). 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."[27] *United States* v. *Coppola*, 671 F.3d 220, 235 (2d Cir. 2012) (internal quotation marks omitted).[28] In determining whether that is the case, courts must

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[27] The *amici* argue that a "heightened vagueness review" is required in this case because the Act "entrench[es] on constitutionally protected freedoms". (LELDF Br. at 15-16). But the Act does not implicate any constitutional freedoms, and the *amici* do not explain what that "heightened" review would be even if it did. *See, e.g., Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (cited by LELDF as applying "heightened" review, but in actuality applying the same standard discussed above). In any event, the *amici's* argument is foreclosed by binding Second Circuit precedent. *See Farhane*, 634 F.3d at 138-39; *see also, e.g., Kuck* v. *Danaher*, 822 F. Supp. 2d 109, 131-32 (D. Conn. 2011); *United States v. Weaver*, 2:09-CR-00222, 2012 WL 727488 (S.D.W. Va. Mar. 6, 2012).

[28] The *amici* also abstractly contend that an undefined "heightened vagueness standard should apply" because the Act imposes criminal penalties without a *scienter* requirement. (LELDF Br. at 17-18). That claim likewise lacks merit. First, although the existence of a

interpret words in the statutes according to their commonly understood meanings. *Sellan* v. *Kuhlman*, 261 F.3d 303, 311 (2d Cir. 2001).

Importantly, moreover, "[v]oid for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed." *United States v. Nat'l Dairy Products Corp.*, 372 U.S. 29, 32-33, 83 S. Ct. 594, 598, 9 L. Ed. 2d 561 (1963) (emphasis added). Thus, a statute is not unconstitutionally vague if its meaning is sufficiently clear, and there are reasonable means by which a person can determine factually whether his or her conduct falls within that meaning. Here, the Act is readily comprehensible and there are several means available to reasonable gun owners by which they may confirm their compliance with the terms of the Act.

1. The Assault Weapons Provisions Are Not Vague

The concerns that underlie the vagueness doctrine are lack of notice to the public and the risk of arbitrary enforcement.[29] *See Kolender* v. *Lawson*, 461 U.S. 352, 358 (1983). Connecticut's ban on certain enumerated assault weapons has existed since 1993, and its ban on assault weapons defined by the military features test has existed since 2001. Plaintiffs have not presented a shred of evidence to demonstrate that law enforcement officials have had any difficulty interpreting or applying the challenged provisions, and the evidence in the record

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scienter requirement may mitigate a law's potential vagueness, *see Rubin v. Garvin*, 544 F.3d 461, 467 (2d Cir. 2008), the *amici* cite no legal authority for the proposition that the lack of such a requirement somehow makes the law more vague, or requires a stricter standard of review than otherwise would apply. Second, under Connecticut law a *scienter* requirement may implicitly be incorporated into a criminal statute even if it is not expressly stated. *See State v. Swain*, 245 Conn. 442, 454 (1998). No appellate court has held that any of the criminal provisions implicated by the Act lack such a requirement, and neither Plaintiffs nor their *amici* have provided any analysis or briefing to support their position on this issue.

[29] Of these two concerns, the risk of arbitrary enforcement is the most important. *Kolender* v. *Lawson*, 461 U.S. 352, 358 (1983).

demonstrates that they have not. (*See* Cooke Aff. at ¶¶18, 20; Delehanty Aff. at ¶¶33, 38; Mello Aff. at ¶¶49-53; Rovella Aff. at ¶¶57-59). Nor have Plaintiffs presented any evidence that any individual has actually been prosecuted for conduct that they could not have reasonably known was prohibited. They cannot do so, as courts have held that many of the challenged provisions provide more than adequate guidelines and standards to withstand constitutional scrutiny.

Instead, Plaintiffs rely upon abstract, hypothetical, and in many instances exceedingly unlikely situations in which they claim that a person of ordinary intelligence might not know whether his or her conduct is prohibited. Plaintiffs' speculative concerns are unfounded, exist at the boundaries of the law's application, and do not account for the countless examples of "core" conduct that plainly is prohibited. They are therefore insufficient to support Plaintiffs' claims.

a. The Enumerated Weapons Provisions Are Not Vague[30]

i. A Person Can Easily Identify The Make And Model Of A Weapon That He Or She Owns Or Wishes To Acquire

Connecticut law defines an assault weapon, *inter alia*, by identifying specific makes and models of prohibited firearms in the lists set forth in General Statutes § 53-202a(1)(A)-(D) (the

[30] In their complaint, Plaintiffs allege that the law's reference to certain specific enumerated firearms are vague, and in particular its reference to any "Avtomat Kalashnikov AK-47 type" the "Colt AR-15" and "AR-15", and the Springfield Armory BM59. (Am. Compl., ¶¶175, 177; *see* Conn. Gen. Stat. § 53-202a(1)(A)(i), § 53-202a(1)(A)(i), (B)(xx)). Plaintiffs do not address any of these claims in their motion for summary judgment, which constitutes their brief on the merits of "their underlying cause of action." (*See* Doc. No. 42). As a result, this Court should summarily deny this aspect of Plaintiffs' claim because Plaintiffs effectively have abandoned it. *Cf. Scruggs v. Meriden Bd. of Educ.*, 3:03-cv-2224 (PCD), 2006 WL 2715388 at *3 (D. Conn. Sept. 22, 2006). Even if the Court chooses to consider these claims, however, they lack merit and judgment should be entered in favor of Defendants on each of those claims because Trooper Delehanty's affidavit makes clear these firearm names are comprehensible to a reasonable person. Delehanty Aff. at ¶¶21, 37-40; *see also Benjamin v. Bailey*, 234 Conn. 455, 485, 662 A.2d 1226, 1241 (1995); *State v. Kalman*, 93 Conn. App. 129, 136-37 (2006); Overstreet Decl. at ¶¶3, 5, Doc. 15-15.

"enumerated weapons provisions"). Plaintiffs appear to claim that these provisions are facially vague not because their meaning is unclear, but because in some rare instances an individual theoretically may not be able to determine whether a particular weapon is one of the listed enumerated firearms. (*See* Am. Compl., ¶174; Pl. PI Br. at 32; Pl. SJ. Br. at 35). That claim lacks merit.

First and foremost, 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. (Delehanty Aff. at ¶28; Cooke Aff. at ¶11). Consequently, even without knowing the actual name of the firearm one owns or possesses, a person need only physically examine the firearm and then read the statute to determine whether it is prohibited. *See Wilson v. Cnty. of Cook*, 968 N.E.2d 641, 651-53 (2012); *see also Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 252-53 (6th Cir. 1994) (holding that enumerated weapons provisions would not be vague if the statute included a "general definition" of assault weapon that focused on a "generic type or category of weapon").

Second, 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. For example, most individuals will be able to determine whether their firearm is prohibited by simply locating the make and model engravings that most firearms have. (Delehanty Aff. at ¶34; Cooke Aff. at ¶7; Mattson Aff. at ¶19). In the rare instance that such engravings do not exist, an individual generally can identify the weapon's make and model based

on its serial number—which all firearms manufactured for retail sale after 1968 must have, *see* 18 U.S.C.A. § 923(i)—or by simply calling the manufacturer, a federally licensed firearms dealer ("FFL"), or the Special Licensing and Firearms Unit at DESPP. (Delehanty Aff. at ¶35; Cooke Aff. at ¶8; Mattson Aff. at ¶¶20-21).[31] Indeed, Plaintiffs' affidavits submitted in support of their motions for preliminary injunction and summary judgment indicate that they are aware that information about firearms is available from local law enforcement, the SLFU and FFLs, and that they obtained clear and accurate information about firearms and magazines they wished to purchase from these sources. (Shew Aff. at ¶27, Doc. No. 15-6; McClain Aff. at ¶¶26-30, Doc. No. 15-7; Owens Aff. at ¶¶31-33, Doc. No. 15-10; Mueller Aff. at ¶¶16-19, Doc. No. 15-11).

ii. The "Copies And Duplicates" Language In The Enumerated Weapons Provisions Is Not Vague

Connecticut law defines an assault weapon, *inter alia*, as any "copies or duplicates . . . with the capability of any" of the enumerated weapons listed in General Statutes § 52-202a(B)-(D), if they "were in production prior to or on April 4, 2013."[32] Conn. Gen. Stat. §§ 52-202a(B), (C) and (D). Plaintiffs contend that the terms "copies and duplicates" and "capability" are vague, and that ordinary individuals have no way of knowing whether a particular firearm actually falls within those terms, or when it was produced. (Am. Compl., ¶¶178-88; Pl PI Br. at 27-32; Pl. SJ Br. at 32-34). Their contentions have no basis in fact or law, and have been squarely rejected by other courts. *See Wilson v. Cnty. of Cook*, 968 N.E.2d 641, 651-53 (2012).

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[31] In addition, starting on April 1, 2014, a person will not be able to lawfully purchase or sell any kind of firearm in this state without knowing its make and model. (*See* Mattson Aff. at ¶22).

[32] Plaintiffs half-heartedly assert that it is unclear whether the "in production" language applies to the enumerated weapons, copies or duplicates thereof, or both. (Am. Compl., ¶179). But a plain reading of the statute makes clear that it applies to both.

First, 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. (Delehanty Aff. at ¶28; Cooke Aff. at ¶11). It is therefore extremely likely that any "copy or duplicate" with the same "capability" as one of the enumerated firearms will have the same prohibited military features. (Cooke Aff. at ¶11). In the vast majority of circumstances, therefore, an individual need only physically examine his or her weapon and then read the statute to determine whether it is prohibited. By way of example, named Plaintiff Michelle DeLuca undertook just this type of visual inspection to determine that a weapon was banned based upon its features, without identifying the specific make or model of the firearm. (DeLuca Aff. ¶22, Doc. No. 15-14). Once again, that is fatal to Plaintiffs' facial vagueness challenge.[33] *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").

Indeed, as the Illinois Supreme Court noted in *Wilson*, this feature of Connecticut's ban readily distinguishes this case from *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 251 (6th Cir. 1994), upon which Plaintiffs exclusively rely for this aspect of their claim. In *Springfield Armory*, the court held that language defining an assault weapon as any of the enumerated firearms with "slight modifications or enhancements"[34] was unconstitutionally

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[33] To the extent that a firearm theoretically could be considered a copy or duplicate and not satisfy the features test, such a scenario will be exceedingly rare and thus plainly insufficient to support Plaintiffs' facial vagueness challenge. (*See* Cooke Aff. at ¶11).

[34] That language leaves far more room for interpretation than does the narrower and more

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; *see also Harrott v. Cnty. of Kings*, 25 Cal. 4th 1138, 1145 (2001), relied upon by LELDF (noting that "anomalous situations could arise" in enforcing ban on enumerated weapons precisely because legislature failed to "define assault weapons generically"). In fact, the court specifically stated in *Springfield Armory* that the city could avoid any vagueness concerns in its law by simply "provid[ing] a general definition of the type of weapon banned," and cited the federal ban's features test as an example. *Springfield Armory*, 29 F.3d 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, the terms "copy" and "duplicate" are not vague on their face because they are readily understandable based on their commonly understood meanings. *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".[35] The word "duplicate" means something that is "exactly the same as something else" or that is "made as an exact copy of something else".[36] Applying these commonly understood meanings, to be a copy or duplicate a firearm must essentially be a reproduction of, and basically identical to, at least one of the listed firearms. (Cooke Aff. at ¶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

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specific "copy and duplicate" with the same "capability" language at issue in this case.

35 http://www.merriam-webster.com/dictionary/copy (last visited September 16, 2013).

36 http://www.merriam-webster.com/dictionary/duplicate (last visited September 16, 2013).

of those weapons made by that manufacturer or another." *Wilson*, 968 N.E.2d at 652; Cooke Aff. at ¶10; *see* Exh. 42 at 5 (Brady Report "On Target"). The fact that "core" prohibited conduct can be identified is fatal to Plaintiffs' facial challenge.

Finally, Plaintiffs' claim that ordinary individuals have no way of knowing the "production date" of their firearm is simply wrong. As discussed above, every firearm manufactured or imported into the United States for retail sale after 1968 must be engraved with a serial number under federal law. 18 U.S.C.A. § 923(i). If the firearm does not have a serial number, then the individual knows that it was either produced before 1968 or is unlawful to possess under federal law. If the firearm does have a serial number, the individual generally can obtain the firearm's production date using the same processes described above for identifying firearm's make and model. (Cooke Aff. at ¶15; Delehanty Aff. at ¶36).

b. The "Part Or Combination Of Parts" Language Is Not Vague

Connecticut law defines an assault weapon as, *inter alia*, "[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 assembled[, or rapidly assembled for any assault weapon enumerated in General Statutes § 53-202a(1)(A),] if those parts are in the possession or under the control of the same person." Conn. Gen. Stat. § 53-202a(1)(A)(ii) and (F). Plaintiffs claim that this language is facially vague because an ordinary person does not know what a part was "designed or intended" for, or what the term "rapidly assembled" means.[37] (Am. Compl.,

[37] Notably, the "rapid" assembly requirement only applies to the enumerated firearms listed in General Statutes § 53-202a(1)(A)(ii). There is no such temporal requirement for those firearms covered by § 53-202a(1)(F).

¶¶189-195; Pl. PI Br. at 34-36; Pl. SJ Br. at 36-37). These claims likewise lack merit, and have been rejected by other courts.

For example, the Second Circuit expressly has held that a virtually identical challenge to the "designed or intended" language was "plainly without merit" because "there exist numerous conceivably valid applications" of the law. *Richmond Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681, 684, 685-86 (2d Cir. 1996), citing *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 501-02 (1982). That decision—which Plaintiffs do not even discuss in their summary judgment papers—is binding on this Court and dispositive of Plaintiffs' challenge to that language.

Similarly, the Third Circuit Court of Appeals affirmed a lower court decision holding that virtually identical language prohibiting a combination of parts that can be "readily assembled"[38] into an assault weapon is not vague. *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). The district court in that case specifically relied on *Richmond Boro*, and held that the language is not facially invalid because "nothing indicates the use of arbitrary, unfettered discretion in applying the statute," and because it "is not vague in all of its applications [and] would surely apply to an otherwise prohibited weapon which was merely altered by removing a single design feature." *Id.* at 681. With regard to the legislature's use of the term "readily" in particular, the court stated that the legislature "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. The precision in drafting which plaintiffs demand is neither constitutionally required nor perhaps even possible or

[38] The term "rapidly" used in General Statutes § 53-202a(1)(A) is no different than the term "readily" for purposes of the vagueness analysis.

advisable given the confines of language in which we all operate." *Id.* Plaintiffs again fail to even cite *Coal. of New Jersey Sportsmen* in their papers filed with this court.

Instead, Plaintiffs rely on *Peoples Rights Org., Inc. v. City of Columbus*, 152 F.3d 522, 538 (6th Cir. 1998) ("*PRO*"), an out-of-circuit decision in which the court improperly applied a heightened level of review, to argue that the phrase "may be readily assembled" is facially vague because there are ambiguous applications of this language Plaintiffs can conceive of. This approach turns the well-established standard on its head. *Richmond Boro*, 97 F.3d at 684, 685-86, *accord Coal. of New Jersey Sportsmen*, 44 F. Supp. 2d at 681. As discussed above, the Second Circuit and numerous district courts have made clear that the applicable standard for assessing facial vagueness claims is actually the reverse of what Plaintiffs' propose; a law survives a facial vagueness challenge if there are any conceivable valid applications of it. *See, e.g.*, *Farhane*, 634 F.3d at 138-39; *Kuck* v. *Danaher*, 822 F. Supp. 2d 109, 131-32 (D. Conn. 2011); *United States v. Weaver*, 2:09-CR-00222, 2012 WL 727488 (S.D.W. Va. Mar. 6, 2012); *Small v. Bud-K Worldwide, Inc.*, 895 F. Supp. 2d 438, 443, 444-45 (E.D.N.Y. 2012), quoting *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988); *Coal. of New Jersey Sportsmen*, 44 F. Supp. 2d at 681. As a result, this Court should disregard *PRO* and follow *Coal. of New Jersey Sportsmen*, which is on all fours with this case and is consistent with Second Circuit precedents.

Even if this Court were inclined to consider *PRO*—which it should not—that decision was wrongly decided because there are countless examples of core conduct that are plainly covered by the statutory language. As a practical matter, for example, parts that are "designed or intended" to convert an otherwise lawful firearm into an assault weapon are the banned military features, several of which are firearm accessories that may be added to the firearm after purchase

to give it a customized look or use. (Cooke Aff. at ¶19; *see* Pl. PI Exh. B). A person clearly would fall within the challenged language if he or she possesses a telescoping stock, a flash suppressor, a grenade launcher or any other prohibited feature that can be added to an otherwise legal semiautomatic firearm with a detachable magazine that is in the same person's possession. (*Id.*).

The "rapidly assembled" language in Conn. Gen. Stat. §§ 53-202a(1)(A)(ii) similarly refers to readily comprehensible "core" conduct that is prohibited. The term "rapidly" is commonly understood to mean "happening in a short amount of time" or "happening quickly".[39] The proponent of the bill that added this language to the statute expressly stated that the term "means exactly what it says, which is that the assemblage would have to be able to be accomplished within a matter of seconds or minutes, not hours or days". *See* 6/8/1993 Senate Debate Transcript, Remarks of Senator Jepsen (Exh. 6). Taking that common sense definition, an individual clearly would be in possession of an assault weapon if he or she possessed the completed upper and lower receivers of an assault weapon, as an ordinary gun owner could easily assemble those two basic parts into a completed assault weapon without any special tools or technical knowledge in a matter of minutes.[40] (Cooke Aff. at ¶20). Similarly, an individual would be in possession of an assault weapon if they were to perform a basic field strip and break

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[39] http://www.merriam-webster.com/dictionary/rapidly (last visited September 16, 2013).

[40] Contrary to Plaintiffs' assertions, a person does not need "to be intimately familiar with the 183 named 'assault weapons' and with a limitless number of 'assault weapons' as generically defined" in order to understand and apply this language. (Am. Compl., ¶192). Because all but one of the enumerated weapons also qualify as an assault weapon under the generic features test, a person need only know that the parts can be assembled into a completed firearm that satisfies that features test.

the weapon down for cleaning. Every single gun owner can and should be able to perform that simple maintenance task and reassemble the weapon in only a few minutes, without any special knowledge or tools. (Delehanty Aff. at ¶41). The 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. These examples of "core" prohibited conduct are more than sufficient to withstand this facial challenge.[41] *See Richmond Boro*, 97 F.3d at 684, 685-86; *Coal. of New Jersey Sportsmen*, 44 F. Supp. 2d at 680-81.

c. The Pistol Grip Language Is Not Vague

Plaintiffs absurdly contend that the definition of "pistol grip" in General Statutes § 53-202a(1)(E)(i)(II) and (vi)(II) is facially vague because every long gun meets the definition when it is held vertically to shoot at waterfowl flying overhead. (Pl. SJ Br. at 32). That claim is patently frivolous and demonstrates how strained Plaintiffs' vagueness contentions truly are. Courts must interpret statutes both to avoid absurd results and constitutional infirmity. *See Phillips v. Saratoga Harness Racing, Inc.*, 240 F.3d 174, 179 (2d Cir. 2001); *Lo Duca v. United States*, 93 F.3d 1100, 1110 (2d Cir. 1996). The 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. If law enforcement ever were to arrest and prosecute an individual for possessing an otherwise lawful semiautomatic rifle or shotgun simply because he or she holds it in a vertical position to shoot at ducks—a

[41] That Plaintiffs can conceive of ambiguities in the application of the statute to assault weapons that have been completely disassembled down to the last nut, bolt and screw is irrelevant. (*See* Am. Compl., ¶193; Pl. SJ. Br. at 36-37). Ordinary gun owners with no technical expertise or tools clearly would fall within the examples of core prohibited conduct discussed above, and that is enough to withstand this facial challenge.

patently absurd proposition for which Plaintiffs have presented no evidence—then that person will be free to bring an as-applied vagueness challenge in the context of their criminal prosecution. Plaintiffs cannot, however, challenge the law as facially vague based on their ridiculous hypothetical scenario.

2. The Large Capacity Magazine Provisions Are Not Vague

The language in Connecticut's definition of large capacity magazine has existed in several other jurisdictions since at least 1994. *See* 18 U.S.C. § 921(a)(31)(A) (repealed); *id.* 18 U.S.C. § 922(w)(1) (repealed); 2000 N.Y. Laws, ch. 189, § 10. Plaintiffs again have not presented any evidence to demonstrate that law enforcement or members of the public in those jurisdictions have had any difficulty whatsoever interpreting or applying it, or that it has ever been arbitrarily enforced in an actual case. Instead, Plaintiffs again hypothesize unlikely scenarios that exist, if at all, at the boundaries of the statute's application. As with their challenge to the assault weapon definition, these imagined scenarios are not only factually and legally unfounded, but they improperly ignore the core conduct that the statute clearly prohibits.

a. The "Can Be Readily Restored Or Converted To Accept" And "Permanently Altered" Phrases Are 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. P.A. 13-220, § 1(a)(1). It also provides that a magazine is not an LCM if it has been "permanently altered" so that it cannot accept more than ten rounds. *Id.*, § 23(a)(1)(A). This language is clear and unambiguous, and provides more than sufficient guidelines to the public and law enforcement alike.

The word "readily" commonly is understood to mean "quickly and easily."[42] The word "restore" commonly is understood to mean "to return (something) to an earlier or original condition by repairing it, cleaning it, etc."[43] And the word "converted" commonly is understood to mean "to change from one form or function to another."[44] 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 ten rounds or less, and which an ordinary person can quickly and easily change back or convert into an LCM. (Cooke Aff. at ¶¶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 takes mere seconds. (*Id.* at ¶23).

By contrast, the word "permanently" commonly is understood to mean "not temporary or changing."[45] Using that common sense definition, a magazine will be "permanently altered" and thus unable to be readily restored or converted to accept more than ten rounds if it requires the services of a gunsmith to perform such a restoration or conversion. (*Id.* at ¶22, 24). An example of a permanently altered magazine would be if the gun owner had a gunsmith permanently weld a plug into the base of the magazine that prevents the spring from being compressed to accept

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42 http://www.merriam-webster.com/dictionary/readily (last visited September 16, 2013).

43 http://www.merriam-webster.com/dictionary/restore (last visited September 16, 2013).

44 http://www.merriam-webster.com/dictionary/convert (last visited September 16, 2013).

45 http://www.merriam-webster.com/dictionary/permanently (last visited September 16, 2013).

more than ten rounds of ammunition. (*Id.* at ¶24). These illustrative examples, which are by no means exhaustive, are again more than sufficient to withstand Plaintiffs' facial challenge.

Indeed, in rejecting a similar challenge to the term "readily" in New Jersey's assault weapons ban, the New Jersey District Court expressly stated in *Coal. of New Jersey Sportsmen*, 44 F. Supp. 2d at 681:

> That plaintiffs can posit ambiguous applications is again, not the issue. Surely 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. The precision in drafting which plaintiffs demand is neither constitutionally required nor perhaps even possible or advisable given the confines of language in which we all operate.

Consistent with that conclusion, courts in several jurisdictions repeatedly have rejected vagueness challenges to similar language in other gun-related contexts. *See, e.g., United States* v. *Carter*, 465 F.3d 658, 663-64 (6th Cir. 2006) (finding no vagueness in federal definition of machine gun, which includes "any weapon which . . . can be readily restored to shoot, automatically more than one shot"); *United States* v. *Drasen*, 845 F.2d 731, 737-38 (7th Cir. 1998) (rejecting a vagueness challenge to the phrase "readily restored" in 26 U.S.C. § 5845(c)); *United States* v. *M-K Specialties Model M-14 Machinegun Serial No. 1447797*, 424 F. Supp. 2d 862, 872 (N.D. W. Va. 2006) (rejecting vagueness challenge to the term "can be readily restored"); *United States* v. *Catanzaro*, 368 F. Supp. 450, 452-54 (D. Conn. 1973) (rejecting a vagueness challenge to the phrase "may be readily restored to fire" in § 5845(d)).[46] This Court should likewise reject Plaintiffs' analogous challenge in this case.

[46] Plaintiffs' continued reliance on *PRO* for this aspect of their claim is totally unpersuasive.

b. The Phrase "More Than Ten Rounds Of Ammunition" Is Not Vague With Regard To Tubular Magazines

Connecticut law defines a large capacity magazine as any magazine that can accept or be readily restored or converted to accept "more than ten rounds of ammunition." P.A. 13-220, § 1(a)(1). Plaintiffs claim that the quoted language is vague with respect to tubular magazines because such magazines can accept different numbers of rounds of the same caliber depending on the length of round used. (Am. Compl., ¶¶171-73; Pl. PI Br. at 36-37; Pl. SJ Br. at 38). Although it is true that the maximum capacity of tubular magazines can vary, Plaintiffs' claim nevertheless lacks merit.

As an initial matter, Plaintiffs do not dispute that the 10-round limit is clear and unambiguous insofar as it applies to non-tubular magazines. The Court should deny this aspect of their facial vagueness challenge on that basis alone. Even if the Court chooses to independently consider the more narrow claim related to the ten round limit as applied to tubular magazines, which are, for the most part, a subcategory of permanently fixed magazines, it should reject that claim too.

Tubular magazines are only typically designed for lever action rifles, rimfire rifles and shotguns. (Delehanty Aff. at ¶42). They generally are fixed magazines that run parallel along the barrel of the firearm, and accept rounds end-to-end instead of one on top of the other. (*Id.*; *see e.g.* Exh. 12). Tubular magazines are manufactured to accept standard lengths and caliber of

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In *PRO*, the court erroneously held that similar language defining an assault weapon as "any firearm which may be restored to an operable assault weapon" was unconstitutionally vague because the term "may be restored" gave no indication as to who must be able to do the restoration (an average gun owner or a master gunsmith). *PRO*, 152 F.3d at 537. Not only has that conclusion been explicitly or implicitly rejected by the precedents cited above, but it is plainly incorrect given the Second Circuit's established framework for assessing facial vagueness claims and the illustrative examples of core prohibited conduct discussed above.

round. (Delehanty Aff. at ¶46). The type and number of each standard round that the magazine is manufactured to accept generally will be included in the firearm's specifications, which should be provided with the firearm when it is purchased, and typically can also be located online or from the manufacturer. (*Id.*; *see e.g.* Exh. 13). An 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. Alternatively, he or she can simply load the magazine with as many of each type of standard round as possible. If the magazine can accept more than ten of any standard round, it clearly is prohibited. That core prohibited conduct plainly is sufficient to defeat Plaintiffs' facial challenge. *See Coal. of New Jersey Sportsmen*, 44 F. Supp. 2d at 680 and n.21 ("the possibility of shorter, non-standard shells, which may or may not be in existence for many of the weapons cited by the plaintiffs, is irrelevant when the statute's prohibition clearly encompasses the standard shells intended for the magazine. In other words, the definition is not vague in all of its applications.").

Even if that were not enough, it is exceedingly unlikely that any tubular magazine that is covered by the ban will be able to accept 10 or less standard rounds but more than 10 non-standard rounds. The definition of large capacity magazine expressly exempts .22 caliber tube ammunition feeding devices and tubular magazines that are contained in a lever-action firearm. P.A. 13-3, § 23(a)(1)(B), (C). Almost all rifles with tubular magazines fall within those exemptions. (Delehanty Aff. at ¶44). Although many shotguns have tubular magazines, as a practical matter, the length of shotgun shells makes most shotguns unable to accept more than ten shells of any length unless the owner makes a special effort to alter and extend the tubular

magazine. (Delehanty Aff. at ¶45). As a result, there are very few non-exempt tubular magazines that can accept more than 10 of any round.

For those few tubular magazines that conceivably could be impacted by the ambiguity that Plaintiffs posit, the difference between the number of standard rounds and smaller non-standard rounds that a 10 round tubular magazine can accept in most instances will be no more than 1 or 2. (Delehanty Aff. at ¶43). As a result, a tubular magazine covered by the Act generally will be able to accept ten or less standard rounds but more than ten non-standard rounds only when its standard round capacity is 9 or 10. There are very few, if any, tubular magazines that could fall within such a hypothetical scenario.[47] Because the ten round limit will be clear and unambiguous in virtually all of its applications, therefore, it is not facially vague.

Because none of the challenged statutory provisions facially challenged by Plaintiffs here lacks a "core" proscription or is vague in all, or even a substantial number, of its applications, Plaintiffs claims should be dismissed and summary judgment entered in Defendants favor on Count V.

V. CONCLUSION

For all of the foregoing reasons, this Court should deny Plaintiffs' pending motion for summary judgment (Doc. No. 60), deny as moot Plaintiffs' pending motion for preliminary injunction (Doc. No. 14), grant summary judgment in favor of Defendants on each of Plaintiffs' claims and enter judgment for the Defendants in this case.

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[47] Plaintiffs' reliance on *PRO* for this aspect of their claim is again unpersuasive. In *PRO*, the court found similar language to be facially invalid based solely on the fact that these exceedingly rare and hypothetical scenarios may occur. *PRO*, 152 F.3d at 536. As discussed above, that is not the standard for assessing facial vagueness claims in this Circuit. *Farhane*, 634 F.3d at 138-39; *see Coal. of New Jersey Sportsmen*, 44 F. Supp. 2d at 680 and n.21.

Respectfully Submitted,

DEFENDANTS
DANNEL P. MALLOY, et al.

GEORGE JEPSEN
ATTORNEY GENERAL

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CERTIFICATION

I hereby certify that on October 11, 2013, a copy of the foregoing Defendants' Memorandum in Support of Their Motion for Summary Judgment and In Opposition to Plaintiffs' Motion for Summary Judgment was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Maura Murphy Osborne
Maura Murphy Osborne

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al.	:	No. 3:13-CV-00739-AVC
Plaintiffs	:	
	:	
v.	:	
	:	
DANNEL P. MALLOY, et al.	:	
Defendants	:	October 11, 2013

DEFENDANTS' LOCAL RULE 56(a)(1) STATEMENT

Pursuant to D.Conn.L.Civ.R. 56(a)(1), Defendants Dannel P. Malloy, Kevin T. Kane, Reuben F. Bradford, David I. Cohen, John C. Smriga, Stephen J. Sedensky III, Maureen Platt, Kevin D. Lawlor, Michael Dearington, Peter A. McShane, Michael L. Regan, Patricia M. Froehlich, Gail P. Hardy, Brian Preleski, David Shepack, and Matthew C. Gedansky (collectively, "Defendants"), respectfully submit their Statement of Undisputed Material Facts.

Relevant Provisions of the Act

1. In 1993, the Connecticut General Assembly adopted Connecticut's first assault weapon ban, in which it prohibited: (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; and (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." *See generally* P.A. 93-306, §1(a) (Exh. 3).

2. The 1993 ban did not have a "features test" and only prohibited firearms specifically enumerated in the statute. (Sweeney Aff. at ¶¶12-13). In 2001, the General Assembly added a "features" test that closely paralleled the assault weapon definition used in the 1994 federal assault weapon ban. *See* P.A. 01-130, § 1 (Exh. 4).

3. Like the federal ban and Connecticut's 1993 ban, the 2001 features test did not prohibit all semiautomatic firearms, or even a significant percentage of them. Rather, it prohibited a subset of semiautomatic rifles and pistols that had detachable magazines and two or more military-style features. P.A. 01-130, § 1(a)(3) and (4); *see* Koper Aff. at ¶¶11, 41, 72; Exh. 21 at 17-20.

4. On April 4, 2013, the General Assembly adopted and the Governor signed Public Act 13-3, An Act Concerning Gun Violence Prevention And Children's Safety ("the Act"). The Act broadened the existing definition of assault weapon in part by augmenting the list of enumerated semiautomatic centerfire rifles, semiautomatic pistols, and semiautomatic shotguns. *See* Exhs. 1 and 2; Conn. Gen. Stat. § 53-202a(1)(B)-(D).

5. As a result of the Act, there are now 183 assault weapons that are prohibited by make and model in Connecticut. Conn. Gen. Stat. § 53-202a(A)-(D).

6. The Act also prohibits any semiautomatic centerfire rifle or semiautomatic pistol that has a fixed magazine with the ability to accept more than ten rounds, *i.e.* an LCM. *Id.*, § 53-202a(1)(E)(ii), (v).

7. The Act strengthened the "features" test adopted in 2001 by making it a one-feature test. The Act 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 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. *Id.*, § 53-202a(1)(E)(i), (iv).

8. Rimfire semiautomatic rifles continue to be regulated under the 2001 Act's two-feature test. *See* P.A. 13-220, § 3.

9. The Act contains a "grandfathering" provision that permits a gun owner to retain possession of an assault weapon banned under the Act if he or she lawfully possessed it prior to April 4, 2013, applies 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).

10. The Act prohibits the possession, sale, or transfer of large capacity magazines ("LCMs"). P.A. 13-3, § 23.

11. A large capacity magazine is defined under the Act 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, 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." P.A. 13-3, § 23; P.A. 13-220, § 1(a)(1).

12. The Act contains a "grandfathering" provision that permits a gun owner to retain possession of LCMs banned under the Act if he or she lawfully possessed them prior to April 5, 2013, declares possession of the LCM to DESPP by January 1, 2014, and possesses them in compliance with other statutory restrictions. *Id.*, § 23(e)(3), § 24(a), (f).

Military Origins of Assault Weapons, Including the AR-15 Assault Rifle

13. A semiautomatic weapon fires one round for each squeeze of the trigger. After each shot, the firearm automatically loads the next round in the chamber and arms the firing mechanism for the next shot, thereby permitting a faster rate of fire as compared to manually operated guns. (Delehanty Aff. at ¶18).

14. A majority of the 183 enumerated weapons banned in Connecticut are based on, and are simply semiautomatic variations of, the original fully automatic AR-15/M-16 and AK-47 military designs. (Delehanty Aff. at ¶¶22-23, 26-27).

15. 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. (Delehanty Aff. at ¶¶24, 26).

16. The banned assault weapons are based on military designs and have the same features as their military counterparts. Those features are designed for combat purposes and for enhancing a soldier's ability to kill the enemy. (Delehanty Aff. at ¶¶20, 22-24, 26-28; Exh. 21 at 18-20 (H.R. Rep. 103-489); *see* Sweeney Aff. at ¶¶14-15, 19-20; Rovella Aff. at ¶¶17-18, 34-38; Mello Aff. at ¶¶12, 18)).

17. The AR-15 assault rifle banned under the Act is a semiautomatic version of the M-16, which the United States military adopted as the primary combat weapon for American soldiers during the Vietnam War and continues to use today. (Delehanty Aff. at ¶¶20-21).

18. 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. (Delehanty Aff. at ¶¶20-21; *see* Pl. SJ Br. at 11; Sweeney Aff. at ¶14).

19. 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) (Exh. 53 (Siebel Testimony)

20. The United States Army considers the M-16 to be more effective as an instrument of war when it is fired on semiautomatic than when it is fired on full automatic, and trains its soldiers to fire their M-16s on semiautomatic whenever it is feasible to do so. (Exh. 54 at 7.8—7.13, 7.47 (Army Training Manual)).

21. Many gun manufacturers emphasize the military origins and uses of many assault weapons in their marketing campaigns. (Exh. 42 at 4 (Brady Report "On Target") (noting Bushmaster, which manufactures the Bushmaster XM-15, marketing of the XM-15 by stating it "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."); *see also generally* Exh. 52 (VPC "Militarization") (discussing militarization of the civilian gun market since the 1980s)).

22. With the exception of the Remington 7615, all of the specifically enumerated weapons have the requisite military features that qualify them as an assault weapon under the applicable features test. (Delehanty Aff. at ¶28; Cooke Aff. at ¶11).

23. 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. (Sweeney Aff. at ¶18; Rovella Aff. at ¶35).

24. A folding or telescoping stock allows a shooter to make a long gun much more compact, and therefore more concealable. (Sweeney Aff. at ¶18; Rovella Aff. at ¶34).

25. 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. (Sweeney Aff. at ¶18; Rovella Aff. at ¶36).

26. A flash suppressor suppresses the flash caused by the firing of the weapon, and thereby helps a shooter avoid detection in a dark environment. (Sweeney Aff. at ¶18; Rovella Aff. at ¶37).

27. A grenade or flare launcher allows a shooter to launch grenades or flares. (Sweeney Aff. at ¶14, 18; Rovella Aff. at ¶38).

History of Prohibitions of Military-Style Assault Weapons and LCMs

28. Civilian ownership of military-style assault weapons has been banned or strictly regulated by many jurisdictions, including the federal government, since the 1980s. (Exh. 17 at 1, 6-9, 12 (1989 ATF Study); Exh. 22 at 20-27 (Comparative Evaluation)).

29. The Gun Control Act of 1968 generally bars the importation of firearms that are not "particularly suitable for or readily adaptable to sporting purposes." 18 U.S.C. § 925(d)(3); *id.* 922(l) (Exh. 9); Koper Aff. at ¶46 n.19.

30. 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 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" and "military applications," and "for killing or disabling the enemy." (Exh. 17 at 1, 6-8, 12; *see* Exh. 19 at 2-3, 9-11, 36-37 (1998 ATF study)).

31. In 1994, Congress enacted a ban on assault weapons, which were defined as any semiautomatic weapon having two or more of a list of military features. 18 U.S.C. 921(a)(30)(B)-(D) (repealed); *id.* § 922(v)(1) (repealed) (Exh. 9); *see* Exh. 21 at 17-20 (H.R. Rep. 103-489 (1994)).

32. The federal ban enacted in 1994 also prohibited the possession of LCMs. 18 U.S.C. § 921(a)(31)(A) (repealed); *id.* 18 U.S.C. § 922(w)(1) (repealed).

33. In 1998, ATF 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 it determined that LCMs "are attractive to certain criminals" and rifles that have them "cannot fairly be characterized as sporting rifles." (Exh. 19 at 36-38; Koper Aff. at ¶46 n.19).

34. ATF has determined 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." (Exh. 18 at 19 (ATF 1994 Report)).

35. While the federal ban expired by its own terms in 2004, 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 visited September 10, 2013).

36. In addition to the federal ban, many other jurisdictions have enacted bans on assault weapons and LCMs. (Exh. 22 at 20-27).

Many Alternative Firearms Remain Legal in Connecticut

37. While the Act bans 183 enumerated firearms and others that have the prohibited features, it does not prohibit more than one thousand handguns, rifles and shotguns, including many semiautomatic pistols or rifles with detachable magazines that have no banned features. (Mello Aff. at ¶37; Delehanty Aff. at ¶¶29-32).

38. There are more than one thousand different firearms that remain available to Connecticut citizens for lawful purposes such as sport shooting, hunting, and self defense. (Delehanty Aff. at ¶¶29-32; *see* Sweeney Aff. at ¶21).

39. A recent issue of "Gun Digest" lists numerous rifles that can lawfully be purchased in Connecticut after the Act: 7 semi-automatics; 62 lever actions; 4 pump actions; 115 bolt actions; and 73 single shot. (*See* Delehanty Aff. at ¶31).

40. Gun Digest also lists over four hundred lawful handguns: over 300 semi-automatic pistols; 86 revolvers; 59 single action revolvers; and 21 derringers and single shot handguns. It similarly lists numerous lawful shotguns: 58 semi-automatics; 33 pump actions; 59 over unders; 30 side by sides; 31 bolt and single shots; 1 lever; and 14 double rifles and drillings. (*Id.*).

41. Gun Digest also lists 25 lawful rimfire semi-automatic rifles; 12 lever and pump or slide rifles; and 37 bolt action and single shot rifles. (*Id.*).

42. The firearms in Paragraphs 39-41 above are not an exhaustive list of firearms that remain lawful in Connecticut. (*Id.*).

43. Plaintiffs' expert points out that there remain in Connecticut many legal firearms that "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." (Kleck Aff. at 6-7).

Assault Weapons Are A Small Percentage of the Civilian Gun Market

44. The number of firearms and gun ownership rates are somewhat imprecise, but the accepted range of civilian firearms in the United States is somewhere between 270-310 million. http://www.pewresearch.org/fact-tank/2013/06/04/a-minority-of-americans-own-guns-but-just-how-many-is-unclear/ (last visited October 1, 2013).

45. 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. (Koper Aff. at ¶¶17, 47).

46. The NRA estimates that assault weapons more broadly account for roughly 2% of the current gun stock. (*See* Exh. 61 at 24-25 (Tribe Testimony)).

47. Plaintiffs estimate that there are approximately 3.97 million AR-15 type rifles presently in the United States. (*See* Pl. Exh. A, Overstreet Decl. at ¶¶5, 11). That represents just over 1% of the current gun stock.

48. Sixty percent of assault rifle owners own several of them, and nearly 44% of the owners are current or former military/law enforcement. (*See* Pl. Prel. Inj. Exhibit B).

49. Since a majority of individual AR-15 rifle owners possess several of them, the number of actual individual owners is far less than the number of rifles produced. (*See* Pl. Prel. Inj. Exhibit B).

50. Household gun ownership rates have declined over the past four decades. (*See* Exhs. 64-65).

51. The national household gun ownership rate has fallen from an average of 50 percent in the 1970s to 49 percent in the 1980s, 43 percent in the 1990s, 35 percent in the 2000s, and 34 percent in 2012. (*See* Exh. 64, p. 1).

52. The household gun ownership rate in Connecticut is below 50% of the national average, at 16% of households in Connecticut reporting a person in the household as a gun owner. (*See* Exhs 38, p. 3).

Gun Death and Injury and Public Safety

53. In 2010, there were 11,070 gun homicides in the United States, 73,505 non-fatal firearm injuries, (Exh. 37), and another 53,738 non-fatal assault-related shootings. (*See* Exh. 30, p.167).

54. A 2013 study found a correlation between rates of gun ownership and gun death, particularly firearms related homicide. (Exh. 67).

55. Reducing gun homicides or shootings by just 1% would amount to preventing about 650 shootings nationwide annually. (*See* Koper Aff. ¶61).

56. The lifetime medical costs of assault-related gunshot injuries (fatal and non-fatal) were estimated to be about $18,600 per injury in 1994. Adjusting for inflation, this amounts to $28,894 in today's dollars. (*Id.* at ¶62).

57. These figures do not measure the full societal costs of gun violence—including medical, criminal justice, and other government and private costs (both tangible and intangible).

When those costs are added in, the true societal cost of gunshot injuries (fatal and non-fatal) have been estimated to be as high as $1 million per shooting. (*Id.* at ¶63).

58. Therefore, even a 1% decrease in shootings could result in roughly $650 million in cost savings to society from shootings prevented each year. (*Id.*).

The Disproportionate Use of Assault Weapons and LCMs in Crime

59. Assault weapons and LCMs 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 market presence. (Koper Aff. at ¶¶7, 14, 17-18, 24, 30, 47, 87-88).

60. 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. (Koper Aff. at ¶¶17, 47).

61. That is at least twice as frequently—and perhaps more than eight times as frequently—as one would expect based on the presence of assault weapons in the civilian gun market. (*See* Koper Aff. at ¶¶17, 47).

62. The disproportionate numbers are higher 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, and up to 42% of mass public shootings. (Koper Aff. at ¶¶19, 22; *see also* Exh. 48 (Mayors Study) (discussing disproportionate use of assault weapons and LCMs in all mass shootings, both public and non-public)).

63. Some studies place the percentage of assault weapons used in killings of law enforcement at as high as 20%. (Mello Aff. at ¶25; Rovella Aff. at ¶23; Exh. 40 at 5 (VPC "Officer Down")).

64. Although large capacity magazines represented only about 21% of the civilian magazine stock in 1994, (Exh. 29 at 18 (Koper 2004)), they were used in between 31% and 41% of gun murders of police and more than 50% of all mass public shootings. (Koper Aff. at ¶¶30-31; *see also generally* Exh. 40 (VPC "Officer Down"); Exhs. 44-46 (Mother Jones Studies).

65. Individuals with criminal histories—and especially those with long and violent criminal histories—purchase assault weapons more frequently than law-abiding citizens. (Koper Aff. at ¶25).

66. Assault pistols are at higher risk of being used in crime than other types of handguns. (*Id.* at ¶¶7, 17).

67. When used in crime, assault weapons and LCMs result in more shots fired, more victims wounded, and more wounds per victim than do gun crimes committed with conventional firearms. (*Id.* at ¶¶8, 13, 23, 33, 35-38, 75, 81, 88; *see* Exh. 7 at 6-7).

68. A person is 63% more likely to die if he or she receives two or more gunshot wounds than if he or she receives just one. (*Id.* at ¶38).

69. Any reduction in the number and lethality of gun crimes is meaningful in terms of lives saved, families preserved, and public resources that will be freed up to be used in better ways. (Rovella Aff. at ¶53; Mello Aff. at ¶49).

70. Assault weapons have been used by gangs of criminals to intimidate and terrorize entire neighborhoods in cities in Connecticut. (Sweeney Aff. at ¶¶7, 9-10).

71. The federal government has determined that LCMs are a crime problem. (Exh. 20 at 10-11; Exh. 19 at 3, 38).

72. LCMs facilitate the rapid firing of large numbers of rounds without having to reload. (Sweeney Aff. at ¶¶14-15, 20; Rovella Aff. at ¶¶17-18, 27-29; Mello Aff. at ¶¶18, 29-32; *see* Exh. 21 at 19; Exh. 7 at 6-7).

73. LCMs allow a shooter to inflict more casualties in a shorter period of time, and allow a shooter to lay down suppressing fire and more effectively hold-off an initial response by law enforcement or bystanders. (Mello Aff. at ¶18; Sweeney Aff. at ¶¶15, 20; Rovella Aff. at ¶17; see Exh. 7 at 6-7).

74. Depriving a criminal of an LCM and thereby forcing him or her 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. (Mello Aff. at ¶¶30-32; Sweeney Aff. at ¶¶14-15, 20; Rovella Aff. at ¶¶29-30; Exh. 49; Exh. 59 at ¶¶18-19; *see also* Rossi Decl. at 6-10 (Doc. No. 15-5) (discussing impacts of delays in firing caused by magazine changes)).

75. Sometimes seconds is all a police officer needs to respond and stop an attack. (Mello Aff. at ¶30). The short period of time of a magazine change can be of value to victims too, because those fleeting seconds can provide an opportunity for him or her to either flee or attempt to thwart the ongoing gun attack. (*Id.* at ¶31).

The Use of Assault Weapons and LCMs in Mass Public Shootings and Mass Killings

76. Assault weapons and LCM's are used disproportionately in two destructive aspects of crime and violence: mass shootings and murders of police. (*See* Koper Affidavit, ¶20).

77. 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 October 1, 2013).

78. Connecticut has experienced the horrific effects of assault weapons and LCMs in mass killings on several occasions. (Exhs. 47 and 50). The Act was passed in direct response to the latest of these tragedies, in which a shooter murdered 26 individuals—including 20 school children—at the Sandy Hook Elementary School in Newtown, Connecticut. (Exh. 5).

79. Recent experience indicates that mass shootings are becoming more frequent and are intensifying in their level of violence and gunshot victimizations. (Exhs. 44-46, 68). One group examined all mass shootings (public and non-public) that occurred between 2009 and 2013. In that short four year period there have been 52 mass shootings in which there were 460 victims, and 323 people killed. (Exh. 48 at 1). That equates to over 1 mass killing per month somewhere in the United States.

80. Since 1982, there have been at least 62 mass shootings across the country. Twenty-five of these mass shootings have occurred since 2006, and seven of them took place in 2012. (Exhibit 44 at 1).

81. More than half of all mass public shooters between 1982 and 2012 possessed high-capacity magazines, assault weapons, or both. (Exhibit 46 at 1).

82. In the 62 mass public shootings in the United States since 1982, more than three quarters of those guns used were obtained legally. (Exhibit 44 at 1).

83. Since 2007, there have been at least fifteen incidents in which offenders used assault-type weapons and other semiautomatics with LCMs to wound and/or kill eight or more people. (Koper Aff. at ¶16).

84. Since 1982, mass public killings in which assault weapons were used resulted in more gunshot victimizations than mass public killings that were committed with conventional firearms. An average of 11.04 people were shot in public mass shootings involving assault weapons, compared to 5.75 people shot in non-assault weapon cases. As a result, the total average number of people killed and injured in assault weapon cases was 19.27, compared to 14.06 in non-assault weapon cases. (Koper Aff. at ¶23).

85. 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. (*Id.* at ¶23).

86. The fatality rate in mass public shootings with a LCM was roughly 33% higher than in non-LCM cases, and the number of individuals shot but not killed was almost four times higher. (*Id.* at ¶33).

87. A study of all mass shootings, not just mass public shootings, between 2009 and 2013 found that shootings that involved assault weapon and/or LCMs resulted in 135% more people shot, and 57% more deaths, compared to incidents in which the perpetrator used more conventional weaponry. (Exh. 48 at 1).

The Use of Assault Weapons and LCMs in Killing of Law Enforcement

88. Although assault weapons make up a small percentage of overall gun market, they were used in up to 20% of law enforcement killings from 1998 through 2001. (Exh. 40 at 5; *see* Koper Aff. at ¶19). Similarly, although large capacity magazines represented only about 21% of the civilian magazine stock in 1994, (Exh. 29 at 18 (Koper 2004)), they were used in between 31% and 41% of gun murders of police. (Koper Aff. at ¶¶30-31; *see also generally* Exh. 40 (VPC "Officer Down").

89. 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. (Rovella Aff. at ¶18; Mello Aff. at ¶21; Exh. 69).

90. Law enforcement officers, and especially law enforcement executives such as chiefs of police, consider assault weapons and LCMs to be particularly dangerous because of their ability to shoot through police body armor, terrorize neighborhoods, and suppress or thwart a police response. (*See* Sweeney Aff. at ¶¶6, 14-15, 19-20; Rovella Aff. at ¶¶17-18, 34-40, 44; Mello Aff. at ¶¶10, 13-16, 26, 33-36, 44-47).

91. Law enforcement officers frequently must confront organized groups of criminals with the most dangerous weaponry, including assault weapons and, in some instances, body armor that can stop many types of ammunition. (Rovella Aff. at ¶¶13, 16, 18-21, 23; Mello Aff. at ¶21; Sweeney Aff. at ¶¶7-10).

92. Law enforcement officers need an advantage over the criminals they seek to apprehend, and should not be required or expected to neutralize dangerous criminals without superior, or at the very least comparable, firepower. (Mello Aff. at ¶¶26, 39-40; Rovella Aff. at ¶¶14, 24, 46-48).

93. Even when assault weapons and LCMs are not actively being used in crime, they are a drain on valuable police resources because departments must equip and train officers to deal with these firearms. (Mello Aff. at ¶15; Rovella Aff. at ¶44).

The Act's Likely Impacts On the Rate and Lethality of Gun Crime

94. While the Act may not substantially reduce the number of gun crimes committed, it will reduce the lethality of gun crime incidents when they do occur, particularly when the assault weapon ban is coupled with the LCM ban. (Koper Aff. at ¶¶8, 10, 13, 23, 32-38, 75, 81, 88). The assault weapon ban will also likely make a difference in some of the most traumatic and serious types of gun crime – killing of law enforcement officers and mass public shootings and mass killings. (*Id.* at ¶¶7, 14, 18-19, 22, 24, 30-31, 87-88).

95. Studies indicate that the federal ban on assault weapons substantially reduced the use of such weapons in gun crime. (*Id.* at ¶¶49-51, 53, 59).

96. Studies also indicate that the federal ban on LCMs substantially reduced the use of such magazines in gun crime, perhaps by as much as 31% to 44%. (Exhs. 31 and 32; *see* Koper Aff. at ¶¶56-57).

97. There is evidence that a ban on LCMs will result in a decline in the criminal use of LCMs over the long-run. (Koper Aff. at ¶¶56-59, 74; Exhs. 31 and 32).

98. The federal ban on LCMs expired in 2004, but had it been allowed to operate long enough to meaningfully reduce the number of LCMs in circulation, it could have reduced the number and lethality of gunshot victimizations by up to 5%. (Koper Aff. at ¶61).

99. Although 5% may be a small percentage of gunshot victimizations overall, applied on a national scale it correlates to 3,241 fewer people being wounded or killed as a result of gun crime every year. (*Id.* at ¶61).

100. Even if the effect of an LCM ban will not be that substantial a percentage, even a small reduction in the number and lethality of gunshot victimizations would yield significant societal benefits, especially for the victims and their friends and families. (*Id.* at ¶61).

101. The Act is more robust than the federal ban in several significant ways and therefore is likely to be more effective in reducing the availability of assault weapons and LCMs. (*Id.* at ¶¶72-73; *see* Sweeney Aff. at ¶¶16-17). In doing so, the Act will have a meaningful impact on public health and safety by: (1) reducing the number of crimes in which assault weapons and LCMs are used; and (2) thereby reducing the lethality and injuriousness of gun crime when it does occur. (Koper Aff. at ¶¶10, 60-61, 76-77). Such impacts will represent lives saved and injuries prevented, and will result in substantial benefits and cost savings to society more broadly. (*Id.*; Rovella Aff. at ¶53).

102. By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons and magazines, the Act could potentially prevent a substantial number of gunshot victimizations in Connecticut on an annual basis. It also could reduce the lethality and injuriousness of those gunshot victimizations that do occur by reducing the number of wounds per victim. (Koper Aff. at ¶¶8, 13, 23, 33, 35-38, 60-61, 75-77, 81, 88).

103. Apart from the inherent benefits of reducing the number and lethality of gunshot victimizations, 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. (Koper Aff. at ¶¶62-63).

Self Defense

104. Citizens who use a firearm defensively actually fire the weapon in less than 50% of the incidents, and when they do fire the weapon they usually only fire around 2 shots. (Exh. 57; Exh. 58 at ¶¶12-15). They almost never fire more than 7 rounds defensively. (*Id.*).

105. The vast majority of defensive-use-of-gun incidents do not involve the use of assault pistols, rifles or shotguns. (Exh. 55 at 19).

106. The typical homeowner has little training with assault weapons; in many instances just the National Rifle Association course that is taken to qualify for a gun permit in Connecticut. (Rovella Aff. at ¶40).

107. Assault weapons and LCMs are not necessary for reasonable home and self defense by citizens. (*See* Sweeney Aff. at ¶¶6, 20; Rovella Aff. at ¶¶39-40, 44; Mello Aff. at ¶10).

108. Conventional handguns, the vast majority of which remain legal in Connecticut, are adequate for lawful self defense. *See Dist. of Columbia v. Heller*, 554 U.S. 570, 629 (2008) (noting that ordinary handguns are the "quintessential" weapon for self defense).

109. In many instances, assault weapons and LCMs are not suitable for home defense because LCMs and high velocity assault rifle rounds pose too many risks of over penetration, down range injuries and disproportionate response by civilians, especially in densely populated areas or buildings. (Mello Aff. at ¶¶10, 33-36; Rovella Aff. at ¶¶39-41; Sweeney Aff. at ¶¶6, 21-22

110. There are more than one thousand different firearms that remain available to Connecticut citizens for lawful self defense. (Delehanty Aff. at ¶¶29-32; *see* Sweeney Aff. at ¶21).

111. Home owners like Plaintiffs still can use their "grandfathered" LCMs for self defense. Alternatively, they can use multiple smaller magazines and simply replace the magazines when they are emptied, a process that takes only seconds for most people. (Kleck Aff. at 4-5; *see also, e.g.*, Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1489 (2009) (Exh. 63). Lastly, they can simply use a second or third loaded weapon. (Kleck Aff. at 4-5)

The Act's Exemptions

112. The Act provides for certain exemptions from the prohibitions on sale, transfer or possession of assault weapons and LCMs for law enforcement, military and others with a professional need to use, train with and possess assault weapons and LCMs. P.A. 13-220, § 1(d)(2)-(4), § 2(a)(2); § 5(b)(1)-(4), § 6(b), § 7(a)(1)(B).

113. The exemptions permit "off-duty" use of assault weapons and LCMs by law enforcement officers who purchase them for official duties, and also allow such individuals to register assault weapons or LCMs that they have purchased for official duties within thirty days of their retirement or separation from service from service. (*Id.*)

114. Many law enforcement officers purchase assault rifles for official duty use with their own money because their agency cannot afford to buy one for each officer. (Mello Aff. at ¶¶38-41; Rovella Aff. at ¶¶14, 45, 48; Delehanty Aff. at ¶15).

115. Even when an officer purchases an assault weapon with his or her own money, the officer is required to "qualify" with such firearms before being able to use them in the field, and receives professional training on when and how to safely use the firearm while at the same time minimizing unintended casualties and other collateral damage. (Mello Aff. at ¶¶16, 41-42, 45; Rovella Aff. at ¶¶14, 44, 49; Delehanty Aff. at ¶¶4, 6-7, 12, 15-16).

116. 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. (Rovella Aff. at ¶¶45-47, 50; Mello Aff. at ¶¶39, 43; Delehanty Aff. at ¶¶16-17).

117. In some jurisdictions in Connecticut, officers are given portable radios to keep with them off-duty so that they can respond to radio calls for assistance on the police frequency even after work hours, (Rovella Aff. at ¶45), or in the case of specialized officers are required to respond to an incident from any location. (Delehanty Aff. at ¶¶16-17).

118. Law enforcement officers face enhanced threats to their personal safety, both on duty and off-duty, because they actively engage with and apprehend dangerous criminals every day. (Rovella Aff. at ¶¶13, 16, 18-21, 23; Mello Aff. at ¶¶21; Sweeney Aff. at ¶¶7-10).

119. On the rare occasion when an ordinary citizen is victimized by a criminal using a gun, the criminal rarely fires the gun and instead only use it to threaten the victim. (Kleck Aff. at 3).

Plaintiffs' Vagueness Claims

120. Information about the make and model of a firearm is engraved on most firearms. (Exh. 11, Delehanty Aff. at ¶34; Cooke Aff. at ¶7; Mattson Aff. at ¶19).

121. Information about the make and model of a firearm can also be obtained based on the firearm's serial number and all firearms manufactured for retail sale after 1968 are required to have a serial number. *See* 18 U.S.C.A. § 923(i).

122. With the serial number, a person can contact the manufacturer, a federally licensed firearms dealer ("FFL"), or the Special Licensing and Firearms Unit at DESPP to obtain the make, model, and other information about the firearm. (Delehanty Aff. at ¶35; Cooke Aff. at ¶8; Mattson Aff. at ¶¶20-21).

123. The Act does not require anyone who lawfully possessed an LCM when the Act was passed to convert it into a magazine that can accept 10 rounds or less. Such individuals can declare possession of their LCM and leave it as is, or can simply buy a new magazine that is lawful under the Act. P.A. 13-3, §§ 23-24; P.A. 13-220, § 1(a)(1); § 2(a)(1).

124. Plaintiffs concede that many rifles and handguns that can accept detachable LCMs also can accept magazines that have a capacity of 10 rounds or less. (*See* Pl. 56(a)(1) Statement at ¶85; *see also, e.g.* Exh. 13, p. 427 (Ruger 1911 pistol sold with an 8 round magazine and a 7 round magazine; and Sig Sauer 1911 sold with an 8-10 round magazine)).

Respectfully Submitted,

DEFENDANTS
DANNEL P. MALLOY, et al.

GEORGE JEPSEN
ATTORNEY GENERAL

BY: */s/ Maura Murphy Osborne*_____

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CERTIFICATION

I hereby certify that on October 11, 2013, a copy of the foregoing Defendants' Local Rule 56(a)(1) Statement was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ *Maura Murphy Osborne*
Maura Murphy Osborne

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al.	:	No. 3:13-CV-00739-AVC
Plaintiffs	:	
	:	
v.	:	
	:	
DANNEL P. MALLOY, et al.	:	
Defendants	:	October 11, 2013

DEFENDANTS' LOCAL RULE 56(a)(2) STATEMENT

Pursuant to D.Conn.L.Civ.R. 56(a)(2), Defendants Dannel P. Malloy, Kevin T. Kane, Reuben F. Bradford, David I. Cohen, John C. Smriga, Stephen J. Sedensky III, Maureen Platt, Kevin D. Lawlor, Michael Dearington, Peter A. McShane, Michael L. Regan, Patricia M. Froehlich, Gail P. Hardy, Brian Preleski, David Shepack, and Matthew C. Gedansky (collectively, "Defendants"), respectfully submit their responses to the Plaintiff's Statement of Undisputed Material Facts.

RESPONSES TO PLAINTIFF'S RULE 56(a)(1) STATEMENT

Gun Deaths In The United States

1. The leading cause of death by firearm in the U.S. is suicide. *See* Pew Research Center, *Gun Homicide Rate Down 49% Since 1993 Peak; Public Unaware* (May 2013) ("Pew Report"), at 2. [Pl. 56(a)(1) Statement "Exhibit A"].

Response: Defendants admit that this statement accurately reflects the cited source. Criminals who use guns to commit mass killings are also included in this statistic because many mass killers commit suicide during the mass killing incident. For example, between January 2009 and January 2013, 26 out of 56 incidents of mass shootings resulted in the shooter committing suicide. (Exh. 48 at 2).

2. Gun suicides now account for six out of every ten firearm deaths in this country. *Id*.

Response: Same as Response paragraph 1 above.

3. The gun suicide rate has been higher than the gun homicide rate since at least 1981. *Id*. at 4.

Response: Same as Response paragraph 1 above.

4. There were 31,672 firearm deaths in the U.S. in 2010; 61% of these were caused by suicide, versus 35% being caused by homicide. Pew Report at 4. In 2010, firearm suicide was the fourth leading cause of violent-injury death in the U.S., behind motor vehicle accidents, unintentional poisoning, and falls. *Id*. at 16.

Response: Same as Response paragraph 1 above.

Gun Homicides In The United States

5. National rates of gun homicide and other violent gun crimes are "strikingly lower" now than during their peak in the mid-1990s. Pew Report at 1. *See also* Pl. Exhibit B, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Special Report – Firearm Violence, 1993-2011* (May 2013) ("BJS Report") at 1.

Response: Defendants admit that this statement accurately reflects the cited source. However, the percentage of all violence that involved a firearm is not "strikingly lower" but has remained between 6% and 9% of all violent crime since the mid-1990s. (*See* Pl. 56(a)(1) Statement Exhibit B, at 1).

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

Response: Defendants admit that this statement accurately reflects the cited source. Defendants note that this statistic indicates that Plaintiffs appear to be even less likely to face a life threatening situation involving an armed assailant. Furthermore, the majority of the decline of firearm related homicides occurred between 1993 and 1998, during which time the Federal Assault Weapons Ban was in effect. (*See* Pl. 56(a)(1) Statement Exhibit B). Also, gun ownership is a significant predictor of firearm homicide rates. (Exh. 67).

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

Response: Same as Response to paragraph 6 above. The number of firearm homicides in the United States remains high. In 2010, there were 11,070 gun homicides

in the United States, 73,505 non-fatal firearm injuries, (Exh. 37), and 53,738 non-fatal assault-related shootings. (See Exh. 30, p.167). These statistics represent lives lost or damages. Reducing firearm homicides or shootings by just 1% would amount to preventing about 650 shootings annually. The lifetime medical costs of assault-related gunshot injuries (fatal and non-fatal) were estimated to be about $18,600 per injury in 1994. Adjusting for inflation, this amounts to $28,894 dollars. Moreover, some estimates suggest that the full societal costs of gun violence—including medical, criminal justice, and other government and private costs (both tangible and intangible)—could be as high as $1 million per shooting. (*See* Koper Aff. at ¶¶61-63). Based on those estimates, even a 1% decrease in shootings could result in roughly $650 million in cost savings to society from shootings prevented each year. (*Id.*).

Non-Fatal Gun Crimes In The United States

8. The victimization rate for other violent crimes committed with a firearm (i.e., assaults, robberies and sex crimes) was 75% lower in 2011 than in 1993. Pew Report at 1. *See also* BJS Report at 1.

Response: Defendants admit that this statement accurately reflects the cited source. Defendants note that this statistic indicates that Plaintiffs appear to be increasingly less likely to be involved in a gun crime incident.

9. In 1993, the rate of non-fatal violent gun crime amongst people aged 12 and over was 725.3 per 100,000 people. Pew Report at 17. By 2011, that rate had plunged 75% to 181.5 per 100,000 people. *Id*.

Response: Same as Response paragraphs 5, 6 and 8 above.

10. During this same period, the victimization rate for aggravated assault with firearms declined 75%, and the rate for robbery with firearms declined 70%. *Id*.

Response: Same as Response paragraphs 5, 6 and 8 above.

Public Knowledge Of The Dropping Gun Crime Rate

11. Despite the widespread media attention given to gun violence recently, most Americans are unaware that gun crime is markedly lower than it was two decades ago. Pew Report at 4.

Response: Defendants admit that this statement accurately reflects the cited source but it is clearly immaterial to the constitutionality of the Act.

12. A national survey taken between March 14-17 of 2013 found that 56% of Americans believe the number of gun crimes is higher than it was 20 years ago; 26% say it stayed the same, and only 12% say it is lower. *Id.*

Response: Same as Response paragraph 11 above.

Mass Shootings

13. Mass shootings, while a matter of great public interest and concern, account for only a very small share of shootings overall. Pew Report at 4. Homicides that claimed the lives of three or more people accounted for less than 1% of all homicide deaths between 1980 and 2008. *Id*.

Response: Defendants admit that this statement accurately reflects the cited source. Although mass shootings and mass killings are rare relative to other homicides, they nevertheless warrant governmental action to help prevent them and reduce the lethality of those mass killings. Recent events demonstrate that mass shootings are becoming more frequent and are intensifying in their level of violence, fatalities and gunshot victimization. (Exhs. 44-46, 48, 67). Since 1982, there have been at least 62 mass shootings across the country. Twenty-five of these mass shootings have occurred since 2006, and seven of them took place in 2012 alone. (Exh. 44 at 1). More than half of all mass public shooters between 1982 and 2012 possessed LCMs, assault weapons, or both. (Koper Aff. at ¶22). Since 2007 alone, for example, there have been at least fifteen incidents in which offenders using assault-type weapons or other semiautomatics with LCMs have wounded and/or killed eight or more people. (*Id.* at ¶16).

14. Most scholarly and expert sources conclude that mass shootings are rare violent crimes. *See* Congressional Research Service, *Public Mass Shootings in the United States: Selected Implications for Federal Public Health and Safety Policy* (March 2013) ("CRS Report"). [Pl. 56(a)(1) Statement "Exhibit C"].

Response: Defendants do not dispute that mass shootings are rare relative to other types of homicides, but see Response paragraph 13 above.

15. One study has described mass shootings as "very low-frequency and high intensity events." *Id*. [citing J. Reid Meloy, *et al*, "A Comparative Analysis of North American Adolescent and Adult Mass Murders," BEHAVIORAL SCIENCES AND THE LAW, vol. 22, no. 3 (2004) at 307].

Response: Defendants do not dispute that mass shootings are rare relative to other types of homicides, but see Response paragraph 13 above.

The Prevalence Of Handgun Use In Gun Crimes

16. Approximately 90% of all non-fatal firearm crimes in the U.S. between 1993 and 2011 were committed with a handgun. BJS Report at 1, 3.

Response: Defendants admit that this statement accurately reflects the cited source. This statistic indicates that Plaintiffs are unlikely to face a gun crime incident involving an assault rifle or assault shotgun. Moreover, some of the "handguns" contained in the above statistic may be "assault pistols" under the Act. Assault pistols are at higher risk of being used in crime than other types of handguns. (Koper Aff. at ¶¶7, 17).

17. Approximately 80% of all gun homicides in the U.S. between 1991 and 2011 were committed with a handgun. *See* U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States – Uniform Crime Report* ("FBI UCRs"), 1995 to 2011. [Complete copies of the FBI UCRs for the years 1995 through 2012 can be accessed at: www.fbi.gov/about-us/cjis/usc/usc-publications. True, complete and accurate summaries of the gun homicide data provided by the FBI UCRs are attached to Pl. 56(a)(1) Statement "Exhibit D"]. *See also* BJS Report at 1, 3.

Response: Same as Response paragraph 16 above.

18. In contrast, only 6% of the gun homicides committed between 1991 and 2011 involved a shotgun, and even less (4.6%) involved a rifle. *See* Pl. Exhibit D.

Response: Defendants admit that this statement accurately reflects the cited source. This statistic indicates that Plaintiffs are unlikely to face a gun crime incident involving an assault rifle or assault shotgun. Further, between 1991 and 2011, 10,750 individuals were murdered by a rifle, and 13,165 individuals were murdered by a shotgun. (*See* Pl. 56(a)(1) Statement Exhibit D).

19. In Connecticut: 77% of the gun homicides between 1995 and 2010 were committed with a handgun. *Id*. Just 3% of these involved a shotgun, and 2% involved a rifle. *Id*.

Response: Defendants admit that this statement accurately reflects the cited source. These homicide statistics are significant and represent lives lost and families damaged. In 2012 alone, law enforcement in Connecticut recovered 859 handguns, (Exh. 35, p. 2), some of which may have been assault pistols. (*See* Koper Aff. at ¶¶7, 17).

The Prevalence of Illegal Guns Used In Crimes

20. Between 1997 and 2004, more state inmates who used guns during crimes (40%) obtained those guns illegally than from any other source. BJS Report at 13.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source. Most mass killers obtain their firearms and LCMs legally. (Exh. 44 at 1).

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

Response: Same as Response to paragraph 20 above.

22. A very small number of state inmates (10%) purchased their guns at retail stores or pawn shops, and even fewer (less than 2%) bought their guns at gun shows or flea markets. *Id*.

Response: Same as Response to paragraph 20 above.

The Prevalence of "Assault Weapons" Used In Crimes

23. Numerous studies have examined the use of firearms characterized as "assault weapons" ("AWs") both before and after the implementation of Title XI of the Violent Crime Control and Law Enforcement Act of 1994 (the federal assault weapons ban) ("the Ban"). *See e.g.*, Christopher Koper, Daniel Woods and Jeffrey Roth, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence*, 1994-2003 (June 2004) ("Koper 2004"); Christopher Koper and Jeffrey Roth, *Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994 – Final Report* (March 1997) ("Koper 1997"). [The Koper 2004 Report, Pl. 56(a)(1) Statement "Exhibit E." The Koper 1997 Report, Pl. 56(a)(1) Statement "Exhibit F."].

Response: Defendants do not dispute Dr. Koper extensively studied the use of assault weapons in crime. Dr. Koper's conclusions are most accurately and completely set forth in his 2004 report, 2013 book chapter and his attached affidavit. (Koper Aff. at ¶5; *see* Exhs. 29 and 30). Dr. Koper's 1997 report (Exh. 28) was based on limited data, especially with regard to the criminal use of large capacity magazines, and is not as complete as his later analysis. (Koper Aff. at ¶5). This Court should focus on Dr. Koper's 2004 study, his 2013 book chapter and his affidavit submitted in support Defendants' motion to best understand Dr. Koper's views on the federal assault weapon ban, the disproportionate use of assault weapons and LCMs in gun crime, and the likely effectiveness of the Act challenged in this case.

24. The "overwhelming weight" of evidence produced by these studies indicates that AWs are used in only a very small percentage of gun crimes overall. Koper 2004 at 17. According to most studies, AWs are used in approximately 2% of all gun crimes, Koper 2004 at 2, 14, 19.

Response: Defendants do not dispute assault weapons are used in a small percentage of gun crimes overall. However, assault weapon use in crime is substantially disproportionate to their presence in the civilian gun market. Assault weapons and other guns with LCMs are used disproportionately in mass killings and murders of law enforcement officers relative to more conventional weaponry. (Koper Aff. at ¶¶20, 87). Moreover, a 2% reduction in gun crime is meaningful. This percentage represents a substantial number of crimes each year. The impact of such reductions would be meaningful in terms of lives saved, families preserved, and public resources that will be freed up to be used in better ways. (*Id.* at ¶¶10, 60-61, 76-77; Rovella Aff. at ¶53; Mello Aff. at ¶49). Furthermore, in the years since the expiration of the federal ban in 2004, there have been numerous mass shooting incidents involving previously banned assault weapons and/or LCMs. Since 2007, for example, there have been at least fifteen incidents in which offenders using assault-type weapons and other semiautomatics with LCMs have wounded and/or killed eight or more people. (Koper Aff. at ¶16). Lastly, just because assault weapons and large capacity magazines are not "widely used by criminals" does not mean that prohibiting their new possession or transfer to new owners does not advance law enforcement goals. Removing these dangerous weapons from the streets will aid law enforcement because it will deescalate the level of concern about them and minimize the threat that they pose. (Mello Aff. at ¶46).

25. The inclusion of AWs among crime guns is "rare." Koper 1997 at 69.

Response: Same as Response to paragraph 23 above. Moreover, Plaintiffs cite to the incorrect page of Dr. Koper's 1997 Report, the correct citation is to page 70 of that report.

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

Response: Defendants do not agree with this statement of fact which is based on mass shooting data that is a decade old. More current evidence demonstrates that assault weapons are used in 42% of mass public shootings, and up to 20% of law enforcement killings. (Koper Aff. at ¶¶22, 24; Exh. 40 at 5). Those percentages are drastically disproportionate to assault weapons' market presence. (*See* response to paragraph 24 above). Also, criminals anticipating confrontations with armed law enforcement agents often arm themselves with assault weapons. (Exhs. 43 at 21-22; 69). Mass public shooters also disproportionately prefer these weapons, and mass public shootings appear to be increasing in frequency and intensity with more people killed or shot in these mass killing incidents. (*See* Response to paragraph 13 above).

27. AWs (including so-called assault pistols ("APs") and assault rifles ("ARs")) and ammunition magazines that can accept more than ten rounds of ammunition (so-called

"Large Capacity Magazines" or "LCMs") are not used disproportionately in crimes. Koper 2004 at 17; Koper 1997 at 65, 70, 96.

Response: Same as Response to paragraph 23 above regarding Dr. Koper's views. See also Responses to paragraphs 24 and 26 above.

28. Prior to the Ban, AWs (as defined by the federal law) accounted for about 2.5% of guns produced from 1989 through 1993. Koper 2004 at 17. This figure is consistent with the fact that AWs are used in just 2% of all gun crimes. *Id*.

Response: Defendants do not dispute assault weapons make up a very small percentage of the gun market overall. Notwithstanding that small percentage, they are disproportionately used in gun crime (*see* Response to paragraph 24 above), and disproportionately used in the worst crimes such as mass killings, mass public shootings and killing of law enforcement is well documented. (*See* Response to paragraphs 13, 24 and 26 above).

29. Prior to the Ban, LCMs accounted for 14% to 26% of guns used in crime. Koper 2004 at 2, 18. This range is consistent with the national survey estimates indicating approximately 18% of all civilian-owned guns and 21% of civilian-owned handguns were equipped with LCMs as of 1994. Koper 2004 at 18.

Response: Defendants admit that this statement accurately reflects the cited source.

30. Post-Ban analysis of ATF trace requests for AWs involved in violent and drug-related crime between 1994 and 1996 show that, on average, the monthly number of assault weapon traces associated with violent crimes across the entire nation ranged from approximately 30 in 1995 to 44 in 1996. Koper 1997 at 65. For drug crimes, the monthly averages ranged from 34 in 1995 to 50 in 1994. *Id*.

Response: Same as Response to paragraph 23 above.

31. These trace ranges represent a "strikingly small" magnitude. Koper 1997 at 65.

Response: Same as Response to paragraph 23 above.

32. ATF trace figures from 1996 show that assault weapons accounted for 3% of all trace requests. *Id*. Analysis of trace requests for AR15, Intratec and SWD types of domestic firearms (i.e., those not impacted by pre-Ban legislation (Koper 1997 at 63)), and also those arms characterized as "assault weapons" that were most frequently sold at the enactment of the Ban (Koper 1997 at 63), showed that AWs associated with violent and drug-related crimes represented only 2.5% of all traces. Koper 1997 at 70. Traces for this select AW

group accounted for 2.6% of traces for guns associated with violent crimes and 3.5% of traces for guns associated with drug crimes. *Id*.

Response: Same as Response to paragraph 23 above.

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

Response: Same as Response to paragraph 23 above.

34. Koper also analyzed all guns confiscated by police in various jurisdictions to obtain "a more complete and less biased" picture of weapons used in crime that that presented by ATF trace requests. Koper 1997 at 71. Data collected from police departments in Boston and St. Louis confirmed that AWs are not overrepresented in violent crime relative to other guns. *Id*. at 72, 75.

Response: Same as Response to paragraph 23 above.

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

Response: Same as Response to paragraph 23 above.

The Prevalence of "Assault Weapons" Used in the Murder of Police Officers

36. Police officers are rarely murdered with assault weapons. Koper 1997 at 99.

Response: Same as Response to paragraph 23 above. Moreover, more current data indicate that police officers are murdered with assault weapons at rates disproportionate to their presence in the overall gun market. (*See* Response to paragraph 24 above.) From 1998 through 2001, 20% of law enforcement officers slain in the line of duty were killed with an assault weapon. (Exh. 43 at 3; Exh. 40 at 5). This is a high number, given that assault weapons made up only a small percent of the firearms owned at that time. (*See* Mello Aff. at ¶26; Rovella Aff. at ¶23).

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

Response: Denied. Dr. Koper's 1997 Report does not state that the fraction of police gun murders perpetrated with AWs is only "slightly" higher than that for civilian gun murders. Moreover, this 1997 data is not material because it is superseded by later data that demonstrates that the percentage of law enforcement officers killed by assault weapons is more than double, and perhaps triple, the percentage of civilian murders with an assault weapon. (Koper Aff. at ¶¶19, 24; Exh. 40 at 5). Further, even

the percentage of civilian murders with assault weapons is six times higher than one would expect based on assault weapons' miniscule market presence. (Koper Aff. at ¶¶17, 19).

38. The argument that assault weapons pose a unique, disproportionate danger to police officers is contradicted by FBI data. See LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED ("LEOKA") [www.fbi.gov/about-us/cjis/ucr/leoka/2010]. The LEOKA data show that, in 2010, a law enforcement officer was eight times more likely to be murdered with a revolver than with an AW or LCM, eight times more likely to be killed with his own service pistol, three times as likely to be killed by a "firearms mishap" during police training (whether by his own hand or that of a fellow officer), and 72 times as likely to be killed in the line of duty accidentally—usually by being run over by another motorist while the officer was standing on a roadside to issue somebody a traffic ticket. The LEOKA statistics for 2011 are similar. *See* www.fbi.gov/about-us/cjis/ucr/leoka/2011.

Response: The statistics recited in this paragraph are not material to the constitutionality of the Act. Further, the LEOKA data is from one year - 2010. Assault weapons and LCMs are disproportionately used in shootings of law enforcement. (*See* Response to paragraph 36 above). Moreover, unlawful attacks on law enforcement with assault weapons and large capacity magazine pose a greater threat to law enforcement because they often result in more rounds fired. The military style features of assault pistols and rifles that allow a shooter to hold multiple weapons with large magazines means that a single shooter can fire suppressing fire at law enforcement, and effectively hold-off and overwhelm an initial law enforcement response. (**Mello Aff. at ¶19; Rovella Aff. at ¶17; Sweeney Aff. at ¶15).**

The Impact of the Federal Assault Weapons Ban

The Impact of the Ban on "Assault Weapon" and "Large Capacity Magazine" Market

Scarcity

39. Repeated statistical analysis of the Ban's impact on primary market prices for AWs and LCMs showed that primary-market prices of the banned guns and magazines rose by upwards of 50% during 1993 and 1994, while the Ban was being debated and as gun distributors, dealers, and collectors speculated that the banned weapons would become expensive collectors' items. Koper 1997 at 1, 3. *Cf.*, Koper 2004 at 23-29. However, production of the banned guns also surged, so that more than an extra year's normal supply of assault weapons and legal substitutes was manufactured during 1994. *Id*. at 1. After the Ban took effect, primary-market prices of the banned guns and most large-capacity magazines fell to nearly pre-Ban levels and remained there at least through mid-1996, reflecting both the oversupply of grandfathered guns and the variety of legal substitutes that emerged around the time of the Ban. *Id*. at 1-3. *Cf.*, Koper 2004 at 2.

Response: Same as Response to paragraph 23 above.

The Ban's Impact on the Consequences of "Assault Weapon" Use

Total Gun Murders

40. The percentage of violent gun crimes resulting in death has been very stable since 1990. Koper 2004 at 92. In fact, the percentage of gun crimes resulting in death during 2001 and 2002 (2.94%) was slightly higher than that during 1992 and 1993 (2.9%). *Id*.

Response: Defendants admit that this statement accurately reflects the cited source. In 2010, guns took the lives of 31,076 Americans in homicides, suicides, and unintentional shootings. This is the equivalent of more than 85 deaths each day and more than three deaths each hour. Firearms were the third-leading cause of injury-related deaths nationwide in 2010, following poisoning and motor vehicle accidents. On average, 33 gun homicides were committed each day in the U.S. in 2010, comprising almost 35% of all gun deaths, and over 68% of all homicides. (Exh. 37). Regions and states with higher rates of gun ownership have disproportionately higher rates of firearm homicide than states with lower rates of gun ownership. (Exh. 67).

41. Similarly, neither medical nor criminological data have shown any post-Ban reduction in the percentage of crime-related gunshot victims who die. Koper 2004 at 92. If anything, this percentage has been higher since the Ban. *Id*.

Response: The most current information about Dr. Koper's views on the reduction of crime-related gunshot victimization related to bans on assault weapons and LCMs is contained in his affidavit filed in support of Defendants' motion, Exhibit 26, and his 2013 book chapter, Exhibit 30. (See Response 23 above). These sources indicate that gun crimes involving assault weapons and other gun crimes with LCMs do result in more shots fired, more victims shot, more gunshots per victim, and more lethal injuries. Although it is true that the federal ban cannot be credited with decreasing gunshot victimizations during the time it was in effect, that is due in large part to the delay in the ban's effectiveness caused by its grandfather provision and the large stock of pre-ban LCMs that remained in circulation. Had the federal ban not been allowed to expire in 2004 and remained in effect long enough to reduce the stock of those pre-ban LCMs—which the Washington Post study suggests it may have begun to do just as it expired in 2004—it is likely that we would have seen a corresponding drop in gun violence lethality. (*See* Koper Aff. at ¶¶80-81).

42. According to medical examiners' reports and hospitalization estimates, about 20% of gunshot victims died nationwide in 1993. *Id*. This figure rose to 23% in 1996, before declining to 21% in 1998. 92. *Id*. Estimates derived from the FBI UCRs and the Bureau of Justice Statistics' annual National Crime Victimization Survey ("NCVS") follow a similar

pattern from 1992 to 1999, and also show a considerable increase in the percentage of gunshot victims who died in 2000 and 2001. *Id*.

Response: Same as Response to paragraph 41 above.

43. Overall, the statistical evidence is not strong enough to conclude that the Ban had any meaningful effect on the rate of gun murders (i.e., that the effect was different from zero). Koper 1997 at 6.

Response: Same as Response to paragraphs 23 and 41 above.

Gun Homicides Associated With AWs
(multiple victims in a single incident, or multiple bullet wounds per victim)

44. The Ban failed to reduce both multiple-victims and multiple-bullet-wounds-per-victim murders. Koper 1997 at 2.

Response: Same as Response to paragraphs 23 and 41 above.

45. Using a variety of national and local data sources, Koper found no statistical evidence of post-Ban decreases in either the number of victims per gun homicide incident, the number of gunshot wounds per victim, or the proportion of gunshot victims with multiple wounds. Koper 1997 at 6. Nor did he find assault weapons to be overrepresented in a sample of mass murders involving guns *Id*.

Response: Same as Response to paragraphs 23 and 41 above.

Multiple-Victim Gun Homicides

46. Examination of the FBI's Supplemental Homicide Report ("SHR") data produced no evidence of short term decreases in the lethality of gun violence as measured by the mean number of victims killed in gun homicide incidents. Koper 1997 at 86.

Response: Same as Response to paragraphs 23 and 41 above.

47. The number of victims-per-incident gun murders increased very slightly (less than 1 percent) after the Ban. *Id*. Multiple-victim gun homicides remained at relatively high levels through at least 1998, based on the national average of victims killed per gun murder incident. Koper 2004 at 93. If anything, then, gun attacks appear to have been more lethal and injurious since the Ban. *Id*. at 96.

Response: Same as Response to paragraphs 23 and 41 above. Although it is true that the federal ban cannot be credited with decreasing gunshot victimizations during the time it was in effect, that is due in large part to the delay in the ban's effectiveness

caused by its grandfather provision and the large stock of pre-ban LCMs that remained in circulation. Had the federal ban not been allowed to expire in 2004 and remained in effect long enough to reduce the stock of those pre-ban LCMs—which the Washington Post study suggests it may have begun to do just as it expired in 2004—it is likely that we would have seen a corresponding drop in gun violence lethality. (*See* Koper Aff. at ¶¶80-81).

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

Response: Same as Response to paragraphs 23, 41 and 47 above. Also, Plaintiffs' citation to "Id" appears to be inaccurate because Koper 2004 at p. 96 does not contain this statement and instead it appears on p. 86 of Dr. Koper's superseded 1997 Report.

Multiple-Wound-Per-Victim Gun Homicides

49. Multiple wound shootings were elevated over pre-Ban levels during 1995 and 1996 in four of five localities examined during Koper's first AW study, though most of the differences were not statistically significant. Koper 2004 at 93.

Response: Admit, *see also* Response to paragraphs 41 and 47 regarding the delay in the effectiveness of the federal ban.

50. If attacks with AWs and LCMs result in more shots fired and victims hit than attacks with other guns and magazines, Koper expected a decline in crimes with AWs and LCMs to reduce the share of gunfire incidents resulting in victims wounded or killed. Koper 2004 at 93. Yet, when measured nationally with UCR and NCVS data, this indicator was relatively stable at around 30% from 1992 to 1997, before rising to about 40% from 1998 through 2000. *Id*.

Response: See Response to paragraphs 41 and 47 regarding the delay in the effectiveness of the federal ban. Moreover, incidents involving assault weapons and LCMs such as mass public shootings and mass killings generally appear to be increasing in frequency and intensity. (*See* response to paragraph 13 above).

51. Analysis of the number of wounds inflicted in both fatal and non-fatal gunshot cases in Milwaukee, Seattle, Jersey City, San Diego, and Boston failed to produce evidence of a post-Ban reduction in the average number of gunshot wounds per case, or the proportion of cases involving multiple wounds. Koper 1997 at 97.

Response: Same as Response to paragraphs 23, 41 and 47 above.

The Role of LCMs in Increased Gunshot Victimization

52. There is very little empirical evidence on the direct role of ammunition capacity in determining the outcomes of criminal gun attacks. Koper 1997 at 10. Specific data on shots fired in gun attacks are quite fragmentary and often inferred indirectly, but they suggest that relatively few attacks involve more than 10 shots fired. Koper 2004 at 90. The limited data which do exist suggest that criminal gun attacks involve three or fewer shots on average. Koper 1997 at 10.

Response: Defendants admit that limited data suggests that criminal gun attacks involve three or fewer shots on average. Moreover, these data indicate that it is extremely unlikely that Plaintiffs will confront a situation in which they will require a 15, 20 or 30 round magazine of ammunition in which to adequately defend themselves. See also Response to paragraphs 23, 41 and 47 above.

53. Based on national data compiled by the FBI, there were only about 19 gun murder incidents a year involving four or more victims from 1976 through 1995 (for a total of 375), and only about one a year involving six or more victims from 1976 through 1992 (for a total of 17). Koper 2004 at 90.

Response: For more current data see Response to paragraph 13 above.

54. Similarly, gun murder victims are shot two to three times on average (according to a number of sources), and a study at a Washington, DC trauma center reported that only 8% of all gunshot victims treated from 1988 through 1990 had five or more wounds. Koper 2004 at 90.

Response: A person is 63% more likely to die if he or she receives two or more gunshot wounds than if he or she receives just one. (Koper Aff. at ¶38).

55. The few available studies on shots fired show collectively that assailants fire less than four shots on average, a number well within the 10-round magazine limit imposed by the AW- LCM ban. Koper 2004 at 90.

Response: Same as Response to paragraph 52 above.

56. A study of mass shootings (defined therein as incidents in which six or more victims were killed with a gun, or twelve or more were wounded) from 1984 to 1993 found that "for those incidents where the number of rounds fired and the duration of the shooting were both reported, the rate of fire never was faster than about one round every two seconds, and was usually much slower than that." *See* Kleck, TARGETING GUNS at 124-25. Thus, "[n]one of the mass killers maintained a sustained rate of fire that could not also have been maintained—even taking reloading time into account—with either multiple guns or with an

ordinary six-shot revolver and the common loading devices known as 'speedloaders.'" *Id*. at 125.

Response: 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 October 1, 2013). The evidence demonstrates that gun crimes involving assault weapons and other gun crimes with LCMs result in more shots fired, more victims shot, more gunshots per victim, and more lethal injuries. (Koper Aff. at ¶81).

57. There is no evidence comparing the fatality rate of attacks perpetrated with guns having large-capacity magazines to those involving guns without large-capacity magazines. Koper 2004 at 90. Indeed, there is no evidence comparing the fatality rate of attacks with semiautomatics to those with other firearms. *Id*.

Response: A graduate student at George Mason University recently analyzed data about mass public killings for his Master's thesis, and compared the number of deaths and fatalities across cases that involved assault weapons and large capacity magazines, and those that did not. With regard to assault weapons, although he found no difference in the average number of fatalities, he did find an increase in gunshot victimization. Specifically, he found that an average of 11.04 people were shot in public mass shootings involving assault weapons, compared to 5.75 people shot in non-assault weapon cases. This is a statistically significant finding, meaning that it was not likely due to chance. As a result, the total average number of people killed and injured in assault weapon cases was 19.27, compared to 14.06 in non-assault weapon cases. (Koper Aff. at ¶¶23, 33). A person is 63% more likely to die if he or she receives two or more gunshot wounds than if he or she receives just one. (Koper Aff. at ¶38).

Summary of Past and Future Impacts of the Ban

58. The Ban cannot clearly be credited with any of the nation's recent drop in gun violence. Koper 2004 at 2, 96.

Response: Same as Response to paragraphs 23 and 41 above.

59. The Ban has produced no discernible reduction in the lethality and injuriousness of gun violence, based on indicators like the percentage of gun crimes resulting in death or the share of gunfire incidents resulting in injury. *Id*. at 96. *See also* NATIONAL RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW 97 (Charles F. Wellford *et al*. eds., 2005) ("[G]iven the nature of the [1994 assault weapons ban], the maximum potential effect of the ban on gun violence outcomes would be very small and, if there were any observable effects, very difficult to disentangle from chance yearly variation and other state and local gun violence initiatives that took place simultaneously"); Centers for Disease Control, *Recommendations To Reduce Violence Through Early Childhood Home Visitation*,

Therapeutic Foster Care, and Firearms Laws, 28 AM. J. PREV. MED. 6, 7 (2005) (With respect to "bans on specified firearms or ammunition," the CDC Task Force found that "[e]vidence was insufficient to determine the effectiveness of bans . . . for the prevention of violence."); *see also* Robert A. Hahn *et al*., *Firearms Laws and the Reduction of Violence: A Systematic Review*, 28 AM. J. PREV. MED. 40, 49 (2005) ("available evidence is insufficient to determine the effectiveness or ineffectiveness on violent outcomes of banning the acquisition and possession of [particular] firearms").

Response: Same as Response to paragraphs 13, 24 above and Defendants's Response to paragraphs 41 and 47 regarding the delay in the effectiveness of the federal ban.

60. If the AW ban were to be renewed, its effects on gun violence would likely to be small at best and perhaps too small for reliable measurement. Koper 2004 at 3. AWs were rarely used in gun crimes even before the ban. *Id*. at 3, 97. LCMs are involved in a more substantial share of gun crimes, but it is not clear how often the outcomes of gun attacks depend on the ability of offenders to fire more than ten shots (the current magazine capacity limit) without reloading. Koper 2004 at 3, 19, 97.

Response: Same as Response to paragraphs 13, 23, 24, 36 and 41 above. In addition, Dr. Koper's more recent analysis indicates that while the federal ban did not appear to have a measurable effect on overall gun crime in terms of crimes committed (due to criminals' ability to substitute other guns in their crimes), the evidence does suggest a significant impact on the number of gun crimes involving assault weapons. Had the federal ban remained in effect over the long-term, moreover, it could have had a potentially significant impact on the number of crimes involving LCMs. (Koper Aff. at ¶59). By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons and magazines, the federal ban could have potentially prevented hundreds of gunshot victimizations annually. It also could have reduced the lethality and injuriousness of those gunshot victimizations that do occur by reducing the number of wounds per victim. (*Id.* at ¶60).

The Impact of the Act

Plaintiffs

61. Members of Organization Plaintiffs Connecticut Citizens Defense League ("CCDL") and the Coalition of Connecticut Sportsmen ("CCS"), as well as the individual plaintiffs and business plaintiffs, possess and wish to acquire rifles, handguns, shotguns, and ammunition feeding devices, but are prevented from doing so by the Act's restrictions on "assault weapons," and "large capacity ammunition feeding devices." *See* Declaration of the CCDL's Scott Wilson ("Wilson Decl.") [Pl. 56(a)(1) Statement "Exhibit G"]; Affidavit of June Shew ("Shew Aff.") [Ms. Shew's affidavit was originally filed with the Court on 06/26/13 as "Exhibit D" (Doc. #15-6) in support of Plaintiffs' Motion for Preliminary Injunction];

Affidavit of Brian McClain ("McClain Aff.") [Mr. McClain's affidavit was originally filed with the Court on 06/26/13 as "Exhibit E" (Doc. #15-7) in support of Plaintiffs' Motion for Preliminary Injunction]; Affidavit of Stephanie Cypher ("Cypher Aff.") [Ms. Cypher's affidavit was originally filed with the Court on 06/26/13 as "Exhibit F" (Doc.#15-8) in support of Plaintiffs' Motion for Preliminary Injunction]; Affidavit of Mitchell Rocklin ("Rocklin Aff.") [Rabbi Rocklin's affidavit was originally filed with the Court on 06/26/13 as "Exhibit G" (Doc. #15-9) in support of Plaintiffs' Motion for Preliminary Injunction]; Affidavit of Peter Owens ("Owens Aff.") [Mr. Owens' affidavit was originally filed with the Court on 06/26/13 as "Exhibit H" (Doc. #15-10) in support of Plaintiffs' Motion for Preliminary Injunction]; Affidavit of Andrew Mueller ("Mueller Aff.") [Mr. Mueller's affidavit was originally filed with the Court on 06/26/13 as "Exhibit I" (Doc. #15-11) in support of Plaintiffs' Motion for Preliminary Injunction]; Affidavit of Michele DeLuca ("DeLuca Aff.") [Mr. DeLuca's affidavit was originally filed with the Court on 06/26/13 as "Exhibit L" (Doc. #15-14) in support of Plaintiffs' Motion for Preliminary Injunction]; and Declaration of Paul Hiller ("Hiller Decl.") [attached to Plaintiff's 56(a)(1) Statement as "Exhibit H"]. *See also*, Supplemental Decl. of June Shew ("Shew Supp'l Decl.") [attached to Plaintiff's 56(a)(1) Statement as "Exhibit I"].

Response: Defendants admit that this statement accurately reflects the cited source. However, Plaintiffs, many of whom possessed assault weapons and magazines with a capacity of more than ten rounds before the effective date of the ban in the Act, can continue to be in lawful possession of their assault weapons and LCMs provided they register them by January 1, 2014. *See* Public Act 13-3, § 24 and §§ 25-31.

62. Some members, individual plaintiffs, and business plaintiffs possess magazines with a capacity of more than ten rounds that are now criminalized by the Act. *See, e.g.*, Wilson Decl. at 2; Rocklin Aff. at 1; DeLuca Aff at 1. Other members and individual plaintiffs do not possess magazines with a capacity of more than ten rounds, but would possess those magazines forthwith but for the Act. Wilson Decl. at 2; Mueller Aff. at 1. Many members and individual plaintiffs would load more than ten rounds in their magazines for use in firearms kept in the home for self- protection, but cannot do so because of the Act. *See, e.g.*, Wilson Decl. at 2; Rocklin Aff. at 1; Mueller Aff. at 1; DeLuca Aff. at 1-3. Members, individual plaintiffs, and business plaintiffs are unaware how to modify magazines so they cannot "readily be restored or converted to accept" more than ten rounds. *See, e.g.*, Wilson Decl. at 2; Rocklin Aff. at 3.

Response: Same as Response to paragraph 61 above.

63. Some members, individual plaintiffs, and business plaintiffs possess arms now prohibited by the Act as "assault weapons" that were lawfully possessed prior to the passage of the Act. *See, e.g.*, Wilson Decl. at 2; Rocklin Aff. at 1; DeLuca Aff. at 1-3. But for the Act, still other members, individual plaintiffs, and business plaintiffs would forthwith obtain and possess "assault weapons" under the Act's new definitions. *See, e.g.*, Wilson Decl. at 2; Rocklin Aff. at 4-5; DeLuca Aff. at 1-3.

Response: Same as Response to paragraph 61 above. Moreover, there remain hundreds of alternative pistols, revolvers, rifles and shotguns that are both legal and adequate for Second Amendment purposes such as self defense in the home. (Delehanty Aff. at ¶¶29-32; Sweeney Aff. at ¶21).

64. As examples, some members, individual plaintiffs, and business plaintiffs possess, and other members, individual plaintiffs, and business plaintiffs would possess but for the Act, semiautomatic rifles that have an ability to accept a detachable magazine with a folding or telescoping stock, or a thumbhole stock; or any other stock 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 a forward pistol grip. *See, e.g.*, Wilson Decl. at 2-3; Owens Aff. at 4-5; DeLuca Aff. at 2.

Response: Same as Response to paragraph 61 above.

65. Further, some members, individual plaintiffs, and business plaintiffs possess semiautomatic rifles with detachable magazines and with a thumbhole stock. *See, e.g.*, Wilson Decl. at 3; DeLuca Aff. at 2. Such rifles are commonly used for hunting game and for target shooting. Wilson Decl. at 3; Shew Supp'l Decl. at 2. A thumbhole stock allows the rifle to be held more comfortably and fired more accurately, but it causes the rifle to be defined as an "assault weapon." Wilson Decl. at 3.

Response: Same as Response to paragraph 61 above.

66. But for the Act, other members, individual plaintiffs, and business plaintiffs would forthwith obtain and possess identical or similar rifles but may not do so in that they are now considered illegal "assault weapons." *See, e.g.*, Wilson Decl. at 3; Rocklin Aff. at 4; Mueller Aff. at 2-3.

Response: Defendants admit that this statement accurately reflects the cited source.

67. Being in possession of, or wishing to acquire, "assault weapons" and "large capacity ammunition feeding devices," members of the CCDL, the CCS, and other plaintiffs are subject to the Act's requirements regarding registration and converting magazines, and to the Act's serious criminal penalties, including incarceration, fines, forfeitures, and cancellation of licenses. *See, e.g.*, Wilson Decl. at 3; Rocklin Aff. at 1-2; Owens Aff. at 4-5; DeLuca Aff. at 3.

Response: Defendants admit that this statement accurately reflects the cited source.

68. Members, individual plaintiffs and business plaintiffs are unaware of how to convert "large capacity ammunition feeding devices" so that they will hold only ten rounds. *See, e.g.*,

Wilson Decl. at 3; Rocklin Aff. at 3; Owens Aff. at 4. Other members, individual plaintiffs and business plaintiffs might possess the technical ability to attempt such conversions, but are unaware of the definition of "readily converted or restored" or "permanent" that the State of Connecticut would apply to such conversions. *Id*. The Act contains no guidance in this regard, nor does it refer gun or magazine owners to other resources that can provide adequate guidance.

Response: The Act does not require anyone who lawfully possessed an LCM when the Act was passed to convert it into a magazine that can accept 10 rounds or less. Such individuals, like Plaintiffs, can declare possession of their LCM and leave it as is, or can simply buy a new magazine that is lawful under the Act. P.A. 13-3, §§ 23-24; P.A. 13-220, § 1(a)(1); § 2(a)(1). If a gun owner elects to convert a LCM to a lawful magazine instead of just purchasing a new magazine, he or she must ensure that the converted magazine cannot "be readily restored or converted" back to an LCM. For example, a magazine would be readily restorable if a gun owner were to insert a dowel plug into a 15-round magazine because the dowel plug would only temporarily prevent the loading of more than ten rounds into the magazine. That magazine could be "readily restored or converted" back to its 15-round capacity by the gun owner simply removing the dowel plug. (Cooke Aff. at ¶23). By contrast, for example, a magazine would be considered to be "permanently altered" from a 15-round magazine to a 10-round magazine if the gun owner or a gunsmith permanently affixed a plug into the base of the magazine that prevents the spring from being compressed to accept more than ten rounds of ammunition. (*Id.* at ¶24). A magazine cannot be readily restored or converted to accept more than ten rounds if it requires the services of a gunsmith to perform such a restoration or conversion or any attempts to restore it back would render it inoperable. (*Id.* at ¶22).

69. Plaintiff MD SHOOTING SPORTS ("MD") is in the business of gunsmithing, and buying and selling firearms and ammunition within and without the State of Connecticut. DeLuca Aff. at 1. MD's business has been harmed by the Act's restrictions on "assault weapons," and "large capacity ammunition feeding devices." *Id*. at 2.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source.

70. Prior to enactment of the Act, one segment of MD's business involved the purchase of "AR"-type firearms from out-of-state distributors and the sale of these "AR"-type firearms to customers. *Id*. at 1-2. Since the passage of the Act, MD's out-of-state distributors have stopped altogether the shipment of "AR"-type firearms to the Store due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. *Id*. at 2. These reductions and stoppages have caused actual harm to MD's sales and overall business. *Id*.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source.

71. Another segment of MD's business involves the sale of ammunition magazines. Since the passage of the Act, MD's sales of magazines have declined significantly. *Id*. at 2.This decline involves magazines that hold more than ten rounds and those that hold less than ten rounds. This decline has caused actual harm to MD's sales and overall business. *Id*.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source.

72. One segment of the Store's business involves the receipt and transfer of firearms pursuant to the FFL the Store holds. *Id*. at 2. Since the passage of the Act, the volume of firearms that the Store received and transfers has declined significantly. *Id*. Before enactment of the Act, MD regularly received 5-7 used firearms per week that would be resold. *Id*. Now, however, MD only receives 1-2 used firearms per week. *Id*. This decline has caused actual harm to MD's sales and overall business. *Id*.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source.

73. Since the passage of the Act, MD's overall sales of rifles, pistols, and shotguns have declined significantly. *Id*. at 3. Mr. DeLuca has observed that this decline in sales involves firearms that contain some of the individual features that are banned by the Act (e.g., pistol grips, telescoping stocks, etc.), but also firearms that are not characterized by the Act as "assault weapons." *Id*. This decline is due, in large part, to customer confusion over which kinds of firearms are banned and which are not, as well as customer concern that purchasing a firearm will subject the customer to criminal prosecution. *Id*.

Response: Defendants admit that this statement accurately reflects the cited source. However, harm to Plaintiff's business is not material to the constitutionality of the Act.

74. Prior to enactment of the Act, MD typically did $2,000-$2,500 in business each weekday and $5,000 to $7,000 in business on Saturdays. After enactment of the Act, however, MD is only generally earning about $1,000 per weekday and $2,000 to $2,500 on Saturdays. *Id*. at 8.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source. However, harm to Plaintiff's business is not material to the constitutionality of the Act.

75. Plaintiff HILLER SPORTS LLC ("Hiller") is in the business of buying and selling firearms and ammunition within and without the State of Connecticut. Hiller Decl. at 1-2.

Hiller's business has been harmed by the Act's restrictions on "assault weapons," and "large capacity ammunition feeding devices." *Id*. at 2.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source. However, harm to Plaintiff's business is not material to the constitutionality of the Act.

76. The firearms sold by Hiller include rifles, pistols and shotguns. *Id*. at 2. Several models of these firearms are semi-automatic, and are capable of accepting detachable magazines. *Id*. Several models are AR-15 type modern sporting rifles. *Id*. Several of these same models also have characteristics such as pistol grips, forward grips, telescoping stocks, thumbhole stocks, and threaded barrels. *Id*. at 2. Threaded barrels permit the firearm to accept popular accessories such as shrouds and flash hiders. *Id*.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source.

77. The Act outlaws semi-automatic rifles that can accept detachable magazines, and also have a thumbhole stock, a telescoping stock, a forward grip, or any grip that permits the fingers of the trigger hand to rest below the firearm's action when firing. *Id*. at 2. These features are commonly found (either individually or in combination) on AR-15 type modern sporting rifles. *Id*.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source.

78. One segment of Hiller's business involves the purchase of "AR"-type firearms from out-of-state distributors and the sale of these "AR"-type firearms to customers. *Id*. at 3. Since the passage of the Act, several of Hiller's out-of-state distributors have stopped altogether the shipment of "AR"-type firearms to the Store due to concern and confusion over whether these types of arms can legally be shipped to, received by and/or sold by the holder of an FFL. *Id*. In fact, Hiller had to refund $100,000 of back orders on AR-15s to its customers because the wholesaler would not ship the AR-15s to fill them. *Id*. The sale of those types of firearms was a vast majority of Hiller's sales before the passage of the Act. These stoppages have caused actual harm to Hiller's sales and overall business. *Id*.

Response: This statement does not accurately reflect the cited source, which references a $50,000 refund amount. Moreover, harm to Plaintiff's business is not material to the constitutionality of the Act.

79. One segment of Hiller's business involves the sale of accessories for "AR"-type firearms. *Id*. at 3-4. These include, among other things, slings, rails, optics/scopes, grips, and cases. Since the passage of the Act, Hiller has not sold one accessory, whereas before the passage of the Act the sale of accessories kept pace with the sale of AR-type firearms. *Id*.

Response: This statement does not accurately reflect the cited source which references the sale of a small number of accessories. Moreover, harm to Plaintiff's business is not material to the constitutionality of the Act.

80. Another segment of Hiller's business involves the sale of ammunition magazines. *Id*. at 4. Since the passage of the Act, Hiller has returned all large capacity ammunition magazines and has asked, in turn, for the manufacturers to send it magazines that hold ten rounds. *Id*. Hiller is still waiting to receive those magazines from the manufacturers. *Id*. This scenario has caused actual harm to Hiller's sales and overall business. *Id*.

Response: Defendants admit that this statement of immaterial fact accurately reflects the cited source. Moreover, harm to Plaintiff's business is not material to the constitutionality of the Act.

81. Another segment of Hiller's business involves the receipt and transfer of large capacity magazines pursuant to the FFL Hiller holds. *Id*. at 4. Since the passage of the Act, Hiller no longer transfers large capacity magazines out-of-state because Hiller cannot profit from those transactions. *Id*. The supply to the out-of-state dealers is high and thus these transactions are not profitable. *Id*. This decline has caused actual harm to Hiller's sales and overall business. *Id*. Some customers who wanted to trade in their large capacity magazines have expressed dissatisfaction with Hiller's refusal to receive and transfer the magazines out-of-state. *Id*.

Response: Same as Response to paragraph 80 above.

82. Since the passage of the Act, Hiller's overall sales of rifles, pistols, and shotguns have declined significantly. *Id*. at 5. Mr. Hiller has observed that this decline in sales involves firearms that contain some of the individual features that are banned by the Act (e.g., pistol grips, telescoping stocks, etc.), but also firearms that are not characterized by the Act as "assault weapons." *Id*. This decline is due, in large part, to customer confusion over which kinds of firearms are banned and which is not, as well as customer concern that purchasing a firearm will subject the customer to criminal prosecution. *Id*.

Response: Same as Response to paragraph 80 above.

Ammunition Magazines

83. Magazines with a capacity of more than ten cartridges, and rifles and shotguns with telescoping stocks, pistol grips, and thumbhole stocks, are commonly possessed for lawful purposes in the millions by law-abiding citizens throughout the United States. *See* Declaration of Mark Overstreet ("Overstreet Decl.") [Pl. Prel. Inj. Exhibit A; Doc. #15-15] at 4-7; the National Shooting Sports Foundation *2010 Modern Sporting Rifle Comprehensive Consumer Report*) ("NSSF 2010 MSR Report") [Pl. Prel. Inj. Exhibit B; Doc. ## 15-2, 15-3,

and 15-4] at 27; Declaration of Guy Rossi ("Rossi Decl.") [Pl. Prel. Inj. Exhibit C; Doc. #15-5] at 2.

Response: Magazines with a capacity of more than ten cartridges are not commonly used for lawful purposes protected by the Second Amendment, which is the material issue relevant to the disposition of this case. Data from the NRA Institute for Legislative Action ("NRA-ILA") indicates that it is extremely rare for a person, when using a firearm in self-defense, to fire more than seven rounds. (Allen Decl. at ¶12). Indeed, a study of defensive firearm uses over a 5-year period from 1997 through 2001 found that, on average, 2.2 shots were fired by defenders and that 28% of incidents of armed citizens defending themselves the individuals fired no shots at all. (*Id*. at ¶13). A similar analysis of NRA-ILA accounts was performed for the 3-year period June 2010 – May 2013. According to this analysis, defenders fired on average 2.1 bullets. In only 1 out of 298 incidents, or less than 1% of incidents, was the defender reported to have fired more than 7 bullets. In 14% of incidents, the defender did not fire any shots, and simply threatened the offender with a gun. For incidents occurring in the home (57% total), defenders fired an average of 2.1 bullets, and fired no bullets in 13% of incidents in the home, or 7% of all incidents. (*Id*. at ¶15). Civilians do not need to have a 20, 30, or 40 round magazine in their home. (Mello Aff. at ¶35). The only situations where firing more than ten rounds may be necessary are in war, by law enforcement attempting to end a confrontation with a criminal, or in a controlled environment at a shooting range or a shooting competition. (*Id*. at ¶ 33; Rovella Aff. at ¶31). The only reason that a citizen would be disadvantaged by having to change out a magazine would be if she was engaged in rapid fire of her weapon. This is simply not an appropriate thing to do in a residential setting under almost any circumstance. (*Id*. at ¶36; *see* Sweeney Aff. at ¶¶6, 21; Rovella Aff. at ¶¶8, 39-41).

84. Magazines that hold more than more than ten rounds are commonplace to the point of being a standard for pistols and rifles: nationwide, most pistols are manufactured with magazines holding 10 to 17 rounds. Overstreet Decl. at 4-7; Rossi Decl. at 2. Many commonly possessed popular rifles are manufactured with magazines holding 15, 20, or 30 rounds. *Id*.

Response: Same as Response to paragraph 83 above.

85. A review of the current edition of GUN DIGEST, a standard reference work that includes specifications of currently available firearms, reveals that about two-thirds of the distinct models of semiautomatic centerfire rifles listed are normally sold with standard magazines that hold more than ten rounds of ammunition. GUN DIGEST 2013 455-64, 497-99 (Jerry Lee ed., 67th ed. 2012). And many rifles sold with magazines of smaller capacity nonetheless accept standard magazines of twenty, thirty, or more rounds without modification. *Id*. Similarly, about one-third of distinct models of semiautomatic handguns listed—even allowing for versions sold in different calibers, which often have different ammunition capacities—are normally sold with magazines that hold more than ten rounds.

Id. at 407-39. In both cases, but especially for handguns, these figures underestimate the ubiquity of magazines capable of holding more than ten rounds of ammunition, because they include many minor variations of lower-capacity firearms offered by low-volume manufacturers, such as those devoted to producing custom versions of the century- old Colt .45 ACP Government Model 1911.

Response: Defendants do not dispute that firearms including many pistols and rifles sold with LCMs (15, 20, 30 or more round magazines) can nonetheless accept standard magazines of smaller capacity without modification. Therefore, Plaintiffs can continue to use their lawful firearms with magazines that hold a maximum of ten rounds.

86. LCMs have been a familiar feature of firearms for more than 150 years. Indeed, many firearms with "large" magazines date from the era of ratification of the 14th Amendment: the Jennings rifle of 1849 had a twenty-round magazine, the Volcanic rifle of the 1850s had a thirty- round magazine, both the 1866 Winchester carbine and the 1860 Henry rifle had fifteen-round magazines, the 1892 Winchester could hold seventeen rounds, the Schmidt-Rubin Model 1889 used a detachable twelve-round magazine, the 1898 Mauser Gewehr could accept a detachable box magazine of twenty rounds, and the 1903 Springfield rifle could accept a detachable box magazine of twenty-five rounds. *See* GUN: A VISUAL HISTORY 170-71, 174-75, 180-81, 196-97 (Chris Stone ed., 2012); Military Small Arms 146-47, 149 (Graham Smith ed., 1994); WILL FOWLER AND PATRICK SWEENEY, WORLD ENCYCLOPEDIA OF RIFLES AND MACHINE GUNS 135 (2012); K.D. KIRKLAND, AMERICA'S PREMIER GUNMAKERS: BROWNING 39 (2013).

Response: Defendants have no basis to determine whether these immaterial facts cited above are even reflected in these sources, as Plaintiffs have not provided these sources to Defendants or the Court and they are not cited or relied upon by Plaintiffs' witnesses.

87. Annual ATF manufacturing and export statistics indicate that semiautomatic pistols rose as a percentage of total handguns made in the United States and not exported, from 50% of 1.3 million handguns in 1986, to 82% of three million handguns in 2011. Overstreet Decl. at 4-6. Standard magazines for very commonly owned semiautomatic pistols hold up to 17 rounds of ammunition. *Id*. In 2011, about 61.5% of the 2.6 million pistols made in the U.S. were in calibers typically using magazines that hold over ten rounds. *Id*.

Response: As semiautomatic pistol sold with a standard magazine of up to 17 rounds can nonetheless accept standard magazines of smaller capacity without modification. (See Paragraph 85 above).

88. In recent decades, the trend in semiautomatic pistols has been away from those designed to hold 10 rounds or fewer, to those designed to hold more than ten rounds.

Overstreet Decl. at 4-6. This tracks with trends among law enforcement and military personnel. *Id*.

Response: Same as Response to paragraphs 85 and 87 above.

89. Today, police departments typically issue pistols the standard magazines for which hold more than ten rounds. Overstreet Decl. at 4-6. One such pistol is the Glock 17, the standard magazines for which hold 17 rounds. *Id*. The standard magazine for our military's Beretta M9 9mm service pistol holds 15 rounds. *Id*. The M9 replaced the M1911 .45 caliber pistol, the standard magazine for which holds seven rounds. *Id*.

Response: Same as Response to paragraphs 85 and 87 above.

90. Magazines holding more than ten rounds are ubiquitous in the law enforcement community: currently, the nation's nearly one million law enforcement agents at the federal, state and local levels are virtually all armed with semiautomatic handguns with magazines holding more than ten, and as many as twenty, rounds of ammunition. *See* MASSAD AYOOB, THE COMPLETE BOOK OF HANDGUNS 50 (2013) (discussing police transition from revolvers to semiautomatics with large magazines); *id*. ("For a time in the 1980s, this Sig Sauer P226 was probably the most popular police service pistol") (fifteen-round magazines); *id*. at 87 ("Known as the Glock 22, this pistol is believed to be in use by more American police departments than any other. Its standard magazine capacity is 15 rounds."); *id*. at 89 ("On the NYPD, where officers have a choice of three different 16-shot 9mm pistols for uniform carry, an estimated 20,000 of the city's estimated 35,000 sworn personnel carry the Glock 19."); *id*. at 90 ("The most popular police handgun in America, the Glock is also hugely popular for action pistol competition and home and personal defense.").

Response: Same as Response to paragraphs 85 and 87 above.

91. Beginning with the M1 Carbine, introduced in the 1940s, rifles equipped with detachable magazines holding more than ten rounds have been increasingly common: there are about two million privately owned M1 Carbines currently in existence, the standard magazines for which hold 15 or 30 rounds. Overstreet Decl. at 6-7.

Response: The number of M1 Carbines currently in existence is immaterial to the constitutionality of the Act, and Defendants have no basis upon which to admit or dispute whether the M1 Carbine is 2 million of the approximately 300 million guns in civilian hands in the United States, or 2%. Moreover, if an M1 Carbine with a large capacity magazine was possessed in Connecticut prior to the passage of the Act, it can continue to be lawfully possessed if the owner registers it by January 1, 2014. *See* Public Act 13-3, § 24. A gun owner can also use a non-LCM in their M1 Carbine. (See Response to paragraphs 85 and 87 above).

92. There are approximately 4 million AR-15 type rifles currently in existence, and these are typically sold with between one and three 30-round magazines. Overstreet Decl. at 6-7. Ruger Mini-14 series rifles, which may outnumber M1 Carbines and AR-15s combined, have the capacity to accept magazines that hold more than ten rounds, and many are equipped with such magazines. *Id*. Numerous other rifle designs use magazines holding more than 10 rounds. *Id*. An unknown number in the millions of such rifles exist in private ownership. *Id*.

Response: Same as Response to paragraphs 85 and 87 above.

93. The actual number of magazines made or imported each year is not known, since the ATF does not require manufacturers to report magazine production. Overstreet Decl. at 6. However, estimates are set forth in the Koper 2004 report. Overstreet Decl. at 6. Koper reported that, as of 1994, 18% of civilian-owned firearms, including 21% of civilian-owned handguns, were equipped with magazines holding over ten rounds, and that 25 million guns were equipped with such magazines. *Id*. Some 4.7 million such magazines were imported during 1995-2000. *Id*.

Response: Same as Response to paragraphs 85 and 87 above. Moreover, these facts are immaterial to the relevant issue of whether LCMs are necessary or commonly used for self defense. The data indicate they are not. 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." (Exh. 61 at 16-17; *see* http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/ (last visited September 23, 2013) (Exh. 57)).

94. Koper further reported that, as of 1994, 40% of the semiautomatic handgun models and a majority of the semiautomatic rifle models manufactured and advertised before the Ban were sold with, or had a variation that was sold with, a magazine holding over ten rounds. Overstreet Decl. at 7.

Response: Same as Response to paragraph 92 above.

Remanufacturing of Ammunition Magazines

95. Connecticut residents who wish retain "large capacity" magazines criminalized by the Act must remanufacture them so that they cannot be "readily restored or converted" to hold more than ten rounds.

Response: The Act does not require anyone who lawfully possessed an LCM when the Act was passed to convert it into a magazine that can accept 10 rounds or less. Such individuals can declare possession of their LCM and leave it as is, or can simply buy a new magazine that is lawful under the Act. P.A. 13-3, §§ 23-24; P.A. 13-220, § 1(a)(1); § 2(a)(1). Connecticut citizens who lawfully possessed LCMs as of April 5, 2013

may continue to do so as long as they register them by January 1, 2014. *See* Public Act 13-3, § 24. If an individual does not wish to register an LCM, he or she can simply purchase a new magazine that holds less than 10 rounds instead of remanufacturing their existing LCM.

96. Remanufacturing or conversion of magazines so that they cannot be readily restored or converted to hold more than ten rounds of ammunition would require engineering know-how, parts, and equipment that are beyond the capacity of most law-abiding gun owners. Rossi Decl. at 2. *See also, e.g.*, McClain Aff. at 3; Rocklin Aff. at 3; Cypher Aff. at 3.

Response: Same as Response to paragraph 95 above.

97. No such products or services that would permit the plaintiffs to restore or convert grandfathered magazines by themselves are currently available on the market. Rossi Decl. at 2. Magazine model and design types number in the hundreds or the thousands. *Id*.

Response: Denied. (*See* Cooke Aff. at ¶24). Further, Plaintiffs need not undertake a conversion of their magazines. They can simply declare the LCMs they own by January 4, 2014 or purchase new lawful non-LCM magazines.

Tubular Ammunition Magazines

98. The "capacity" of tubular magazines for rifles and shotguns varies with the length of the cartridges or shells inserted therein. *Peoples Rights Org., Inc. v. City of Columbus*, 152 F.3d 522, 536 n.15 (6th Cir. 1998). They may hold no more than ten of one length, but more than ten of another length.

Response: Admitted. However, firearms with fixed tubular magazines are manufactured to accept standard lengths and caliber of round. A gun owner can consult the specifications associated with his or her firearm to determine the type, length and number of standard rounds that the magazine can accept. The specifications should be provided with the firearm when it is purchased, and are available online, in gun publications or from the manufacturer. (Delehanty Aff. at ¶46). If a firearm owner is concerned that a tubular magazine can fit more than ten of any nonstandard rounds, then he or she can simply have the magazine permanently altered by a gunsmith so that it cannot fit more than ten of any round. *Id*. at ¶ 47.

Further, although tubular magazines often can accept different rounds of the same caliber that have varying lengths, the variance in the number of cartridges that may fit in a ten round tubular magazine usually is no more than 1-2 rounds depending upon the caliber used. (*Id.* at ¶43). Further, the definition of large capacity magazines under the Act specifically exempts .22 caliber tube ammunition feeding devices and tubular magazines that are contained in a lever action firearm. Most rifles with tubular magazines are either .22 caliber or lever action. (*See id*. at ¶44). Shotguns can also have

tubular magazines, but most shotguns cannot fit more than ten shotgun shells of any length in the tubular magazine unless the gun owner has made a special effort to alter and extend the magazine. (*Id*. at ¶45).

Common Features Banned by the Act

99. The Act defines the term "assault weapon" so as to criminalize features that are commonly found on rifles, pistols and shotguns. CONN. GEN. STAT. § 53-202a. These features include telescoping stocks, pistol grips, and thumbhole stocks. *Id*. Telescoping stocks, pistol grips, and thumbhole stocks promote the safe and comfortable use of a firearm, and also promote firing accuracy. Rossi Decl. at 2-5.

Response: The banned features are not commonly found on rifles, pistols and shotguns. (*See* Koper Aff. at 17 (noting that assault weapons were only 1% of the gun stock in 1994). Further, these features are appropriately banned because they either help criminals conceal themselves from law enforcement, conceal their weapons, enhance the firepower available to shooters, and prolong any shooting incident where law enforcement and innocent civilians may be indiscriminately murdered. (Sweeney Aff. at ¶19). After the enactment of Connecticut's original ban, and an adoption of a military features test in 2001, gun manufacturers made minor modifications to their firearms to evade the features test. (*See* Sweeney Aff. at ¶¶16-17; *see also* Koper Aff. at ¶¶46, 72; Exh. 43 at 2, 4-6 (VPC "On Target")).

Telescoping Stocks

100. A stock is that part of a firearm a person holds against the shoulder when shooting. *See* diagram attached to Pl. 56(a)(1) Statement "Exhibit J." It provides a means for the shooter to support the firearm and easily aim it. Rossi Decl. at 4.

Response: Admit. Defendants note, however, that a collapsing or telescoping stock may allow a criminal to more easily conceal an assault weapon in clothing or a pack therefore posing a risk to law enforcement and civilians. (Sweeney Aff. at ¶19). These features are appropriately banned because they either help criminals conceal themselves from law enforcement, conceal their weapons, enhance the firepower available to shooters, and prolong any shooting incident where law enforcement and innocent civilians may be indiscriminately murdered. *Id*.

101. A "telescoping stock" allows the length of the stock to be shortened or lengthened consistent with the length of the person's arms, so that the stock fits comfortably against the shoulder and the rear hand holds the grip and controls the trigger properly. Rossi Decl. at 4-5. It simply allows the gun to fit the person's physique correctly, in the same manner as one selects the right size of shoe to wear. *Id*. For example, a telescoping stock allows a hunter to change the length of the stock depending on the clothing appropriate for the weather encountered. *Id*. Shooting outdoors in fall and winter require heavy clothing and a shooting

vest, thus requiring shortening the stock so that the firearm can be fitted for proper access to the trigger. *Id*. The gun may be adjusted to fit the different sizes of several people in a family or home. *Id*. A gun that properly fits the shooter promotes greater shooting accuracy. *Id*.

Response: A shooter's personal comfort is not material to the constitutionality of the Act. Moreover, collapsing or telescoping stocks pose public safety threats. (*See* Response to paragraphs 99 and 100 above).

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

Response: Same as Response to paragraph 101 above.

Pistol Grips

103. A pistol grip is a grip of a shotgun or rifle shaped like a pistol stock. Exhibit J. A pistol grip allows a rifle to be held at the shoulder with more comfort and stability. Rossi Decl. at 5. Many rifles have pistol grips rather than straight grips. *Id*.

Response: Features like the pistol grip, forward pistol grip and thumbhole stocks allow shooters to steady the weapon during rapid firing, and also make it easier to spray bullets from the hip or fire the weapon with only one hand. (Sweeney Aff. at ¶18).

104. Pistol grips serve two basic functions. The first is assisting sight-aligned accurate fire. Rossi Decl. at 5. Positioning the rear of the stock into the pocket of the shoulder and maintaining it in that position is aided by the pistol grip, and is imperative for accurate sight alignment and thus accurate shooting with rifles of this design, due to the shoulder stock being in a straight line with the barrel. *Id*. With the forward hand holding the fore-end, the rearward hand holding the grip, and the butt securely against the shoulder, a rifle may be fired accurately. *Id*. The more consistent the shooter's eye is in relation to the line of the stock and barrel, the more accurate the shot placement. *Id*.

Response: Same as Response to paragraph 103 above.

105. The second function of the pistol grip is firearm retention, imperative, for example, during a home invasion when assailant(s) may attempt to disarm a citizen in close quarters. Rossi Decl. at 5.

Response: Same as Response to paragraph 103 above.

106. A pistol grip does *not* function to allow a rifle to be fired from the hip. Rossi Decl. at 5. . (emphasis added). Sight alignment between the eye and firearm is not conducive to spray or hip fire. Rossi Decl. at 5. Conversely, a rifle with a straight grip and no pistol grip would

be more conducive to firing from the hip. Rossi Decl. at 5. Firing from the hip would be highly inaccurate and is simply not a factor in crime. *Id*.

Response: Same as Response to paragraph 103 above.

107. A pistol grip ("conspicuous" or otherwise) does not make a firearm more powerful or deadly. Rossi Decl. at 5.

Response: Same as Response to paragraph 103 above.

Thumbhole Stocks

108. A thumbhole stock is simply a hole carved into the stock of a rifle through which a user inserts his or her thumb. Rossi Decl. at 5. Thumbhole stocks allow the rifle to be held with more comfort and stability and, thus, fired more accurately. *Id*.

Response: Same as Response to paragraph 103 above.

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

Response: Same as Response to paragraph 103 above.

Firearms Affected By The Act's Restrictions

110. The Act's broadened definition of "assault weapon" impacts a wide range of firearms, all of which are regularly used for lawful and legitimate purposes like hunting, sporting competitions and self defense. Rossi Decl. at 2. The pistols, rifles and shotguns criminalized by these restrictions are immensely popular and have widespread use throughout the United States. *Id*.

Response: Denied. The only issue of material fact regarding the number of firearms prohibited by the Act is whether there remain adequate alternative firearms for citizens to keep and bear for protected Second Amendment purposes. There remain lawful in Connecticut many of the most popular pistols, revolver, rifles and shotguns that are alternative firearms to be lawfully purchased and used by gun owners for lawful and responsible Second Amendment purposes such as self defense and home defense. A recent issue of "Gun Digest" lists numerous rifles that can lawfully be purchased in Connecticut after the Act: 7 semi-automatics; 62 lever actions; 4 pump actions; 115 bolt actions; and 73 single shot. The same issue also lists numerous lawful handguns: over 300 semi-automatic pistols; 86 revolvers; 59 single action revolvers; and 21 derringers and single shot handguns. The same issue also lists numerous lawful handguns: over 300 semi-automatic pistols; 86 revolvers; 59 single action revolvers; and 21 derringers and single shot handguns. It similarly lists numerous lawful shotguns: 58 semi-automatics; 33 pump actions; 59 over unders; 30 side by sides; 31 bolt and single

shots; 1 lever; and 14 double rifles and drillings. There are also 25 rimfire semi-automatic rifles; 12 lever and pump or slide rifles; and 37 bolt action and single shot rifles listed. This is not an exhaustive list of firearms that remain lawful in Connecticut. (*See* Delehanty Aff. at ¶¶29-32).

Moreover, Plaintiffs exaggerate the "immense popularity" of their favored assault rifle, the AR-15, which is the primary focus in this litigation. AR-15 type rifles are not commonly owned in the United States. There are at least 3.97 million AR -15 type rifles that have been manufactured in the United States for the commercial market. Pl. Prel. Inj. Exhibit A, ¶ 5. It is estimated that there are about 300 million firearms in the nation. (*See* Exh. 65). Therefore, AR-15 type rifles make up around 1% of the gun market. Furthermore, according to the Modern Sporting Rifle Report, 60% of modern sporting rifle owners owned multiple rifles, and nearly 44% of the owners were current or former military/law enforcement. *See* Pl. Prel. Inj. Exhibit B. Since individual AR-15 rifle owners are possess multiple AR-15s the number of owners is far less than the number of rifles and likely less than 1% of gun owners.

Lastly, even assuming arguendo the "wide spread use" and "immense popularity" of these weapons for sporting, hunting, and recreational purposes, these are not purposes protected by the Second Amendment and are not a basis upon which to strike down the Act as unconstitutional.

111. One type of rifle that is directly impacted by the Act's restrictions is arguably the most popular: the AR-15 type of Modern Sporting Rifle ("MSR"). Overstreet Decl. at 2-4; NSSF 2010 MSR Report. Colt introduced the AR-15 SP-1 rifle in 1963. Overstreet Decl. at 2. Since that time, "AR-15" has become a generic term commonly used to describe the same or similar MSRs made by Colt and other manufacturers. *Id*.

Response: Same as Response to paragraph 110 above.

112. AR-15 model MSRs (and all other rifles called "assault weapons" under the Act) are semiautomatic, meaning that they are designed to fire only once when the trigger is pulled. Overstreet Decl. at 2. As a general matter, semiautomatic firearms are extremely common in the U.S. (Overstreet Decl. at 2-4), having flooded the handgun market for at least twenty (20) years. *See* Koper 2004 at 81 (80% of handguns produced in 1993 were semiautomatic). *See also* David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. CONTEMP. L. 381, 413 (1994) ("semiautomatics are more than a century old"). "Sixty percent of gun owners [own] some type of semiautomatic firearm." Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue*, 60 HASTINGS L.J. 1285, 1293-95 (2009).

Response: The statement is not material because it fails to distinguish between semiautomatic weapons generally and assault weapons banned by the Act. The Act does not affect most semiautomatic firearms, just a small subset of semiautomatic

firearms that are not commonly used for lawful, Second Amendment purposes. *See* Conn. Gen. Stat. § 53-202a(A)-(D); *see also* Response to paragraph 110 above.

113. AR-15 MSRs are not fully automatic machine guns, which continue to fire so long as the trigger is pressed. Overstreet Decl. at 2. AR-15 model MSRs have the capacity to accept a detachable magazine. *Id*. Standard magazines for AR-15 MSRs hold 20 or 30 rounds of ammunition, but magazines of other capacities are also available. *Id*. AR-15 MSRs also have a pistol grip typically 3 ¾ to 4 inches in length that protrudes at a rearward angle beneath the action of the rifle. *Id*.

Response: The above statement appears to be accurate except for Plaintiffs' euphemistic reference to AR-15s as "Modern Sporting Rifles" or MSRs ,when they are in fact civilian versions of the military's M-16. (Delehanty Aff. at ¶¶20-21).

114. The AR-15 is the semi-automatic civilian sporting version of the select-fire M16 rifle and M4 carbine used by the United States military and many law enforcement agencies. See Declaration of Gary Roberts ("Roberts Decl.") [Pl. 56(a)(1) Statement "Exhibit K"].

Response: Same as Response to paragraph 113 above.

115. The AR15 is extremely common in America. Roberts Decl. at 14-16. As a result of being used by the military for nearly 50 years, perhaps more Americans have been trained to safely operate the AR15 than any other firearm, as there are approximately 25 million American veterans who have been taught how to properly use an AR15 type rifle through their military training, not to mention in excess of 1 million American law enforcement officers who have qualified on the AR15 over the last several decades, as well as numerous civilian target shooters and hunters who routinely use AR15s. *Id*. Since so few military service members, particularly those not on active duty, get enough training and practice with their M16 or M4 service rifle, many military Reservists and National Guard personnel, as well as some active duty service members, have purchased civilian AR15s in order to train and practice on their own time with a rifle offering similar ergonomics and operating controls as the service weapon they are issued in the military. *Id*.

Response: Defendants do not dispute that members of the military train and practice on the M16 or M4 and purchase AR15s to train on as M16 because the two rifles are virtually identical. That does not make the AR15 "extremely common in America." *See* Response to paragraph 110 above.

116. U.S. Government data sources (such as ATF manufacturing and export statistics) and nationwide market and consumer surveys (such as the National Shooting Sports Foundation ("NSSF") *Modern Sporting Rifle Comprehensive Consumer Report*) indicate that the AR-15 MSR is one of the most widely and commonly possessed rifle in the United States. Overstreet Decl. at 2-4.

Response: Same as Response to paragraph 110 above.

117. Between 1986-2011, over 3.3 million AR-15s were made and not exported by AR-15 manufacturers whose production can be identified from government data sources. Overstreet Decl. at 2-4.

Response: Same as Response to paragraph 110 above.

118. In 2011, there were 6,244,998 firearms (excluding fully-automatic firearms, i.e., machine guns) made in the U.S. and not exported. *Id*. Of these, 2,238,832 were rifles, including 408,139 AR-15s by manufacturers whose production figures could be discerned from the ATF reports. *Id*. Thus, AR-15s accounted for at least 7% of firearms, and 18% of rifles, made in the U.S. for the domestic market that year. *Id*.

Response: Same as Response to paragraph 110 above.

119. From 1986 through 2011, U.S.-made firearms accounted for 69% of all new firearms available on the commercial market in the United States. *Id*. Even with the inclusion of imported firearms into the above calculations, AR-15s would account for a significant percentage of new firearms available in the United States. *Id*.

Response: Same as Response to paragraph 110 above.

120. The FBI reports that background checks processed through the National Instant Criminal Background Check System (NICS), most of which are conducted for retail purchases of firearms by consumers, increased 14.2 % in 2011 as compared to 2010; 19.1 % in 2012 as compared to 2011; and 44.5 % during the first three months of 2013 as compared to the same period in 2012. Overstreet Decl. at 2-4.

Response: Defendants admit that these statistics are accurate. However, actual gun ownership in households has declined over the past four decades, even if the number of firearms purchased is increasing. (*See* Exhs. 64 and 65). The household gun ownership rate has fallen from an average of 50 percent in the 1970s to 49 percent in the 1980s, 43 percent in the 1990s, 35 percent in the 2000s, and 34 percent in 2012. (*Id.*). The household gun ownership rate is even less in Connecticut – at only 16.2% of Connecticut households reporting a gun owner in the home. (Exh. 38). So even assuming the accuracy of these facts, they are not material to the question of a Second Amendment individual right because even if more guns are being bought, they are being bought by fewer people.

121. If the 2011-2013 trend for AR-15 rifle production was identical to that for NICS checks, it would mean that nearly 660,000 AR-15s were made in the U.S. and not exported during 2012 and the first three months of 2013. *Id*. That figure, added to the over 3.3 million

noted earlier, implies a conservative estimate of 3.97 million AR-15s for the period 1986-March 2013, excluding production by Remington and Sturm, Ruger. Overstreet Decl. at 2-4.

Response: Same as Response to paragraph 110 above.

122. The NSSF 2010 MSR Report (Doc. ## 15-2, 15-3, 15-4) illustrates the lawful and legitimate reasons supporting the MSR's popularity and common use as of 2010. According to this report, 60% of MSR owners that responded to the study owned multiple MSRs. NSSF 2010 MSR Report at 7-8. Recreational target shooting and home defense were the top two reasons for owning an MSR. *Id*. Beyond this, MSR owners consider accuracy and reliability to be the two most important things to consider when buying a MSR. *Id*. Those who shoot often are much more likely to own multiple MSRs. *Id*. 3 out of 4 people who shoot twice a month or more own multiple MSRs. *Id*. 60% of MSR owners use a collapsible/folding stock. *Id*. One-third of all MSR owners use a 30- round magazine in their MSR. *Id*.

Response: Same as Response to paragraph 110 above.

123. The firearms characterized as "assault weapons" under the Act, have been widely and legally used for sporting purposes (as well as for self-defense and hunting) throughout Connecticut and the United States for decades. *See* Wilson Decl. at 4; Shew Supp'l Decl. at 2.

Response: Same as Response to paragraph 110 above.

124. There are numerous shooting competitions for non-military personnel that have taken place throughout the State of Connecticut for years that regularly and legally used the firearms now classified as "assault weapons" to compete. *See* Wilson Decl. at 4; Shew Supp'l Decl. at 2. For example, timed competitions known as "3 Gun Shoots" and "2 Gun Shoots" were regularly held at such places as the Metacon Gun Club in Weatogue, CT, and the Rockville Fish & Game Club in Vernon, CT. *Id*. These matches were and are extremely popular, have been taking place throughout Connecticut for years, and have been attended throughout the years by hundreds (and likely thousands) of individual and member plaintiffs. *Id*.

Response: This immaterial fact may or may not be true, Defendants lack sufficient information upon which to admit or deny immaterial facts about shooting competitions and need not do so for this Court to enter summary judgment for Defendants in this case.

125. In this sense, the argument that the firearms now classified as "assault weapons" are not used by private citizens for sporting competitions is simply untrue. *Id*.

Response: This immaterial fact may or may not be true, Defendants lack sufficient information upon which to admit or deny this fact and need not do so.

Moreover, recreational purposes or subjective preferences for a firearm are not a basis upon which to strike down a law as unconstitutional.

Suitability of the AR-15 MSR For Home Defense

126. It is widely accepted that the AR15 chambered in a .223/5.56 mm caliber is the firearm best suited for home defense use. Roberts Decl. at 14-16. *See also* J. Guthrie, *Versatile Defender: An Argument for Advanced AR Carbines in the Home*, in BOOK OF THE AR-15 134 (Eric R. Poole, ed. 2013) ("If a system is good enough for the U.S. Army's Delta and the U.S. Navy SEALs, surely it should be my weapon of choice, should I be a police officer or Mr. John Q. Public looking to defend my home"); Eric Poole, *Ready To Arm: It's Time to Rethink Home Security*, in GUNS & AMMO, BOOK OF THE AR-15 15-22 (Eric R. Poole, ed. 2013) (discussing virtues of the AR-15 platform as a home defense weapon); Mark Kayser, *AR-15 for Home & the Hunt*, In PERSONAL & HOME DEFENSE 28-29, 30-31(2013) (advising use of AR-15 for self-defense in the home and recommending customizing with accessories).

Response: Denied. AR-15 assault rifles may not be most suitable for home defense use in many situations, and certainly are not required for adequate self defense, which is the only issue of material fact relevant to the question of self defense. Assault weapons are not needed, or necessarily the best choice, for reasonable home and self defense by citizens. (*See* Sweeney Aff. at ¶6; Rovella Aff. at ¶8; Mello Aff. at ¶10). Assault style weapons particularly those using large capacity magazines and high velocity rifle rounds pose too many risks of over penetration, down range injuries and disproportionate response by civilians. (Sweeney Aff. at ¶21). Assault rifles in particular are not well suited for self defense in the home in an urban environment because they typically take a .223 caliber round, which could easily pass through the walls of many dwellings and result in shooting of unintended victims such as family members, passers-by or neighbors. (Rovella Aff. at ¶39).

Furthermore, the typical homeowner has little training in weapons; in many instances just the National Rifle Association course that is taken to qualify for a gun permit in Connecticut. This type of training does not prepare a homeowner for the stress of a gun confrontation. A homeowner could use the weapon recklessly in a stressful situation such as a home invasion and would respond disproportionately by firing off excessive rounds. This could result in serious personal injury to innocent bystanders and first responders. These are weapons for war zones, not the homes and streets of communities. (*Id*. at ¶40).

127. The AR15 .223/5.56 mm caliber carbine configuration is extremely common. Roberts Decl. at 14-16. In fact, it is the carbine configuration most commonly used by law enforcement officers today. *Id*. This configuration (i.e., 5.56 mm 55 grain cartridges fired from 20" barrel M16A1 rifles) was the U.S. military standard ammunition in the 1960s and 1970s. *Id*. The roots of the .223/5.56 mm cartridge commonly used in the AR15 come from a

caliber designed for small game varmint hunting and used to eliminate small furry rodents and animals up to coyote size. *Id*.

Response: Same as Response to paragraph 110 above.

128. During defensive shooting encounters, shots that inadvertently miss the intended target in close quarter battle and urban environments can place innocent citizens in danger. Roberts Decl. at 14-16. In general, .223/5.56 mm bullets demonstrate less penetration after passing through building structural materials than other common law enforcement and civilian calibers. *Id*. All of the .223/5.56 mm bullets recommended for law enforcement use offer reduced downrange penetration hazards, resulting in less potential risk of injuring innocent citizens and reduced risk of civil litigation in situations where bullets miss their intended target and enter or exit structures compared with common handgun bullets, traditional hunting rifle ammunition, and shotgun projectiles. *Id*.

Response: Same as Response to paragraph 126 above.

The Impact Of The Act On Crime

129. The Act's restriction on the number of rounds loaded in a magazine is unlikely to have any detectable effect on the number of homicides or violent acts committed with firearms. *See* Declaration of Gary Kleck ("Kleck Decl.") [Pl. Prel. Inj. Exhibit K; Doc. # 15-13)] at 2. Criminals will be even less likely to be affected by the LC magazine restriction than non-criminals. *Id*. It is the law-abiding citizens who will primarily be impacted by the restriction. *Id*.

Response: Plaintiff's assertions that "[c]riminals will be even less likely to be affected by the LC magazine restriction than non-criminals," and "[i]t is the law-abiding citizens who will primarily be impacted by the restriction" do not have any evidentiary support other than Dr. Kleck's references to his own self-serving and not well regarded studies. (Pl. Prel. Inj. Exhibit K; see Exhs. 56 and 60). Second, and more importantly, even accepting Plaintiffs' claim that the Act does not reduce the number of gun crimes overall, the Act will have the effect of reducing the lethality of gunshot victimizations. (*See* Responses to paragraphs 24, 41 and 60 above).

130. The Act's limitation of the number of rounds allowable for a firearm in the home impairs a homeowner's ability to successfully defend himself or herself during a criminal attack in the home because: (a) victims often face multiple criminal adversaries; and (b) people miss with most of the rounds they fire, even when trying to shoot their opponents. Kleck Decl. at 3. In 2008, the NCVS indicated that 17.4% of violent crimes involved two or more offenders, and that nearly 800,000 crimes occurred in which the victim faced multiple offenders. *Id*.

Response: Victims of gun crime almost never fire more than seven rounds in self defense, in any situation. (*See* Exhs. 57 and 58). Further, national rates of gun homicide and other violent gun crimes are strikingly lower now than during their peak in the mid-1990s, paralleling a general decline in violent crime, according to the Pew Report. Compared with 1993, the peak of U.S. gun homicides, the firearm homicide rate was 49% lower in 2010, and there were fewer deaths, even though the nation's population grew. The victimization rate for other violent crimes with a firearm—assaults, robberies and sex crimes—was 75% lower in 2011 than in 1993. Violent non-fatal crime victimization overall (with or without a firearm) also is down markedly (72%) over two decades. (*See* Pl. 56(a)(1) Statement, Exhibit A). Moreover, Dr. Kleck is not an expert in self defense so his unsubstantiated statement does not meet the Rule 56 requirement that evidence in support of summary judgment be admissible.

131. Like civilians, police officers frequently miss their targets: numerous studies have been done of shootings by police officers in which the officers were trying to shoot criminal adversaries. Kleck Decl. at 3. In many of these shootings, the officers fired large numbers of rounds. *Id*. Yet, in 63% of the incidents, the officers failed to hit even a single offender with even a single round. Kleck Decl. at 3. Police officers have the experience, training, and temperament to handle stressful, dangerous situations far better than the average civilian, so it is reasonable to assume marksmanship among civilians using guns for self-protection will be still lower than that of police. *Id*.

Response: This paragraph is not material because, even if they are inaccurate, victims of gun crime almost never fire more than seven rounds in self defense, in any situation. (*See* Exhs. 57 and 58). Further, a lack of accuracy on the part of civilians in self defense situations is a legitimate concern for law enforcement officials and policy makers, and not a basis upon which to permit or encourage the possession of assault weapons and LCMs by average citizens who Plaintiffs contend will miss their target with a large percentage of their shots.

In fact, this is a reason why assault weapons and LCMs are not appropriate for home defense. The typical homeowner has little training in weapons; in many instances just the National Rifle Association (NRA) course that is taken to qualify for a gun permit in Connecticut. This type of training does not prepare a homeowner for the stress of a gun confrontation. A homeowner could use the weapon recklessly in a stressful situation such as a home invasion, and would respond disproportionately by firing off excessive rounds. This could result in serious personal injury to innocent bystanders and first responders. Assault weapons are for war zones, not the homes and streets of our communities. (*See* Rovella Aff. at ¶40; Sweeney Aff. at ¶21).

In regard to LCMs, the only reason a citizen would be disadvantaged by having to change out a magazine would be if she was engaged in rapid fire of her weapon. This is simply not an appropriate thing to do in home defense, particularly in an urban area. (Rovella Aff. at ¶41). A shotgun would be an appropriate weapon for home defense

because it would spray a lot of pellets, and almost invariably hit the intruder while at the same time causing minimal collateral damage. (*Id.* at ¶43).

132. Some law-abiding citizens, along with many criminals, might invest in multiple ten-round magazines in the absence of larger capacity magazines – a development which obviously defeats the purpose of the magazine capacity limit. Kleck Decl. at 3. Beyond that, however, some people will not be able to make effective use of additional magazines. *Id*.

Response: Some law-abiding citizens might invest in multiple 10 round magazines, but deny that that defeats the purpose of the Act. Limiting the number of rounds in a magazine means that a shooter intent on firing bullets indiscriminately has to at least pause periodically to change out his magazine. While a trained shooter can change a magazine in seconds in a controlled environment, the stress of the situation may substantially increase the time it takes a criminal to change the magazine during a criminal attack. Sometimes seconds is all a police officer needs to respond and stop the attack. (Mello Aff. at ¶30). Furthermore, the short period of time of a magazine change can be of value to victims too, because those fleeting seconds can provide an opportunity for him or her to either flee or attempt to thwart the ongoing gun attack. (*Id*. at ¶ 31, Exh. 49). Moreover, if Plaintiffs can own multiple ten-round magazines, along with the "grandfathered" LCMs that should be more than enough ammunition with which to defend themselves, even in their hypothesized "multiple assailant" situations. Finally, for those individuals who cannot effectively use additional magazines, Plaintiffs admit that they can simply use a second or third loaded weapon. (Kleck Aff. at 4-5).

133. The restrictions on LC magazines will have an inconsequential impact on reducing homicides and violent crimes. Kleck Decl. at 3-4. Criminals rarely fire more than ten rounds in gun crimes. *Id*. Indeed, they usually do not fire any at all – the gun is used only to threaten the victim, not attack him or her. *Id*. For the vast majority of gun crimes, the unavailability of LC magazines would therefore be inconsequential to deterring the criminal behavior. *Id*.

Response: Evidence suggests that gun attacks with semiautomatics—especially assault weapons and other guns equipped with large capacity magazines—tend to result in more shots fired, more persons wounded, and more wounds per victim, than do gun attacks with other firearms. There is evidence that victims who receive more than one gunshot wound are substantially more likely to die than victims who receive only one wound. Thus, it appears that crimes committed with these weapons are likely to result in more injuries, and more lethal injuries, than crimes committed with other firearms. (Koper Aff. at ¶8). Bans on assault weapons and large-capacity magazines, and particularly a ban on LCMs, thus have the potential to prevent and limit gunshot victimizations over the long-run. (See *id*. at ¶77).

134. A ban on LC magazines will have an inconsequential effect on reducing the number of killed or injured victims in mass shootings. Kleck Decl. at 4-5. The presumption is false

that an offender lacking LC magazines would be forced to reload sooner or more often, thereby giving bystanders the opportunity to tackle him and stop his attacks. *Id*. Analysis of mass shootings in the United States shows it is exceedingly rare that victims and bystanders in mass shootings have tackled shooters while they are reloading. *Id*. This is particularly true because most mass shooters bring multiple guns to the crimes and, therefore, can continue firing without reloading even after any one gun's ammunition is expended. *Id*. at 4-5. A study of every large-scale mass shooting committed in the United States in the 10-year period from 1984 through 1993 found that the killers in 13 of these 15 incidents possessed multiple guns. Kleck Decl. at 4-5.

Response: Denied. There are several instances in which it has been documented that a shooting was interrupted during a magazine change. (Mello Aff. at ¶¶30-32; Sweeney Aff. at ¶¶14-15, 20; Rovella Aff. at ¶¶29-30; *see* (Exh. 49; Exh. 59 at ¶¶18-19; *see also* Rossi Decl. at 6-10 (Doc. No. 15-5) (discussing impacts of delays in firing caused by magazine changes).

Also, a graduate student at George Mason University recently analyzed data about mass public killings for his Master's thesis, and compared the number of deaths and fatalities across cases that involved assault weapons and large capacity magazines, and those that did not. With regard to assault weapons, although he found no difference in the average number of fatalities, he did find an increase in gunshot victimization. Specifically, he found that an average of 11.04 people were shot in public mass shootings involving assault weapons, compared to 5.75 people shot in non-assault weapon cases. This is a statistically significant finding, meaning that it was not likely due to chance. As a result, the total average number of people killed and injured in assault weapon cases was 19.27, compared to 14.06 in non-assault weapon cases. (Koper Aff. at ¶¶23, 33). A person is 63% more likely to die if he or she receives two or more gunshot wounds than if he or she receives just one. (Koper Aff. at ¶38).

135. The Act's restrictions on rifles and shotguns that contain so-called "Assault Weapon" characteristics will not further the goals of reducing homicides or violent crimes or improving public safety. Kleck Decl. at 6.

Response: Denied. The Act strengthens the assault weapons ban by moving it to a "one-feature" test rather than the "two-feature" test that existed under the federal ban and Connecticut's original ban. This change is likely to substantially limit—if not eliminate—the ability of gun manufacturers to quickly adopt minor 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. In doing so, the Act is likely to meaningfully limit the number of weapons with military-style characteristics considered conducive to criminal applications in Connecticut, and to further reduce the use of such weapons in crime. (Koper Aff. at ¶72; Sweeney Aff. at

¶¶16-17). Such reductions in turn will reduce the lethality of gun crime when it does occur. (Koper Aff. at ¶¶10, 60-61, 76-77).

136. Criminals are just as likely to use non-banned firearms that function the same as firearms falling within the so-called "assault weapon" ("AW") definition under the Act. Kleck Decl. at 6-7. Under the Act, though some semi-automatic firearms are banned, other semi-automatic firearms are left legally available, including (a) unbanned models; (b) currently banned models that are redesigned to remove the features that make them AWs; and (c) firearms that would otherwise be banned as AWs but are grandfathered into lawful status because they were manufactured before September 13, 1994, or were lawfully possessed before January 15, 2013. *Id*. Thus, firearms will continue to be available that function in essentially identical ways as the banned firearms – i.e., they can accept detachable magazines (including LC magazines), can be fired just as fast, and can fire rounds that are, shot-for-shot, just as lethal as rounds fired from the banned firearms. *Id*. Consequently, criminals can substitute mechanically identical firearms for banned AWs, commit the same crimes they otherwise would have committed with the banned firearms, with the same number of wounded or killed victims. *Id*.

Response: Defendants admit that thousands of lawful firearms remain available to citizens to use for protected Second Amendment purposes as well as other lawful purposes such as hunting, recreation and sport shooting. *See also* Response to paragraph 110 above. While those lawful firearms are perfectly adequate for self defense, they are less lethal than the banned weapons and pose less of a threat to the public safety. (Koper Aff. at ¶¶8, 77).

137. The Act's expanded definition and ban of "assault weapons" will make little difference on public safety by reducing crimes committed with firearms. Kleck Decl. at 6-7. Criminals who do not currently possess or use banned AWs have no need to acquire substitute weapons because they will presumably continue to use the firearms they currently possess. Kleck Decl. at 7.

Response: Denied. While the ban on assault weapons alone may not reduce the incidence of gun crime it will reduce the lethality of gun crime incidents when they do occur, particularly when the assault weapon ban is coupled with the LCM ban. The assault weapon ban will also likely make a difference in some of the most traumatic and serious types of gun crime – killing of law enforcement officers and mass public shootings and mass killings. *See e.g.* Responses to paragraph 13, 24, 41, and 60 above.

138. All attributes of AWs that *do* make them more useful for criminal purposes (i.e., accuracy, the ability to fire many rounds without reloading) are present in easily-substituted, unbanned, counterpart firearms. Kleck Decl. at 7. More importantly, these same attributes increase the utility of AWs for *lawful* self-defense or various sporting uses. *Id*.

Response: Defendants admit that thousands of lawful firearms remain available to citizens to use for protected Second Amendment purposes as well as other lawful purposes such as hunting, recreation and sport shooting. *See also* Response to paragraph 110 above.

139. In self-defense situations where it is necessary for the crime victim to shoot the criminal in order to prevent harm to the defender or others, accuracy is crucial for the victim. Kleck Decl. at 8. Where it is necessary for a crime victim to shoot the aggressor, and only lethal or incapacitating injury will stop him, the lethality of the defender's firearm is a precondition to her ability to end the criminal attack, and prevent harm to herself and other potential victims. *Id*.

Response: The Act leaves many other firearms, including many handguns, rifles and shotguns, available to the public to use for self-defense. Notably, it does not ban the sale or possession of the many semiautomatic pistols or rifles with detachable magazines that have no banned features. (Mello Aff. at ¶37; Delehanty Aff. at ¶31). Moreover, Plaintiffs have adduced no evidence, other than self-serving and dubious assertions by Dr. Kleck, who is not an admissible expert in self defense, that gun crime victims routinely, or ever, fire more than ten rounds during a gun crime incident. *See* Response to paragraph 83 above. Law enforcement officials who are witnesses for Defendants in this case could not recall one incident in Connecticut in their career in which a civilian appropriately fired more than ten rounds in a legitimate self defense, home defense or business defense situation.

140. Where a crime victim faces multiple adversaries, the ability and need to fire many rounds without reloading is obvious. Kleck Decl. at 8. The ability to fire rapidly may be essential to either deter offenders from attacking, or failing that, to shoot those aggressors who cannot be deterred. *Id*. at 8. This is because some of the defender's shots will miss, and because the offender(s) may not allow the victim much time to shoot before incapacitating the victim. *Id*. Regardless of how an AW is defined, restricting firearms with the attributes that make them useful for criminal purposes necessarily restricts firearms possessing attributes that make them more effective for lawful self-defense. *Id*.

Response: Denied. Victims of gun crime almost never fire more than seven rounds in self defense, in any situation. (*See* Exhs. 57 and 58). Further, Plaintiffs once again have adduced no actual evidence to support their assertion that ten rounds of ammunition is not adequate for self defense. There is no rational argument for why a civilian needs to have a 20, 30 or 40 round magazine in her or his home. (Mello Aff. at ¶35). The only reason that a citizen would be disadvantaged by having to change out a magazine would be if she was engaged in rapid fire of her weapon. This is simply not an appropriate thing to do in a residential setting under almost any circumstance. (*Id*. at ¶ 36; Rovella Aff. at ¶41). A shotgun would be an appropriate weapon for home defense because it would spray a lot of pellets, and almost invariably hit the intruder

while at the same time causing minimal collateral damage. (Rovella Aff. at ¶4; *See* Sweeney Aff. at ¶21).

141. The Act's ban on firearms defined as "assault weapons" will not deter criminals from using them to commit crimes or from finding substitute firearms with the same features, and will simultaneously deny law-abiding citizens access to those weapons to defend themselves. Kleck Decl. at 8.

Response: The Act is likely to meaningfully limit the number of weapons with military-style characteristics considered conducive to criminal applications in Connecticut, and to further reduce the use of such weapons in crime. (Koper Aff. at ¶72). Moreover, even if the ban on assault weapons alone does not reduce the incidence of gun crime because criminals use substitute firearms, the ban will still have an effect because it will reduce the lethality of gun crime incidents when they do occur, particularly when the assault weapon ban is coupled with the LCM ban. The assault weapon ban will also likely make a difference in some of the most traumatic and serious types of gun crime – killing of law enforcement officers and mass public shootings and mass killings. *See e.g.* Responses to paragraph 13, 24, 41, and 60 above.

142. While either criminals or prospective crime victims *could* substitute alternative weapons for banned "AWs," criminals are more likely to actually do so because they are more powerfully motivated to have deadly weapons. Kleck Decl. at 8. This would be especially true of the extremely rare mass shooters, who typically plan their crimes in advance and thus are in a position to take whatever time and effort is needed to acquire substitute weapons. *Id*. Further, even ordinary criminals are strongly motivated to acquire firearms both for purposes of committing crimes and for purposes of self-defense. *Id*. at 9. Because criminals are victimized at a rate higher than non-criminals, this means that they have even stronger self-defense motivations to acquire and retain guns than non-criminals. *Id*. In contrast, many prospective crime victims do not face an imminent threat at the time they consider acquiring a gun for self-protection, have a weaker motivation to do whatever it takes to acquire their preferred type of firearm, and are therefore less likely to do so. *Id*.

Response: *See* Response to paragraph 141 above. In addition, Plaintiffs' last sentence in this paragraph regarding "prospective crime victims" is immaterial because Plaintiffs have adduced no evidence that a "preferred type of firearm" is constitutionally required for self defense when ample alternative firearms remain legal and available.

143. It is virtually a tautology that criminals will disobey the AW ban at a higher rate than non-criminals. Kleck Decl. at 9.

Response: This statement of immaterial fact regarding the subjective mindset of all criminals may or may not be true, it simply does not matter to the disposition of this case. If assault weapons are banned their presence in the gun market will decrease

overtime and thereby become less available to criminals irrespective of a criminal's willingness to violate the prohibition. Moreover, many mass killers obtain their weapons lawfully. (Exh. 44 at 1).

The Impact Of The Act On Self-Defense

144. Limiting plaintiffs' ability to possess a magazine containing more than ten rounds of ammunition in one's home severely compromises their ability to defend themselves, their families, and their property. Rossi Decl. at 6-10.

Response: Denied. Victims of gun crime almost never fire more than seven rounds in self defense, in any situation. (*See* Exhs. 57 and 58). Further, Plaintiffs have not cited any evidence to support their assertion that ten rounds of ammunition is not adequate for self defense. There is no rational argument for why a civilian needs to have a 20, 30 or 40 round magazine in her or his home. (Mello Aff. at ¶35). The only reason that a citizen would be disadvantaged by having to change out a magazine would be if she was engaged in rapid fire of her weapon. This is simply not an appropriate thing to do in a residential setting under almost any circumstance. (*Id*. at ¶36; Rovella Aff. at ¶41). A shotgun would be an appropriate weapon for home defense because it would spray a lot of pellets, and almost invariably hit the intruder while at the same time causing minimal collateral damage. (Rovella Aff. at ¶4; *See* Sweeney Aff. at ¶21).

The Ability to Aim Under Stress

145. The Act's ten-round limitation assumes that all homeowners will never need to fire more than ten rounds to defend themselves, that they own multiple firearms, or that they will be able to switch out their firearms' magazines while under criminal attack. Rossi Decl. at 6. However, a homeowner under the extreme duress of an armed and advancing attacker is likely to fire at, but miss, his or her target. *Id*. Nervousness and anxiety, lighting conditions, the presence of physical obstacles that obscure a "clean" line of sight to the target, and the mechanics of retreat are all factors which contribute to this likelihood. Rossi Decl. at 6.

Response: Denied. Victims of gun crime almost never fire more than seven rounds in self defense, in any situation. (*See* Exhs. 57 and 58). Further, Plaintiffs have not cited any evidence to support their assertion that ten rounds of ammunition is not adequate for self defense. (*See* Response to paragraph 144 above). If a gun owner is concerned about accuracy of aim, a conventional shotgun would be an appropriate weapon for home defense because it would spray a lot of pellets, and almost invariably hit the intruder while at the same time causing minimal collateral damage. (Rovella Aff. at ¶4; *see* Sweeney Aff. at ¶21).

146. Highly trained police officers are not immune to the stressors affecting the ability to aim well under pressure: the 2010 New York City Police Department's *Annual Firearms*

Discharge Report ("NYPD AFDR") (available at http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/afdr_20111116.pdf) provides detailed information on all incidents in which NYPD officers discharged their weapons in 2010. Rossi Decl. at 9. In that year there were thirty-three (33) incidents of the police intentionally discharging firearms in encounters of adversarial conflict. Rossi Decl. at 8; NYPD AFDR at p.8, Figure A.10. 65% of these incidents took place at a distance of less than ten (10) feet. *Id*. NYPD AFDR at p.9, Figure A.11. In 33% of these incidents, the NYPD officer(s) involved fired more than seven (7) rounds. *Id*. NYPD AFDR at p.8, Figure A.10. In 21% of these incidents, the NYPD officer(s) fired more than ten (10) rounds. *Id*.

Response: *See* Response to paragraphs 126 and 145 above.

147. If highly trained and experienced NYC police officers required the use of at least eight rounds in 1/3rd of their close-range encounters to subdue an aggressive assailant, it stands to reason that a "green" civilian gun owner under duress (and certainly far less experienced and trained than a NYC police officer) would need at least that many rounds to subdue an armed assailant with his or her home. *Id*. at 9.

Response: *See* Response to paragraphs 126 and 145 above. Moreover, once again, hypothetical or imagined scenarios, not supported by a reasonable basis in fact, are immaterial to the constitutionality of the Act.

148. Under such expected conditions and with such likely results, it is of paramount importance that a homeowner have quick and ready access to ammunition in quantities sufficient to provide a meaningful opportunity to defend herself and/or her loved ones. *Id*. at 6. It is equally important that the homeowner under attack have the capability to quickly and efficiently re-load a firearm after all of the rounds it holds are fired. *Id*. However, many homeowners cannot re-load quickly or efficiently due to such factors as age, physical limitations, and the stress/anxiety produced by a potentially life-threatening situation. *Id*.

Response: *See* Response to paragraphs 126 and 145 above. Moreover, once again, hypothetical or imagined scenarios, not supported by a reasonable basis in fact, are immaterial to the constitutionality of the Act.

Delayed Reaction Time Under Stress

149. Violent criminal attacks frequently occur suddenly and without warning, leaving the victim with very little time to fire the firearm to save herself. Rossi Decl. at 6. Reaction time under stress is complicated and can be attributed to many physiological, psychological and environmental factors. *Id*. The most basic premise breaks down into three factors: the ability for an individual to perceive a threat (Perceptual Processing), the ability to make a decision (Cognitive Processing), and lastly the ability of the brain to send messages to the muscles to react (Motor Processing). Rossi Decl. at 6-7.

Response: Same Response as paragraph 148 above.

150. This processing takes, minimally, several seconds without consideration to other factors such as distractions, noise, multiple assailants, lighting conditions, nervousness and fatigue. Rossi Decl. at 6-7.

Response: Same Response as paragraph 148 above.

Loading and Re-Loading Difficulties for the Physically Disabled

151. Loading a firearm requires two hands, and is a far more difficult task when someone is physically handicapped, or one hand is wounded during an attack. Rossi Decl. at 7-8. Having more rounds in a magazine allows the victim to better protect himself or herself without the need to reload especially if handicapped, disabled or injured. *Id*. at 8.

Response: Denied. Victims of gun crime almost never fire more than seven rounds in self defense, in any situation. (*See* Exhs. 57 and 58). Further, Plaintiffs have not cited any evidence to support their assertion that ten rounds of ammunition is not adequate for self defense for any victim. There is no rational argument for why a civilian needs to have a 20, 30 or 40 round magazine in her or his home. (Mello Aff. at ¶35). The only reason that a citizen would be disadvantaged by having to change out a magazine would be if she was engaged in rapid fire of her weapon. This is simply not an appropriate thing to do in a residential setting under almost any circumstance. (*Id*. at ¶36; Rovella Aff. at ¶41). A shotgun would be an appropriate weapon for home defense because it would spray a lot of pellets, and almost invariably hit the intruder while at the same time causing minimal collateral damage. (Rovella Aff. at ¶4; *see* Sweeney Aff. at ¶21).

152. Plaintiff Peter Owens and Plaintiff Stephanie Cypher are but two examples.

Response: No response is required because this statement is an incomplete sentence.

153. Mr. Owens is physically disabled. Owens Aff. at 2. When he was four years old he suffered a stroke and lost the functional use of the left side of his body. *Id*. As a result, he cannot use most of his left hand or arm. *Id*. He owns several pistols and rifles with magazines having capacities over ten rounds. *Id*.

Response: Defendants admit that this statement accurately reflects the cited source.

154. In order to change a magazine Mr. Owens must discard the spent magazine from his firearm, tuck the empty firearm under his left arm, pick up a new magazine with his right hand, insert the new magazine into the firearm and then continue firing. *Id*. Since he cannot

use his left hand, it takes him more time to exchange an empty magazine for a full one than it does an able- bodied shooter. *Id*. The ten-round limitation will require Mr. Owens to switch out the magazines of his pistols more frequently if confronted with a sudden home invasion, robbery, or other attack. *Id*. Therefore, Mr. Owens' ability to defend himself and property with these pistols is substantially compromised by the ten-round limitation. *Id*.

Response: Defendants admit that this statement accurately reflects the cited source. However, Mr. Owen's unique personal circumstances are not material to Plaintiff's facial constitutional challenge. Even in an as applied context, if Mr. Owens possessed magazines with a capacity of more than ten rounds on April 5, 2013, he can continue to lawfully possess them as long as he registers them by January 1, 2014. *See* Public Act 13-3, § 24.

155. Plaintiff Stephanie Cypher is similarly impacted by the limitation. *See* Cypher Aff. at 1, 2. Ms. Cypher is physically disabled, losing her right arm to cancer at 12 years old. *Id*. Ms. Cypher owns several firearms, all with magazine capacities of over ten rounds. *Id*. 164. In light of her physical limitations, the ten-round limitation increases her vulnerability during a home invasion. *Id*. at 2.

Response: Defendants admit that this statement accurately reflects the cited source. However, this is not material to Plaintiff's facial constitutional challenge. Even in an as applied context, if Ms. Cypher possesses magazines with a capacity of more than ten rounds, that are now prohibited by the Act, she can continue to be in lawful possession of them if they were lawfully possessed prior to April 5, 2013, provided they are registered by January 1, 2014. *See* Public Act 13-3, § 24.

156. Since Ms. Cypher can only use her left hand, it takes her more time to exchange an empty magazine for a full one than it does an able-bodied shooter. *Id*. at 2. In order to change a spent magazine, Ms. Cypher must place her firearm down on a bench or table, press the magazine eject button, wiggle the magazine free, exchange the spent magazine for a new one, and then pick up the firearm and continue shooting. *Id*. at 2.

Response: *See* Response to paragraph 155 above.

157. Like Mr. Owens, Ms. Cypher must switch out the magazines of her firearm more frequently under the Act if confronted with a sudden home invasion, robbery, or other attack. *Id*. Her ability to defend herself and her property is, likewise, substantially compromised by the ten- round limitation. *Id*.

Response: *See* Response to paragraph 155 above.

Loading and Re-Loading Difficulties for All Gun Owners

158. The physiological reaction to the "stress flood" produced by an armed attack, the time delay caused by loading/re-loading a firearm, the loss of defensive use of the non-dominant arm and hand during loading/re-loading, and the attention distraction caused by loading/re-loading a firearm are factors that effect able-bodied gun owners as well as those who are handicapped. Rossi Decl. at 8-10.

Response: Same Response as paragraph 151 above.

159. Under the "stress flood" of a life or death encounter the blood within one's body is re-routed to the larger muscles so as to allow a "flee or fight" response Rossi Decl. at 8-9. This physiological reaction to extreme stress causes significant reloading difficulty during an attack due to loss of fine motor control in the fingers. *Id*. Trying to push a magazine release or align a magazine with the magazine well with fingers that are shaking and weakened due to blood loss is very difficult for a seasoned veteran soldier or police officer who expects this phenomena. Rossi Decl. at 8.

Response: The stress experienced by a prospective victim is the same stress experienced by a mass shooter. Law enforcement could thwart an attack if a mass shooter is required to reload a firearm, thereby benefiting from the mass shooter's sympathetic nervous system reaction. (*See* Mello Aff. at ¶31, Rovella Aff. at ¶39). Unlike mass shooters, civilians do not typically fire more than ten rounds even in a legitimate self defense situation. *See e.g.* Response to paragraph 151.

160. It is far more difficult for a civilian who has never been trained that such changes will occur, or trained during realistic scenario-based training, or who is experiencing a life-threatening attack for the first time. *Id*. at 9.

Response: Assault weapons are not needed, or necessarily the best choice, for reasonable home and self defense by citizens. (*See* Sweeney Aff. at ¶6, Rovella Aff. at ¶8, Mello Aff. at ¶10). Assault style weapons particularly those using large capacity magazines and high velocity rifle rounds pose too many risks of over penetration, down range injuries and disproportionate response by civilians. (Sweeney Aff. at ¶21). Assault rifles in particular are not well suited for self defense in the home in an urban environment because they typically take a .223 caliber round, which could easily pass through the walls of many dwellings and result in shooting of unintended victims such as family members, passers-by or neighbors. (Rovella Aff. at ¶39).

Furthermore, the typical homeowner has little training in weapons; in many instances just the National Rifle Association course that is taken to qualify for a gun permit in Connecticut. This type of training does not prepare a homeowner for the stress of a gun confrontation. A homeowner could use the weapon recklessly in a stressful situation such as a home invasion and would respond disproportionately by

firing off excessive rounds. This could result in serious personal injury to innocent bystanders and first responders. These are weapons for war zones, not the homes and streets of communities. *Id*. at ¶ 40.

161. Police and civilians who train in defensive handgun use learn to draw a loaded handgun, quickly acquire a sight picture, and place two shots on the attacker's upper center of mass. Rossi Decl. at 9. Optimally, all this can be accomplished in a little over two seconds. *Id*. The process of loading the handgun will take at least a few extra seconds. *Id*. Extensive practice can reduce how long it takes a person to load a firearm under stress, but that time cannot be reduced to zero. *Id*. Accordingly, the simple time delay of loading a spent firearm may result in the success of a violent attacker who otherwise could have been thwarted. *Id*.

Response: Same Response as paragraph 151 above.

162. Carrying an unloaded firearm will often not provide a viable means of self-defense and would frequently result in a situation where the assailant has closed the distance on the victim so that the assailant is on the person of the victim. Rossi Decl. at 9. The victim is left with a firearm she needs to retain so that she is not shot with her own gun. *Id*. At best then, the firearm becomes a bludgeoning tool. *Id*.

Response: *See* Response to paragraphs 126 and 145 above. Moreover, once again, hypothetical or imagined scenarios, not supported by a reasonable basis in fact, are immaterial to the constitutionality of the Act.

163. The delay in loading a firearm has additional deadly implications. Rossi Decl. at 10. While the left arm and hand are being used to load the handgun, they cannot be used for anything else. *Id*. The victim is more vulnerable because both hands are occupied. *Id*. The non-gun hand becomes useless to fend off the attacker or to deflect the attacker's knife, stick, or other weapon. *Id*.

Response: *See* Response to paragraphs 126 and 145 above. Moreover, once again, hypothetical or imagined scenarios, not supported by a reasonable basis in fact, are immaterial to the constitutionality of the Act.

164. Further, if the victim were to be grabbed during the loading of the firearm, the sympathetic nervous system reaction of clenching one hand to retain the magazine, or simply tightening muscles under stress would further limit the victim's ability to complete the loading of the firearm. Rossi Decl. at 10.

Response: This statement is not material to the constitutionality of the Act. Furthermore, the stress experienced by a prospective victim is the same stress experienced by a mass shooter. Law enforcement could thwart an attack if a mass shooter is required to reload a firearm, thereby benefiting from the mass shooter's

sympathetic nervous system reaction. (*See* Mello Aff. at ¶31; Rovella Aff. at ¶39). Moreover, civilians almost never fire more than ten rounds even in a legitimate self defense situation. *See e.g.* Response to paragraph 151.

DISPUTED ISSUES OF MATERIAL FACT

Defendants have cross moved for summary judgment and have submitted their own Rule 56(a)(1) statement in support of their motion. Accordingly, it is Defendants position that the truly material and undisputed facts are contained in Defendants' Local Rule 56(a)(1) statement filed this day. Much of Plaintiffs' 164 paragraphs of "material" facts above contained extraneous and irrelevant information and inadmissible assertions that this Court need not resolve in order to enter judgment for Defendants' in this case. Because Defendants position is that summary judgment for Defendants is appropriate in this case, they do not separately list "disputed issues of material fact" here.

Respectfully Submitted,

DEFENDANTS
DANNEL P. MALLOY, et al.

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ATTORNEY GENERAL

BY:*/s/ Maura Murphy Osborne*_____

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CERTIFICATION

I hereby certify that on October 11, 2013, a copy of the foregoing Defendants' Rule 56(a)(2) Statement was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

BY :*/s/ Maura Murphy Osborne*
Maura Murphy Osborne