# 14-0319-cv

# United States Court of Appeals

*for the*

# Second Circuit

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

*Plaintiffs-Appellants,*

– v. –

DANNEL P. MALLOY, in his official capacity as Governor of the State of Connecticut, KEVIN T. KANE, in his official capacity as Chief State's Attorney of the State of Connecticut, REUBEN F. BRADFORD, in his official capacity as Commissioner of the Connecticut Department of Emergency Services and Public

*(For Continuation of Caption See Inside Cover)*

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

**JOINT APPENDIX**
**Volume 9 of 10 (Pages A-2275 to A-2560)**

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# EXHIBIT 63

56 UCLA L. Rev. 1443

**UCLA Law Review**
June, 2009

Symposium
The Second Amendment and the Right to Bear Arms After D.C. v. Heller

# IMPLEMENTING THE RIGHT TO KEEP AND BEAR ARMS FOR SELF-DEFENSE: AN ANALYTICAL FRAMEWORK AND A RESEARCH AGENDA

Eugene Volokh [a1]



How should state and federal constitutional rights to keep and bear arms be turned into workable constitutional doctrine? I argue that unitary tests such as "strict scrutiny," "intermediate scrutiny," "undue burden," and the like don't make sense here, just as they don't fully describe the rules applied to most other constitutional rights.

Rather, courts should separately consider four different categories of justifications for restricting rights: (1) Scope justifications, which derive from constitutional text, original meaning, tradition, or background principles; (2) burden justifications, which rest on the claim that a particular law doesn't impose a substantial burden on the right, and thus doesn't unconstitutionally infringe it; (3) danger reduction justifications, which rest on the claim that some particular exercise of the right is so unusually dangerous that it might justify restricting the right; and (4) government as proprietor justifications, which rest on the government's special role as property owner, employer, or subsidizer.

I suggest where the constitutional thresholds for determining the adequacy of these justifications might be set, and I use this framework to analyze a wide range of restrictions: "what" restrictions (such as bans on machine guns, so-called "assault weapons," or unpersonalized handguns), "who" restrictions (such as bans on possession by felons, misdemeanants, noncitizens, or 18-to-20-year-olds), "where" restrictions (such as bans on carrying in public, in places that serve alcohol, or in parks, or bans on possessing in public housing projects), "how" restrictions (such as storage regulations), "when" restrictions (such as waiting periods), "who knows" regulations (such as licensing or registration requirements), and taxes and other expenses.

## *1445 Introduction

The Second Amendment, the Supreme Court has held, secures an individual right to keep and bear arms for self-defense. [1] Whether or not the federal right will be applied to the states, at least forty state constitutions secure a similar right. [2] But how should courts translate this right into workable constitutional doctrine?

***1446** In this Article, I offer a few thoughts towards answering this question (chiefly in Part I), and apply those thoughts to some areas in which the question needs answering (chiefly in Part II). I sometimes offer my views on how particular gun-

rights controversies should be resolved, but more often I just suggest a structure for analyzing those controversies and chart an agenda for future research.

In particular, I argue that the question should not be whether federal or state right-to-bear-arms claims ought to be subject to strict scrutiny, intermediate scrutiny, an undue burden standard, or any other unitary test. [3] Rather, as with other constitutional rights, courts should recognize that there are four different categories of justifications for a restriction on the right to bear arms.

1. Scope. A restriction might not be covered by the constitutional text, the original meaning of the text, the traditional understanding of what the text covers, or the background legal principles establishing who is entitled to various rights.

2. Burden. A restriction might only slightly interfere with rightholders' ability to enjoy the benefits of the right, and thus might be a burden that doesn't rise to the level of unconstitutionally "infring[ing]" the right.

3. Danger Reduction. A restriction might reduce various dangers (in the case of arms possession, chiefly the dangers of crime and injury) so much that the court concludes that even a substantial burden is justified. This is where talk of intermediate scrutiny or strict scrutiny would normally fit, though, as Part I.C argues, such labels likely obscure more than they reveal.

***1447** 4. Government as Proprietor. The government might have special power stemming from its authority as proprietor, employer, or subsidizer to control behavior on its property or behavior by recipients of its property.

Paying attention to all four of these categories can help identify the proper scope of government authority. For instance, even if some kinds of gun bans are presumptively unconstitutional, under something like strict scrutiny or a rule of per se invalidity, it doesn't follow that less burdensome restrictions must be judged under the same test. Conversely, the conclusion that certain kinds of restrictions should be upheld even when they might not pass muster under a demanding form of review shouldn't lead courts to entirely reject that demanding review for all restrictions. [4]

Breaking down the possible elements of the constitutional test into these categories can also tell us which analogies from one restriction to another are sound. For example, if the limitation on minors' possessing guns is a matter of scope--stemming from the background legal principle that minors' constitutional rights are narrower than adults' rights--this would suggest that the validity of bans on possession by minors offers little support for bans on possession of handguns by 18-to-20-year-olds. [5] On the other hand, if the limitation is a matter of the danger posed by ownership by relatively immature people, then the analogy between under-18-year-olds and 18-to-20-year-olds becomes more plausible.

And laying out these categories can help us notice and evaluate analogies to other constitutional rights. Many of the disputes that arise in the context of gun control debates are similar to those arising in other fields, such as free speech, abortion rights, and property rights. Consider, for instance, debates about whether the presence of ample alternative means for self-defense should justify a restriction on one means, [6] whether gun possession may be taxed, [7] or whether waiting periods are constitutional. [8] Understanding exactly why these types of restrictions are upheld or struck down elsewhere can inform the discussion about how they should be treated where gun rights are involved.

* * *

***1448** A few notes on the limits of this Article: First, let me repeat that this Article offers a framework for gun rights doctrine, and a research agenda for further inquiry about the constitutionality of some particular gun controls. It does not offer an exhaustive analysis of each regulation, or an answer about which regulations are sound. But I hope the framework, and some brief sketches of how the framework would apply in each area, will prove useful to those who are working on such questions.

Second, the Article focuses solely on the right to keep and bear arms for self-defense. The constitutional provisions I discuss may have other components, [9] for instance a right to keep arms that would deter government tyranny, or in seven states a "right to keep and bear arms . . . for hunting and recreational use." [10] But those components are left for other articles.

Third, the framework that the Article proposes would lead to the upholding even of some laws that I think are unlikely to do much good, and may even do some harm. But not all unwise laws are unconstitutional; and, conversely, not all that is constitutionally permitted should in fact be implemented.

Fourth, the Article tries to discuss the right to bear arms under both the federal Constitution (whether or not the right is eventually incorporated against the states) and state constitutions. But state constitutions often have different wording and different histories: For instance, a general discussion of whether waiting periods are constitutional says little about the Florida right-to-bear-arms provision, which expressly authorizes a three-day waiting period. [11] Nonetheless, broadly discussing a multistate law of the right to bear arms--or of search and seizure, civil jury trial rights, and other constitutional rights--can be helpful, so long as we recognize that there may be differences among states significant enough to override any general theoretical framework we develop.

## I. A Framework for Thinking About Constitutional Rights Doctrine

Say a restriction is challenged under a constitutional rights provision, such as the freedom of speech, the right to jury trial, the right to marry, or the right to keep and bear arms. There are at least four general categories of reasons why the restriction might be upheld.

### *1449 A. Scope

Sometimes, a constitutional right isn't violated by a restriction because the restriction is outside the terms of the right as set forth by the constitution. The restriction may still implicate some of the central concerns that prompted the recognition of the right, but the constitutional text, the original meaning, or our understanding of background constitutional norms may lead us to conclude that the right is narrower than its purposes may suggest.

1. Text

This is clearest when the right is expressly textually limited: If someone seeks a jury trial in a federal case in which an injunction is requested, he will lose because an injunction demand doesn't constitute a "suit[ ] at common law." [12] Much could still be said for a jury trial in such cases as a policy matter, but the constitutional text forecloses such arguments in Seventh Amendment cases.

Likewise, the First Amendment's protection of "freedom of speech" may well--for functional and original meaning reasons--extend to symbolic expression. [13] But at some point conduct may be so different from "speech" that it will not be protected, for instance when the conduct isn't in a conventionally expressive medium and isn't intended to or likely to convey a particular message. [14]

Similarly, a restriction on carrying concealed weapons can't violate the Colorado state constitutional right to keep and bear arms, which expressly states, "nothing herein contained shall be construed to justify the practice of carrying concealed weapons." [15] And a hypothetical Connecticut ban on gun possession by noncitizens can't violate the Connecticut Constitution, which secures a right to bear arms to "[e]very citizen." [16]

***1450** 2. Original Meaning

Those who believe that original meaning is relevant to constitutional interpretation (including those who see it as relevant but not dispositive) may also find a right's scope to be limited by the original meaning. [17] Thus, for instance, the Jury Trial Clause has been interpreted to exclude "petty crimes"--despite the text's reference to "all criminal prosecutions"-- because such an exception has apparently been accepted from the late 1700s to the present. [18] Similarly, the criminal procedure amendments have been interpreted to not apply to military justice, or to the detention of enemy combatants. [19] And District of Columbia v. Heller interpreted "arms" in light of what the Court saw as the Framing-era meaning of the term. [20]

3. Tradition

Some, especially Justice Scalia, view tradition as an important source of a right's scope. This could be because traditions that start near the Framing are evidence of original meaning. [21] Or it could be because "the principles adhered to, over time, by the American people" [22] are independently constitutionally relevant (though not necessarily dispositive, for instance if they clash with clear textual command or clearly demonstrated original meaning). In Justice Scalia's words,

> The provisions of the Bill of Rights were designed to restrain transient majorities from impairing long-recognized personal liberties. They did not create by implication novel individual rights overturning accepted political norms. Thus, when a practice not expressly prohibited by the text of the Bill of Rights bears the endorsement of a long tradition of open, widespread, and unchallenged use that dates back to the beginning of the Republic, we have no proper basis for striking it down. Such a venerable and accepted tradition is not to be laid on the examining ***1451** table and scrutinized for its conformity to some abstract principle of First Amendment adjudication devised by this Court. To the contrary, such traditions are themselves the stuff out of which the Court's principles are to be formed. They are, in these uncertain areas, the very points of reference by which the legitimacy or illegitimacy of other practices are to be figured out. When it appears that the latest "rule," or "three-part test," or "balancing test" devised by the Court has placed us on a collision course with such a landmark practice, it is the former that must be recalculated by us, and not the latter that must be abandoned by our citizens. I know of no other way to formulate a constitutional jurisprudence that reflects, as it should, the principles adhered to, over time, by the American people, rather than those favored by the personal (and necessarily shifting) philosophical dispositions of a majority of this Court. [23]

Likewise, the Court has held that tradition is relevant by itself--even when it isn't evidence of original meaning--in determining which rights, whether substantive or procedural, are protected by the Due Process Clause. [24] And of course Burkeans, and those with Burkean tendencies (which judges tend to possess as a professional norm), tend to see tradition as a presumptive guide.

There has been less written about tradition as a guide to constitutional meaning than about original meaning as a constitutional guide. I suspect more scholars and judges think original meaning is presumptively normatively binding than think the same about tradition (as opposed to just following tradition because they tend to follow precedent). And I myself am not sure what to think about tradition as an independently binding constitutional norm. But it is a possible source for defining the scope of a constitutional right, especially given that the traditionalist Justice Scalia is the author of Heller and that Heller's approval of "longstanding" (but not Framing-era) restraints on felons and of concealed carry laws is consistent with Justice Scalia's broader endorsement of tradition.

4. Background Legal Principles

Constitutional rights are drafted against a background of legal principles, often ones that aren't tied to the particular right. The freedom of speech, ***1452** for instance, generally doesn't include a right to speak on others' property, even though such speech is indeed restricted through government action (trespass law). [25] The freedom to hire a lawyer doesn't include a right to pay him with money that isn't rightly your own. [26] Likewise, the right to bear arms doesn't apply to possession of arms on private property

against the property owner's wishes.[27] Nor does it preclude the seizure of arms, alongside other property, in satisfaction of a money judgment against the owner, though some states do indeed statutorily exempt some weapons from such execution.[28]

One could argue that such actions are constitutional because trespassing or failing to satisfy judgments is so harmful that those laws trump the freedom of speech or the right to keep and bear arms. But I don't think that's right. Laws aimed at stopping greater harms, such as the risk of violence or interference with national war efforts, often don't trump those constitutional rights.[29] Rather, the actions described above are constitutional because constitutional rights have always been understood as involving a right to use one's own property to accomplish one's goal, not the property of others or the property that lawfully becomes that of others as a result of a lawsuit.[30] This is the background legal principle against which the rights have been enacted and interpreted.

The same is true as to who counts as a rightholder: Prisoners lose many constitutional rights, surely including the right to bear arms,[31] alongside much of their Fourth Amendment rights and Free Speech Clause rights.[32] That's not said in the text of the Constitution, but it's widely accepted as a background legal principle that was likely embodied in the original meaning and in longstanding tradition.

***1453** Minors have some constitutional rights, like many aspects of the freedom of speech, but they don't have the right to sexual autonomy or to access sexually themed publications, and they have weaker versions of other rights, such as the right to marry or the right to abortion.[33] Noncitizens found outside the U.S. are seen as lacking Fourth Amendment rights;[34] the same logic would necessarily strip them of Second Amendment rights. Enemy combatants lack most constitutional rights,[35] though they have some due process rights once they are captured.[36]

All these scope restrictions reflect background legal principles reasonably assumed to be part of the original meaning of the right to bear arms, or of its meaning as traditionally understood. And this is so even if the principles were usually discussed or assumed in the context of rights generally, rather than being discussed with regard to the right to bear arms specifically.

5. Why It's Helpful to Distinguish Scope-Based Restrictions From Burden-Based Restrictions or Reducing-Danger-Based Restrictions

Because scope-based restrictions often flow from particular drafting decisions, there is less need for courts to logically reconcile them with other restrictions, and less justification for arguing by analogy from those restrictions to others. If, for instance, courts rely on a danger reduction argument to conclude that a concealed carry ban is constitutional, that might well set a precedent for other restrictions justified by a desire to reduce danger (for instance, waiting periods for acquiring guns). But if courts conclude that a concealed carry ban is constitutional because the state constitution expressly excludes concealed carry from the right to bear arms, or because that has been seen as a traditional limitation on the right, that conclusion should offer little room for arguments by analogy. So long as neither the text nor tradition allows waiting periods, the textual or traditional endorsement of concealed carry bans offers little support for waiting periods.

***1454 B. Burden**

1. Generally

A restriction may also be justified on the grounds that it imposes a less than substantial burden on the exercise of a right, and therefore doesn't unconstitutionally “infringe[ ]” the right even though it regulates the right's exercise.[37] The mildness of the burden, the argument would go, means that it's unnecessary for the government to prove that the law would indeed likely materially reduce some harm. Rather, the mildly burdensome law would be treated as categorically constitutional, at least so long as it is not outright irrational.

We see this approach in many constitutional doctrines. The government may require that people get a marriage license, and pay a modest amount for it, because these minor restrictions do not infringe the right to marry; the heightened scrutiny that's applied to substantial burdens on the right to marry isn't applied here. [38] More controversially, the government may require that a woman seeking an abortion be given certain information and that she wait twenty-four hours before the procedure because the Court has concluded that these are not "substantial obstacle[s]" to her exercising her right to get an abortion. [39] Similarly, religious freedom provisions that secure a substantive right to religious exemptions apply only to "substantial burden[s]" on religious practice. [40]

We likewise see a substantial burden threshold in the lower scrutiny applied to content-neutral restrictions on speech that regulate only the "time, place, or manner" of speech and leave open "ample alternative channels" for ***1455** expression. [41] The availability of ample alternative channels makes the restrictions into lesser burdens than a broader ban would be. The restrictions' content neutrality provides a natural political check on their growth, since people with many different views will be affected by them; this political check will likely limit the risk that a particular kind of speech will be subjected to many small burdens that will add up to a larger burden. [42] And the restrictions' content neutrality makes the burden qualitatively less troubling to the Justices, because the restrictions aren't contrary to the equality norm that the Justices have sensibly read into the Free Speech Clause. [43]

As Part I.C.2.d below notes, the time, place, and manner inquiry requires some showing that even laws that impose only small burdens will reduce danger. In this respect, the time, place, and manner test is different from the substantial burden tests mentioned in the preceding paragraph. But it is still similar to those other tests in that it requires an inquiry into the magnitude of the burden in deciding what kind of danger reduction showing, if any, must be made.

Many of the cases upholding restrictions on low-value or no-value speech--such as false statements of fact, obscenity, fighting words, and child pornography--also reason that the restrictions impose only a slight burden on the values that the Free Speech Clause protects. [44] When the Court says that "there is no constitutional value" in false statements of fact, obscenity, or fighting words, it's suggesting that restrictions on such speech do not materially interfere with the marketplace of ideas, democratic self-government, or even constitutionally valuable self-expression, and thus do not substantially burden free speech rights. [45]

***1456** 2. In Right-to-Bear-Arms Cases

A similar inquiry into the magnitude of the burden on a constitutional right is visible in Heller's discussion of why the handgun ban is unconstitutional. Consider, for instance, the Court's distinction between unconstitutional handgun bans and potentially constitutional gun safety laws: "Nothing about [Framing-era] fire-safety laws"--the laws that the dissent points to as evidence that the right to bear arms should be read as allowing handgun bans-- "undermines our analysis; they do not remotely burden the right of self-defense as much as an absolute ban on handguns. Nor, correspondingly, does our analysis suggest the invalidity of laws regulating the storage of firearms to prevent accidents." [46] Likewise, in distinguishing the handgun ban from colonial laws that imposed minor fines for unauthorized discharge of weapons, the Court pointed out that "[t]hose [colonial] laws provide no support for the severe restriction in the present case." [47]

Earlier in the opinion, the Court similarly justified striking down the handgun ban on the grounds that the ban is a "severe restriction." In the process, the Court favorably quoted an old case distinguishing permissible "regulati[on]" from impermissible "destruction of the right" and from impermissible laws that make guns "wholly useless for the purpose of defence." [48] The Court did not discuss what analysis would be proper for less "severe" restrictions, likely because it had no occasion to. But its analysis suggested that the severity of the burden was important.

And the Court's explanation of why the handgun ban is unconstitutional even if long guns are allowed is likewise consistent with an inquiry into how substantially a law burdens the right to bear arms:

> It is no answer to say, as petitioners do, that it is permissible to ban the possession of handguns so long as the possession of other firearms (i.e., long guns) is allowed. It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon. There are many reasons that a citizen may prefer a handgun for home defense: It is easier to store in a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a ***1457** burglar with one hand while the other hand dials the police. Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid. [49]

The Court is pointing out that handguns are popular for a reason: For many people, they are the optimal self-defense tool, and bans on handguns make self-defense materially more difficult. The handgun ban, then, is a material burden on the right to bear arms in self-defense.

Parts of the Court's analysis do focus on whether the law bans "an entire class of 'arms,'" or whether handguns are actually popular, which might seem like inquiry into something other than the magnitude of the burden on self-defense. [50] Likewise, in free speech law, the Court has sometimes asked whether a law bans an "entire medium of expression." [51]

But on its own, asking whether the law bans "an entire class of 'arms'" or an "entire medium" of expression can't yield a determinate answer. How can we decide whether, say, a hypothetical ban on revolvers bans "an entire class of 'arms'" or only a subclass of the broader class of handguns? How can we decide whether a ban on possessing firearms with obliterated serial numbers bans "an entire class of 'arms'" or only a subclass? [52] How can we decide whether a ban on window signs (unconstitutional) or residential picketing (constitutional) bans an "entire medium" of expression or only a subclass of the broader medium of signs or demonstrations? [53]

For example, say a law banned black or silver handguns (or purely mechanical handguns) and required all new handguns to be fluorescent orange (or electronic and personalized to be fired only by the owner). The ***1458** constitutionality of this law should not be much affected by the historical or esthetic circumstance of whether black and silver handguns, or mechanical handguns, are the most popular form of weapon, or are seen as a separate "class of 'arms.'" Rather, the "entire medium" and "entire class" formulations should be seen as shorthand proxies for an inquiry into the functional magnitude of the restriction: whether the measures "significantly impair the ability of individuals to communicate their views to others," [54] or whether they significantly impair the ability of people to protect themselves.

Many state right-to-bear-arms cases likewise look to the magnitude of the burden on self-defense. Some do so only loosely, by asking whether a restriction is a "reasonable regulation" or a prohibition. [55] This is probably the dominant test in the state cases, and it does seek to sort at least the most severe burdens (prohibitions) from less severe ones, though many cases tend to set the unconstitutionality threshold very high--allowing anything short of a prohibition--with a vague additional requirement of "reasonableness," whatever that might mean. [56] But other cases are more explicit, upholding gun controls unless they "materially burden" the right to bear arms in self-defense, [57] or unless they "frustrate the purpose" of the right to bear arms, which is to say substantially burden people's ability to defend themselves. [58]

As the previous subsection suggests, we can also borrow from the First Amendment time, place, and manner restriction test, and articulate the substantial burden inquiry as an inquiry into the presence of "ample alternative channels" for exercising the

right. [59] While a restriction on certain gun types might be justifiable as a manner restriction that leaves open ample alternative ***1459** channels, [60] a ban on carrying guns in public can't be justified as a place restriction: It leaves people without ample alternative means of defending themselves in public places. [61]

3. Risks and Benefits of a Burden Threshold

One difficulty with a substantial burden threshold, of course, is that people will disagree about the normative question of how large a burden must be to qualify as substantial (or whatever other term one uses for such thresholds, such as "grave" or "serious"). Still, the problems with determining whether a burden is substantial should be less than the problems with defining "reasonableness" or "balancing." Among other things, the substantiality inquiry requires comparisons along a single dimension--a judgment of how much a law's interference with self-defense compares to benchmark interferences considered by past cases--rather than a balancing of incommensurable quantities such as burden and danger reduction. [62] (Such balancing is also often called for under reasonableness tests, if the tests ask whether the burden the law imposes is reasonable in light of its benefits.) But there's no doubt that there'll be controversy about the substantiality inquiry, just as there's controversy about how large a burden on abortion rights must be to qualify as substantial, [63] or about how ample the alternative channels left open by content-neutral time, place, or manner speech restrictions must be. [64]

Another difficulty is that people will disagree about the empirical question of just how much of a burden a particular restriction will impose. The answer should often be fairly clear, [65] and this estimate should often be easier than ***1460** estimates of whether a gun control law will reduce the danger of gun crime and gun injury. Estimating the burden on self-defense will require considering how a particular hypothetical defense scenario is likely to play out under different regulatory schemes--for instance, how self-defense with a shotgun might be harder than self-defense with a handgun--as well as having a rough sense for how often the scenario will occur. Estimating the burden will not, however, require predicting how many criminals will comply with the law (always hard to measure or even guess) or trying to separate causation from mere correlation in empirical studies. Nonetheless, I should again acknowledge that the judgment about just how much a law will interfere with self-defense will sometimes be difficult and controversial.

Finally, a third difficulty is the danger that many small, less-than-substantial burdens will aggregate into a substantial burden. In the words of an 1822 court decision striking down a ban on carrying concealed handguns, "if the act be consistent with the constitution, it can not be incompatible with that instrument for the legislature, by successive enactments, to entirely cut off the exercise of the right of the citizens to bear arms." [66] This might be one reason that the Court has generally concluded that content-based speech restrictions are constitutionally suspect even when they impose only slight burdens on communication. [67] But courts can avoid this, I think, by considering each burden together with others, and asking (for instance) whether the remaining legal classes of guns--or legal means of carrying guns-- indeed provide ample channels for self-defense that are pretty much as good as those that would have been offered by the prohibited guns. [68]

More importantly, though, despite these difficulties, I don't think courts are at all likely to reject the burden threshold and take the view that any gun restriction is an unconstitutional infringement of the right. As noted above, restrictions on other rights are often held constitutional if the burden is seen as not substantial. The exceptions tend to be equality rights, such as racial or sexual equality, or equality of ideas where content-based speech restrictions are involved; but I expect that judges will treat the right to bear ***1461** arms more like the liberty rights, which tend to be subject to a substantial burden threshold, than like the equality rights, which are not.

Judges also seem especially likely to adopt a substantial burden threshold as to the right to bear arms because judges are rightly worried about gun crime and gun injury, and are likely to want to leave legislatures with some latitude in trying to fight crime in ways that interfere little with lawful self-defense. A substantial burden threshold would give legislatures the power to

experiment without requiring a court to estimate the effectiveness of the law in preventing future crime and injury--estimation that Part I.C argues is likely to be especially hard.

Finally, the mantra that not all regulations are prohibitions has been commonplace in American right-to-bear-arms law for over 150 years, [69] with only a few departures. [70] The judges who are most likely to take at least a moderately broad view of the right--judging by Heller, usually the more conservative judges--are also the judges who are most likely to take such traditions seriously.

So courts are likely to look at the degree to which a gun control law burdens self-defense, and are likely to uphold laws that impose only a modest burden. The best way to protect self-defense rights, I think, is to acknowledge that courts are likely to find slight burdens to be constitutional, to focus on defining the threshold at which the burden becomes substantial enough to be presumptively unconstitutional, and to concretely evaluate the burdens imposed by various gun restrictions.

**C. Danger Reduction**

The government often tries to justify substantial burdens on constitutional rights by arguing that such burdens significantly reduce some grave danger. Courts sometimes accept this by saying that a constitutional right may be restricted when the restriction is necessary to serve a compelling government interest, or is substantially related to an important government interest. But such phrases often obscure more than they reveal. The real inquiry is into whether and when a right may be substantially burdened in order to materially reduce the danger flowing from the exercise of the right, and into what sort of proof must be given to show that the substantial restriction will indeed reduce the danger.

***1462** 1. Per Se Invalidation, at Least for Especially Serious Burdens

To begin with, certain kinds of restrictions are unconstitutional even when they seem likely to substantially reduce some grave dangers. I discuss this in detail elsewhere, [71] but clear examples are offered by the right to trial by criminal jury, the right to counsel, and some similar rights: Even if mandating bench trials, for instance, were necessary to effectively serve a compelling government interest in most effectively punishing and preventing certain crimes, the jury trial right still couldn't be abrogated.

There are, of course, some scope limits on the jury trial right stemming from the original meaning of the provision, for instance as to criminal trials in petty cases (even though the government interest in making such trials cheaper and quicker is probably not compelling), [72] or as to the enforcement of military law against military combatants. [73] But once a particular situation is found to be within the historical scope of the jury trial right, a jury trial must be afforded, even if mandating bench trials were the most effective way to reduce the danger posed by certain kinds of criminals.

The same is true for some kinds of especially burdensome speech restrictions [74] or interferences with the autonomy of religious institutions. [75] Though the Court sometimes uses the language of strict scrutiny in such cases, many of its decisions can only be explained as applying a principle that certain kinds of burdens on speech rights or religious institutions are per se unconstitutional. [76]

District of Columbia v. Heller implicitly adopted such a rule of per se invalidation of especially severe burdens, I think, when it struck down the handgun ban. In the heart of the Court's analysis of the ban's validity, Justice Scalia wrote:
Under any of the standards of scrutiny that we have applied to enumerated constitutional rights [except the rational basis test], banning from the home "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," would fail constitutional muster.

***1463** Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban. . . .

. . . .

The very enumeration of the right takes out of the hands of government--even the Third Branch of Government--the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad. . . . The Second Amendment . . . [, l]ike the First, . . . is the very product of an interest-balancing by the people--which Justice Breyer would now conduct for them anew. And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home. . . .

. . . .

. . . [T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct. [77]

Absent here is any inquiry into whether the law is necessary to serve a compelling government interest in preventing death and crime, though handgun ban proponents did indeed argue that such bans are necessary to serve those interests and that no less restrictive alternative would do the job. [78] The Court concludes that "the enshrinement of constitutional rights necessarily takes" "severe restriction[s]" "off the table," and that the Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." The statement that "Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home 'the most preferred firearm in the nation to "keep" and use for protection of one's home and family,' would fail constitutional muster" suggests that even tests such as intermediate or ***1464** strict scrutiny are in practice rules of per se invalidation of laws that sufficiently "severely" burden the right.

The matter might be different if it came to some truly extraordinary danger. [79] The rules the Bill of Rights sets forth should cover the great majority of risks, but it's not clear that such rules--developed with an eye towards ordinary dangers--can deal with dangers that are hundreds of times greater. [80] This is why the usual Fourth Amendment rules related to suspicionless home searches might be stretched in cases involving the threat of nuclear terrorism. [81] It's why we continue to have a debate about the propriety of torture in the ticking nuclear time bomb scenario. [82] It's why, in a somewhat different context, the Constitution provides for the suspension of habeas corpus in cases of rebellion or invasion. [83] And it's why courts are and probably should be willing to reduce normal free speech protections when it comes to the publication of information that can help readers build nuclear bombs or create smallpox epidemics. [84]

But while this rationale may justify, for instance, bans on the possession of arms of mass destruction or surface-to-air-missiles, those bans are already outside the scope of the right as defined by Heller, [85] and are in any event not substantial burdens on self-defense. [86] The right to keep and bear weapons that are roughly as dangerous as civilian firearms will definitionally exclude the extraordinarily dangerous weapons. And while it will indeed protect ordinarily dangerous guns, this ordinary danger is precisely what the right to bear arms expressly contemplates.

2. The Two Versions of Strict Scrutiny

A different approach to danger reduction arguments is sometimes implemented using the strict scrutiny test: Rights may indeed be substantially ***1465** burdened, the claim goes, so long as the burden is genuinely necessary to serve a compelling government interest. Where other less restrictive means can serve the compelling interest pretty much equally, the more restrictive means will be unnecessary and therefore unconstitutional. But where only the more restrictive means can provide the reduction of danger that the government seeks, those means will indeed be constitutional. [87]

a. The Shape of the Underlying Factual Debate

The difficulty is that we often won't know if the proposed law is really necessary to reduce various dangers. And this is especially true as to the right to keep and bear arms: People notoriously disagree about whether gun control laws will indeed reduce total injury and crime, especially since such evaluations require one to predict both (1) the possible decrease in injury and crime stemming from the controls and (2) the possible increase in injury and crime stemming from the interference with lawful self-defense.

Gun control proponents argue that only banning guns, or removing guns from certain places, or limiting guns in other ways will prevent certain kinds of crimes. And they suggest that lawful self-defense isn't really that effective, or that it won't be much interfered with by the proposals (even fairly burdensome ones, such as bans on public carrying of handguns).

Gun control opponents argue that the gun restrictions largely won't disarm those who misuse guns, since the misusers are criminals who won't comply with gun laws any more than they comply with laws banning robbery, rape, or murder. [88] And they argue that any possible slight decline in injuries caused by people who do comply with gun laws, or in accidental injuries or in suicides (to the extent suicides are legitimately weighed against lawful self-defense) will be more than offset by the increase in crime and injury stemming from lost opportunities for effective self-defense.

Scientific proof of any of these theories is very hard to get. There are no controlled experiments that can practically and ethically be run. “Natural experiments” stemming from differences in policies and in gun ownership rates among different cities, states, or countries are subject to many confounding factors, such as culture and background crime rates. Many studies purport to show some statistically significant effects, even controlling for ***1466** various factors. But many other studies argue the contrary, and point to failures to control for other important factors.

Thus, for instance, some claim that international comparisons show that private gun ownership is strongly correlated with homicide rates. [89] Even if true, this isn't proof that laws reducing gun ownership will reduce the danger, since the correlation doesn't prove a causal relationship, given the possibility of uncontrolled-for confounding cultural factors. Moreover, even if high private gun ownership did cause high homicide rates, it's not clear that banning or otherwise restricting guns would be effective in reducing the danger: [90] Perhaps any reduction will primarily affect law-abiding citizens and won't disarm the criminals who are causing the crime.

And beyond this, the most comprehensive recent study of the subject, reviewing twenty-one Western countries, including the U.S., found no statistically significant correlation between gun ownership levels and total homicides or suicides. [91] Perhaps such a correlation, or even causation, does exist but is hidden by random noise; the study doesn't disprove the empirical case for gun control. But the study's results do highlight the weaknesses of previous studies that found significant correlations in smaller samples, and claimed to therefore support the empirical case for gun control.

More strikingly, even much simpler questions, such as how often guns are used in self-defense, remain unanswered, with studies from credible sources yielding results that differ by a factor of thirty. Leading gun control criminologist Gary Kleck conducted a survey in the 1990s that yielded an estimate of roughly 2.5 million per year. [92] The National Criminal Victimization Survey conducted a survey in the 1990s, based on which it estimated the total at 80,000 per year. [93] Another leading gun control criminologist, Phil Cook, conducted a survey that yielded raw numbers quite close to Kleck's 2.5 million. But Cook's bottom

***1467** line was that the numbers might be skewed by unreliable reporting, and that the actual number is unknown and possibly unknowable. [94]

Those are just two examples, but they are characteristic of the field. A National Research Council 2004 report, Firearms and Violence: A Critical Review, reports that there is basically no sound scientific data supporting either gun control or gun decontrol proposals (such as broadened availability of concealed carry permits). [95] The same is true of the Centers for Disease Control 2005 report, Firearms Laws and the Reduction of Violence: A Systematic Review. [96] Both reports do argue that with the proper research design, statistically reliable results could indeed be obtained. [97] But given that we don't have adequate results after at least thirty-five years of serious work on the matter, it's not clear that even a fresh research agenda will yield definitive conclusions any time soon.

b. The Consequences for Strict Scrutiny

Because of this uncertainty, the application of strict scrutiny to gun controls ends up turning on how courts evaluate empirical claims of likely danger reduction. Courts might take a few different approaches in their evaluations.

1. One approach would be to require some substantial scientific proof to show that a law will indeed substantially reduce crime and injury (and that other alternatives, such as liberalizing concealed carry, won't do the job). The Court has at times suggested that this was a necessary part of strict scrutiny, [98] and lower courts have as well. For instance, courts have struck down bans on the distribution to minors of works that contain violent (but ***1468** not sexual) imagery. Though the government has argued that the bans are necessary to serve the compelling interest in reducing crime, courts have generally demanded strong social science proof of this, and have rejected existing studies as methodologically inadequate. [99]

If courts accept such an approach in right-to-bear-arms cases (at least ones involving a substantial burden), then this test will likely be tantamount to per se invalidation: As the National Research Council and Centers for Disease Control reports point out, such scientific proof of effectiveness is absent. [100]

2. Another approach to ostensibly strict scrutiny would be to simply require a logically plausible theory of danger reduction that many reasonable people believe. This test would likely uphold virtually any gun control law, including a total ban on all guns: One can make a logically plausible argument that anything short of complete gun prohibition will fail to prevent thousands of crimes and killings.

Even a total handgun ban, for instance, would leave people able to kill their housemates with rifles and shotguns, or illegally take those guns out of the house for criminal purposes (perhaps with the barrels illegally sawn down for greater concealability). Only a complete gun ban would prevent that harm. And, the argument would go, guns are so rarely used for self-defense that the loss of valuable self-defense will be more than compensated for by the gain in crime and injury prevention. Proven? Absolutely not. Correct? Not in my view. But logically plausible? Yes, given a certain view of likely behavior by criminals and by law-abiding citizens.

Some laws might be hard to support if a logically plausible theory were required: For instance, as I argue in Part II.A.2, so-called “assault weapons” are not materially more dangerous than other kinds of weapons, so anyone who is denied an “assault weapon” will almost certainly substitute another gun that is equally lethal. It's therefore hard to see how assault weapons bans will do much to reduce danger of crime or injury. [101] But many people, including many legislators, obviously don't share my view; and I expect many judges will find these other views to be at least credible. So this sort of strict scrutiny will in practice be little different from a rational basis test.

***1469** 3. Finally, courts could rely on their own common sense judgments of when a particular law will likely reduce danger, and demand empirical evidence only when a litigant is promoting a view that doesn't comport with the court's common sense judgment. [102] The Court and lower courts have at times used this approach in strict scrutiny cases, [103] for instance upholding some restrictions that restrict adult access to sexually themed speech in the name of protecting minors' psychological well-being without any scientific evidence that access to such speech will indeed harm the minors. [104]

Such an approach would yield results in gun control cases that are impossible to predict. And it's hard to see why this approach would have much to recommend it, given that there's little reason why judges' intuitions about the danger of guns would be particularly reliable.

I should acknowledge that this sort of approach has been applied in some areas of free speech law, and I can't say the sky has fallen from this sort of decisionmaking. Perhaps such intuitive decisionmaking is in some measure inevitable, where deference to the legislature is undesirable because a constitutional right is involved and where insistence on empirical proof is unappealing because such proof is often unavailable.

***1470** But it's nonetheless hard to see this level of judicial discretion as particularly appealing, at least outside areas that are viewed as largely peripheral to the constitutional right that's involved. And the strength of modern free speech protection, at least where content-based restrictions on core protected speech are involved, has chiefly stemmed from the Court's adopting a per se invalidation regime even while it talks about strict scrutiny. [105]

c. Intermediate Scrutiny

Intermediate scrutiny, the other common test used to evaluate reducing-danger arguments, is likely to suffer from the same problems as strict scrutiny.

In principle, intermediate scrutiny differs from strict scrutiny in two ways. First, intermediate scrutiny allows restrictions that serve merely important and not compelling government interests. [106] That's unlikely to be relevant to gun controls, since virtually every gun control law is aimed at serving interests that would usually be seen as compelling--preventing violent crime, injury, and death. [107]

Second, intermediate scrutiny allows restrictions that are merely substantially related to the government interest rather than narrowly tailored to it. In one prominent intermediate scrutiny context--the scrutiny applicable to restrictions on commercial advertising--this has played out as a requirement that the law be merely a “reasonable fit” with the government interest rather than that it be the least restrictive means of serving the interest. [108]

But applying this lower tailoring requirement would likely yield the same problems discussed in the previous subsections. If the substantial relationship or the reasonable fit has to be proven through social science, such proof would likely be as unavailable or unpersuasive as it would be if the court applied strict scrutiny. If the substantial relationship or reasonable fit claim has to be merely intuitively persuasive to reasonable legislators, that requirement would nearly always be satisfied. And if the claim has to be intuitively persuasive to the reviewing judge, there's little reason to think that the judge's intuitions are going to be particularly sound. [109]

***1471** d. Different Levels of Danger-Reduction Showings for Different Levels of Burden

So far, I've talked about “low burden” justifications separately from “preventing danger” justifications. But a court could demand different levels of preventing danger arguments to justify different degrees of burden.

For instance, where content-neutral speech restrictions are involved, restrictions that impose severe burdens (because they don't leave open ample alternative channels) must be judged under strict scrutiny, but restrictions that impose only modest burdens (because they do leave open ample alternative channels) are judged under a mild form of intermediate scrutiny. [110] Ballot access regulations are likewise subject to strict scrutiny if they "impose a severe burden on associational rights," but to a much weaker level of scrutiny if they "impose[ ] only modest burdens." [111]

On the other hand, in some areas meaningful scrutiny is reserved only for restrictions that impose a sufficiently grave burden, and remaining restrictions are subject to minimal rationality review. That, for instance, is what is done with the right to abortion after Planned Parenthood v. Casey: [112] If the law ***1472** is seen as imposing a "substantial obstacle" to a woman's getting an abortion (or having the purpose to impose such a substantial obstacle), then it's categorically invalidated, but if it is seen as imposing merely a minor burden, then it's upheld unless it is seen as simply irrational. [113] Likewise, under religious accommodation regimes, whether the Sherbert/Yoder-era [114] Free Exercise Clause regime or the regimes in those states in which the state constitutions are interpreted to track Sherbert and Yoder, a substantial burden led to a weak form of strict scrutiny, while minor burdens led to minimal rationality review. [115]

There are thus many possible options for the right to bear arms. The Court could adopt a Casey-like undue burden test, under which substantial burdens are struck down but less-than-substantial burdens are upheld. The Court could adopt a test under which substantial burdens are struck down but less-than-substantial burdens are still evaluated under a mild form of intermediate scrutiny. The Court could adopt a test under which very serious burdens are categorically struck down, substantial but less serious burdens are evaluated under some demanding form of strict scrutiny, and less-than-substantial burdens are evaluated under a mild intermediate scrutiny. Or it could adopt some other mix.

My sense is that there'll be plenty of trouble getting courts to adopt meaningful scrutiny even of substantial burdens. [116] The chances of getting courts to adopt meaningful scrutiny of mild burdens are thus very low; judges are understandably reluctant to strike down democratically enacted laws, especially ones that are both aimed at crime control and seen as imposing little burden on law-abiding citizens. Nor do I see much to be gained from requiring such modest scrutiny when the burden on self-defense is indeed slight. It's probably best for courts (and for those who are recommending doctrine to courts) to save their energy and their willingness to fight a battle ***1473** with the legislative and executive branches for those situations where the law does indeed substantially burden self-defense.

### D. Government Proprietary Role

A restriction might also be justified because the government is acting not as sovereign--outlawing, taxing, or imposing liability on private citizens' behavior--but as subsidizer, landlord, employer, and the like. This distinction has been most clearly developed in free speech cases: If I wear a jacket with a vulgarity printed on it, the government may not throw me in prison, but it likely may fire me from my government job, especially if I wear the jacket to work. [117] It might even be able to bar such jackets from certain "nonpublic forum" property. [118]

Likewise, the government may not criminalize abortions, but it may bar them from government-owned hospitals, or even from hospitals built on land leased from the government. [119] The government as employer has more power to search its employees' offices than it does to search private citizens' offices, and more power to search people entering government buildings than it does to search people entering private buildings. [120] The government as employer has more power to restrict its employees' choices to send their children to private schools than it does as to private citizens' choices. [121] The same is likely true for other rights, such as the right to marry, or the right to religious freedom under state constitutions that follow the Sherbert/Yoder model. [122]

Some might argue that such restrictions are permissible because they are not that burdensome, given that people can still exercise the right (for instance, get an abortion) off government property. [123] Or some might argue that the government has an especially strong reason for imposing the restriction (for instance, the desire to keep government workplaces running smoothly).

***1474** But many of the decisions are most plausibly explained by a judgment that even burdensome restrictions may be more restricted by the government as proprietor than by the government as sovereign, even when the government interest is the same. For instance, insulting labor picketing (for instance, with signs calling strikebreakers "scabs" or "traitors") outside a government office, or similarly unpleasant public-issue picketing, might affect employees' morale more than would one coworker's rudeness. The picketing, though, is generally protected, even when it substantially hurts morale; the coworker speech (on the job or even off the job) is often unprotected. [124]

And having such separate standards for different government roles may well make sense, both to give the government more power when it comes to accomplishing its democratically determined goals on its property and with its wage payments, and to keep this power from bleeding over to controls of private citizens' behavior on private property. Draft office employees shouldn't be able to interfere with office morale by telling their colleagues that the draft is slavery, or interfere with office efficiency more broadly by telling would-be registrants the same. But similarly morale-reducing speech by picketers outside the door, or by influential media commentators or political leaders, should be protected despite its effect on draft office efficiency. [125] A unitary standard might overprotect speech by employees but, just as likely, it might end up underprotecting speech by private citizens.

For some classes of government property the government might not have special powers acting as proprietor. Free speech doctrine, for instance, treats the government acting as proprietor of "traditional public fora"--chiefly public sidewalks and public parks--the same as the government acting as sovereign. [126] Fourth Amendment doctrine generally applies to public sidewalks to the same extent that it applies to unenclosed places on private property. The First and Fourth Amendments might also apply to the inside of public housing, much the same way as they apply to privately owned homes. [127] And constitutional rights that inherently involve government ***1475** adjudicative processes, such as the right to a jury trial, are naturally not diminished by the government's owning the courtroom. Nonetheless, there is both precedent and reason for allowing the government acting as proprietor extra power to restrict the exercise of many constitutional rights on its property.

This suggests that separate government-as-proprietor standards may likewise be proper for the right to keep and bear arms, whether in government buildings, by government employees, in government-owned parks, in government-owned housing, and so on. [128] Some constraints on government power as proprietor may also be proper, since people's need for self-defense can remain even on government property. And it may well be that for some of this property (such as public housing or national parks) the constitutional analysis should be no different than on private property. But there is little reason to assume that the rule should always be precisely the same whether the gun possession is on private property or on government-owned property.

## II. Applying the Framework to Various Gun-Control Laws

This framework, I hope, can help us analyze a wide range of gun control laws-- and the analyses can help us reflect on whether the framework is helpful.

### A. "What" Bans: Bans on Weapon Categories

1. Scope

Let me begin with bans on categories of weapons, weapons parts, or ammunition: machine guns, .50 caliber weapons, handguns, semiautomatic "assault weapons," cheap and supposedly low-quality "Saturday Night Specials," magazines with room for more than 10 rounds, nonfirearms such as knives and billy clubs, or nonlethal defensive devices such as stun guns (e.g., Tasers) or

irritant sprays (e.g., pepper spray). Such bans naturally raise a scope question: What sorts of "arms" are protected by the right to keep and bear arms?

***1476** a. The "Usually Employed in Civilized Warfare" Test

Some early cases took the view that "arms" covered only arms that were "usually employed in civilized warfare," [129] "in distinction from those which are employed in quarrels and brawls and fights between maddened individuals." [130] Under this definition, some 1800s cases read the right as excluding, among other things, daggers, "sword-cane[s]," and "belt or pocket pistol[s] or revolver[s]." [131]

This, however, is not the meaning that makes the most sense for a right to keep and bear arms that is at least partly aimed at protecting self-defense. Nor is it the textual meaning: As Heller pointed out, arms in the late 1700s generally meant "weapons of offence, or armour of defence," [132] or "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." [133]

Nor have I seen any evidence that a more limited definition became solidly accepted in the subsequent decades, as new state constitutions were adopted; some courts did take the "civilized warfare" view, but many did not. [134] And functionally, if the right protects arms used for self-defense, it's not clear why such defensive arms should be limited to those that are also used in civilized warfare. Heller expressly rejected the notion that "only those weapons useful in warfare are protected," [135] and while Heller isn't dispositive of the ***1477** meaning of state constitutional provisions, I expect it to be influential, [136] and the reasons just given suggest that it was correct.

b. The "Descended From Historically Personal-Defense Weapons" Test

The Oregon courts have taken the view that "arms" covers only those weapons that, "as modified by [their] modern design and function, [are] of the sort commonly used by individuals for personal defense" at or before the time the Oregon Constitution was adopted in 1859. [137]

This doesn't fix the technology at the 1859 level: A switchblade, for instance, was held to be a protected weapon even though it contains a spring that knives in 1859 didn't possess. [138] But the Oregon Court of Appeals has essentially concluded that, to be protected, a modern weapon must be a "technological advancement" on an 1859-era personal-defense weapon, rather than a "modification[ ]" of a more modern military weapon. [139] In particular, the court held that semiautomatic weapons--including but not limited to the "assault weapons" at issue in that case--don't qualify as constitutionally protected arms. [140] Revolvers and other guns, on the other hand, would qualify for constitutional protection.

The trouble with this kind of reasoning is that all civilian firearms are in some ways both modifications of military firearms and technological advancements on past civilian firearms. A semiautomatic handgun or rifle, for instance, can correctly be described as a technological advancement on the ordinary revolver or rifle owned by 1859 Oregonians. [141] At the same time, modern civilian semiautomatic handguns can also be described as a modification of military weapons. Semiautomatics are built on the concept that the recoil caused by the firing of one round can automatically load the next round, a concept that's also at the heart of automatic weapons. [142]

***1478** Most guns labeled "assault weapons" today are semiautomatic versions of more modern automatic weapons, rather than of the late 1800s varieties. [143] But there too one could equally describe them as technological advancements on earlier civilian handguns and rifles, especially the late 1800s semiautomatics, as well as modifications of military weapons. Civilian and military small arms technology have always developed hand in hand.

Nor is the Oregon Court of Appeals' alternative formulation, which asks "whether the drafters would have intended the constitutional protection to apply if they had envisioned the technological advancements and the reasons for which those advancements were made," [144] particularly helpful. I tend to agree with the Oregon Court of Appeals' dissenting opinion that, under this very test, semiautomatics would be protected. "It is hard to conceive that the pioneer family facing an attacking foe would have chosen the one shot ball and powder musket over a firearm that gave them the ability to fire repeatedly," [145] and it's hard to conceive that Oregonians' representatives would have treated the more effective firearm as not falling within the constitutional term "arms."

In any case, the Oregon Court of Appeals' test seems to me to be a largely indeterminate inquiry. We have some equipment, such as legal dictionaries and contemporaneous sources, for figuring out the 1791 or 1859 meanings of particular legal terms. But it's hard to see how we can reliably guess what legislators in 1859 would have done had they envisioned certain changes in weapons technology.

c. The "of the Kind in Common Use" "by Law-Abiding Citizens for Lawful Purposes" Test

Heller defines arms to exclude "weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." [146] Some ***1479** state cases have used similar definitions. [147] But it's not quite clear how this test is to be applied, for six reasons.

1. Typical possessor vs. is possession typical? It's not clear whether "typically possessed by law-abiding citizens for lawful purposes" requires that the typical possessor of the weapon be a law-abiding citizen with lawful purposes, or that possession of the weapon be a typical (that is, common) practice. [148] The two are different, since a rare weapon that is overwhelmingly used for lawful purposes (e.g., an expensive or antique hunting rifle) would fit the first definition--its typical possessor would likely be a lawful hunter--and not the second, since possession of it would be highly atypical. My sense is that the first definition, focusing on the characteristics of the typical possessor, is the more natural reading of the phrase. Yet the phrase is offered as an interpretation of United States v. Miller's "arms . . . of the kind in common use" language, which supports the second definition, focusing on how typical possession is.

2. Uncertainty about the typical possessor. It will often not be clear who might be the typical possessor of the weapon; one can hardly do a survey of owners of a particular kind of gun, asking them whether they possess it for lawful purposes. Nor is perceived utility for self-defense and hunting a good proxy for whether a gun is "typically possessed by law-abiding citizens for lawful purposes," given that collecting and recreational shooting are "lawful purposes." Gun collecting may seem like a strange hobby to many, but likely about a million law-abiding Americans engage in it. [149] So while few people would choose (for instance) a semiautomatic version of an AK-47 rifle for home defense or for hunting, this doesn't tell us whether its "typical [ ] possess[or]" is a criminal or a law-abiding collector.

3. Definition of weapon category. How common a weapon is depends on how specifically it is defined. Handguns are in common use, but particular brands of handguns are less common, and some are uncommon, simply because they come from small companies or are of unusual caliber or design. Likewise, some so-called "assault weapons" are indeed not that commonly owned; [150] semiautomatic versions of the AK-47 rifle, for instance, likely make ***1480** up a small fraction of the total gun stock owned by law-abiding citizens. But the same could equally be said of virtually any specific kind of gun, except the most popular.

4. Uncertainty about gun stocks. There are also no censuses of weapons. Surveys give us an approximate sense of how many households own guns generally, or handguns in particular, [151] but they don't give us many more details than that. Nor does gun tracing data help, because there's no reason to think that traced guns are even close to a representative sample of all guns. Guns found at crime scenes are disproportionately likely to be traced, so guns that are more popular with law-abiding citizens will

be underrepresented, as would more expensive guns that are less likely to get left behind. [152] And we're even more in the dark about the prevalence of nearly all weapons other than guns, such as fighting knives and billy clubs.

5. Defensive devices that are often not owned as weapons. Some defensive weapons aren't primarily owned as weapons; a home defender may pick up a sharp kitchen knife when no other weapon is close to hand. [153] Knives and baseball bats are very common, but knives and baseball bats owned specifically for defensive purposes are doubtless much less so. Which then should count for the "in common use" /"typically possessed . . . for lawful purposes" inquiry?

6. The difficulty with a "dangerous and unusual weapons" test. Heller does seem to offer one clue to what its test might mean--that the weapons ought not be "dangerous and unusual":

We also recognize another important limitation on the right to keep and carry arms. Miller said, as we have explained, that the sorts of weapons protected were those "in common use at the time." We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of "dangerous and unusual weapons." See 4 Blackstone 148-149 (1769); [other treatises and cases]. [154] ***1481** But the sources Heller cites--some of which say "dangerous and unusual weapons" and some of which say "dangerous or unusual weapons" [155] --don't really discuss what sorts of weapons could historically be possessed. As Heller admitted, the historical tradition is focused on carrying, and carrying only in the circumstances where the carrying is so open that it is "terrifying." [156] The cited Blackstone passage, which the other treatises and cases closely echo, [157] makes this clear:

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; and is particularly prohibited by the statute of Northampton, 2 Edw. III. C. 3 upon pain of forfeiture of the arms, and imprisonment during the king's pleasure: in like manner as, by the laws of Solon, every Athenian was finable who walked about the city in armour. [158]

Even carrying normally dangerous arms was punishable if it was done in a way that indicated a likely hostile intent, perhaps simply by the unusualness of the behavior, as in the Athenian example. Conversely, even possessing unusually dangerous weapons at home wouldn't be covered if the weapons were hidden at home and thus were not terrifying to observers.

d. An Unusual Dangerousness Test

My main point in this Article is to identify questions and possible answers, not to propose any definitive solutions. Nonetheless, I'd like to offer a possible interpretation of "arms" that might be relatively consistent with the concerns expressed in Heller, with the bottom-line conclusion that Heller endorsed (no protection for sawed-off shotguns and machine guns), and with many aspects of Heller's language.

As I noted above, whether a weapon is in common use depends a lot on how generally one defines the weapon: for instance, as a handgun generally, or as a Glock 17 in particular. At the same time, if one says that a form of arms is protected if weapons of this general level of practical dangerousness [159] are in common use, the answer is more definite. This is especially so if one further ***1482** refines this (though at the expense of moving a little further beyond Heller's language) to whether this weapon is no more practically dangerous than what is in common use among law-abiding citizens. [160]

Machine guns are more dangerous in their likely effects than are those guns that are in common use among law-abiding citizens. They not only fire very quickly, but they are harder to shoot in a discriminating way, at least in their fully automatic mode. [161]

Likewise, short-barreled shotguns are practically more dangerous than the kinds of guns that are in common use among law-abiding citizens, because they combine a lethality close to that of a shotgun--at least at the short distances characteristic of the typical criminal attack--with a concealability close to that of a handgun.

On the other hand, if we're talking about a particular sort of handgun that is not materially more dangerous than a typical handgun would be, then it would qualify as a type of arm covered by the constitutional provisions. This is so even if this particular variety happened to be rare (for instance, because it came from a small or new manufacturer). And this decision wouldn't require speculation--and speculation is all that it could be--about whether the typical owner of the handgun is a criminal or a law-abiding citizen.

This test (is the weapon not more materially dangerous than what is in common use among law-abiding citizens?) would thus be consistent with Heller's examples, and would use the elements Heller pointed to--common use, unusualness, dangerousness, and use by law-abiding citizens for lawful purposes--though in a somewhat different mixture from the one Heller set forth. Not a perfect way of reading a case, but, for the reasons given above, there might not be a perfect way of reading Heller on this point.

This leaves one more question: What happens when a particular type of arm--for instance a knife or billy club, or nonlethal weapon such as a stun gun or pepper spray--is less dangerous than the guns that are in common use?

I'm inclined to agree with the Oregon courts--and some other recent authorities--in concluding that these should be considered arms alongside ***1483** guns. [162] First, the literal definition of arms isn't limited to firearms, and laws from the Framing era used arms to refer both to firearms and to non-firearm weapons. [163] Second, if one purpose of the right is to preserve people's ability to use weapons in self-defense, it's hard to see why only the more lethal self-defense weapons should qualify as arms and be protected by the right. And third, many devices other than firearms, even if not necessarily designed as weapons, are indeed commonly used by law-abiding citizens for self-defense, just because those devices (clubs, knives, and the like) are often the only things at hand when the need for self-defense arises. [164]

2. Burden

As I said, bans on particular kinds of arms naturally raise a scope question; but the analysis shouldn't be limited to this question only. Among other things, ***1484** banning some categories of arms might not substantially burden people's right to self-defense, because the remaining categories will be pretty much as effective without being materially harder to use or materially more expensive. [165]

This is clearest when we look at bans on so-called “assault weapons.” Such bans have been hotly controversial, but the dispute about them is largely symbolic. The laws generally define assault weapons to be a set of semiautomatic weapons (fully automatic weapons have long been heavily regulated, and lawfully owned fully automatics are very rare and very expensive [166]) that are little different from semiautomatic pistols and rifles that are commonly owned by tens of millions of law-abiding citizens. “Assault weapons” are no more “high power” than many other pistols and rifles that are not covered by the bans. [167] Definitions of assault weapons reflect this functional similarity: They often focus on features that have little relation to dangerousness, such as folding stocks, pistol grips, bayonet mounts, flash suppressors, or (for assault handguns but not assault rifles) magazines that attach outside the pistol grip or barrel shrouds that can be used as hand-holds. [168]

It's therefore hard to see how assault weapons bans would do much to decrease crime, since even a criminal who complies with the ban could easily find an unbanned gun that is as criminally useful as the unbanned gun, and is ***1485** as dangerous to victims as is the banned gun. [169] The class of assault weapons is indeed not “typical,” at least in the sense of common use. [170] But there is no reason to think that most assault weapons owners have them for criminal purposes. And assault weapons are not more dangerous than the usual gun, which in my view makes them fit within the category of “arms.”

Nonetheless, the availability of close substitutes for assault weapons--the very reason why assault weapons bans are unlikely to work--also makes it hard to see how assault weapons bans would materially interfere with self-defense, [171] at least

given definitions such as those in the 1994 federal statute.[172] And the reasons the Court gave for why handgun bans are impermissible--that handguns are "easier to hold and control (particularly for persons with physical infirmities), easier to carry, easier to maneuver in enclosed spaces, [or easier to handle while] still hav[ing] a hand free to dial 911"--do not apply to assault weapons bans: Assault weapons are no more ***1486** useful for self-defense than are many other handguns, rifles, and shotguns that aren't prohibited by assault weapons bans.[173] Assault weapons bans might well be pointless, and might offend gun owners who want the freedom to choose precisely what sorts of guns they own. But this need not make assault weapons bans unconstitutional, if the courts focus on whether the law substantially burdens self-defense.

Nor can one draw much from the Court's conclusion in the Free Speech Clause context that "one can[not] forbid particular words without also running a substantial risk of suppressing ideas in the process."[174] Though this is likely true as to particular words, the Court has concluded that certain means of expression--such as residential picketing, or the use of sound trucks--can indeed be forbidden without running a substantial risk of suppressing ideas.[175] Not all restrictions on the use of some devices to exercise a constitutional right are unconstitutional burdens on that right. And it's likewise possible to forbid certain kinds of guns without running a substantial risk of materially interfering with the ability to use arms in self-defense.[176]

As Part I.C.2.d pointed out, in a few constitutional fields--for instance, the review of content-neutral speech restrictions--even mild burdens on a right are judged under a relatively deferential form of intermediate scrutiny; it is possible that assault weapons bans would fail even that mild scrutiny. But, for the reasons discussed in Part I.C.2.d, it seems unlikely that courts will adopt anything more than rational basis scrutiny for minor burdens on self-defense. And while it is conceivable that bans that focus on matters such as pistol grips or bayonet mounts might fail rational basis scrutiny,[177] I doubt that this ***1487** would happen, given the deference given to legislative factual judgments under minimum rationality review.[178]

This is also why a machine gun ban shouldn't be seen as violating the right to keep and bear arms for self-defense, even setting aside the Court's conclusion that machine guns aren't arms. Machine guns are no more useful for self-defense than are nonautomatic guns in all but a tiny fraction of civilian uses.[179]

3. Danger Reduction

Finally, some weapons bans might materially reduce various dangers to law-abiding citizens; consider, for instance, the ban on private possession of surface-to-air missiles. But this sort of ban would be independently justifiable through a scope argument: The weapons are certainly much more dangerous and uncommon than the machine guns and short-barreled shotguns that Heller concluded were outside the scope of "arms." More broadly, it's hard to imagine any such weapon that is unusually dangerous but that would fit within the scope of "arms" as Heller defined it.

That, of course, leaves the normally dangerous weapons, such as handguns, rifles, and shotguns. These weapons are indeed dangerous, and some people believe that entirely banning them will materially diminish the danger of crime and death.

But as Heller correctly concluded, right to bear arms provisions embody the judgment that the danger posed by private ownership of the normally dangerous weapons is justified by the benefits of gun ownership for, among other things, private self-defense. This is much like the constitutional judgment that the danger posed by First-Amendment-protected speech praising violence, or by criminals who are harder to catch as a result of the Fourth Amendment or harder to prosecute as a result of the Fifth and Sixth Amendments, is justified by the benefits that those constitutional provisions ***1488** yield. So it seems to me that if a weapon is within the scope of "arms," because it is not unusually dangerous, avoiding-danger arguments can't be used to justify bans on such weapons.

4. A Quick Review of Weapons Bans

This allows us to quickly go through some commonly proposed weapons bans, though much of what follows has already been foreshadowed above.

a. Handguns are of course protected arms under Heller; and, as Heller correctly concludes, a handgun ban so interferes with many people's ability to defend themselves that it constitutes a grave burden. [180] Some old cases that use the "civilized warfare" test for the scope of arms have concluded that handguns may indeed be banned, [181] but as I've argued above, this is not a sound test for rights provisions that cover self-defense purposes; and in any event, modern militaries do routinely use handguns.

b. Machine guns, short-barreled shotguns, and still more dangerous military weapons (such as surface-to-air missiles or grenade launchers) are outside the scope of "arms," and may thus be banned. [182] Moreover, such bans do not substantially burden the right to keep and bear arms for self-defense. [183]

c. Short-barreled or otherwise sawed-off rifles would likely be arms simply because they aren't materially different from handguns, which certainly qualify as arms. A handgun is just a very short-barreled rifle (some rifles even have pistol grips), and it's hard to see why a short-barreled rifle would be materially more dangerous than the even more concealable handgun. But for the same reason it's hard to see why a ban on short-barreled rifles would materially burden the right to keep and bear arms in self-defense, when handguns remain available. [184]

***1489** d. Assault weapons bans would generally be constitutional, if the right is seen as unconstitutionally infringed only when a law substantially burdens self-defense. Semiautomatic assault weapons are functionally virtually identical to other semiautomatics, and are as much arms as are other semiautomatics. [185] But bans on such weapons don't substantially burden the right to keep and bear arms for self-defense, precisely because equally useful guns remain available. Such a ban would be unconstitutional only if the courts conclude that even less-than-substantial burdens on self-defense must be justified by some showing of likely reduction of danger, or unless courts conclude that assault weapons bans are entirely irrational. [186]

e. Bans on silencers and .50 caliber ammunition would also likely be constitutional because they don't materially burden self-defense. [187]

f. Large-capacity magazine bans are a closer question. [188] A gun with a larger than usual capacity magazine is in theory somewhat more lethal than a gun with a 10-round magazine (a common size for most semiautomatic handguns), but in practice nearly all shootings, including criminal ones, use many fewer rounds than that. [189] And mass shootings, in which more rounds are fired, usually progress over the span of several minutes or more. [190] Given that removing a magazine and inserting a new one takes only a few seconds, a mass murderer--especially one armed with a backup gun--would hardly be stymied by the magazine size limit. It's thus hard to see large magazines as materially more dangerous than magazines of normal size.

Still, these same reasons probably mean that the magazine size cap would not materially interfere with self-defense, if the cap is set at 10 or so rather than materially lower. First, recall that until recently even police officers would routinely carry revolvers, which tended to hold only six rounds. Those revolvers were generally seen as adequate for officers' defensive needs, though of course there were times when more rounds are needed. Second, 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 (though to take advantage of this, the defender would have to make a habit of carrying both the gun and a spare magazine).

***1490** g. Bans on small, relatively cheap guns (including so-called "Saturday-Night Specials") might be unconstitutionally substantial burdens if the alternatives that they leave would be materially more expensive. [191] What extra expense qualifies as "material" is of course hard to tell, but as Part II.F discusses, this is not a constitutionally insurmountable problem. Similar issues arise with regard to regulations of abortion, speech, the right to marry, and the like. Moderate fees, and regulations

that indirectly impose moderate cost increases, are generally seen as permissible burdens, but at some point the fee becomes sufficient to make the law into an unconstitutional burden.

h. Bans on knives or billy-clubs would, under the framework I propose, count as restrictions on arms. The question would be whether the ban substantially burdens people's ability to defend themselves--quite possible, given that firearms tend to be much more expensive than knives and clubs, and given that clubs may be preferred by some defenders precisely because they are less lethal than firearms [192] --and whether there's some credible danger reduction argument in favor of restricting knives and clubs when guns are protected. [193]

i. Bans on shotguns should be unconstitutional, even if handguns are available. Many people keep a shotgun rather than a handgun for home defense, and many self-defense experts recommend shotguns. [194] With shotguns, there is less chance of missing, and their great lethality makes them even more effective at scaring away home invaders.

As Heller points out, handguns are for many people easier to store, easier to handle, harder to take away, and easier to hold with one hand while calling 911 with the other. [195] But this just reflects that handguns may be materially more effective self-defense weapons for some people in some contexts while shotguns may be materially more effective self-defense weapons for others (something that can't be said as to assault weapons, which are almost ***1491** entirely interchangeable with their non-assault cousins). Allowing only shotguns would substantially burden some people's rights to defend themselves, while allowing only handguns would substantially and similarly burden other people's rights.

j. Bans on electric stun guns and irritant sprays are dealt with in a separate article. [196]

5. A Special Case: “Personalized Gun” Mandates

Some have urged laws requiring that all new guns be personalized--designed so they can be fired only by an authorized user. Such personalization could, for instance, use fingerprint technology or wireless sensing of whether the user is wearing some electronic identification ring. In theory, if personalized guns became common, child gun accidents would become rare, and perhaps gun theft would become somewhat rarer, too. (I say “somewhat” because many thieves or resellers of stolen guns will likely know how to disconnect the electronics in a way that leaves the gun operational.) What's more, this could happen without compromising people's ability to defend themselves, something that distinguishes such proposals from handgun bans, carry bans, and locked storage requirements. [197]

Whether these requirements are constitutional should, I think, turn on whether they make guns materially more expensive, slower to fire, or unreliable. Say, for instance, that a personalized gun costs $1000, often fails to fire until after many seconds of fumbling, or requires monthly battery changes and is unusable if the battery isn't changed. Or say the gun receives its “OK to fire” signal through wireless radio from a ring worn by the owner, and there are cheap devices that would jam such transmissions and would thus let criminals effectively disarm any defender. Requiring that such guns be used-- as opposed to the more robust mechanical guns that are now common--would substantially burden self-defense. So if personalization requirements are upheld, they would have to be upheld under a danger reduction theory, if such a theory is accepted as a justification for substantial burdens on self-defense.

On the other hand, say the extra cost is relatively modest, the technology is highly reliable, and the batteries are extremely long-lived (or perhaps have an audible alarm reminding a user that they need replacing), or the gun is ***1492** designed so that, if the electronics fails, the gun is left operational as a mechanical weapon. (This sort of low cost / high reliability outcome seems quite possible as the technology matures.) Then the requirement probably wouldn't be a substantial burden, and should be upheld.

One possible way of estimating whether personalized gun requirements substantially burden self-defense is by looking at what police departments are doing. [198] Police officers can especially benefit from carrying personalized guns, because about 10

percent of all police officer fatalities involving shootings happen with the officer's own weapon.[199] Sometimes the shooter might have his own weapon and might use the officer's weapon just to make tracing harder; but sometimes the shooter starts out unarmed and seizes the gun from the officer in a struggle. If the officer has a personalized gun, the officer's life could be saved.

At the same time, police officers are also vulnerable to many of the reliability risks associated with switching from proven mechanical technology to new and unproven electronic technology. They don't want guns that fail to fire at the critical moment, or that can be disabled electronically.

So if police departments are ready to use personalized guns, and the personalizing technology doesn't increase the gun cost too much, then requiring such guns for civilians probably won't substantially burden civilian self-defense just as it won't substantially burden law enforcement. But if personalized guns aren't reliable enough for police departments, then requiring them would likewise impose a substantial burden on civilian self-defense (though some civilians might still choose to accept this substantial burden in order to get other benefits, for instance if they have small children at home and estimate that the danger of the child's accidentally misusing the gun is higher than the danger of the gun's being unusable at the crucial moment).

One state, New Jersey, has actually enacted a law mandating that, within roughly two and a half years after "personalized handguns" become "available for retail sales," sales of other handguns will be prohibited in New Jersey.[200] But while the law is triggered only when the Attorney General finds that personalized handguns are about as reliable as mechanical handguns,[201] the law ***1493** nonetheless doesn't apply to guns sold to the police until a separate commission endorses police use.[202] This may breed some skepticism about whether the Attorney General's initial finding of reliability is itself entirely reliable.

The law also doesn't consider the guns' affordability. In principle, the ban on selling unpersonalized handguns could be triggered even when personalized handguns cost many thousands of dollars. So there's some reason to suspect that the New Jersey ban on unpersonalized handguns, when it takes effect, might indeed substantially burden the right to keep and bear arms in self-defense. But it's impossible to tell until the personalized handguns exist, and their reliability and cost can be assessed.

**B. "Who" Bans: Bans on Possession by Certain Classes of People**

1. The Bans

Federal law bans gun possession by people guilty of certain illegal conduct-- felonies, unlawful drug use, illegal presence in the U.S., or misdemeanor domestic violence.[203] Some laws cover other kinds of misdemeanors,[204] and include misdemeanants released on probation.[205]

***1494** Federal law also bans gun possession by people who are the targets of protective orders, which are generally assumed to rest on a finding (by a preponderance of the evidence[206]) that the subject has acted violently, or poses a credible threat of violence.[207] And federal law bans the transfer of guns to anyone who is under indictment for a felony, which generally just requires a grand jury finding (usually in a nonadversarial proceeding) of probable cause to believe the person is guilty.[208] Some states ban gun possession, and not just gun acquisition, by people who are under indictment;[209] federal law does the same as to people indicted for murder, kidnapping, or various sex crimes, including possession of child pornography.[210]

Federal law essentially forbids nonimmigrant aliens from possessing guns.[211] Some states ban gun possession by all noncitizens.[212]

Federal law and the laws of many states also largely ban gun possession by under-18-year-olds (though possession of long guns is often allowed with ***1495** the permission of a parent or guardian).[213] New York City bars gun possession by 18-to-20-year-olds as well;[214] Illinois bars gun possession by 18-to-20-year-olds, except with the permission of a parent, and sometimes not even then.[215] And many other states bar handgun possession by 18-to-20-year-olds.[216] Federal law doesn't ban such possession, but it does bar gun dealers from selling handguns to 18-to-20-year-olds, which makes handguns available to 18-to-20-year-olds only by the good graces of a nondealer third party who is willing to sell to them.

Finally, government employers may sometimes ban both on-duty[217] and off-duty[218] gun possession by employees. I will not discuss this further in this Article, but I flag it here as a question for further research: How much extra power should the government as an employer have to control gun possession ***1496** by its employees, and if one seeks analogies from other fields, such as free speech law, how can such analogies be sensibly drawn?[219]

2. Burden

An individual right to keep and bear arms for self-defense is substantially burdened whenever an individual is entirely barred from owning a gun, or even entirely barred from owning a handgun.[220] It is a mistake to treat such total bans as "relatively minor" restrictions,[221] or assume that there's no infringement of the right to bear arms simply because non-firearm "arms" are available.[222] Perhaps such total bans are ultimately found to be justifiable burdens, but they are certainly substantial burdens.

***1497** Some of the statuses that trigger the laws--minority, alienage, being under indictment, being a felon in those states that allow for restoration of civil rights some years after the conviction--are temporary, and may expire in years or even months. But denying people the ability to defend themselves with firearms for that long remains a substantial burden on self-defense. To be upheld, then, the bans must be justified either by a scope argument (that the constitutional right explicitly or implicitly excludes the prohibited class of people) or by a danger reduction argument (that people in the prohibited class are so unusually dangerous that even a total ban on their gun possession is constitutional).

3. Scope and Danger Reduction

Naturally, the scope and danger reduction arguments are often related, because any textual or original-meaning limitations on who possesses the right will often stem from the perception that certain people aren't trustworthy enough to possess firearms. The Idaho right to bear arms, for instance, enacted in its current form in 1978, expressly states that the provision shall not "prevent the passage of legislation providing penalties for the possession of firearms by a convicted felon."[223]

Even provisions that do not have such explicit language might have been enacted with a background assumption that some people are not entitled to the full range of constitutional rights. Consider, for instance, the rights of minors. Though no right-to-bear-arms provision expressly excludes minors, it seems likely that such provisions were enacted with an understanding that minors might not have the same constitutional rights as adults. This background understanding likely reflects a judgment that minors aren't mature enough to fully appreciate the consequences of their actions, a judgment that could apply to minors' potential dangerousness to others, as well as to themselves.

At the same time, the scope and danger reduction justifications are importantly different. For one, they look to two different kinds of authorities. Scope justifications rest on a conclusion that some past authorities responsible for the scope of the constitutional provision--usually those who enacted the provision, but possibly those who maintained a particular tradition throughout American history--view certain people as untrustworthy (presumably because they are dangerous). Danger reduction justifications rest on a conclusion that the legislature and the reviewing court view certain people as untrustworthy, notwithstanding a constitutional text, original meaning, ***1498** and historical tradition that would secure the constitutional rights of those people as much as the rights of the rest of us.

Relatedly, scope justifications are less subject to being extended by analogy. If felon bans are upheld on the grounds that felons have historically been seen as outside the scope of various constitutional rights, then felon bans would offer a poor analogy for bans on possession by misdemeanants (even violent misdemeanants), or people who are under indictment and thus haven't yet been convicted. Scope arguments that exclude those categories of people would have to be made independently, and the prohibition on possession by felons would offer only a weak analogy.

But if felon bans are upheld on the grounds that felons pose an unusual danger to society, then many other categories of people might be seen as posing a comparable danger. This is especially so because many felonies are nonviolent crimes and their perpetrators probably pose a comparatively small danger of gun violence. If this small danger is enough to support a reducing danger argument in favor of a gun ban, then a wide range of other people could likewise be disarmed on a reducing danger theory.

I'm not sure which theory is right, though my instincts push me towards scope justifications, precisely because scope justifications are less likely to be broadened by analogy. But in any event, the decision about which theory to use is important.

4. Bans Justified by Individualized Finding of Likely Past Criminal Behavior or Future Danger

We therefore need more research on the historical scope limitations on the right to bear arms.

a. Felons. As to bans on gun possession by felons, the question is likely to be academic: Heller expressly held that such bans are constitutional. Nor did it distinguish between people convicted of violent felonies and those convicted of, say, fraud. Dozens of state court decisions likewise take the view that felons (even those convicted of nonviolent felonies) lack a constitutional right to keep and bear arms. [224]

***1499** Felons may need arms for lawful self-defense just as much as the rest of us do. Moreover, bans on felon possession of firearms also affect their law-abiding spouses, girlfriends and boyfriends, and other housemates: Those people might be unable to safely possess guns in their homes because of the possibility that their felon housemate will be seen as "constructive[ly] possess[ing]" the gun, [225] and that they themselves will therefore be seen as criminally aiding this illegal possession. [226] Nonetheless, the understandable worry about felon recidivism probably makes it unlikely that the settled law on the subject will change, though a few judges have expressed some dissenting views. [227]

***1500** b. "[Non-]Peaceable Citizens." The more practically important question concerns extensions of the ban from felons to violent misdemeanants [228] and to nonviolent misdemeanants. [229] Some historical references say that the right to keep and bear arms encompassed only "peaceable citizens" or "virtuous citizens," [230] and some recent scholarship and recent government arguments suggest that this justifies restrictions that go beyond felons and at least to violent misdemeanants. [231] The question is whether this was indeed a historically understood limitation.

c. People Found Dangerous by Preponderance of the Evidence or Under a Probable Cause Standard. A related question would be the extent to which this historical exclusion of the nonpeaceable or nonvirtuous has covered those who haven't been criminally convicted--or, if one focuses on the preventing danger theory, to what extent it should cover them. May the right to bear arms be restricted simply based on a finding by a preponderance of the evidence that the target poses a danger of violence? [232] What if the finding is at a hearing conducted without notice to the target? [233] May the right be restricted on a finding of probable cause by a grand jury handing down an indictment, a context where the defendant has no opportunity even to introduce exculpatory ***1501** evidence? Two courts have held such a restriction violates the right to bear arms, but two others have held otherwise. [234]

d. People Found "Unsuitable" by Police Departments. Massachusetts law provides that people may get or keep permits to carry handguns--which are also required for simple possession of handguns at home--only so long as the police department finds them

to be "suitable person[s]."[235] The police department may make this judgment based on its own conclusions about the person's likely past misconduct or future dangerousness, with only a highly deferential review by judges.[236] Police departments have in fact sometimes revoked such licenses based on charges that had been "dismissed or otherwise ***1502** resolved without a finding of guilt"[237] and on unadjudicated criminal complaints that "never ended in convictions [and] that . . . were essentially all brought by one person."[238] The denials or revocations are also sometimes based in part on whether the "person habitually associates with persons who violate the law or otherwise engage in inappropriate behavior, including verbal behavior"[239] or on whether the person "refused to cooperate in the police investigation concerning . . . several shooting incidents."[240]

Other states have similar rules, whether as to permits to possess firearms or permits to carry them; some provide for de novo review by courts,[241] while in others courts review police decisions deferentially, and set them aside only if they are found to be arbitrary or capricious.[242] Do such decisions have to involve a more concrete finding of dangerousness than just a conclusion that the person is not "a suitable person"? Does there have to be some judgment using an explicit quantum of proof, such as by a preponderance of the evidence? Moreover, should such decisions be reviewed de novo by the judiciary, as is required in some constitutional contexts?[243] This too bears further investigation.

***1503** e. People found to be physically incapable of safely using firearms. A few statutes limit gun possession by those who are seen as too "physical[ly] infirm[ ]" to "safe[ly] handl[e]" firearms.[244] I have seen virtually no cases or commentary on this, though one case, In re Breitweiser, suggests that sometimes this standard might be misapplied to handicapped people who are capable of safely using weapons but require special adaptive tools for doing so.[245]

5. Bans Without Individualized Findings of Likely Past Violence or Future Danger

a. Side Effects of Attempts to Disarm the Dangerous: Bans on Gun Possession by People Subject to Restraining Orders Without Findings of Misconduct or Dangerousness

New Jersey law prohibits gun possession by "any person whose firearm is seized pursuant to the 'Prevention of Domestic Violence Act of 1991' and whose firearm has not been returned."[246] This was likely aimed at people whose firearm hadn't been returned because of a finding of domestic violence, made by a preponderance of the evidence in a civil proceeding.

But in M.S. v. Millburn Police Department,[247] a New Jersey appellate court held this applied more broadly, to anyone whose firearm has not been returned.[248] M.S. and his wife had both filed domestic violence complaints against each other, and each had agreed to have restraining orders issued against the other. The prosecutor sought the forfeiture of M.S.'s guns, and "M.S. signed a consent judgment, permitting him to sell the five weapons to a registered firearms dealer,"[249] without admitting guilt. Some time after he sold his firearms, the restraining orders were vacated, and apparently no finding as to any violence ***1504** on M.S.'s part was ever made.[250] Nonetheless, because M.S.'s firearms hadn't been returned--with no finding or admission of M.S.'s likely guilt--M.S. was permanently barred from having guns under New Jersey law.

The following year, the New Jersey Supreme Court reversed the ruling, concluding that the statute should be read as applying only when the firearms aren't returned because of a finding or admission of guilt.[251] This basically places the New Jersey law on a similar footing with laws that bar gun possession based on a restraining order entered upon a finding of past violence or future danger.[252] But for over a year, New Jersey law appeared to bar certain people from possessing guns even without any such finding.

The same might sometimes happen under the federal statute that bans possession of guns by people subject to restraining orders. The federal statute applies when the order

(B) restrains such person from harassing, stalking, or threatening an intimate partner . . . or child . . ., or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. [253]

The use of "or" between (C)(i) and (C)(ii) suggests that the law could bar gun possession even when there is no finding of a credible threat or of past violence, and all that is present is a prohibition on "use, attempted use, or threatened use of physical force."

And a judge might not think much about issuing an order barring the use of injury-causing force even without a finding of threat or past misconduct: After all, such force is already generally illegal (setting aside self-defense, which would likely be implicitly exempted), so why not prohibit it? [254] In such ***1505** a case, barring firearms possession solely because the order exists, unbacked by any findings of dangerousness or misbehavior, must violate the right to bear arms.

Some courts that have considered the federal statute quoted above have concluded that no-use-of-force orders will indeed be based on a factual finding of threat:

Congress legislated against the background of the almost universal rule of American law that for a temporary injunction to issue: "There must be a likelihood that irreparable harm will occur. Speculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant. Thus, a preliminary injunction will not be issued simply to prevent the possibility of some remote future injury. A presently existing actual threat must be shown. However, the injury need not have been inflicted when application is made or be certain to occur; a strong threat of irreparable injury before trial is an adequate basis."

We conclude that Congress in enacting section 922(g)(8)(C)(ii) proceeded on the assumption that the laws of the several states were such that court orders, issued after notice and hearing, should not embrace the prohibitions of paragraph (C)(ii) unless such either were not contested or evidence credited by the court reflected a real threat or danger of injury to the protected party by the party enjoined. [255]

Some states (perhaps many or even almost all) might only authorize such orders when some finding of threat or past violence has been made. [256] And some might demand a persuasive showing of violent conduct precisely because they want to avoid improperly restricting a person's right to bear arms. [257]

On the other hand, at least some courts seem willing to enter orders simply based on "verbal[ ] abus[e]" that consists of "insulting and foul language [used] to humiliate and degrade." [258] Likewise, even statutes that ostensibly ***1506** require a finding of domestic violence could be satisfied simply by "a communication . . . in offensively coarse language" made "with purpose to harass," [259] or based on "making annoying telephone calls, directly or indirectly destroying personal property and 'contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party . . . .'" [260] And under the Vermont statute, a person's supposed future dangerousness could be determined not just based on the person's past unlawful conduct, but also based on the person's past lawful use of nondeadly force to defend property. [261]

Moreover, the physical conduct required for the statutes (which of course only require a showing by a preponderance of the evidence) may often be quite ambiguous. In one case, for instance, the target of the order "grabbed [the petitioner's] arm" and

then "stormed out." [262] In another, the target of the order was found to have "[p]hysically blocked [a] pathway to prevent [the petitioner] from entering the house" and "subjected [the petitioner] to extreme psychological abuse." [263]

In a third, a domestic protective order was issued against a woman who quickly backed out from a driveway when the petitioner and his son were in the way on a small riding mower, and "stopped within a few feet" of the petitioner and the son--possibly a threat but possibly just an incident of unsafe driving. [264] Moreover, the order applied to the driver's husband as well ***1507** as to the driver herself, though there was no finding of any violence on the husband's part. In another case, though reversed on appeal, a judge issued a restraining order against a woman based simply on her briefly remaining at a party in her boyfriend's apartment after he had ordered her to go; she had just learned of the boyfriend's infidelity while at the party, started to cry and yell at the unfaithful boyfriend, and then did not obey his order to "Get the F[expletive] out of [the] house." [265]

Other courts allow the issuance of restraining orders when the target has long been out of the state or even out of the country--or perhaps even has always lived outside the state and the country--and was thus outside what would normally be the court's jurisdiction under the Due Process Clause. [266] Such nonresidents might find it too burdensome to return to defend themselves against the factual allegations, one common explanation for why personal jurisdiction is generally required in the first place. [267] A finding of past violence or future threat may thus be based on a one-sided presentation in a context where the legal system would otherwise not treat the defendant's rights as being forfeited by a decision not to appear.

It thus seems to me that there might well be cases in which the right to bear arms is denied to the targets of restraining orders even in the absence of a credible finding of threat or violence. Whether this is true needs further research. And if the research reveals that such prohibitions are indeed sometimes imposed, it seems to me that they would likely be unconstitutional. It's hard to see how the scope of the right to bear arms can be understood as excluding people simply because they're subject to a court order that has been entered with no finding of past violence or future dangerousness. [268]

***1508** b. Proxies for Likely Inadequate Judgment: Bans on Gun Possession by Under-18-Year-Olds, the Mentally Ill, Mentally Retarded, the Drug-Or-Alcohol-Addicted, and 18-to-20-Year-Olds

Scope and Burden. Many (but not all) states generally ban gun possession by under-18-year-olds, [269] though such states tend to have exceptions for hunting and target shooting with a parent's permission. These laws are serious burdens on the ability of under-18-year-olds to defend themselves. Older minors are just as likely to be violently attacked as are younger adults (and much more so than older adults), and 12-to-17-year-old girls are substantially more likely to be raped than young adult women. [270] Moreover, both male and female minors are often without adult protection, whether at home or in public places.

Nonetheless, it is also highly plausible that even older minors are more likely to misuse their guns, chiefly because their capacities for impulse control and thoughtful judgment haven't fully matured. This avoiding danger argument is of course the justification for age cutoffs for various decisions, whether decisions that may jeopardize the minors' own safety, or ones (such as about driving or drinking) that may jeopardize third parties. [271] And because the ***1509** drafters of the Second Amendment likely saw this danger, it also seems to me that such bans on gun possession by minors can be justified by a scope argument: Minors generally have, and historically have had, lesser constitutional rights than do adults, [272] and the same should apply to the right to possess deadly weapons. [273]

***1510** For related reasons, I suspect that those whose judgment is seen as compromised by mental illness, [274] mental retardation, or drug or alcohol addiction [275] have historically been seen as less than full rightholders, alongside those whose judgment is compromised by youth. [276] But again, some solid historical research would be more helpful than either scholars' or judges' speculation.

But what about 18-to-20-year-olds? The New York City ban on all gun ownership by 18-to-20-year-olds surely qualifies as a substantial burden.[277] So must the Illinois law, which bans gun ownership by 18-to-20-year-olds whose parents are dead, felons, or nonresident aliens, and conditions other 18-to-20-year-olds' rights on their parents' permission.[278] And under Heller, the same should be true for the more common restrictions on handgun ownership and acquisition by 18-to-20-year-olds:[279] The availability of long guns as a self-defense option wouldn't undo the "sever[ity of the] restriction," for the same reasons that it didn't do so in Heller.[280]

***1511** Yet regardless of the burden, there is also the scope question: Should constitutional rights be seen as fully vesting at age 18, or at age 21, in keeping with the historical tradition of 21 being the age of majority? The rule that majority begins at 21 endured until the early 1970s,[281] so most right-to-bear-arms provisions were thus enacted while 18-to-20-year-olds were technically treated as minors.[282] And the same issue arises as to other rights as well: Consider, in the First Amendment context, a recent proposal to set 21 as the age of consent for being filmed or photographed naked or in sexual contexts,[283] and the possibility that this is already the law in Mississippi and as to under-19-year-olds in Nebraska.[284] Consider the Nebraska requirement of parental consent for marriage of under-19-year-olds.[285] Or consider the Alaska law barring possession of marijuana by under-19-year-olds even though the Alaska Supreme Court has interpreted the Alaska Constitution's right to privacy as securing adults' right to possess small quantities of marijuana at home.[286]

I'm skeptical about this argument, because the pre-1970s cases that I've seen involving lesser constitutional rights for minors--lesser free speech rights, lesser religious freedom rights, and lesser criminal procedure rights-- involved age cutoffs of 18 or less.[287] Whatever setting the age of majority at 21 might ***1512** have meant for purposes such as contracting, parental authority, and the like, it seems not to have affected those other constitutional protections. At the same time, for much of our nation's history, the right to contract was seen as an important constitutional guarantee, and that right was not fully secured to 18-to-20-year-olds. The matter of the historical constitutional rights of 18-to-20-year-olds warrants more research.

Danger reduction. The 18-to-20-year-old issue illustrates the importance of figuring out precisely why the less controversial restrictions on the under-18-year-olds and the mentally infirm are constitutional. If the reason for upholding the ban on possession by under-18-year-olds is the historical scope of constitutional rights, then that reason probably will not carry over to other age groups. It certainly wouldn't carry over to, say, 22-year-olds. (In St. Louis, one can't carry a gun on a public street until one is 23.[288]) And it wouldn't even carry over to 18-to-20-year-olds, unless they were historically not seen as full rightsholders for the purposes of most constitutional rights, or of the right to keep and bear arms in particular.

But if the ban on possession by under-18-year-olds is upheld under a danger reduction argument, which is to say based on the plausible but unproven speculation that banning possession by 17-year-olds will diminish crime in a way that somehow outweighs the diminution in 17-year-olds' legitimate ability to defend themselves, then that argument could easily be applied more broadly. Most obviously, the same argument could be made, about as plausibly, about 18-year-olds or even 22-year-olds. There's a reason why auto insurance companies charge higher rates all the way up to age 25. And gun death rates remain within 10 percent of their age 18 levels into the late 20s,[289] though the need for self-defense remains high then as well.

Moreover, the danger reduction argument could equally justify similar bans for any demographic group that can plausibly be seen as potentially more dangerous. Presumably race-based restrictions and likely even sex-based restrictions would violate the Equal Protection Clause,[290] though of course violent ***1513** crime is highly correlated with sex, and in considerable measure with race.[291] But similar arguments could also be made about people who live in especially high-crime cities, or who don't have high school degrees, or who have other possible demographic correlates of gun misuse.

It seems to me that these danger reduction arguments ought to be rejected. At least absent overwhelming statistical evidence, I don't think that any class of mentally competent adults should be denied constitutional rights based on their demographic

characteristics, as opposed to things they have personally done. But in any event, this question, and the relationship between the rights of 17-year-olds, 20-year-olds, and 22-year-olds, illustrates the importance of distinguishing restrictions justified by the scope of the right from those justified by a danger reduction rationale.

c. Bans on Gun Possession by Noncitizens

If bans on gun ownership by noncitizens are constitutional, they have to be constitutional on scope grounds. Reducing-danger grounds will not work: Noncitizens with guns are no more dangerous than citizens with guns. [292]

As to some jurisdictions' right-to-bear-arms provisions, the scope question is clear. Some states expressly secure the right only to citizens. [293]

Others expressly secure the right to any person; consider, for instance, the Colorado provision: "The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question . . . ." [294] The phrase "no person" is clear and broad. [295] The Colorado and Michigan Supreme Courts have indeed relied on state right-to-bear-arms provisions to strike down bans on gun possession by noncitizens. [296]

But some constitutional provisions, including the Second Amendment, secure a "right of the people." And the Court held in United States v. Verdugo- ***1514** Urquidez [297] that "the people" (as opposed to "person") is a "term of art" that "refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." [298] Likewise, Heller described "the people" as referring "to all members of the political community"--"not an unspecified subset," but also not persons who are outside the political community. [299]

I'm inclined to say that "the right of the people" should be read in the Second Amendment the same way it has been read in the First and Fourth Amendments: as including the nation's lawful guests, though not applying to those who are largely unconnected with the country, for instance because they are aliens in foreign countries, [300] or perhaps because they are illegally present in the United States. [301] The right to bear arms is in part aimed at self-defense, something valuable to all people and not just to citizens. Given that the American constitutional tradition generally secures individual rights to citizens as well as noncitizens (though not to people in foreign countries), the Second Amendment right to bear arms in self-defense should be treated the same way.

But whether or not I'm right on this, the scope of the phrase "the people" is the key question here. Resolving the matter by just asserting that the law is a regulation rather than a prohibition, as the Utah Supreme Court did in a ***1515** cursory decision, [302] would be a mistake; so would concluding that disarming noncitizens is somehow necessary to materially reduce danger of crime or injury.

Finally, I should note that it's possible that state laws that discriminate against noncitizens when it comes to gun possession or gun carrying might violate the Equal Protection Clause, which has been interpreted as requiring strict scrutiny of some (but not all) state discrimination against noncitizens. [303] But I leave that question to others.

**C. "Where" Bans: Prohibition on Possession in Certain Places**

Many laws prohibit most people from possessing guns in certain places, such as on all public streets, in bars, in parks, and in public housing projects. [304] Naturally, these laws are by definition lesser burdens than are total bans on possession. But they are nonetheless serious burdens: Whenever people are in the prohibited places--places where they have a right to be, and often have a practical need to be--they are barred from protecting themselves with a firearm.

And of course people's ability to protect themselves elsewhere is no substitute for their ability to protect themselves where they are. Some rights, such as free speech, may be only slightly burdened by laws that bar speech in some places but allow it in many other places. But self-defense has to take place wherever the person happens to be. Nearly any prohibition on having arms for self-defense in a particular place (I note some exceptions below) is a substantial burden on the right to bear arms for self-defense. Perhaps the burden can be justified on scope or danger reduction grounds, [305] but it is indeed a serious burden.

***1516** 1. Bans on All Gun Carrying

Heller stated that bans on concealed carry of firearms are so traditionally recognized that they must be seen as constitutionally permissible. [306] This tradition does indeed go back to 1813 and the following decades, at least in some Southern and border states, as well as in Indiana, [307] and by the end of the 19th century the constitutionality of such bans had become pretty broadly accepted. [308] A few state court cases have struck down such bans, [309] but most courts have upheld them, and many state constitutions expressly authorize them.

The same cannot, however, be said about general bans on carrying firearms in public, which prohibit open as well as concealed carrying. Heller expressly concluded that "the right to . . . bear arms" referred to carrying arms. [310] Ten state ***1517** constitutions strongly imply this, by protecting "bear[ing] arms" but expressly excluding "carrying concealed weapons." [311] Other constitutions don't mention carrying as such, but they do use the word "bear." And many courts applying state constitutional provisions have held or suggested that carrying in public is generally constitutionally protected, [312] though some courts have disagreed. [313]

***1518** Such protection, of course, makes sense when the right is (at least in part) a right to keep and bear arms in self-defense: Often, people need to defend themselves against robbers, rapists, and killers outside and not just in the home. [314] Two-thirds of all rapes and sexual assaults, for instance, happen outside the victim's home, and half happen outside anyone's home. [315] The percentages are even greater for robberies and assaults. [316] So a ban on carrying weapons outside the home--especially in places that one practically needs to frequent, such as the streets on the way to work or to buy groceries--is a serious burden on the right, more so than the ban on handgun possession struck down in Heller (which would have at least left open some possibility of self-defense with shotguns or rifles).

Some states ban unlicensed carrying of loaded weapons, even when they are carried openly, but allow the carrying of unloaded weapons. A few courts have upheld such laws on the grounds that they let a would-be defender carry both the weapon and ammunition, and load it when needed. [317] But seconds count when one is attacked, especially in public, where one might not have the warnings that are sometimes available in the home (the breaking window, the barking dog, the alarm). While loading a gun may take only several seconds, especially if the ordinance allows the carrying of loaded ***1519** magazines so long as the magazine is outside the weapon, [318] those will often be seconds that the defender doesn't have. [319]

So these laws are substantial burdens on the right to defend oneself, and carrying arms is within the scope of the right, alongside home possession. The question is whether bans on carrying can be justified on a rationale that they avert so much danger that the restriction on self-defense is an acceptable price to pay. I don't believe they can.

To begin with, bans on carrying loaded weapons that let people carry ammunition as well as a gun seem unlikely to avert much danger. An enraged driver can generally quickly load a weapon, even while driving, [320] and several seconds' delay will likely be less of a barrier to an attacker (who usually gets to choose the moment of attack) than to a defender. A would-be armed robber could load a weapon in seconds before going into a liquor store, so that he won't be committing a gun crime pretty much until he's actually committing the robbery itself. And while a ban on loaded carry might avert some gun accidents, it seems to

me that preventing gun accidents--which are over ten times less common than deliberate gun injuries [321] --would not justify such a serious loss of self-defense rights.

Bans on carrying loaded weapons that require people to carry the guns or ammunition in locked cases might do more to prevent road rage killings, or to increase the chances that a would-be gun criminal is caught after he removes the gun from a locked case but before he is about to use it. But they seem unlikely to prevent the great majority of gun crime, which is committed by criminals who ignore gun laws just as they ignore other laws [322] and ***1520** who are unlikely to be stopped and arrested for a gun law violation by the police before the crime is committed.

And such bans would essentially deny people the ability to defend themselves in public places using firearms--the tools that are likely to be the most effective for self-defense, and that the criminal attackers are already likely to possess. That seems to me to be an unacceptable burden on a constitutionally protected right, even if one in principle accepts some power to substantially burden self-defense in order to reduce danger of crime or injury. As the National Academy of Sciences and Centers for Disease Control reports suggest, a regime in which pretty much all law-abiding citizens can get licenses to carry concealed guns has not been shown to cause any increase in net crime or death. [323]

This having been said, I must acknowledge that my guesses about the degree to which such laws block lawful and effective self-defense, and the degree to which they prevent criminal attacks, are indeed just guesses. I've read a lot of criminological work on guns, and I designed and four times taught a seminar on firearms regulation policy, which mostly focused on the criminological data. But given the lack of empirical data, an educated guess is all I see available in this field.

My inclination in such situations is to defer to the constitutional judgment embodied in the right to bear (not just to keep) arms, and more broadly to a presumption that people should be free to have the tools they need for self-defense until there is solid evidence that possession of those tools will indeed cause serious harm. And, as I noted above, many courts have taken the same view by holding that there is a constitutional right to openly carry weapons; Heller's discussion of the phrase “keep and bear” points in the same direction. Still, I expect that this will be a major area of debate in courts in the coming years.

***1521** 2. Bans on Concealed Carry, Revisited

To be sure, any discussion of open carry rights has a certain air of unreality. In many places, carrying openly is likely to frighten many people, and to lead to social ostracism as well as confrontations with the police. [324] Most people are aware that many neighbors own guns, and even that many people are licensed to carry concealed guns and many others carry them illegally, [325] but this abstract knowledge doesn't cause much worry. But when a gun is visible, it occupies people's attention in a way that statistical realities do not. This is likely to deter many people from carrying a gun. [326]

There is indeed an “open carry movement” of people who deliberately wear guns openly, as a means of trying to normalize such behavior and of making a statement in favor of gun possession. [327] But this is like people who wear T-shirts that say “I had an abortion.” [328] A few people choose to disclose such facts to make a political point. Yet most people are reluctant to make such disclosures, and would be reluctant to engage in the underlying behavior if they had to publicly disclose it.

And the Court has recognized that requirements of disclosure to the government may substantially burden constitutional rights when they trigger ***1522** social pressure that deters constitutionally protected behavior. For instance, the right to anonymous speech and anonymous group membership stems largely from concerns that mandated identification of speakers will lead to a risk of ostracism and police harassment, and will thus deter speech. [329] Likewise, banning concealed carry in public places, coupled with the social pressures against open carry, will likely deter many people from carrying guns in public places altogether--and will thus substantially burden their ability to defend themselves.

What's more, the historical hostility to concealed carry strikes me as inapt today. The classic argument was captured well by the Richmond, Virginia Grand Jury in 1820:
On Wearing Concealed Arms

We, the Grand Jury for the city of Richmond, at August Court, 1820, do not believe it to be inconsistent with our duty to animadvert upon any practice which, in our opinion, may be attended with consequences dangerous to the peace and good order of society. We have observed, with regret, the very numerous instances of stabbing, which have of late years occurred, and which have been owing in most cases to the practice which has so frequently prevailed, of wearing dirks: Armed in secret, and emboldened by the possession of these deadly weapons, how frequently have disputes been carried to fatal extremities, which might otherwise have been either amicably adjusted, or attended with no serious consequences to the parties engaged.

The Grand Jury would not recommend any legislative interference with what they conceive to be one of the most essential privileges of freemen, the right of carrying arms: But we feel it our duty publicly to express our abhorrence of a practice which it becomes all good citizens to frown upon with contempt, and to endeavor to suppress. We consider the practice of carrying arms secreted, in cases where no personal attack can reasonably be apprehended, to be infinitely more reprehensible than even the act of stabbing, if committed during a sudden affray, in the heat of passion, where the party was not previously armed for the purpose.

We conceive that it manifests a hostile, and, if the expression may be allowed, a piratical disposition against the human race--that it is ***1523** derogatory from that open, manly, and chivalrous character, which it should be the pride of our countrymen to maintain unimpaired--and that its fatal effects have been too frequently felt and deplored, not to require the serious animadversions of the community. Unanimously adopted.

JAMES BROWN, Foreman. [330]

Carrying arms, the theory went, was "one of the most essential privileges of freemen," but "open, manly, and chivalrous" people wore their guns openly, "for all the honest world to feel." [331] Carrying a gun secretly was the mark of "evil-disposed men who seek an advantage over their antagonists." [332] And requiring that people carry openly imposed no burden on self-defense, precisely because open carry was so common that it wasn't stigmatized.

Today, open carrying is uncommon, and many law-abiding people naturally prefer to carry concealed (in the many states where it is legal). Concealed carrying is no longer probative of criminal intent. If anything, concealed carrying is probably more respectful to one's neighbors, many of whom are (sensibly or not) made uncomfortable by the visible presence of a deadly weapon. Nor is there any particular reason to think that concealed carrying increases lethal quarrels by suckering people into thinking that they can safely argue with a person who they think is unarmed. We should be aware now that strangers might well be armed, whether lawfully or not. And the very people who are most likely to turn an argument into a gunfight--for example, gang members--are probably especially unlikely to comply with an open-carry-or-no-carry mandate.

So it seems unlikely that there's a credible danger reduction case to be made for mandating that carrying be done openly rather than concealed--except insofar as one argues that all carrying is dangerous, and that mandating open carry is good precisely because it will deter carrying even by the law-abiding. Yet that is an argument that the right to bear arms in self-defense should foreclose. If my analysis in the previous section is correct, and a right to bear arms generally includes the right to carry, then it ought to include the right to carry concealed.

I must acknowledge, though, that longstanding American tradition is contrary to this functional view that I outline. For over 150 years, the right to bear arms has generally been seen as limited in its scope to exclude concealed carry. Constitutional provisions enacted after this consensus emerged ***1524** were likely enacted in reliance on that understanding. If Heller is correct to read the Second Amendment in light of post-enactment tradition and not just Founding-era original meaning, this

exclusion of concealed carry would be part of the Second Amendment's scope as well. [333] And if the Second Amendment is incorporated via the Fourteenth Amendment, its scope as against the states might well be properly defined with an eye towards how the right to bear arms was understood in 1868, [334] when the concealed-carry exception was apparently firmly established.

There is a response to be made against this scope argument: The historical exclusion, the response would go, was contingent on the social conventions of the time--the social legitimacy of open carry, and the sense that concealed carry was the behavior of criminals--and this exclusion is no longer sustainable now that the conventions are different. [335] If this response is persuasive, then for the reasons I argue above a ban on concealed carry should indeed be seen as a presumptively unconstitutional substantial burden on self-defense. But overcoming the scope objection would be an uphill battle, as Heller itself suggests.

3. Bans on Carry Into Places Where Alcohol Is Served or Sold

Many states ban carrying weapons into places where alcohol is served or sold. [336] This generally includes restaurants and sometimes even convenience stores, and not just bars. [337]

***1525** It also strips people of the ability to have a gun present for self-defense not just at the restaurant, store, or bar, but also on the way to and from their cars (or their homes, for those who walk or take public transportation). A gun might be comparatively unnecessary for people who want to go into a restaurant, because a rape or an assault inside the establishment might be relatively unlikely. But an attack outside the restaurant, on the way to the car, may be much more likely, especially if the restaurant has no parking lot of its own, or if the jurisdiction bars firearms even from alcohol licensees' parking lots; [338] the tools for self-defense are therefore more necessary on the way from the restaurant to the car. And given that there's no sign that restaurants, bars, and convenience stores are likely to set up some sort of gun check or locker system, a ban on gun carrying in such places is likely to disarm the law-abiding on their ways to and from these places as well as inside them.

So the burden here seems fairly substantial: To remain able to defend oneself, one has to avoid not just bars but a wide range of restaurants and stores. It's much less substantial than the burden imposed by laws that prohibit all carrying in public places, because it applies to many fewer places. But in and on their way immediately to and from those places, law-abiding citizens are stripped of the ability to bear arms in self-defense.

So the question is again whether the law might still be justified on the theory that it reduces danger. But here any such judgment is even more speculative than it usually is. I'm pretty sure that there's no good data on (1) the number of gun crimes that happen within places that serve alcohol, (2) the number of such gun crimes that are committed by people who are likely to comply with gun control laws, (3) the number of accidental gun injuries in such places, (4) the number of defensive gun uses that happen inside such establishments, or on the way from the establishment to a parking place, in those jurisdictions that allow the carrying of guns in such establishments, or (5) comparative crime rates in states that do and don't allow such carrying, controlling for various possible confounding factors.

We can guess that guns are more likely to be abused by drunk people, but not how often. We can guess that some of this abuse will be by people who would comply with gun control laws when sober, and thus not carry the gun into the bar--though we can also guess that much will be by people who ***1526** wouldn't comply with gun control laws at all. We can guess that guns will sometimes be needed for lawful self-defense on the way to and from such places, and possibly even in such places, but again not how often. It really is all guesswork when it comes to the danger reduction argument, especially as to this less studied sort of restriction.

4. Bans on Carry Into Places With Effective Security Screening and Internal Security, Such as Airports and Courthouses

In a few places, there is pretty thorough protection, through a combination of effective security screening using metal detectors, a substantial law enforcement presence, and the presence of many law-abiding citizens who would witness any crime. This is

why violent crime inside airport security cordons, and inside courthouses that screen for weapons, seems to be rare (though of course not unheard of, especially since some extremely violent and determined criminals could steal weapons from police officers and marshals). [339]

In such places, a ban on civilian weapons seems likely to be a modest burden on lawful self-defense, perhaps low enough to fall below the constitutional threshold. [340] Most supposed "gun-free zones" are zones in which guns are outlawed but in which criminals still find it easy to have them. But the post-security-screening areas of courthouses and airports may indeed be nearly gun-free zones (as far as civilian possession is concerned), [341] and largely crime-free zones.

This having been said, I should note that the problem raised in the previous subsection--that banning guns in a place also prevents people from having guns available on their way to and from the place--is present here, too. Given this, the "insubstantial burden" argument should only apply to those courthouses and airports that provide lockers for gun storage. If such lockers aren't provided, the justification for gun possession restriction would have to flow from the "government as proprietor" argument (discussed below) or from a danger reduction argument.

***1527** 5. Bans on Carrying in Other Privately Owned Places

Some jurisdictions ban, and sometimes have long banned, carrying guns into certain kinds of places, such as schools (including private schools), churches, polling places, and the like. [342] Heller similarly, though rather cryptically, endorsed "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." [343] Heller didn't discuss whether this would be limited to public schools and government buildings, in which case the law might be justified by the government's power as proprietor (discussed two subsections below). But the general reference to schools (which on its face includes private schools), and the description of places as "sensitive" rather than just government-owned, at least leaves open the possibility that Heller is endorsing such prohibitions on carrying into "sensitive" privately owned buildings.

These laws substantially burden self-defense. While violent crime against adults on private school and church property is fairly rare, it is not unheard of, especially once one includes open spaces such as parking lots. [344] The question must be whether the carry bans might nonetheless be justified because of (1) the historical exclusion of certain places from the right to bear arms, or (2) some sufficient evidence that the prohibition on gun carrying in those places will considerably reduce the aggregate danger of crime and injury (taking into account the decline in lawful self-defense opportunities). It seems to me that future research should focus on those questions, rather than dismissing the burden on the right to bear arms as immaterial, or just assuming that the language in Heller gives the government carte blanche to ban guns in schools, government buildings, or other places.

***1528** 6. Bans on Carrying Within One Thousand Feet of a School

The federal Gun-Free School Zones Act bans gun possession, except on private property, within one thousand feet of any school. [345] The Act exempts possession by those with a state gun license, [346] but many states allow unlicensed open carry, [347] Alaska and Vermont allow unlicensed concealed carry, [348] many states don't give someone an option to get a gun possession license, and many more don't allow 18-to-20-year-olds to get concealed carry licenses. [349] In these states, gun carrying on public streets and sidewalks within one thousand feet of a school is effectively barred by federal law. [350]

California and Wisconsin laws likewise prohibit open carrying within one thousand feet of a school, even when the gun is unloaded. [351] (Outside those zones, California law generally allows unloaded open carry, [352] and Wisconsin ***1529** law generally allows even loaded open carry. [353]) Louisiana law in effect prohibits carrying by 18-to-20-year-olds within one thousand feet of a school or university, except in a car, and provides that "[l]ack of knowledge that the prohibited act occurred . . .

within one thousand feet of school property shall not be a defense."[354] In Aurora (Illinois), carrying of firearms, stun guns, and even pepper spray is banned within one thousand feet of a school or university.[355]

These school zone statutes substantially burden people's ability to defend themselves. Many people live and work within one thousand feet of schools, and may need to defend themselves in that area even if they never set foot on school property. I know of no longstanding tradition of treating several blocks around a school as a "sensitive place[ ]" in which people are stripped of their right to keep and bear arms in self-defense, including at night when self-defense is most necessary and school is not even in session. And if a reducing danger argument is inadequate to justify gun bans on public streets generally (see Part II.C.1), it's hard to see how it would be adequate to justify gun bans on public streets within several blocks of a school.

7. Bans on All Gun Possession on Government Property (Setting Aside Streets and Sidewalks)

Some government-run housing projects impose lease conditions barring tenants from possessing any guns in their apartments.[356] Illinois allows firearms ***1530** in public housing, but bans stun guns.[357] Aurora (Illinois) bans possession in public housing of firearms, stun guns, and even pepper spray.[358] Louisiana and Lincoln (Nebraska) domestic violence shelters ban both guns and stun guns.[359] Guns are also banned on other government property,[360] including places where the risk of crime may be quite substantial, such as government-owned parks (both city parks and national parks).[361] How much extra power should the government's role as proprietor give it in such situations?[362]

I don't know what the right answer is, but I can point to two wrong or at least incomplete answers. The first comes from a court that used a danger reduction rationale to uphold a ban on gun possession in public housing projects:
While the right to possess arms is acknowledged within the Michigan Constitution, this right is subject to limitation. Jurisprudence in this state has consistently maintained the right to keep and bear arms is not absolute. This Court has determined that "the constitutionally guaranteed right to bear arms is subject to a reasonable exercise of the police power." The state has a legitimate interest in limiting access to weapons.

***1531** It is recognized that public housing authorities have a legitimate interest in maintaining a safe environment for their tenants. Infringements on legitimate rights of tenants can be justified by regulations imposed to serve compelling state interests which cannot be achieved through less restrictive means. Restrictions on the right to possess weapons in the environment and circumstances described by plaintiff are both in furtherance of a legitimate interest to protect its residents and a reasonable exercise of police power. This is particularly true given defendant's failure to make any allegation she feels physically threatened or in danger as a resident of plaintiff's complex necessitating her possession of a weapon to defend herself.[363]

This can't be a sound argument, because it doesn't explain why public housing projects are any different from private housing, where the right to keep and bear arms is indeed protected under the Michigan Constitution.[364] After all, the right to bear arms is constitutionally protected even though the government has a legitimate interest in "maintaining a safe environment" for everyone, and there are few "environment[s] and circumstances" in which guns lose their dangerousness.[365]

***1532** The second wrong (or at least incomplete) approach comes from the Oregon Attorney General's opinion that a ban on gun possession in public housing would be unconstitutional:
It is well settled that the government may not condition entitlement to public benefits, whether gratuitous or not, upon the waiver of constitutional rights that the government could not abridge by direct action. The United States Supreme Court has repeatedly upheld that principle under the United States Constitution. . . .

. . . Although the Oregon Supreme Court has not ruled on the issue directly, from [various state court] authorities we believe that, if faced squarely with the question, the court would hold that this "unconstitutional condition" principle applies under the Oregon Constitution. . . .

Eligibility for low-income housing provided by a housing authority plainly is a public benefit or privilege. Subject to certain federal limitations, a housing authority lawfully may condition eligibility for low-income housing on satisfaction of income criteria and other factors designed to ensure that only responsible tenants reside in that housing. However, we conclude that a housing authority may not require an otherwise-eligible individual to surrender rights under article I, section 27 in order to obtain low-income housing. [366]

The problem here is that, though all the cases cited by the Oregon Attorney General indeed rejected government demands that someone waive a constitutional right to get a benefit, many other cases uphold such demands. [367] A plea bargain may be conditioned on a waiver of the right to trial. Welfare benefits, or membership on a high school sports team, may be conditioned on a waiver of some parts of the recipient's rights to be free from searches without probable cause. [368] A government paycheck may be conditioned on a promise not to reveal certain things the employee learns in confidence. [369]

More broadly, the government may sometimes refuse to allow the exercise of constitutional rights on its property, especially setting aside traditionally open places such as parks and sidewalks. It could, for instance, insist that abortions not be performed in government-owned hospitals. [370] It could bar a wide range of speech in government buildings. [371]

***1533** Public housing might be treated specially, because it is a home as well as a government building, [372] or because it is the sort of government benefit that is unusually important to those who use it. This has been the view of cases striking down at least certain kinds of speech restrictions [373] and search and seizure policies in public housing. [374] But still, while the Oregon Attorney General probably reached the right result in concluding that public housing authorities can't require their tenants to surrender the right to bear arms, the unconstitutional conditions analysis in that opinion too categorically rejects the government-as-landlord claim, just as the Michigan opinion quoted above too categorically rejects the constitutional right claim.

It's not clear to me how other public property should be treated: Should the government be allowed to ban guns on government-owned recreational land, whether a city park or a national park, either by insisting that people who want to use the land must waive their right to bear arms, or by otherwise concluding that there is no right to bear arms in such places? [375] As a condition of going onto a public university campus, which might have a considerable amount of open space and parking areas where crime is not uncommon? [376] In public university dorm rooms, where one state attorney general's opinion suggests gun possession is constitutionally protected? [377] As a condition of going onto a public primary or secondary school campus, or into a government office building, especially when this requires walking unarmed through a potentially dangerous parking structure? Courts need to work out a government-as-proprietor doctrine for the right to bear arms much as they have done for the freedom of speech.

### ***1534 D. "How" Restrictions: Rules on How Guns Are to Be Stored**

1. Requirements That Guns Be Stored Locked or Unloaded

The D.C. gun ban required that even long guns be stored locked and unloaded. [378] Other states require that all guns be stored locked if minors under a certain age (often sixteen) can access them. [379]

Such laws substantially burden self-defense. Even if the gun can be unlocked in several seconds (something such laws generally allow [380]), a defender might not have those seconds. [381]

The laws are aimed at danger reduction, especially to children. And it is plausible that the storage requirements will prevent some suicides, accidents, or even crimes by children. [382] But it is also plausible that they will prevent life-saving defensive actions by adults, including defensive actions that save the very children whom the law is trying to protect. The empirical evidence is unsettled. [383]

So it's hard to see how one can definitively either say that the substantial burden is justified by the danger that the laws reduce, or dismiss, the possibility that the laws will indeed materially reduce aggregate crime and injury. As in the other examples, much depends on what kind of showing of danger reduction--empirical proof, mere plausibility, or something in ***1535** between [384] --is treated as sufficient justification, if substantial burdens can indeed be justified by a danger reduction argument.

**E. "When" Restrictions: Rules on Temporarily Barring People From Possessing Guns**

1. Restrictions on Possession While Intoxicated

Many states bar possession of a firearm while intoxicated. Now a drunk man may need self-defense as much as the rest of us, and perhaps even more. [385] But he is also especially likely to endanger innocent people--whether bystanders or people whom he mistakenly identifies as threatening him--and he is especially unlikely to successfully defend himself. [386] And to the extent that the scope of the right to bear arms has historically excluded the mentally infirm, there seems to be little reason to treat those who are briefly mentally infirm as a result of intoxication differently from those who are permanently mentally infirm as a result of illness or retardation. [387]

A difficulty would arise if the law covered not just gun handling or carrying, but gun possession in the home while the homeowner is home and intoxicated. If every gun owner becomes a felon when he drinks too much at home, or must somehow find a friend who will soberly store the gun elsewhere on such occasions, [388] then millions of people will be felons. [389]

***1536** It's not entirely clear how this problem fits with the constitutional framework outlined above. My inclination is to say that while there may be a strong enough tradition of treating the mentally infirm as too unreliable to possess guns, and the tradition might extend to treating the temporarily mentally infirm as similarly too unreliable, the tradition likely doesn't extend to a usually sober person's possession of a gun in his home while he's drunk. I would also think that requiring gun owners to refrain from normally accepted social drinking practices, to do all their serious drinking outside the home, or to temporarily move their guns outside their homes on party nights creates a substantial burden. But at the same time people can avoid or sharply decrease this burden by entirely or largely refraining from a behavior that, while legal and socially acceptable, is hardly necessary or praiseworthy; perhaps that should affect our judgment about the burden's substantiality.

Fortunately we can largely avoid this issue, at least for now, since nearly all the statutes on the subject cover only "carry[ing]" or "personal possession." [390] The one exception that I've seen, the Missouri statute stating that a person is guilty of a crime if he knowingly "[p]ossesses or discharges a firearm or projectile weapon while intoxicated," [391] is likely just inartfully drafted: Though accompanying statutes use "possesses" broadly, likely broadly enough to include storing inside one's home, [392] this statute is labeled "Unlawful use of weapons," and generally covers discharging, carrying, or brandishing a weapon (or setting a spring gun). I expect that Missouri courts would therefore narrowly interpret "possesses" in this statute, as covering only having on one's person and not simply having a gun stored somewhere in the home.

2. Restrictions on, or Sentence Enhancements for, Possessing Firearms While Possessing Drugs or Committing Another Crime

Many states ban possession of guns while possessing drugs or committing a crime. If read broadly, these could be seen as "when" restrictions, prohibiting all gun possession during the commission of a crime.

***1537** The right to keep and bear arms in lawful self-defense doesn't include the right to use those arms in a crime. [393] And this would include using the guns in ways short of firing or even brandishing them (for instance, by carrying them in case one wants to fire or brandish them, which might well embolden the criminal and deter others who know that this criminal is armed).

On the other extreme, keeping a gun for self-defense in a way that's unconnected to the crime should generally be seen as the exercise of one's constitutional right [394] --consider, for instance, a person who possesses a gun for home defense while engaged in consensual sex with someone under the age of consent, or while committing a fraud at work.

One can hypothesize ways in which even this sort of gun possession could help one commit a crime, for instance to resist arrest in the event that one is caught, or to threaten witnesses or coconspirators should such a threat be necessary. But so long as such possible misuse of a gun is entirely speculative, and not part of either the defendant's behavior during the crime or clearly planned future behavior, those hypotheses shouldn't suffice to turn constitutionally protected behavior into criminal behavior. And the exercise of constitutionally protected rights in ways that are unconnected with criminal conduct generally can't be used to enhance the sentence for such criminal conduct. [395]

This in fact is how many courts have analyzed this, in the "nexus" line of cases: When a gun is not possessed on the person, gun possession can only be treated as criminal or used to enhance a sentence if there is an adequate connection between the possession and the crime. [396] In particular, "mere proximity or mere constructive possession is insufficient to establish that a defendant was armed at the time the crime was committed": "[T]he weapon must be easily accessible and readily available for use," "whether to facilitate the commission of the crime, escape from the scene of the crime, protect ***1538** contraband or the like, or prevent investigation, discovery, or apprehension by the police." [397] This test is far from perfectly clear, and needs more scholarly attention. But it seems like a reasonable first cut aimed at making sure that criminals are punished for their criminal behavior, and not for their constitutionally protected behavior.

3. Waiting Periods

Some jurisdictions require a "cooling-off" period before a gun may be delivered to the purchaser. [398] Others apply this only to handguns. [399] The rationale for such laws is to prevent impulsive killings or suicides by people who are angry or despondent and who might calm down after a few days.

It's hard to see how handgun-only cooling-off periods will materially reduce danger of impulsive crime or injury. It's as easy to commit suicide with a shotgun as with a handgun, [400] and for a crime of passion a shotgun will often be equally effective, too. Though long guns are not as concealable as handguns, and are thus worse for daily carrying or for inconspicuously possessing while waiting for passersby to rob, they can be quite sufficient for a crime of passion, for which they can be concealed briefly under a coat or in a bag. All-gun waiting periods might in principle be effective, if the buyer is an otherwise law-abiding citizen who wouldn't just turn to the black market instead. But even that has not been proven; as with so many "danger reduction" arguments, the social science evidence on the effectiveness of cooling-off periods is inconclusive. [401]

Other states delay people's ability to receive a gun, or to get a license that's required to receive or possess a gun, in order to give the police time to ***1539** perform a more thorough background check. The times on this vary dramatically--two days in Wisconsin (only for handguns), up to thirty days in Massachusetts (for all firearms), and up to six months in New York (only for handguns). [402] The federal background check is generally instant, but can take several days to complete if someone with the same name as the applicant is on the prohibited list. [403] Are these waiting periods substantial burdens on self-defense? [404]

In one way, they are: A person covered by the waiting period is entirely unable to defend himself for days, weeks, or (in New York) months. An attack that requires self-defense can happen during the waiting period just as easily as it can happen during other times.

Moreover, in some situations, the attack may be especially likely during the waiting period: A person's attempt to buy a gun may be prompted by a specific threat, one that could turn into an actual attack in a matter of days or hours. If a woman leaves an abusive husband or boyfriend, who threatens to kill her for leaving, she may need a gun right away [405] and not ten days or six months later.

On the other hand, being disarmed for 0.1 percent of one's remaining life [406] is less of a burden than being disarmed altogether. And waiting periods have been found to be constitutionally permissible as to other rights. The Supreme Court has upheld--over heated dissent--a 24-hour waiting period for abortions, justified by a cooling-off rationale. [407] A short-lived Ninth Circuit decision that recognized a right to assisted suicide said that "reasonable, though ***1540** short, waiting periods to prevent rash decisions" would be constitutional, [408] and the Oregon assisted suicide statute indeed provides a 15-day waiting period. [409]

Likewise, a waiting period is often required for sterilization, [410] though there might well be a constitutional right to undergo sterilization as part of one's right to control one's procreation. [411] In many states it takes from one to five days to get a marriage license, [412] though I know of no cases considering whether this violates the right to marry. [413]

The Supreme Court has also held that a state may require people to register to vote fifty days before the election, [414] for much the same investigatory reasons that are offered for some background-check-based waiting periods. Cities are generally allowed to require that demonstration and parade permit applications be filed some days in advance.

On the other hand, there are substantial limits on how long a waiting period can be, and on when such waiting periods may be imposed. Lower courts have suggested the upper bound for demonstration and parade permits might be three or four days. [415] Forty-eight-hour waiting periods for abortions have been found to pose "substantial burdens," even though Casey upheld a twenty-four-hour waiting period. [416] Even where prisoners and military members are involved--a context where the government generally has very broad ***1541** authority--lower courts have struck down six-month and one-year waiting periods before a soldier or an inmate may marry. [417]

And lower courts have also suggested that even if some substantial advance notice may normally be required for demonstration permits, there has to be a special exception for spontaneous expression occasioned by breaking events. [418] Likewise, there has to be a special exception to abortion waiting periods for medical emergencies. [419] This would suggest that a similar exception might have to be required for handgun permits when the applicant can point to a specific, recently occurring threat--such as the applicant's leaving an abusive boyfriend who threatened to kill her if she left. [420]

These other constitutional rights are not perfect analogies. A three-day delay in voting, marrying, or demonstrating won't leave you unprotected against a deadly attack. Conversely, erroneously authorizing someone to vote when he's a convicted felon is less likely to cause serious harm than erroneously authorizing that same person to buy a gun. Nonetheless, this catalog of decisions at least suggests that (1) waiting periods on the exercise of constitutional ***1542** rights need not always be seen as unconstitutional, and (2) courts are and should be willing to decide which waiting periods are excessive.

**F. Taxes, Fees, and Other Expenses**

Taxes on guns and ammunition, or gun controls that raise the price of guns and ammunition, or bans on inexpensive firearms would be substantial burdens if they materially raised the cost of armed self-defense. (The $600 tax discussed by Cook, Ludwig & Samaha, [421] justified by an assertion that "keeping a handgun in the home is associated with at least $600 per year in externalities," is one example; a proposed Illinois requirement that gun owners be required to buy a $1 million insurance policy is another. [422]) "The poorly financed [self-defense] of little people," like their "poorly financed causes," [423] deserves constitutional protection as much as the self-defense of those who can afford technologically sophisticated new devices or high new taxes. This is true whether the tax or expensive control is imposed on gun owners directly, or on gun sellers or manufacturers, just as a restriction on abortion can be a substantial burden even if it's imposed on doctors and not on the women who are getting the abortions. [424]

High gun taxes should remain presumptively impermissible even if they are based on some (doubtless controversially calculated) estimate of the public ***1543** costs imposed by the average handgun: Such an average--like the cost of an insurance policy--takes into account both the very low cost stemming from guns that are always properly used by their owners, and the very high cost stemming from guns that are used in crime. The law-abiding owners thus are not just being required to "internalize the full social costs of their choices," [425] even if you take into account as a "cost" the possibility that any gun will be stolen by a criminal. They are also being required to internalize the social costs of choices made by criminal users of other guns--much as if, for instance, all speakers were charged a tax that would be used to compensate those libeled by a small subset of speakers, or were required to buy a $1 million libel insurance policy before speaking.

Nonetheless, some modest taxes might not amount to substantial burdens, as a review of taxes and fees on other constitutional rights illustrates. Taxes based on the content of speech are unconstitutional, regardless of their magnitude. [426] But this is a special case of the principle that discrimination based on certain kinds of characteristics--race, sex, religiosity, or the content or viewpoint of speech--is unconstitutional. Setting aside these special areas of constitutionally forbidden discrimination, and setting aside poll taxes, which were constitutional until the Twenty-Fourth Amendment forbade them, other kinds of taxes, fees, and indirect costs imposed on the exercise of constitutional rights are often permissible.

The government may require modest content-neutral fees for demonstration permits or charitable fundraising permits, at least if the fees are tailored to defraying the costs of administering constitutionally permissible regulatory regimes. [427] The same is true for marriage license fees [428] and filing fees for political candidates (though the Court has held that the right to run for office is in some measure protected by the First Amendment). [429] The same is doubtlessly true of costs involved in getting permits to build on your own property, a right protected by the Takings Clause. [430]

***1544** Likewise, regulations of the right to abortion are not rendered unconstitutional simply because they increase the cost of an abortion. The Court so held when upholding a 24-hour waiting period even though it required some women in states with very few abortion providers to stay in a hotel overnight or miss a day of work, [431] and when upholding viability testing requirements that might have marginally increased the cost of an abortion. [432] So long as the extra costs don't amount to "substantial obstacle[s]" to a woman's getting an abortion, they are constitutional. [433]

At the same time, when a cost is high enough to impose a substantial obstacle to the exercise of a right for a considerable number of people, [434] it is unconstitutional. This is likely also true when a cost goes materially beyond the cost of administering the otherwise permissible regulatory scheme. [435] And if a law substantially burdens rightholders who are relatively poor, an exemption would likely be constitutionally required. [436]

I acknowledge that any such regime necessarily creates linedrawing problems and poses the danger that a genuinely substantial burden will be missed by judges who are deciding how much is too much. But, first, there is ample precedent for such tolerance for modest fees in other constitutional rights contexts, and it thus seems neither likely nor normatively appealing for the courts

to conclude that the right to bear arms is more protected than these other rights. Second, the caselaw from those other areas can provide guideposts for the linedrawing process. And third, the caselaw from those other areas (as well as the general logic of the substantial burden threshold) supports a constitutional requirement that poor applicants be exempted from fees--say, fees that dramatically increase the cost of a new gun, or that are required for periodic reregistration of an old gun--that are substantial for them even if relatively minor for others.

***1545 G. Restrictions on Sellers**

The right to keep and bear arms in self-defense protects those who would use the arms in self-defense, not those who would sell such arms. Similarly, the right to an abortion protects those women who want abortions, not abortion providers. The freedom of speech protects speakers and listeners, not sellers of the paper or computer hardware that make certain kinds of speech possible. [437]

Restrictions on the sales transactions that enable the exercise of these constitutional rights should be evaluated based on whether they impose a substantial burden on the exercise of the protected right. [438] A ban on gun sales, or a heavy tax on such sales, would be unconstitutional, [439] just as a ban on engaging in the business of providing abortions would be, because it would make it much harder for would-be gun owners to get guns. But laws allowing gun sales only by particular kinds of sellers or in particular places would not be unconstitutional unless they actually make guns substantially costlier or harder to get.

**H. "Who Knows" Restrictions: Government Tracking Regulations, Including Nondiscretionary Licensing, Background Checks, Registration, and Ballistics Tracking Databases**

Governments impose various tracking regulations on arms possession or carrying--nondiscretionary licensing regimes (either for possession or carrying), [440] instant background checks, registration requirements, [441] serial number ***1546** requirements, [442] requirements that guns be test-fired and the marks they leave on bullets recorded, [443] or requirements that all new semiautomatic guns must "microstamp" the ejected brass with the gun's serial number. [444] If the regulations contain some restrictions, such as waiting periods, fees, or denials of licenses to certain people (either as a class or in government officials' discretion [445]), those might be substantial burdens. But the tracking regulation itself is not much of a burden on self-defense; a person is just as free to defend himself with a registered gun as he would be if the gun were unregistered. [446]

In one high-profile area of constitutional law, such requirements are indeed forbidden: Most speakers don't need to get licenses, or register their speech, or submit their typewriters for testing so that their anonymous works can be tracked back to them. Likewise, tracking requirements for abortions would likely be unconstitutional. [447]

***1547** But this is not the normal rule for constitutional rights. Even speakers may sometimes need to register or get licensed. Parade organizers may be required to get permits. [448] Gatherers of initiative signatures may be required to register with the government, [449] and so may fundraisers for charitable causes, though such fundraising is constitutionally protected. [450] People who contribute more than a certain amount of money to a candidate may be required to disclose their identities to the candidate, who must in turn disclose those identities to the government; [451] lower courts have held the same as to people who contribute to committees that support or oppose ballot measures. [452] The contribution disclosure requirements have been judged (and upheld) under a moderately strong form of heightened scrutiny; the other disclosure requirements have been upheld under lower level of scrutiny.

Likewise, the Constitution has been interpreted to secure a right to marry, but the government may require that people get a marriage license. The Takings Clause bars the government from requiring people to leave their land unimproved and thus valueless, but the government may require a building permit before improvements are made.

People have a right to vote, under all state constitutions and, in practice, under the federal Constitution, but they may be required to register to vote. Whom they voted for has been kept secret, at least for a hundred years, but whether they voted and what party they belong to is known to the government, and is often even a matter of public record. Many of these requirements are instituted to prevent crime (chiefly fraud) or injury (such as the injury stemming from unsafe construction).

This of course leaves the question of what the right to bear arms is most like: those rights for which government tracking can't be required, or those rights for which it can be. I'm inclined to think that it is more like the trackable rights, and that it is the untrackable rights that are the constitutional outlier.

The rule barring licensing requirements for many kinds of speakers is in large part historical, stemming from an era when such licenses were discretionary and used to control which viewpoints might be expressed. It persists largely because of a continuing concern that some viewpoints may be so unpopular with the government or the public that people who are known to convey ***1548** those viewpoints will face retaliation.[453] Even so, some kinds of speakers may have to identify themselves to the government, when the speech poses serious concerns about fraud or corruption. The same worry about retaliation, coupled with a longstanding tradition of privacy of medical records, likely provides the cause for the no tracking rule for abortions.

Gun owners as a group have faced some hostility from the government and the public, but gun ownership is very common behavior, and there's safety in numbers: It seems unlikely that the government will retaliate against the tens of millions of gun owners in the country, who represent 35 to 45 percent of all American households. Gun carrying is both rarer and, if required to be done openly, more likely to viscerally worry observers.[454] But mere gun ownership, if disclosed to the government rather than to the public at large,[455] is not likely to yield a harsh government reaction, and registration requirements are thus unlikely to deter ownership by the law-abiding.

It's true that certain kinds of guns are rare and especially unpopular. But as I've argued above, the right to bear arms in self-defense should be understood as protecting a right to own some arms that amply provide for self-defense, not a right to own any particular brand or design of gun. (In this respect, it differs from the right to speak, which includes the right to convey the particular viewpoint one wishes to convey. Many kinds of arms are fungible for self-defense purposes in a way that viewpoints are not fungible for free speech purposes.)

It is not impossible that the government will want to go after gun owners, chiefly to confiscate their guns. This could happen if the government shifts to authoritarianism, and thus doesn't care about constitutional constraints and at the same time wants to seize guns in order to diminish the risk of violent resistance. Or it could happen if a future Supreme Court concludes the individual right to bear arms is not constitutionally protected, and Congress enacts a comprehensive gun ban.[456]

***1549** Some have argued that the Free Speech Clause ought to be interpreted from a "pathological perspective," with an eye towards creating a doctrine that would serve free speech best even in those times when the public, the government, and the courts are most hostile to unpopular speakers.[457] Should the Second Amendment be interpreted the same way?

Here we may be getting to a topic that's outside the scope of this Article, because it requires us to think about whether the Second Amendment retains a deterrence-of-government-tyranny component as well as a self-defense component. I'm inclined to be skeptical of the ability of private gun ownership to constrain the government in truly pathological times. I'd like to think that an armed citizenry would provide a material barrier to such pathologies, but I doubt that this would in fact be so, especially given the size and power of modern national government. Nonetheless, figuring this out requires thinking through the deterrence-of-government-tyranny rationale, something I have not done for this Article.

For now, I'll leave things at this: The tracking requirements likely don't themselves impose a substantial burden on the right today. Such tracking requirements aren't generally unconstitutional as to other rights, though they are sometimes unconstitutional as to some rights. And the key question is the extent to which current doctrine should be crafted with an eye towards a future time when the doctrine or government practice may be very different than it is today.

**Conclusion**

Right-to-bear-arms controversies will likely arise especially often after District of Columbia v. Heller. It is possible that judges will respond to them simply by deciding intuitively what counts as a reasonable regulation, as state courts have often done with regard to state right-to-bear-arms controversies.

My hope, though, is that courts can do better, and decide the questions more reflectively--by looking closely at the scope of the right, at the burden the regulation imposes, at evidence on whether the regulation will actually reduce danger of crime and injury (and at the normative arguments about what sorts of evidence, if any, should suffice), and at any special role the government may be playing as proprietor. It's hard to predict what answers the courts will give, or to be confident that the answers will be the right ones. But at least it would be a good start for courts to ask the right questions.

Footnotes

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1 District of Columbia v. Heller, 128 S. Ct. 2783, 2799 (2008). It might also secure an individual right to keep and bear arms for other purposes as well, but that is a topic outside the scope of this Article.

2 Eugene Volokh, State Constitutional Rights to Keep and Bear Arms, 11 Tex. Rev. L. & Pol. 191, 192 (2006). The number will likely rise to at least forty-one in 2010, when Kansas voters consider recasting the Kansas rights to bear arms as a clearly individual-rights provision. See Kan. S. Con. Res. 1611, 2009 Sess. (Kan. 2009), available at http:// www.kslegislature.org/bills/2010/2009_1611.pdf (placed on the ballot by a 39-1 vote in the state senate and by a 116-9 vote in the state house). And the number might be increased by one more, to include Virginia, if one takes the view of a 2006 Virginia Attorney General's opinion, Va. Op. Att'y Gen. No. 05-078 (2006) (treating the Virginia Constitution's right to bear arms as individual). But cf. 1993 Va. Op. Att'y Gen. 13 (concluding that "judicial interpretation of the Second Amendment...applies equally to" the Virginia right to bear arms provision, and concluding, given the federal Second Amendment caselaw of the time, that this meant that the Virginia right to bear arms was only a collective right). And it might rise by one more if Hawaii's right to bear arms is interpreted as an individual right, a matter that is not settled. See State v. Mendoza, 920 P.2d 357, 367 (Haw. 1996).

3 See, e.g., Sayoko Blodgett-Ford, The Changing Meaning of the Right to Bear Arms, 6 Const. L.J. 101, 172-73 (1995) (calling for strict scrutiny of state gun restrictions and intermediate scrutiny of federal gun restrictions); Brannon P. Denning & Glenn H. Reynolds, Telling Miller's Tale: A Reply to David Yassky, Law & Contemp. Probs., Spring 2002, at 113, 120 (suggesting that government regulation of machine guns may be constitutional if it "survive[s] strict scrutiny," and seemingly accepting strict scrutiny as the generally proper test for gun controls); Mark Tushnet, Permissible Gun Regulations After Heller: Some Speculations About Method and Outcomes, 56 UCLA L. Rev. 1425, 1426 (2009) (predicting that courts "will circle around a standard of review akin to either rational basis with bite or intermediate scrutiny, and that the Supreme Court...will use rational basis with relatively weak bite"); Gerard E. Faber, Jr., Casenote, Silveira v. Lockyer: The Ninth Circuit Ignores the Relevance and Importance of the Second Amendment in Post-September 11th America, 21 T.M. Cooley L. Rev. 75, 89 (2004) ("Had the court recognized an individual right to bear arms, the [California assault-weapon ban] would be subject to strict scrutiny, a far more demanding standard.").

4 Cf. Tushnet, supra note 3, at 1428-29 (implicitly assuming that courts will adopt a unitary test, and concluding that courts will opt for a deferential test rather than strict scrutiny, "because of concern that such a standard [strict scrutiny] imperils too many well-established...gun regulations" such as "[t]he ban on possession of guns by convicted felons").

5 See infra Part II.B.5.b.

6 See infra Part I.B.

7 See infra Part II.F.

8 See infra Part II.E.3.

9 See District of Columbia v. Heller, 128 S. Ct. 2783, 2801 (2008).

10 Del. Const. art. I, §20; Neb. Const. art. I, §1; Nev. Const. art. I, §11(1); N.M. Const. art. II, §6; N.D. Const. art. I, §1; W. Va. Const. art. III, §22; Wis. Const. art. I, §25.

11 Fla. Const. art. I, §8.

12 U.S. Const. amend. VII.

13 See Eugene Volokh, Symbolic Expression and the Original Meaning of the First Amendment, 97 Geo. L.J. 1057 (2009).

14 See, e.g., Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 547 U.S. 47, 65-67 (2006).

15 Colo. Const. art. II, §13; Douglass v. Kelton, 610 P.2d 1067, 1069 (Colo. 1980); see also Watson v. Stone, 4 So. 2d 700, 701-03 (Fla. 1941) (concluding that then-existing provision that "the Legislature may prescribe the manner in which [arms] may be borne" allowed the legislature to require a license to carry a weapon in public); cf. State v. Grob, 690 P.2d 951, 953-54 (Idaho 1984) (applying a state constitutional clause authorizing the legislature to provide "minimum sentences for crimes committed while in possession of a firearm," and punish illegal "use of a firearm").

16 Conn. Const. art. I, §15.

17 See, e.g., Klein v. Leis, 795 N.E.2d 633 (Ohio 2003) (relying on an originalist argument about the Ohio Constitution's right-to-bear-arms provision, which had been reenacted in 1874); State v. Willis, 100 P.3d 1218 (Utah 2004) (same as to the Utah provision, enacted in 1984); King v. Wyo. Div. of Criminal Investigation, 89 P.3d 341, 351-52 (Wyo. 2004) (same as to the Wyoming provision, enacted in 1889).

18 See District of Columbia v. Clawans, 300 U.S. 617, 624 (1937); Felix Frankfurter & Thomas G. Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv. L. Rev. 917, 969-70 (1926).

19 Hamdi v. Rumsfeld, 542 U.S. 507 (2004); Johnson v. Eisentrager, 339 U.S. 763 (1950).

20 128 S. Ct. 2783, 2816-17 (2008).

21 See, e.g., Printz v. United States, 521 U.S. 898, 905-16 (1997); Marsh v. Chambers, 463 U.S. 783, 791-92 (1983).

22 Rutan v. Republican Party of Ill., 497 U.S. 62, 96 (1990) (Scalia, J., dissenting).

23 Id. at 95-96 (footnote omitted); see also Michael W. McConnell, Tradition and Constitutionalism Before the Constitution, 1998 U. Ill. L. Rev. 173 (defending a similar approach in which tradition has independent constitutional significance); Michael W. McConnell, The Right To Die and the Jurisprudence of Tradition, 1997 Utah L. Rev. 665, 682-85 (likewise).

24 Washington v. Glucksberg, 521 U.S. 702, 720-22 (1997); Medina v. California, 505 U.S. 437, 445-47 (1992).

25 See Hudgens v. NLRB, 424 U.S. 507 (1976). A few state courts take a different view under their state constitutions, but they are a small minority, see State v. Viglielmo, 95 P.3d 952, 963-64 (Haw. 2004) (discussing cases), and even those decisions apply only to a small set of private property (chiefly large shopping malls), see Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n, 29 P.3d 797, 810 (Cal. 2001).

26 Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 626 (1989).

27 See, e.g., Winters v. Concentra Health Servs., Inc., No. CV075012082S, 2008 WL 803134, at *4 (Conn. Super. Ct. Mar. 5, 2008).

28 See, e.g., An Act to Protect the Owners of Firearms, Jan. 26, 1869 (noting in the preamble that the act is partly justified by concerns about constitutional rights), quoted in Matthew P. Deady & Lafayette Lane, The Organic and Other General Laws of Oregon 613 (Portland, E. Semple 1874) (codified as to the substance at Or. Rev. Stat. §18.362 (2007)).

29 See, e.g., New York Times Co. v. United States (Pentagon Papers Case), 403 U.S. 713 (1971); Brandenburg v. Ohio, 395 U.S. 444 (1969).

30 See, e.g., Caplin & Drysdale, 491 U.S. at 626.

31 See, e.g., State v. Barnes, 708 P.2d 414 (Wash. Ct. App. 1985).

32 See, e.g., Thornburgh v. Abbott, 490 U.S. 401 (1989).

33 See infra Part II.B.5.b.

34 United States v. Verdugo-Urquidez, 494 U.S. 259 (1990).

35 See, e.g., Johnson v. Eisentrager, 339 U.S. 763, 784 (1950) (arguing that it can't be the case that "during military occupation irreconcilable enemy elements, guerrilla fighters, and 'were-wolves' could require the American Judiciary to assure them freedoms of speech, press, and assembly as in the First Amendment, right to bear arms as in the Second, security against 'unreasonable' searches and seizures as in the Fourth, as well as rights to jury trial as in the Fifth and Sixth Amendments," since "[s]uch extraterritorial application of organic law would have been so significant an innovation in the practice of governments that, if intended or apprehended, it could scarcely have failed to excite contemporary comment").

36 Hamdi v. Rumsfeld, 542 U.S. 507 (2004).

37 U.S. Const. amend. II.

38 See infra note 428; see also Boy Scouts of Am. v. Dale, 530 U.S. 640, 683-84 (2000) (concluding that only a law that "serious[ly] burden[s]" or "significant[ly]" "affect[s]" or "substantial[ly] restrain[s]" a group's ability to express its views should be seen as violating the right of expressive association).

39 Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 885-87 (1992) (opinion of O'Connor, Kennedy, and Souter, JJ.). I don't agree with the claim in Tushnet, supra note 3, at 1436, that "[t]o the extent that one can extract something from the abortion cases, it is that the undue-burden standard might require rational basis with bite, intermediate scrutiny, or more likely something in between." Rather, I read Casey as saying that if the law imposes a substantial burden--an inquiry that focuses on the magnitude of the burden, not the importance or legitimacy of the government interest--it is per se unconstitutional, and that if it doesn't impose a substantial burden (and isn't intended to impose a substantial burden), it is judged only under the rational basis test and is thus almost always constitutional.

40 See, e.g., Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp., 746 N.W.2d 105, 106 (Mich. 2008). For an excellent treatment of substantial burden thresholds, see Alan Brownstein, How Rights Are Infringed: The Role of Undue Burden Analysis in Constitutional Doctrine, 45 Hastings L.J. 867 (1994).

41 Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).

42 See Eugene Volokh, Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, "Situation-Altering Utterances," and the Uncharted Zones, 90 Cornell L. Rev. 1277, 1305-10 (2005).

43 Id. at 1304-05.

44 See, e.g., Gertz v. Robert Welch, Inc., 418 U.S. 323, 340 (1974) (explaining the false statements of fact exception by reasoning that "there is no constitutional value in false statements of fact," because they do not "materially advance[] society's interest in 'uninhibited, robust, and wide-open' debate on public issues"); Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973) (doing likewise

for the obscenity exception); Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (doing likewise for the fighting words exception); New York v. Ferber, 458 U.S. 747 (1982) (doing likewise for the child pornography exception).

45 Gertz, 418 U.S. at 340. Some of these First Amendment decisions may also be partly "scope" cases, for instance when they rely on assertions about the historical exclusion of obscenity from constitutional protection, see, e.g., Roth v. United States, 354 U.S. 476, 482-85 (1957), or danger reduction cases, see, e.g., Ferber, 458 U.S. at 749, 757. But much speech that can cause comparable harms remains protected, on the premise that it is valuable, that restricting it would therefore substantially burden public debate, and that the speech therefore must be protected despite the harm it might cause. See Eugene Volokh, Freedom of Speech, Permissible Tailoring and Transcending Strict Scrutiny, 144 U. Pa. L. Rev. 2417 (1996). It is largely the perceived lesser value of false statements, fighting words, and the like that makes the restrictions into lesser burdens on free-speech interests, and thus makes the restrictions constitutional.

46 District of Columbia v. Heller, 128 S. Ct. 2783, 2819-20 (2008).

47 Id. at 2820.

48 Id. at 2818.

49 Id. at 2818 (citations omitted).

50 The same is true of the reasoning in the decision affirmed in Heller, Parker v. District of Columbia, 478 F.3d 370, 400 (D.C. Cir. 2007). Parker reasoned:
The District contends that since it only bans one type of firearm, "residents still have access to hundreds more," and thus its prohibition does not implicate the Second Amendment because it does not threaten total disarmament. We think that argument frivolous. It could be similarly contended that all firearms may be banned so long as sabers were permitted. Once it is determined--as we have done--that handguns are "Arms" referred to in the Second Amendment, it is not open to the District to ban them. See [State v. Kerner, 107 S.E. 222, 225 (N.C. 1921)] ("To exclude all pistols...is not a regulation, but a prohibition, of...'arms' which the people are entitled to bear."). Indeed, the pistol is the most preferred firearm in the nation to "keep" and use for protection of one's home and family.

51 See City of Ladue v. Gilleo, 512 U.S. 43, 55 (1994); see also Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753, 803 (1995) (Stevens, J., dissenting).

52 See United States v. Marzzarella, 595 F. Supp. 2d 596, 599 (W.D. Pa. 2009) (concluding, in my view correctly, that such a ban "imposes a burden on gun ownership that is practically negligible when compared to the District of Columbia's complete ban on operable firearms within the home").

53 Gilleo, 512 U.S. at 55;Frisby v. Schultz, 487 U.S. 474 (1988).

54 Gilleo, 512 U.S. at 55;id. at 55 n.13 (quoting Geoffrey Stone, Content-Neutral Restrictions, 54 U. Chi. L. Rev. 46, 57 (1987)).

55 See, e.g., Mosher v. City of Dayton, 358 N.E.2d 540, 543 (Ohio 1976).

56 For an absurd example of how high the unconstitutionality threshold has at times been set, see State v. Wilburn, 66 Tenn. 57 (1872). Andrews v. State, 50 Tenn. (3 Heisk.) 165 (1871), struck down a statute banning open carrying of handguns, on the grounds that the state right to bear arms provision protected such carrying. But in Wilburn, the court upheld a similar statute because it had exactly one exception--for army pistols carried "openly in [one's] hands." Wilburn, 66 Tenn. at 62. A requirement that, to carry a gun, one must constantly have it in one's hands, is obviously a very serious burden on the right, one that makes exercise of the right largely impractical. Yet the court nonetheless upheld the requirement as a permissible "regulat[ion]." Id.

57 See, e.g., Lacy v. State, 903 N.E.2d 486, 490 (Ind. Ct. App. 2009) (upholding a ban on switchblades because it does not "materially burden" the right to bear arms for self-defense).

58 Dano v. Collins, 802 P.2d 1021, 1022 (Ct. App. Ariz. 1990), review granted, Jan. 15, 1991, review dismissed as improvidently granted, 809 P.2d 960 (Ariz. 1991).

59 See, e.g., Gilleo, 512 U.S. at 56-57 (quoting Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984)).

60 Cf., e.g., United States v. Marzzarella, 595 F. Supp. 2d 596, 606 (W.D. Pa. 2009) (suggesting that a ban on the possession of guns with obliterated serial numbers should be judged under a standard comparable to that "applicable to content-neutral time, place and manner restrictions," and upholding it partly because it "le[ft] open ample opportunity for law-abiding citizens to own and possess guns within the parameters recognized by Heller").

61 See infra Part II.C.1; see also Eugene Volokh, Time, Place, and Manner Restrictions, in Free Speech Law and Elsewhere (unpublished work in progress, on file with author).

62 See Eugene Volokh, Freedom of Speech, Shielding Children, and Transcending Balancing, 1997 Sup. Ct. Rev. 141, 167-94.

63 Compare, e.g., Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 886-87 (1992) (opinion of O'Connor, Kennedy, and Souter, JJ.) (holding that a 24-hour waiting period for abortions is not a substantial burden on the right to abortion), with id. at 937 (Blackmun, J., dissenting) (arguing that it is a substantial burden).

64 Compare, e.g., Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 812 & n.30 (1984) (holding that a ban on posting leaflets on city-owned utility poles left open ample alternative channels, though the alternatives were likely considerably more expensive), with id. at 819 (Brennan, J., dissenting) (arguing that this did not leave open ample alternative channels).

65 See, for instance, the discussion of weapon category bans in Part II.A.

66 Bliss v. Commonwealth, 12 Ky. (2 Litt.) 90, 92 (1822); see also Eugene Volokh, The Mechanisms of the Slippery Slope, 116 Harv. L. Rev. 1026, 1105-14 (2003) (discussing "small change tolerance slippery slopes").

67 See Volokh, supra note 42, at 1305-10.

68 Cf. Arnold v. City of Cleveland, 616 N.E.2d 163, 173 (Ohio 1993) (acknowledging that "the city...would have violated [the right to bear arms] if it had banned all firearms," and concluding that there is no reason to think "that by banning certain firearms ['assault weapons'] 'there is no stopping point' and legislative bodies will have 'the green light to completely ignore and abrogate an Ohioan's right to bear arms").

69 See, e.g., Owen v. State, 31 Ala. 387 (1858).

70 For one such departure, see Bliss, 12 Ky. (2 Litt.) at 91-92.

71 See Eugene Volokh, Beyond Strict Scrutiny: Per Se Invalidation of Certain Kinds of Burdens on Certain Constitutional Rights (unpublished work in progress, on file with author).

72 See sources cited supra note 18.

73 See sources cited supra note 19.

74 See Eugene Volokh, Freedom of Speech, Permissible Tailoring and Transcending Strict Scrutiny, 144 U. Pa. L. Rev. 2417 (1996).

75 See Eugene Volokh, A Common-Law Model for Religious Exemptions, 46 UCLA L. Rev. 1465, 1496 (1999).

76 See Volokh, supra note 71.

77 District of Columbia v. Heller, 128 S. Ct. 2783, 2817-22 (2008) (citations omitted).

78 See, e.g., Brief of the American Academy of Pediatrics et al. as Amici Curiae in Support of Petitioners at 5, District of Columbia v. Heller, 128 S. Ct. 2783 (2008) (No. 07-290), 2008 WL 157189.

79 See Richard H. Fallon, Jr., Strict Judicial Scrutiny, 54 UCLA L. Rev. 1267, 1271, 1304 (2007) (noting that "[o]ne stringent version [of the Court's strict scrutiny test] allows infringements of constitutional rights only to avert catastrophic or nearly catastrophic harms").

80 See Eugene Volokh, Crime-Facilitating Speech, 57 Stan. L. Rev. 1095, 1209-12 (2005).

81 See, e.g., Michael Stokes Paulsen, The Constitution of Necessity, 79 Notre Dame L. Rev. 1257, 1279 (2004).

82 See, e.g., Alan Dershowitz, Why Terrorism Works 141, 158-63 (2002); Oren Gross, Are Torture Warrants Warranted? Pragmatic Absolutism and Official Disobedience, 88 Minn. L. Rev. 1481 (2004); Christopher Slobogin, The World Without a Fourth Amendment, 39 UCLA L. Rev. 1, 48-49 (1991). See generally Torture: A Collection (Sanford Levinson ed., 2004).

83 U.S. Const. art. I, §9, cl. 2.

84 See supra note 80.

85 See infra Part II.A.1.

86 See infra Part II.A.2 (discussing machine gun bans).

87 See Volokh, supra note 74, at 2422, 2431.

88 Cf. Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Village of Stratton, 536 U.S. 150, 169 (2002) (expressing skepticism that a permit requirement for door-to-door political solicitors would reduce the danger that criminals will pose as solicitors).

89 Nicholas Dixon, Why We Should Ban Handguns in the United States, 12 St. L. U. Pub. L. Rev. 243, 248 (1993); Martin Killias, International Correlations Between Gun Ownership and Rates of Homicide and Suicide, 148 Can. Med. Ass'n J. 1721, 1723 (1993).

90 See David B. Kopel, Peril or Protection? The Risks and Benefits of Handgun Prohibition, 12 St. Louis U. Pub. L. Rev. 285, 294-319, 344-49, 353-59 (1993).

91 Martin Killias et al., Guns, Violent Crime, and Suicide in 21 Countries, 43 Can. J. Criminology 429 (2001). The study did show a correlation between gun ownership levels and some categories of gun homicide and gun suicide, but that doesn't show that lower gun ownership is correlated with reduced danger: If the total homicide and suicide rate remains the same, but gun homicides or suicides are replaced by an equal number of nongun homicides or suicides--for instance, because a decrease in gun homicides is offset by an increase in nongun homicides that would have otherwise been prevented by self-defense using guns, or because suicides shift from guns to other highly lethal means--the total harm remains the same.

92 Gary Kleck & Mark Gertz, Armed Resistance to Crime: The Prevalence and Nature of Self-Defense With a Gun, 86 J. Crim. L. & Criminology 150, 184-86 (1995).

93 Michael R. Rand, U.S. Dep't of Justice, Guns and Crime 1, 2 (1994).

94 See Philip J. Cook & Jens Ludwig, Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use 68-76 (1996); cf. Tom W. Smith, A Call for a Truce in the DGU War, 87 J. Crim. L. & Criminology 1462, 1462-69 (1997) (describing the debate, and suggesting that the right answer is somewhere in the mid-to-high hundreds of thousands).

95 See Nat'l Research Council, Firearms and Violence: A Critical Review 7-8 (2004); see also Tushnet, supra note 3, at 1427 ("[I]t is quite difficult to show with any moderately persuasive social-science evidence that discrete and moderate gun regulations...do much if anything to advance public policies favoring reduction in violence, reduction in gun violence, reduction in accidents associated with guns, or pretty much anything else the public thinks the regulations might accomplish.").

96 Robert A. Hahn et al., Firearms Laws and the Reduction of Violence: A Systematic Review, 28 Am. J. Prev. Med. 40, 59 (2005) ("Review of eight firearms laws and law types found insufficient evidence to determine whether the laws reviewed reduce (or increase) violence.").

97 See Nat'l Research Council, supra note 95, at 7-9; Hahn et al., supra note 96, at 59, 61.

98 See, e.g., Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 391-93 (2000) (applying something short of strict scrutiny, but not far short).

99 See, e.g., Video Software Dealers Ass'n v. Schwarzenegger, 556 F.3d 950, 962-64 (9th Cir. 2009); Am. Amusement Mach. Ass'n v. Kendrick, 244 F.3d 572, 578-79 (7th Cir. 2001) (Posner, J.).

100 See supra notes 95-97 and accompanying text.

101 Even Charles Krauthammer, a noted supporter of gun bans and of the assault weapons ban in particular, acknowledged as much. See Charles Krauthammer, Disarm the Citizenry. But Not Yet., Wash. Post, Apr. 5, 1996, at A19.

102 Consider, for instance, State v. Brown, 859 N.E.2d 1017 (Ohio Ct. App. 2006), which involved a law requiring that concealed carry licensees traveling in cars have their guns either holstered and in plain sight on the person, or stored in a locked glove compartment or case. The Ohio state right-to-bear-arms rule asks courts to decide whether a regulation is "reasonable," something that requires more than the extremely deferential federal rational basis test. See Arnold v. City of Cleveland, 616 N.E.2d 163, 171 (Ohio 1993). The majority upheld the law as "reasonable," on the grounds that "[t]hese restrictions reduce the possibility of the loaded firearm being acquired by a third person" and "alert[ approach police] officer[s] that a loaded firearm in the vehicle." Brown, 859 N.E.2d at 1020. The dissent concluded that the law was not "reasonable," because "the majority's views are contrary to common sense and physical realities" because "[a] third person can just as readily reach out and grab a firearm from a driver's unlocked holster as he can take that firearm from a closed [but unlocked] glove compartment" and "the real risk to law enforcement officers...is the criminal element, who do not bother with such matters as permits, visible holsters, or closed glove compartments." Id. at 1022 (Grendell, J., concurring and dissenting in part). With no requirement of scientific evidence, the case became a battle of the judges' intuitions.

103 See, e.g., Burson v. Freeman, 504 U.S. 191, 207-08 (1992) (plurality opinion). See also Nixon, 528 U.S. at 391, which reasoned that "[t]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised"; Nixon applied a standard that was somewhat less demanding than strict scrutiny, but my sense is that the quote from Nixon also expresses how the Court has behaved in cases such as Burson and Sable Communications of Cal., Inc. v. FCC, 492 U.S. 115 (1989).

104 See, e.g., Sable Communications, 492 U.S. 115;Crawford v. Lundgren, 96 F.3d 380 (9th Cir. 1996); Dial Info. Servs. Corp. of N.Y. v. Thornburgh, 938 F.2d 1535 (2d Cir. 1991); Info. Providers' Coal. for Def. of the First Amendment v. FCC, 928 F.2d 866 (9th Cir. 1991); Am. Booksellers v. Webb, 919 F.2d 1493 (11th Cir. 1990).

105 See Volokh, supra note 74, at 2425-38, 2452-54.

106 See, e.g., United States v. Virginia, 518 U.S. 515, 533 (1996); Bd. of Trs. of State Univ. of N.Y. v. Fox, 492 U.S. 469, 478 (1989).

107 Cf., e.g., Sable Communications, 492 U.S. at 126 (treating the prevention of physical and even psychological injury to minors as a compelling interest).

108 See, e.g., Fox, 492 U.S. at 480.

109 Consider, for instance, United States v. Schultz, No. 1:08-CR-75-TS, 2009 U.S. Dist. LEXIS 234 (N.D. Ind. Jan. 5, 2009), which involved the federal felon-in-possession ban as applied to someone who had been convicted only of felony failure to pay child support. The court concluded that the Equal Protection Clause required intermediate scrutiny, even of a restriction on possession by felons. But the court quickly upheld the law under intermediate scrutiny because "[p]ersons who have committed felonies are more likely to commit crimes than those who have not," id. at *15-16, and because the defendant's claim that "[t]here is no empirical data suggesting that persons convicted of non-violent felonies...are more likely to seek guns or use them than other, non-convicted person" lacked a sufficient "factual basis" that would "persuade[ the court] that these factual assertions are correct." Id. at *16 n.6.

Thus, the court largely relied on its intuitions that the recidivism rates for criminals generally (a statistic that the court did cite, see id. at *16 n.4 (citing Bureau of Justice Statistics, U.S. Dep't of Justice, Recidivism of Prisoners Released in 1994 1 (2002), available at http:// www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf)) also apply to violent recidivism--the sort that might be in some measure prevent a gun possession ban--by non-violent felons, including ones guilty only of failure to pay child support. Perhaps that's so, on the grounds that people who break one law are materially more likely to break others, even very different ones. Perhaps it's not. But all the court had to rely on was its intuition.

The court also separately concluded that "the challenged statute still substantially relates to the important governmental objective of public safety," id. at *16 n.6 (quoting Response to Government's Reply at 2, United States v. Schultz, No. 1:08-CR-75-TS, 2009 U.S. Dist. LEXIS 234 (N.D. Ind. Jan. 5, 2009) (No. 1:08-CR-75)), even if nonviolent felons don't have a higher gun crime rate than violent felons. But that was not legally sound, since if a law is so substantially overinclusive--if it covers millions of nonviolent felons, whose actions don't implicate the government interest, together with violent felons, whose actions do implicate the interest--then it would fail intermediate scrutiny. See, e.g., Supreme Court of N.H. v. Piper 470 U.S. 274, 285 n.19 (1985); Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557, 569-70 (1980); Craig v. Boren, 429 U.S. 190, 199-02 (1976).

110 See generally Geoffrey R. Stone, Content-Neutral Restrictions, 54 U. Chi. L. Rev. 46 (1987).

111 Wash. State Grange v. Wash. State Republican Party, 128 S. Ct. 1184, 1191-92 (2008).

112 505 U.S. 833 (1992).

113 See id. at 877 (opinion of O'Connor, Kennedy, and Souter, JJ.) ("A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."); Gonzales v. Carhart, 550 U.S. 124, 158 (2007) (concluding that abortion procedure regulations that don't "impose an undue burden" on the right to an abortion need only have a "rational basis"). The plurality did state that a law could also be unconstitutional if it is intended to impose a substantial burden, presumably even if it fails to do so. See Casey, 505 U.S. at 877. But in any event, if the abortion restriction does not impose a substantial burden, and is not intended to impose such a burden, it is judged under rational basis scrutiny.

114 Sherbert v. Verner, 374 U.S. 398 (1963); Wisconsin v. Yoder, 406 U.S. 205 (1972).

115 See, e.g., Jimmy Swaggart Ministries v. Bd. of Equalization, 493 U.S. 378 (1990).

116 See, e.g., Brannon P. Denning & Glenn H. Reynolds, Heller, High Water(mark)? Lower Courts and the New Right to Keep and Bear Arms, 60 Hastings L.J. (forthcoming 2009) (manuscript at pt. II, on file with author) (discussing how the right to bear arms has been read quite narrowly even after Heller).

117 See Waters v. Churchill, 511 U.S. 661, 672 (1994) (plurality opinion).

118 See Int'l Soc'y for Krishna Consciousness, Inc. (ISKCON) v. Lee, 505 U.S. 672, 678-79 (1992) (holding that content-based restrictions are permitted on government "nonpublic forum" property, so long as they are reasonable and viewpoint-neutral).

119 Webster v. Reproductive Health Servs., 492 U.S. 490 (1989).

120 See, e.g., O'Connor v. Ortega, 480 U.S. 709 (1987).

121 E.g., Fyfe v. Curlee, 902 F.2d 401, 405 (5th Cir. 1990) (applying the government employee free speech analysis from Pickering v. Bd. of Ed., 391 U.S. 563 (1968)); Stough v. Crenshaw County Bd. of Educ., 744 F.2d 1479, 1480-81 (11th Cir. 1984) (likewise).

122 See, e.g., Montgomery v. Carr, 101 F.3d 1117 (6th Cir. 1996); Eugene Volokh, Intermediate Questions of Religious Exemptions--A Research Agenda With Test Suites, 21 Cardozo L. Rev. 595, 635 (1999).

123 See, e.g., Webster, 492 U.S. at 509.

124 See, e.g., Connick v. Myers, 461 U.S. 138 (1983); see also Waters v. Churchill, 511 U.S. 661, 674 (1994) (plurality opinion) ("The restrictions [on speech imposed by the government as employer] are allowed not just because the speech interferes with the government's operation. Speech by private people can do the same, but this does not allow the government to suppress it.").

125 See Robert C. Post, Constitutional Domains: Democracy, Community, Management 234-35, 237 (1995) (discussing the constitutional foundation for giving the government some extra power when it is acting as manager of its own property).

126 See, e.g., ISKCON v. Lee, 505 U.S. 672, 678 (1992).

127 See, e.g., Pratt v. Chicago Hous. Auth., 848 F. Supp. 792 (N.D. Ill. 1994) (holding that the Fourth Amendment barred warrantless sweeps through public housing projects); Resident Action Council v. Seattle Hous. Auth., 174 P.3d 84 (Wash. 2008) (evaluating restriction on public housing residents' posting materials on the outside of their apartment doors the same way the U.S. Supreme Court had evaluated restriction on private residents' rights to post materials in their windows). Resident Action Council involved the outside of public housing units, but its reasoning would apply at least as forcefully to speech inside such units.

128 See infra Part II.C.7.

129 Aymette v. State, 21 Tenn. (2 Hum.) 154, 158 (1840); Fife v. State, 31 Ark. 455, 458 (1876) (quoting Aymette, 21 Tenn. (2 Hum.) at 158).

130 Fife, 31 Ark. at 459 (citing 2 Joel Prentiss Bishop, Commentaries on the Criminal Law §124 (3d ed. 1865)).

131 Id. (citing Andrews v. State, 50 Tenn. (3 Heisk.) 165 (1871)); see also Aymette, 21 Tenn. (2 Hum.) at 161; Tenn. Op. Att'y Gen. No. 08-19 (2008) (following Tennessee precedent to conclude that "switchblades, sword canes, and pocket pistols" are not covered by the right to bear arms). But see Andrews, 50 Tenn. (3 Heisk.) at 187 (suggesting that the "pistol known as the repeater is a soldier's weapon" and is therefore constitutionally protected even under the "civilized warfare" test); Glasscock v. City of Chattanooga, 11 S.W.2d 678 (Tenn. 1928) (relying on Andrews to strike down a ban on carrying "any pistol"); English v. State, 35 Tex. 473, 476 (1872) (applying the "arms of a militiaman or soldier" test, but concluding that "holster pistols" qualify).

132 District of Columbia v. Heller, 128 S. Ct. 2783, 2791 (2008) (quoting 1 Samuel Johnson, Dictionary of the English Language (4th ed. 1773)).

133 Id. at 2791 (quoting 1 Timothy Cunningham, A New and Complete Law Dictionary (2d ed. 1771)). This casts doubt on the conclusion in Walker v. State, 222 S.W.3d 707, 711 (Tex. App. 2007), that body armor isn't covered by the right to bear arms. Nonetheless, Walker's upholding of the ban on felons' possessing body armor might still be constitutional on the theory that felons are excluded from the scope of the right to bear arms, see infra Part II.B.4; United States v. Bonner, No. CR 08-00389 SBA, 2008 WL 4369316, at *4 (N.D. Cal. Sept. 23, 2008).

134 See, e.g., Owen v. State, 31 Ala. 387 (1858); Nunn v. State, 1 Ga. 243 (1846); State v. Jumel, 13 La. Ann. 399 (1858).

135 128 S. Ct. at 2815.

136 See Denning & Reynolds, supra note 116, at pt. III.D.

137 State v. Delgado, 692 P.2d 610, 612 (Or. 1984).

138 Id.

139 Or. State Shooting Ass'n v. Multnomah County, 858 P.2d 1315, 1319-22 (Or. Ct. App. 1993).

140 Id. at 1319.

141 Firearms designers in the 1800s had to solve a fundamental problem: How does one easily allow multiple shots, whether at enemy soldiers or civilian attackers, without the need to manually reload or even manually chamber a new round? The revolver, invented in the early 1800s, was one popular solution to that problem, but the rotating cylinder was inherently limited in capacity, so designers kept looking for new technological advancements, and found one in the semiautomatic.

142 The military has long been an early adopter of much new firearms technology, and the first broadly used fully automatic military weapon was likely the Maxim gun, developed for military use in the 1880s; semiautomatic civilian weapons quickly followed, by 1893. Merrill Lindsay, One Hundred Great Guns 196-97 (1967); Pollard's History of Firearms 294 (Claude Blair ed., 1983); see generally David B. Kopel, Clayton E. Cramer & Scott G. Hattrup, A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts, 68 Temp. L. Rev. 1177, 1199-1200 (1995) (faulting the Oregon test on similar grounds). (The Gatling gun, patented in 1862, was crank-operated and thus was probably not technically an "automatic weapon" as the term is now understood. Lindsay, supra, at 196; Pollard's History of Firearms, supra, at 293.)

143 See Gary Kleck, Targeting Guns: Firearms and Their Control 110 (1997).

144 Or. State Shooting Ass'n, 858 P.2d at 1320.

145 Id. at 1327 (Edmonds, J., concurring in part and dissenting in part).

146 District of Columbia v. Heller, 128 S. Ct. 2783, 2815-16 (2008).

147 See, e.g., Lacy v. State, 903 N.E.2d 486, 492 (Ind. Ct. App. 2009); City of Akron v. Williams, 172 N.E.2d 28, 30 (Ohio Mun. Ct. 1960); State v. Kessler, 614 P.2d 94, 99 (Or. 1980) (likewise); Burks v. State, 36 S.W.2d 892, 894 (Tenn. 1931); State v. Duke, 42 Tex. 455, 458 (1875).

148 See State v. Graves, 700 P.2d 244, 248 (Or. 1985) (likewise noting that the phrase "commonly used [for a certain purpose]" can mean either "generally or usually used" for that purpose in the sense of most users' having that purpose, or "frequently used" in the sense of the use being frequent).

149 See Cook & Ludwig, supra note 94, at 39 tbl.4.6.

150 See Jim Stewart & Andrew Alexander, Assault Weapons Muscle in on the Front Lines of Crime, reprinted in Firepower: Assault Weapons in America (1989) (reporting on BATF's guess about assault weapon prevalence); see Tenn. Op. Att'y Gen. No. 89-54 (1989) (opining that an assault weapons ban would be constitutional because assault weapons are not "the usual arms of the citizen of the country").

151 See, e.g., Kleck, supra note 143, at 112-18, 141-42 (1997) (citing data suggesting that only 5 percent or less of all privately owned guns fall in the category of "'assault weapons"').

152 Id. at 112.

153 The National Crime Victimization Survey (NCVS) reports that non-gun weapons are used defensively more often than are guns. See data run on 1992-2005 NCVS datasets by Joe Doherty of the UCLA School of Law (on file with author). The NCVS might capture only a small fraction of defensive actions, see Kleck, supra note 143, at 152-53, so the comparison is only suggestive, not dispositive. But the data shows that non-gun defensive actions are not uncommon in absolute terms, and suggests that they are not uncommon even when compared to defense with guns.

154 District of Columbia v. Heller, 128 S. Ct. 2783, 2817 (2008) (citations omitted).

155 See, e.g., William Blackstone, 4 Commentaries *148-49 (using "or") (emphasis added).

156 Id.

157 State v. Lanier, 71 N.C. 288, 288-89 (1874), didn't itself involve weapons, but it mentioned "the offence of going armed with dangerous or unusual weapons" in passing and cited State v. Huntley, 25 N.C. (3 Ired.) 418 (1843), which followed the Blackstone passage.

158 Blackstone, supra note 155, at *148-49.

159 I say "practical dangerousness" to focus on dangerousness as the weapon is likely to be used in a typical criminal or defensive shooting, as opposed to the hypothetical dangerousness in the hands of a perfect marksman.

160 Cf. Rinzler v. Carson, 262 So. 2d 661, 665-66 (Fla. 1972) (upholding a machine gun ban on the grounds that the legislature "can determine that certain arms or weapons may not be kept or borne by the citizen," when they are "too dangerous to be kept in a settled community by individuals, and...which, in times of peace, find[ their] use by...criminal[s]").

161 Because each shot generates recoil that moves the gun barrel, and because the fully automatic firing makes it impossible to aim again after each shot, a machine gun's shots tend to cover a much larger area than a non-automatic weapon's shots would. A shotgun also has a considerable spread, but shotgun pellets go a considerably shorter distance than do machine gun bullets.

162 See, e.g., State v. Delgado, 692 P.2d 610 (Or. 1984) (striking down a ban on possessing and carrying switchblades); State v. Blocker, 630 P.2d 824 (Or. 1981) (striking down a ban on carrying billy clubs in public); State v. Kessler, 614 P.2d 94 (Or. 1980) (striking down a ban on possessing of billy clubs); Barnett v. State, 695 P.2d 991 (Or. Ct. App. 1985) (striking down a ban on possessing blackjacks); see also Hill v. State, 53 Ga. 472, 474-75 (1874) (taking the view that "swords" and "bayonets" are protected because they "are recognized in civilized warfare"); Ex parte Thomas, 97 P. 260, 262, 265 (Okla. 1908) (following Hill and finding likewise); City of Akron v. Rasdan, 663 N.E.2d 947 (Ohio Ct. App. 1995) (treating a ban on public carrying of knives as implicating the right to bear arms, though concluding that the ban was a "reasonable regulation" and thus did not violate the constitutional provision); 1986 Fla. Op. Att'y Gen. 2 (concluding that stun guns qualify as "arms" under the state right-to-bear-arms provision); cf. City of Seattle v. Montana, 919 P.2d 1218, 1222 (Wash. 1996) (noting the question of whether knives are protected but not reaching it); Concealed Handgun Permits, Alaska Op. Att'y Gen. (Inf.) 209 (1994) (suggesting that the Alaska courts may conclude that knives are protected, though not making a definitive prediction). But see State v. Kerner, 107 S.E. 222, 224 (N.C. 1921) ("[None of a] 'bowie knife, dirk,

dagger, slung-shot, loaded cane, brass, iron or metallic knucks or razor or other deadly weapon of like kind'...except 'pistol' can be construed as coming within the meaning of the word 'arms' used in the constitutional guaranty of the right to bear arms.").
Those decisions that reject constitutional protection for non-firearms tend to do so on the grounds that those weapons are customarily used for criminal purposes--an approach that I argue against above--and not on the grounds that "arms" necessarily covers only firearms. See, e.g., Lacy v. State, 903 N.E.2d 486, 492 (Ind. Ct. App. 2009) (holding that switchblades are unprotected because they "are primarily used by criminals and are not substantially similar to a regular knife or jackknife"); State v. Swanton, 629 P.2d 98, 98 (Ariz. Ct. App. 1981) (holding that nunchakus are not arms, because "arms" is limited to "such arms as are recognized in civilized warfare and not those used by a ruffian, brawler or assassin"); People v. Brown, 235 N.W. 245, 246-47 (Mich. 1931) (upholding a ban on, among other things, blackjacks, because they are "too dangerous to be kept in a settled community by individuals" and their "customary employment by individuals is to violate the law," but concluding that the legislature may not ban arms which "by the common opinion and usage of law-abiding people, are proper and legitimate to be kept upon private premises for the protection of person and property," and stressing in the law's defense that the law "does not include ordinary guns, swords, revolvers, or other weapons usually relied upon by good citizens for defense or pleasure" (emphasis added)).

163 See District of Columbia v. Heller, 128 S. Ct. 2783, 2791 (2008).

164 See supra text accompanying note 153.

165 This doesn't resolve the matter under state constitutions that protect a "right to keep and bear arms...for hunting and recreational use," see supra note 10, or under any right to keep and bear arms to deter government tyranny, to the extent such a right is recognized under some constitutional provision. But those aspects of the right to bear arms are outside the scope of this Article.

166 See, e.g., Kleck, supra note 143, at 108-10; Rusty Marks, Machine Guns Rumble Mountains, Shinnston Range Attracts Shooters of Automatic Arms, Charleston Gazette (W. Va.), June 19, 2004, at 1A ("Fully automatic weapons cost anywhere from a few thousand dollars to tens of thousands of dollars each, and there are stiff federal licensing fees that must be paid by machine gun owners.").

167 See, e.g., Kleck, supra note 143, at 121-24 (explaining why that notion is mistaken).

168 See, e.g., Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §110102(b), 108 Stat. 1796, 1997 (1994) (expired 2004, id. §110105(2)). Even Carl Bogus, one of the leading supporters of broad gun control (including a near-total ban on handgun possession in large cities) and a former member of the Brady Campaign board, agrees that the focus on these features is "largely cosmetic," Carl T. Bogus, Gun Control and America's Cities: Public Policy and Politics, 1 Alb. Gov't L. Rev. 440, 463, 468 n.189, 469 (2008). Likewise, Charles Krauthammer, a proponent of total handgun bans, labeled the assault weapons ban "phony gun control," and said, "The claim of the advocates that banning these 19 types of 'assault weapons' will reduce the crime rate is laughable....Dozens of other weapons, the functional equivalent of these 'assault weapons,' were left off the list and are perfect substitutes for anyone bent on mayhem." Krauthammer, supra note 101. A statute that restricts guns that take large capacity fixed-size magazines, and restricts interchangeable large capacity magazines--as the 1994 Act did only in small part--might have noncosmetic effects, though I doubt it. See Bogus, supra, at 469; infra pp. 1487-88. But any focus on pistol grips and the like is sure to have no material effect on crime.

169 See generally David B. Kopel, Rational Basis Analysis of "Assault Weapon" Prohibition, 20 J. Contemp. L. 381, 388-401 (1994).

170 See supra note 150.

171 See, e.g., Robertson v. City & County of Denver, 874 P.2d 325, 333 (Colo. 1994) (upholding the assault weapons ban because it was not an "onerous restriction," given that "there are literally hundreds of alternative ways in which citizens may exercise the right to bear arms in self-defense" and "the barriers...created [by the law] do not significantly interfere with this right"); Benjamin v. Bailey, 662 A.2d 1226, 1232-35 (Conn. 1995) (upholding the assault weapons ban because the right to bear arms secures only a right to possess weapons adequate for self-defense, not any weapons that one might choose, and the assault weapons ban "does not frustrate the core purpose" of the right to bear arms); Arnold v. City of Cleveland, 616 N.E.2d 163, 173 (Ohio 1993) (upholding the assault weapons ban but noting need "to allow for the practical availability of certain firearms for purposes of hunting, recreational use and protection"); Nelson Lund, The Past and Future of an Individual's Right to Bear Arms, 31 Ga. L. Rev. 1, 71 (1996) (agreeing that assault weapons bans would not materially interfere with self-defense, but concluding that they should be struck down because they are irrational); Kopel et al., supra note 142, at 1211-12 (likewise).

172 Because the term "assault weapon" has no inherent technical definition, it's in principle possible for virtually any firearm to be so labeled by a legislature. Thus, for instance, the proposed Assault Weapons Ban and Law Enforcement Protection Act of 2007, H.R. 1022, 110th Cong., § 3(a) (2007) (proposing 18 U.S.C. §921(a)(30)(L)), defined "assault weapon" to include (among other things) "a firearm based on the design of such a firearm, that is not particularly suitable for sporting purposes, as determined by the Attorney General. In making the determination, there shall be a rebuttable presumption that a firearm procured for use by the United States military or any Federal law enforcement agency is not particularly suitable for sporting purposes, and a firearm shall not be determined to be particularly suitable for sporting purposes solely because the firearm is suitable for use in a sporting event." Nearly all handguns might have been labeled "assault weapons" under this proposed law, on the theory that they are not "particularly suitable for sporting purposes" in the sense of hunting, that the possibility of using them for target shooting doesn't count because "a firearm shall not be determined to be particularly suitable for sporting purposes solely because the firearm is suitable for use in a sporting event" and that their primary purpose is defensive rather than sporting. Such a ban would be broad enough to substantially burden people's ability to defend themselves, and the analysis in the text--which rests on the much narrower scope of most past and present assault weapon bans--would not apply.

173 District of Columbia v. Heller, 128 S. Ct. 2783, 2818 (2008) (explaining why handguns may make more convenient self-defense tools than long guns).

174 Cohen v. California, 403 U.S. 15, 26 (1971).

175 See, e.g., Frisby v. Schultz, 487 U.S. 474 (1988); Kovacs v. Cooper, 336 U.S. 77 (1949), reaffirmed by Ward v. Rock Against Racism, 491 U.S. 781, 796 (1989).

176 The dissenting opinion in Arnold, 616 N.E.2d at 176 (Hoffman, J., dissenting), takes the view that any "outright prohibition of possession"-- including "possession of certain types of arms"--"as opposed to mere regulation of possession" must be judged under "strict scrutiny." But it doesn't explain why a requirement that people use one category of arms instead of another virtually equivalent category of arms should be viewed as a presumptively unconstitutional "prohibition" or "infringe[ment]," id. at 176, 177, even though the requirement does not materially interfere with keeping arms for self-defense. And it requires a judgment about what constitutes a "type[] of arms" that is often indeterminate, see supra text accompanying note 51.

177 See Kasler v. Lungren, 72 Cal. Rptr. 2d 260 (1998) (concluding that challengers should be able to introduce evidence to show that a ban is irrational), rev'd sub nom. Kasler v. Lockyer, 2 P.3d 581 (Cal. 2000); Kasler, 2 P.3d at 605-06 (Kennard, J., concurring in part and dissenting in part) (likewise); Kopel, supra note 169, at 381 (arguing that assault weapons bans fail the rational basis test).

178 See Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 469-70 (1981) (setting forth a rule of extreme deference to legislatures' factual conclusions); Kasler, 2 P.3d 581 (upholding an assault weapons ban under the rational basis test); Robertson v. City & County of Denver, 874 P.2d 325 (Colo.1994) (likewise).

179 Even when several people are attacking you, a semiautomatic pistol or even a revolver will let you fire several times within a few seconds, and likely remain more accurate than a fully automatic weapon. The firing of the first round from a fully automatic will cause recoil that throws off the accuracy of all subsequent rounds during the same trigger-pull. See supra Part II.A.1.d. Moreover, the fully automatic firing mode can empty the magazine in under a second, which would leave you unable to aim and shoot more. (Machine guns are useful in warfare, where you might need to lay down a field of fire, but that almost never arises in civilian self-defense.) So machine guns create extra hazard to passersby without providing any real self-defense benefits.

180 Accord State v. Kerner, 107 S.E. 222, 225 (N.C. 1921) (dictum) (concluding that a total ban on handguns would be unconstitutional). But see State v. Bolin, 662 S.E.2d 38, 39 (S.C. 2008) (concluding that a ban on handguns didn't substantially burden the right to bear arms, though only in the course of evaluating a handgun ban that was limited to 18-to-20-year-olds).

181 E.g., Ex parte Thomas, 97 P. 260, 262-64 (Okla. 1908). Bolin, 662 S.E.2d at 39, held that a ban on under-21-year-olds' possessing handguns didn't violate the right to bear arms because it "[did] not prevent a person under the age of 21 from possessing other types of guns"; but as I note infra note 280, I think Heller was correct in concluding that handgun bans impose a substantial burden on the right to bear arms, even when people remain free to possess rifles or shotguns.

182 See, e.g., Carson v. State, 247 S.E.2d 68, 73 (Ga. 1978) (upholding ban on short-barreled shotguns); State v. LaChapelle, 451 N.W.2d 689, 691 (Neb. 1990) (same); State v. Fennell, 382 S.E.2d 231, 233 (N.C. Ct. App. 1989) (same).

183 See 51 N.C. Op. Att'y Gen. 60, 65 (1981) (concluding machine guns aren't covered by the right to bear arms because they are "not a weapon designed for the general use of the populace").

184 See, e.g., Cal. Penal Code §§12278, 12280 (West Supp. 2009) (banning .50 caliber rifles); State v. Astore, 258 So. 2d 33, 34 (Fla. Dist. Ct. App. 1972) (upholding ban on short-barreled rifles).

185 See supra Part II.A.2.

186 See supra p. 1486.

187 See People v. Brown, 235 N.W. 245 (Mich. 1931) (upholding ban on silencers).

188 Cf. id. (upholding ban on magazines that have room for more than sixteen rounds); City of Cincinnati v. Langan, 640 N.E.2d 200 (Ohio Ct. App. 1994) (upholding ban on rifle magazines that have room for more than 10 rounds).

189 See Kleck, supra note 143, at 119-20.

190 See id. at 144.

191 See infra Part II.F for a discussion of when taxes and indirect cost increases substantially burden the right to bear arms.

192 See the discussion in Eugene Volokh, Nonlethal Self-Defense, (Almost Entirely) Nonlethal Weapons, and the Rights to Keep and Bear Arms, Defend Life, and Practice Religion, 62 Stan. L. Rev. (forthcoming 2010) (manuscript pt. III), available at http://www.law.ucla.edu/volokh/nonlethal.pdf, about why bans on nonlethal weapons may substantially burden people's right to bear arms in self-defense, even when firearms are allowed. The same analysis would in considerable measure apply to bans on weapons such as clubs, which are more lethal than stun guns and pepper sprays but much less so than firearms or knives.

193 See the discussion in id. (manuscript pt. II.A), about the arguments for banning nonlethal weapons but allowing firearms (arguments that are not irrational, though in my view quite unpersuasive); some of the same arguments would apply to bans on knives and clubs.

194 See generally Massad Ayoob, Legends and Myths of the Home Defense Shotgun, Guns, May 2000, at 16; Firearms Tactical Institute, Tactical Briefs #10 (Oct. 1998), http://www.firearmstactical.com/briefs10.htm.

195 District of Columbia v. Heller, 128 S. Ct. 2783, 2818 (2008).

196 See Volokh, supra note 192.

197 See generally Cynthia Leonardatos, Paul H. Blackman & David B. Kopel, Smart Guns/Foolish Legislators: Finding the Right Public Safety Laws, and Avoiding the Wrong Ones, 34 Conn. L. Rev. 157 (2001).

198 For a related approach as to the definition of "arms" more broadly, and not just as to the burden inquiry, see Michael P. O'Shea, The Right to Defensive Arms After District of Columbia v. Heller, 111 W. Va. L. Rev. 349, 391-93 (2009).

199 Uniform Crime Reporting Program, FBI, Law Enforcement Officers Killed and Assaulted 14 (1998), available at http:// www.fbi.gov/ucr/killed/98killed.pdf (1989-98 data).

200 N.J. Stat. Ann. §§2C:58-2.4, 2C:58-2.5 (West 2005).

201 Id. §2C:39-1(dd) ("No make or model of a handgun shall be deemed to be a 'personalized handgun' unless the Attorney General has determined, through testing or other reasonable means, that the handgun meets any reliability standards that the manufacturer may require for its commercially available handguns that are not personalized or, if the manufacturer has no such reliability standards, the handgun meets the reliability standards generally used in the industry for commercially available handguns.").

202 Id. §2C:58-2.5(b), (d).

203 18 U.S.C. §922(g) (2006).

204 See, e.g., 720 Ill. Comp. Stat. Ann 5/24-3.1(a)(2) (West 2003 & Supp. 2008) (barring possession of any gun by 18-to-20-year-olds if they have "been convicted of a misdemeanor other than a traffic offense"); Mass. Ann. Laws ch. 140, §§129B(1)(e), 131(d)(i)

(e), ch. 94C, §§32L, 34 (LexisNexis 2007) (barring possession of any firearms by anyone who had ever been convicted of any drug crime (except possession of one ounce or less of marijuana), though allowing rifle and shotgun possession for people guilty only of nonviolent drug possession after five years pass from the end of their term of imprisonment, probation, or parole supervision); N.J. Stat. Ann. §2C:58-3(c)(1),:1-4 (West 2005) (barring possession of any firearms by anyone who has ever been convicted of a crime that carries a maximum sentence of over six months in jail); Dayton, Ohio, Code of Ordinances §§ 138.11, 138.14(C), (D) (2009) (banning possession of any firearms by anyone with "more than one conviction of any offense involving drunkenness within one year prior to his/her application for firearm owner's identification card" or anyone "with more than one conviction of disorderly conduct, or the state equivalent of such offense, within two years prior to his/her application for firearm owner's identification card"). See Mosher v. City of Dayton, 358 N.E.2d 540, 544 (Ohio 1976) (Celebrezze, J., dissenting) (noting that the city ordinance upheld by the majority banned possession by people with more than one conviction in the preceding year as to drunkenness or drug abuse); Ohio Rev. Code Ann. §2923.13(A)(3) (West 2006) (banning possession even by misdemeanants convicted of "illegal possession" of "any drug of abuse," though leaving courts discretion to lift this restriction under Ohio Rev. Code Ann. §2923.14 (West 2006) if "[t]he applicant has led a law-abiding life since his discharge or release [from imprisonment, probation, and parole], and appears likely to continue to do so").

205 See, e.g., State v. Hopkins, No. 2005AP1482-CR, 2005 WL 2739081, at *3 (Wis. Ct. App. Oct. 25, 2005) (upholding no-firearms probation conditions for someone who pled guilty to misdemeanor theft and misdemeanor trespass to dwelling, because the defendant "might graduate from non-violent, albeit intrusive, anti-social acts to things more serious" and because the defendant's "taste of not being able to have a gun may spur him to mend his ways and become a wholly law-abiding member of our community"). As a general matter, the constitutional rights of probationers may generally be restricted about as much as the constitutional rights of inmates. See, e.g., Johnson v. State, 659 N.E.2d 194, 200 (Ind. Ct. App. 1995).

206 See, e.g., Ind. Code Ann. §34-26-5-9(f) (LexisNexis 2008); Sinclair v. Daly, 672 S.E.2d 672, 673-74 (Ga. Ct. App. 2009); Uttaro v. Uttaro, 54 Mass. App. 871, 873 (2002).

207 See 18 U.S.C. §922(d)(8) (2006); United States v. Emerson, 270 F.3d 203, 261-62 (5th Cir. 2001).

208 18 U.S.C. §922(d)(1), (n).

209 See, e.g., Haw. Rev. Stat. Ann. §134-7(b) (LexisNexis 2006); Ohio Rev. Code Ann. §2923.13 (West 2006); Wash. Rev. Code Ann. § 9.41.040(2)(a)(iv) (West Supp. 2009); State v. Winkelman, 442 N.E.2d 811, 814 (Ohio Ct. App. 1981) (upholding such a ban, though noting that it imposes only a "temporary limitation," with provision for relief "[s]hould the temporary limitation work an undue hardship upon the indicted party"), overruled on other grounds, State v. Frederick, Nos. CA88-07-111, CA88-07-118, 1989 WL 80493, at *3 (Ohio Ct. App. July 17, 1989).

210 18 U.S.C. § 3142(c)(1)(B)(viii) (2006).

211 See 18 U.S.C. §922(g)(5)(B). In this discussion, I'll omit minor exceptions, such as for noncitizens with certain hunting licenses or ones who are engaged in targetshooting.

212 See, e.g., Mass. Ann. Laws ch. 140, §130 (LexisNexis 2007). Guam also bans gun possession by any noncitizens, Guam Code Ann. tit. 10, §60108(b)(2) (1993), and a federal statute extends the entire Bill of Rights (except the Tenth Amendment) to Guam, 48 U.S.C.A. §1421b(u) (West 2003). The Guam noncitizen possession ban may thus be challenged without resolving whether the Second Amendment binds the states via the Fourteenth Amendment. But see United States v. Lewis, Crim. No. 2008-45, 2008 WL 5412013, at *4 (D.V.I. Dec. 24, 2008) (reasoning, in my view unpersuasively, that a similar federal statute extending the Bill of Rights to the Virgin Islands only extended the same Second Amendment right as applies against state governments, and thus didn't secure an individual right to bear arms because the Second Amendment has not been incorporated against states).

213 See, e.g., Dozier v. State, 709 N.E.2d 27, 31 (Ind. Ct. App. 1999) (upholding ban on possession of a handgun by under-18-year-olds).

214 N.Y. Penal Law §400.00 (McKinney 2008) (providing minimum age of 21 for license to possess a handgun); N.Y. City Admin. Code §10-303 (1996) (providing that licenses to possess a rifle or a shotgun must be issued if the applicant is 21 or above and satisfies certain other criteria); NYPD, Permits | Rifle/Shotgun Permit Information, http:// www.nyc.gov/html/nypd/html/permits/rifle_licensing_information.shtml (last visited May 20, 2009) (asserting that no license to possess a rifle or a shotgun will be issued to under-21-year-olds).

215 430 Ill. Comp. Stat. Ann. §§65/2(a)(1), 65/4(a)(2)(i) (West Supp. 2008), bars gun ownership or possession by under-21-year-olds unless they have the written consent of a parent or guardian, and the parent or guardian is not himself disqualified from owning guns. This entirely bars 18-to-20-year-olds from possessing a gun if their parents are dead, or if the living parent or parents are felons, nonimmigrant aliens, mental patients, or otherwise disqualified from owning a gun in Illinois. It also conditions other 18-to-20-year-olds' rights on the permission of their parents, something that is not normally done with regard to the exercise of constitutional rights by adults.

216 See, e.g., Conn. Gen. Stat. Ann. §§29-34, -36f (West 2003 & Supp. 2008); see also N.M. Stat. §30-7-2.2 (2004) (banning possession of handguns by anyone under nineteen).

217 See Ariz. Op. Att'y Gen. No. I01-011 (2001) (opining that such a restriction should be constitutional).

218 See, e.g., Simons v. Gillespie, 2008 WL 3925157 (C.D. Ill. Aug. 1, 2008) (noting possibility of constitutional problem with a police department's barring an employee "from possessing or carrying firearms without prior authorization from the Chief of Police"); Nassau County (N.Y.) District Attorney, Assistant District Attorney Applicant Information & Instruction Form 5, http://www.nassaucountyny.gov/agencies/DA/Docs/PDF/AppInfoForms.pdf (last visited Feb. 26, 2009) ("I understand that assistant district attorneys are not permitted to apply for a handgun permit nor own or possess a handgun while employed by the Nassau County District Attorney. Any exception to this policy must be in writing and approved by the District Attorney."). For a case that should be easy, because it involved a less than substantial burden on self-defense, see Lally v. Dep't of Police, 306 So. 2d 66 (La. Ct. App. 1974), in which the court upheld a police department rule that when police officers carry guns off-duty, the guns they carry must be .38s or .357s.

219 The First Amendment analogy would be to Pickering v. Board of Ed., 391 U.S. 563 (1968), which held that a government employer was constrained by the Constitution in firing an employee for his speech, but that the employer may nonetheless fire the employee if the speech is sufficiently potentially disruptive to its mission, and to Waters v. Churchill, 511 U.S. 661, 677 (1994) (plurality opinion), which held that a government employer may make such a judgment based on the facts as it reasonably believes them to be. It seems to me that Connick v. Myers, 461 U.S. 138 (1983), which held that there ought to be no First Amendment scrutiny of discipline based on speech on matters of purely private concern, is not analogous here. First, it is hard to see how a "private concern" /"public concern" line would apply to the right to keep and bear arms in self-defense. Second, the Connick Court's underlying rationale, which is that allowing a First Amendment claim whenever an employment decision was made based partly on private-concern speech would turn a vast range of employment decisions into federal lawsuits, id. at 147, doesn't apply to the right to keep and bear arms (at least off the job), since very few government employment decisions would normally turn on the exercise of that right. For a similar analogy to Pickering as to a different constitutional right, see the cases involving government employees' rights to send their children to private schools, cited supra note 121.

220 See supra Part I.B.2.

221 See State v. Owenby, 826 P.2d 51, 53 (Or. Ct. App. 1992) (upholding ban on gun possession by the mentally ill on the grounds that it was a "relatively minor" restriction).

222 See People v. Swint, which defended a ban on gun possession by felons this way:
We also note that while [the Michigan Constitution] ensures a Michigan citizen's right to keep and bear "arms," that term is not defined. Black's Law Dictionary (6th ed.), p. 109, defines "arms" as "[a]nything that a man wears for his defense, or takes in his hands as a weapon." While [the statute] only precludes a former felon's use, possession, receipt, sale or transportation of a "firearm," it is silent regarding other "weapons." Arguably, [the statute] does not completely foreclose defendant's constitutional right to bear "arms," i.e., nonfirearm weapons, in defense of himself...."[A]s long as our citizens have available to them some types of weapons that are adequate reasonably to vindicate the right to bear arms in self-defense, the state may proscribe the possession of other weapons without infringing on" the constitutional right to bear arms. Accordingly, we find that the constitutional right to bear arms contained in [the Michigan Constitution] does not guarantee defendant the right to possess a firearm after defendant is convicted of a felony.
572 N.W.2d 666, 670-71 (Mich. Ct. App. 1997) (citation omitted). But non-gun weapons are not "adequate reasonably to vindicate the right to bear arms in self-defense" at anywhere near the effectiveness of firearms. Id. at 671. A ban on felons' possession of guns, if it is to be upheld, should be upheld despite its burden on self-defense, not because it doesn't much burden self-defense.

223 Idaho Const. art. I, §11.

224 See, e.g., Mason v. State, 103 So. 2d 341, 343 (Ala. 1958) (Coleman, J., dissenting); Morgan v. State, 943 P.2d 1208 (Alaska Ct. App. 1997); People v. Blue, 544 P.2d 385 (Colo. 1975); State v. Brown, 571 A.2d 816 (Maine 1990); People v. Swint, 572 N.W.2d 666 (Mich. Ct. App. 1997); State v. Ricehill, 415 N.W.2d 481 (N.D. 1987); see also United States v. Schultz, 2009 U.S. Dist. LEXIS 234 (N.D. Ind. Jan. 5, 2009) (rejecting a Second Amendment argument as to someone convicted of felony refusal to pay child support). For the few dissenting views, see United States v. Abner, 2009 WL 103172 (M.D. Ala. Jan. 14, 2009) (concluding that the federal ban on gun possession by felons "has a strikingly large scope--a scope that might be arguably called into question by a fair reading of Heller's rationale"); Posey v. Commonwealth, 185 S.W.3d 170, 183-84 (Ky. 2006) (Scott, J., concurring in part and dissenting in part); State v. Amos, 343 So. 2d 166, 170 (La. 1977) (Calogero, J., dissenting); Britt v. State, 649 S.E.2d 402, 410 (N.C. Ct. App. 2007) (Elmore, J., dissenting); City of Akron v. Williams, 172 N.E.2d 28, 31 (Ohio Mun. Ct. 1960); Long v. State, 339 S.W.2d 215, 219 (Tex. Crim. App. 1960) (Davidson, J., dissenting). Some cases suggest that there is a constitutional right for a felon to pick up or borrow a gun for immediate self-defense, though not to possess it for defending himself against unspecified future threats. E.g., Conaty v. Solem, 422 N.W.2d 102, 104 (S.D. 1988). Finally, People v. Ford, 568 P.2d 26, 28 (Colo. 1977), suggests that felons generally have a right to possess guns, so long as they can show that the "purpose in possessing weapons was the defense of...home, person, and property," but later cases suggest that this applies only when there was a specific threat to which the felon was responding. See, e.g., People v. Barger, 732 P.2d 1225, 1226 (Colo. App. 1986).

225 Cf. Alaska Stat. §11.61.200(a)(10) (2008) (expressly barring felons from "resid[ing] in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling," though providing an exception for felons who get an apparently discretionary "written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located"). There are limits on the constructive possession doctrine, for instance if the housemate keeps the gun locked in a combination-locked safe. But such practices can substantially burden the housemate's gun possession, both by making guns hard to access in an emergency and by increasing the cost, especially for long guns that require large safes.

226 This is especially likely in jurisdictions which allow criminal liability for aiding criminal conduct whenever the defendant knowingly aids another's conduct, without a further requirement that the defendant purposefully aid the conduct. Compare, e.g., Ind. Code Ann. §35-41-2-4 (West 2004) ("A person who knowingly or intentionally aids...another person to commit an offense commits that offense."); W. Va. Code §17C-19-1 (2004) (likewise); Wyo. Stat. Ann. §6-1-201(a) (2007) (likewise); Backun v. United States, 112 F.2d 635 (4th Cir. 1940) (treating knowing help as aiding and abetting); People v. Spearman, 491 N.W.2d 606, 610 (Mich. Ct. App. 1992) (likewise), overruled as to other matters by People v. Veling, 504 N.W.2d 456 (Mich. 1993), with Ala. Code §13a-2-23 (2004) (defining only intentional aiding as aiding and abetting); Colo. Rev. Stat. Ann. §18-1-603 (West 2008) (likewise); 18 Pa. Cons. Stat. Ann. §306 (West 2004) (likewise); Tex. Penal Code Ann. §7.02 (Vernon 2004) (likewise); United States v. Pino-Perez, 870 F.2d 1230, 1235 (7th Cir. 1989) (likewise); United States v. Peoni, 100 F.2d 401 (2d Cir. 1938) (likewise). See generally Grace E. Mueller, Note, The Mens Rea of Accomplice Liability, 61 S. Cal. L. Rev. 2169 (1988). They might also be civilly liable for possessing a firearm where a felon might be able to access it. Compare Estate of Heck v. Stoffer, 786 N.E.2d 265, 270-71 (Ind. 2003) (holding that parents of a fugitive may be liable for leaving their gun where it was available for the fugitive to steal, logic that would apply equally to nonfugitive convicted felons), with Lelito v. Monroe, 729 N.W.2d 564, 567 (Mich. Ct. App. 2006) (holding, in a civil lawsuit, that felon-in-possession statutes "impose no duty on the felon's friends, family, neighbors, etc....to suppress their own lawful access to firearms when a felon is present").

227 See supra note 224.

228 See, e.g., 18 U.S.C. §922(g)(9) (2006) (banning possession by people convicted of domestic violence misdemeanors); United States v. Li, No. 08-CR-212, 2008 U.S. Dist. LEXIS 100867, *6 (E.D. Wis. Sept. 22, 2008) (upholding §922(g)(9)); Mosher v. City of Dayton, 358 N.E.2d 540, 543 (Ohio 1976) (upholding ban on possession by violent misdemeanants).

229 See supra note 204.

230 See 2 Bernard Schwartz, The Bill of Rights: A Documentary History 681 (1971) (quoting Samuel Adams' proposal for a right-to-bear-arms constitutional amendment, made during the Massachusetts Ratifying Convention, which would have limited protection to "peaceable citizens"); id. at 665 (discussing a proposal for a right-to-bear-arms constitutional amendment, made during the Pennsylvania Ratifying Convention, which would have limited the right to exclude disarming "for crimes committed, or real danger of public injury from individuals"); see, e.g., State v. Hirsch, 114 P.3d 1104, 1131 (Or. 2005) (using these sources as a justification for upholding bans on gun possession by felons); Don B. Kates, Jr., The Second Amendment: A Dialogue, Law & Contemp. Probs.,

Spring 1986, at 143, 146 (likewise); Glenn Harlan Reynolds, A Critical Guide to the Second Amendment, 62 Tenn. L. Rev. 461, 480 (1995) (likewise).

231 See Don B. Kates & Clayton E. Cramer, The Second Amendment: Scope and Criminological Considerations 17-18, http://works.bepress.com/clayton_ cramer/3 (last visited Apr. 5, 2009) (so arguing); Li, 2008 U.S. Dist. LEXIS 100867, at *6 (quoting the government's argument).

232 See, e.g., Kampf v. Kampf, 603 N.W.2d 295, 298 n.3 (Mich. Ct. App. 1999); see also Nelson Lund, The Ends of Second Amendment Jurisprudence: Firearms Disabilities and Domestic Violence Restraining Orders, 4 Tex. Rev. L. & Pol. 157, 189 (1999) ("[A] strong case can be made for upholding that part of [18 U.S.C.] §922(g)(8) that imposes a firearms disability on persons who are under a domestic violence restraining order because a court has found that they represent a credible threat to the physical safety of their domestic partner or child.").

233 Kampf, 603 N.W.2d at 297.

234 Compare United States v. Arzberger, Nos. 08 Cr. 894 (AKH), 08 Mag. 1876 (JCF), 2008 WL 5453739, at *10-11 (S.D.N.Y. Dec. 31, 2008) (holding that a mandatory no-firearms condition for pretrial release of people accused of possessing child pornography was unconstitutional, in the absence of "an independent judicial determination" of "whether such a condition [was] reasonably necessary in his case to secure the safety of the community"), and United States v. Kennedy, No. CR08-354-RAJ-JPD, 2008 WL 5517643 (W.D. Wash. Nov. 25, 2008) (same), with State v. Winkelman, 442 N.E.2d 811 (Ohio Ct. App. 1981) (upholding such a ban, though noting that it imposes only a "temporary limitation," with provision for relief "[s]hould the temporary limitation work an undue hardship upon the indicted party"), overruled on other grounds by State v. Frederick, Nos. CA88-07-111, CA88-07-118, 1989 WL 80493 (Ohio Ct. App. July 17, 1989), and State v. In, 18 P.3d 500, 503 (Utah Ct. App. 2000) (also stating that such a ban is constitutional, but without a detailed explanation).
State v. Spiers, 79 P.3d 30 (Wash. Ct. App. 2003), struck down a ban on ownership of guns while under indictment, but partly because other laws that allowed a ban on possession of guns under those circumstances were "sufficient to protect public safety":
It should be kept in mind that, separate from the challenged ownership provision, the State may prohibit a defendant from possessing guns. RCW 9.41.040(1)(b)(iv) (contains prohibition on possession that is unchallenged here); CrR 3.2(d)(3) (on showing that defendant poses substantial danger). Thus, in analyzing Spiers's rights, this court examines whether it is reasonably necessary to prohibit Spiers's gun ownership rights in addition to his gun possession rights.
Id. at 34-35. But while the first cited provision covers anyone "free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010," Wash. Rev. Code Ann. § 9.41.040(1)(b)(iv) (West 2003) (current version at Wash. Rev. Code Ann. § 9.41.040(2)(a)(iv) (West Supp. 2009)), the second is limited to situations where there is "a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice," Wash. Sup. Ct. Crim. R. 3.2(d)(3) (West Supp. 2009). It is therefore not clear to what extent the Spiers court approved of bans on possession by all indictees, by those indicted for serious offenses (a fairly large category defined in Wash. Rev. Code Ann. §9.41.010(12) (West 2003), which covers both violent offenses and some nonviolent offenses), or by those who "pose [] substantial danger."

235 Mass. Ann. Laws. ch. 140, §131 (LexisNexis 2007).

236 Chief of Police of Shelburne v. Moyer, 453 N.E.2d 461, 464 (Mass. App. Ct. 1983) (providing that a police chief's decision may be set aside only if it is "arbitrary, capricious, or an abuse of discretion").

237 Tucci v. Police Dep't of Wareham, No. 07-P-1409, 2008 WL 2595923, at *1-2 (Mass. App. Ct. July 2, 2008) (upholding revocation of permit); see also Stavis v. Carney, No. Civ.A. 99-349-A, 2000 WL 1170090, at *8 (Mass. Super. Ct. July 31, 2000) (noting the revocation of permit but not reaching a final conclusion on the merits).

238 Roddy v. Leominster Dist. Court, No. 03457, 2005 WL 2539851, at *2 (Mass. Super. Ct. Sept. 2, 2005) (upholding revocation of permit).

239 Stavis, 2000 WL 1170090, at *7.

240 Brief of the Defendant-Appellee, Godfrey v. Fritts, No. 91-P-1460, at 9 (Mass. App. Ct. Apr. 7, 1992) (listing this as the "sole[]" reason for the revocation of the license); Godfrey v. Chief of Police of Wellesley, 616 N.E.2d 485, 488 (Mass. App. Ct. 1993) (upholding the revocation). The police had been investigating a series of shootings in town, and had gotten tips that the shootings might have

been committed by Godfrey's brother using Godfrey's gun. Brief of the Defendant-Apellee, supra, at 4-5. But the government's brief in the case specifically declined to point to any finding by the police department that Godfrey had likely committed any crime, or had been complicit in his any crime on his brother's part. Rather, it asserts that "All that the Chief knew is that Godfrey declined at all relevant times to answer any questions whatsoever as a part of the Department's ongoing investigation into the incidents," id. at 13; see also id. at 9, 16, and that this sufficed as a justification for the license revocation.

241 See, e.g., Heindlmeyer v. Ottawa County Concealed Weapons Licensing Bd., 707 N.W.2d 353, 361 (Mich. Ct. App. 2005); Kozerski v. Steere, 433 A.2d 1244, 1245 (N.H. 1981); Weston v. State, 286 A.2d 43, 47 (N.J. 1972); Moats v. Pennsylvania State Police, 782 A.2d 1102, 1104-05 (Pa. Commw. Ct. 2001).

242 See, e.g., Snowden v. Handgun Permit Review Bd., 413 A.2d 295, 298-99 (Md. Ct. Spec. App. 1980); Denora v. Safir, 711 N.Y.S.2d 900, 900 (App. Div. 2000).

243 Compare, e.g., Jacobellis v. Ohio, 378 U.S. 184, 190 n.6 (1964) (lead opinion by Brennan, J.) ("Even in judicial review of administrative agency determinations, questions of 'constitutional fact' have been held to require de novo review."); Crowell v. Benson, 285 U.S. 22, 60 (1932) (taking a similar view); Simonson v. Iowa State University, 603 N.W.2d 557, 561 (Iowa 1999) (likewise), with NLRB v. Gissel Packing Co., 395 U.S. 575, 620 (1969) (providing for deferential review of expert agency's decisions restricting speech of employers or unions); Hamdi v. Rumsfeld, 542 U.S. 507, 534 (2004) (providing for some deference to a military tribunal's determination that someone was an enemy combatant).

244 See N.J. Stat. Ann. §2C:58-3(c)(3) (West 2005); Guam Code Ann. tit 10, § 60108(b)(7) (1993). For similar provisions in statutes limiting the issue of concealed carry licenses, see also Ark. Code Ann. §5-73-309(4) (2005); Fla. Stat. Ann. §790.06(2)(c) (West 2007); Kan. Stat. Ann. §75-7c04(a)(3) (Supp. 2008); La. Stat. Ann. §40:1379.3(C)(5) (2008); Miss. Code Ann. §45-9-101(2)(c) (2004); Neb. Rev. Stat. §69-2432(3) (2003); Wyo. Stat. Ann. §6-8-104(b)(iii) (2007).

245 2007 WL 845916, at *1 (N.J. Super. Ct. App. Div. Mar. 22, 2007) (upholding trial court's reversal of a police department's decision to deny someone a permit to possess a shotgun for hunting, because he was "partially paralyzed," had "limited use of his left arm and hand," and had "partially limited" "left side peripheral vision").

246 N.J. Stat. Ann. §2C:58-3(c)(8) (citation omitted).

247 930 A.2d 481, 484 (N.J. Super. Ct. App. Div. 2007), rev'd, 962 A.2d 515 (N.J. 2008).

248 Id.

249 Id. at 482.

250 Id. at 482-83; see Video of Oral Argument (No. A-80-07) (Sept. 23, 2008), available at http://njlegallib.rutgers.edu/supct/args/A_80_07.php (not noting any finding of violence on M.S.'s part).

251 M.S. v. Millburn Police Dep't, 962 A.2d 515, 524-25 (N.J. 2008).

252 Though not exactly the same footing, because the New Jersey law's prohibition is permanent--much like a prohibition based on a criminal conviction--and not just for the duration of the restraining order.

253 18 U.S.C. §922(g)(8) (2006).

254 See Pearson v. Pearson, 488 S.E.2d 414, 428 (W. Va. 1997) (Workman, C.J., dissenting) (noting that "[b]oilerplate mutual restraining orders" that bind both partners are "all too often" issued "without a proper evidentiary foundation," perhaps because "[o]n first glance, they seem harmless").

255 United States v. Emerson, 270 F.3d 203, 262 (5th Cir. 2001) (emphasis, footnote, and citation omitted).

256 See id. at 262-63 (concluding that Texas law so requires); see also In re Marriage of Yates, 148 P.3d 304, 317 (Colo. App. 2006); M.B. v. H.B., No. CS02-04668, 2003 WL 22265053, at *4-5 (Del. Fam. Ct. May 2, 2003); Murphy v. Okeke, 951 A.2d 783, 790 (D.C. 2008); Uttaro v. Uttaro, 768 N.E.2d 600, 604 (Mass. App. Ct. 2002); Pearson, 484 S.E.2d at 424.

257 See M.B., 2003 WL 22265053, at *4; see also Moore v. Moore, 657 S.E.2d 743, 747-48 & nn.3-4 (S.C. 2008).

258 Green v. Green, No. 269, 1997 WL 67315 (Del. Oct. 14, 1997) (upholding such an order, and summarily rejecting the target's state right-to-bear-arms claim, even though the Delaware Constitution expressly secures a right to bear arms in self-defense). See also Lujan ex rel. Lujan v. Casados-Lujan, 87 P.3d 1067, 1068-69, 1071 (N.M. Ct. App. 2003), which issued such an order based on a stepmother's "continuous verbal abuse and belittlement" of her 14-year-old stepson (though also mentioning a possible implicit threat "inasmuch as [the wicked stepmother] was always bragging about hitting people, and [the stepson] was fearful that she would hit him"). The court concluded that "the language...could be interpreted as symbolizing an aggressiveness and threat of physical and emotional domination that comes well within the provisions of [N.M. Rev. Stat. §40-13-2](C)(2), (4), and (10)," a statute that defined "domestic abuse" to include incidents that result in "severe emotional distress," "a threat causing imminent fear of bodily injury," and "harassment." The Lujan court noted that "the special commissioner told Respondent that she would not be subject to firearms restrictions," 87 P.3d at 1071, but this seems to have been a misstatement on the commissioner's part: 18 U.S.C. §922(g)(8) would indeed apply in such a situation, see Lujan v. Casados, No. D0117DV200200105 (N.M. Super. Ct. Feb. 25, 2002) (order of protection) (expressly prohibiting the use or threat of force that would result in bodily injury, which would trigger §922(g)(8), and expressly noting to the target that "federal law prohibits you from possessing or transporting firearms or ammunition while this order is in effect").

259 N.J. Stat. Ann. §§ 2C:25-19(a)(13), 2C:25-29, 2C:33-4 (West 2005).

260 See, e.g., Anderson v. Weakland, No. A104837, 2004 WL 1574529, at *2-3 (Cal. Ct. App. July 14, 2004) (upholding a domestic protective order that expressly barred firearms possession, expressly asserting that such orders can be issued based on "abuse" short of "physical abuse or bodily injury," and giving the material quoted in the text as examples of what could constitute "abuse").

261 Raynes v. Rogers, 955 A.2d 1135, 1139-40 (Vt. 2008).

262 Saladino v. Harms, No. 05-1785, 2006 WL 1897166, at *1 (Iowa Ct. App. July 12, 2006).

263 Kie v. McMahel, 984 P.2d 1264, 1267 (Haw. Ct. App. 1999). These were the only incidents of "domestic abuse" that the court found.

264 Acosta v. Wilder, No. D041293, 2004 WL 206288 (Cal. Ct. App. Feb. 4, 2004). The targets of the order, the Acostas, had apparently been the subject of a campaign of harassment on petitioner Wilder's part, including "intimidating the Acostas' son, repeatedly telephoning the Acosta residence, making threats, and stating racial and disparaging statements about the Acostas." Id. at *2. (A restraining order was also issued against Wilder.) This may have led the court to assume that the driver's behavior was deliberate retaliation; but such an inference is hard to reliably draw.

265 See Murphy v. Okeke, 951 A.2d 783, 786 (D.C. 2008) (describing the circumstances); id. at 790-91 (reversing the order).

266 See Bartsch v. Bartsch, 636 N.W.2d 3 (Iowa 2001). But see T.L. v. W.L., 820 A.2d 506 (Del. Fam. Ct. 2003).

267 18 U.S.C. §922(g)(8)(A) (2006) applies only to orders "issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate," but doesn't specifically require that the court had personal jurisdiction over the person.

268 See Lund, supra note 232, at 163 (taking the same view).

269 See, e.g., Cal. Penal Code §§12072, 12078 (Deering Supp. 2009) (banning selling or giving a firearm to a minor, except as to loans of no more than thirty days with the parent's permission, or longer loans for limited reasons that don't include self-defense). For examples of the minority view generally allowing possession of handguns by under-18-year-olds, see Mont. Code Ann. §45-8-344 (2007) (age 14) and Vt. Stat. Ann. tit. 13 §4008 (1998) (age 16). See also N.Y. Penal Law §§265.00(3), 265.05, 400.00 (McKinney 2008) (setting the age at 16 for long guns); N.C. Gen. Stat. §§14-269.7, -316 (2007) (setting the age at 12 for long guns).

270 Bureau of Justice Statistics, U.S. Dep't of Justice, Criminal Victimization in the United States, 2006 Statistical Tables, tbl.4 (2006), http://www.ojp.usdoj.gov/bjs/pub/pdf/cvus06.pdf. The equal or higher victimization of older minors compared to adults applies even if one focuses only on victimization by strangers. See id. at tbls.4, 29.

271 The driving age is generally 16 rather than 18, even though many more 16- and 17-year-olds die in car accidents than in gun accidents, gun suicides, or gun homicides, but this lower driving age is likely a concession to the practical reasons why parents want children to have cars (especially to travel to work and school), and not a considered judgment that 16-year-olds are generally mature enough to be entrusted with a wide range of adult responsibility where the use of deadly weapons is involved. See Insurance Inst. for Highway

Safety, US Licensing Systems for Young Drivers, May 2009, http://www.iihs.org/laws/pdf/us_licensing_systems.pdf (summarizing driving ages in various states, with thirty-three pegged at exactly age 16 and forty-six being between age 15 and age 16); Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, WISQARS Leading Causes of Death Reports, 1999-2006, http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html (last visited May 6, 2009) (2001-05 data for 16-to-17-year-olds) (reporting about 35 fatal gun accidents, 260 gun suicides, and 500 gun homicides per year); Nat'l Safety Council, Injury Facts 104 (2009) (reporting that there were 700 16-year-old drivers and 1100 17-year-old drivers involved in fatal accidents in 2007, though the total number of deaths caused would be a little less than 1800 since the 1800 double-counts accidents in which two 16- or 17-year-old drivers were involved but only one fatality resulted); E-mail from Lyn Cianflocco, National Highway Traffic Safety Administration, to Cheryl Kelly Fischer, UCLA Law Library (Mar. 24, 2009, 12:09 PST) (on file with author) (reporting, using 2007 data, a total of 844 "fatalities in motor vehicle traffic crashes involving at least one 16 year old driver" and 1408 where at least one 17-year-old was involved).

272 Minors, for instance, generally don't have the constitutional right to sexual autonomy, to marry, or to beget children, and are limited in their abortion rights. See Lawrence v. Texas, 539 U.S. 558, 578 (2003) (recognizing adults' right to sexual autonomy and implicitly adults' right to beget children, but specifically noting that the case did not involve minors); Hodgson v. Minnesota, 497 U.S. 417 (1990) (holding that minors have narrower abortion rights than do adults); Kirkpatrick v. Eighth Judicial Dist. Court ex rel. County of Clark, 64 P.3d 1056, 1060 (Nev. 2003) (holding that minors do not have the right to marry); In re R.L.C., 643 S.E.2d 920 (N.C. 2007) (likewise as to sexual autonomy and implicitly the right to beget children). For a rare decision to the contrary, see B.B. v. State, 659 So. 2d 256 (Fla. 1995), holding that 16-year-olds have a constitutional right to have sex with each other, though not with adults. The law's support for parental control over their minor children, something that would be a grave interference with liberty as to adults, tracks that. See, e.g., Cal. Welf. & Inst. Code §601 (West 2008) (threatening a child "who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian" with being adjudged a "ward of the court"); Minn. Stat. Ann. §609.06 subdiv. 1(6) (West 2003) (exempting reasonable force used by parents from criminal assault law); id. §609.255 (West 2003) (defining false imprisonment to exclude conventional parental restraint of children); Brekke v. Wills, 23 Cal. Rptr. 3d 609, 613 (Ct. App. 2005) (upholding an injunction barring a sixteen-year-old girl's ex-boyfriend, whom her mother considered a bad influence, from contacting her, partly on grounds that injunction helped protect "[mother's] exercise of her fundamental right as parent to direct and control her daughter's activities"); L.M. v. State, 610 So. 2d 1314 (Fla. Dist. Ct. App. 1992) (affirming the lower court's order, as condition of juvenile's probation, that he obey his mother); Model Penal Code §3.08 (Proposed Official Draft 1962) (providing that parents' use of force is justified when done for "the purpose of safeguarding or promoting the welfare of the minor"). The same is in some measure true for explicitly secured rights, such as free speech rights, at least where it comes to sexually themed expression. See Ginsberg v. New York, 390 U.S. 629, 636-37 (1968). And the law has long allowed children to be adjudged delinquent and basically imprisoned through the juvenile justice system, without the standard constitutional guarantees applicable to criminal proceedings. See McKeiver v. Pennsylvania, 403 U.S. 528, 545-51 (1971). This has been rationalized on the grounds that the proceedings are civil rather than criminal, see, e.g., Ex Parte Crouse, 4 Whart. 9 (Pa. 1839), but it was precisely the presumed incapacity of the child that justified such civil proceedings.
On the other hand, when it comes to criminal prosecutions as opposed to juvenile court proceedings, minors have apparently generally had the same constitutional rights as adults. See Edward W. Spencer, A Treatise on the Law of Domestic Relations §628, at 549 (1911). And some sorts of constitutional rights, such as the right to have some judicial hearing before any imprisonment, including through the juvenile justice system, have apparently also been long extended to minors. See, e.g., Silas Jones, An Introduction to Legal Science 63 (New York, J.S. Voorhies 1842).

273 See, e.g., Glenn v. State, 72 S.E. 927 (Ga. Ct. App. 1911) (upholding ban on carry license for under-18-year-olds). I suggest in Volokh, supra note 192, that the result might be different for generally nondeadly weapons, such as pepper spray or stun guns.

274 See, e.g., United States v. McRobie, No. 08-4632, 2009 WL 82715 (4th Cir. Jan. 14, 2009) (upholding 18 U.S.C. §922(g)(4) (2006), which bans gun possession by persons committed to a mental institution, by citing Heller's approval of bans on possession by "the mentally ill"); Foss v. Town of Mansfield, No. 03-P-1457, 2004 WL 2150984 (Mass. App. Ct. Sept. 17, 2004) (upholding revocation of handgun license based on the licensee's depression, which led to a suicide threat and brief hospitalization).

275 See State v. Oaks, 594 S.E.2d 788, 793 (N.C. Ct. App. 2004) (striking down court order permanently barring firearms possession by a person who had admitted to habitually using marijuana, on the grounds that "we cannot affirm an order that apparently presumes that he will always be an unlawful user of controlled substances, and therefore may never possess firearms").

276 For instance, the sufficiently mentally ill may have conservators appointed for them, and thus be stripped of the right to dispose of their property. Their criminal trials may be delayed while they are incompetent, despite the Speedy Trial Clause. See, e.g., United

States v. Mills, 434 F.2d 266, 271 (8th Cir. 1970); Langworthy v. State, 416 A.2d 1287, 1293-94 (Md. Ct. Spec. App. 1980). Sex with those who are so mentally ill or mentally retarded that they can't fully appreciate the consequences of their actions may likely be criminalized, see, e.g., Lawrence v. Texas, 539 U.S. 558 (2003) (repeatedly stressing the rights of "consenting adults"); Anderson v. Morrow, 371 F.3d 1027, 1032-33 (9th Cir. 2004) ("The Lawrence Court held that the Due Process Clause of the Fourteenth Amendment protects the right of two individuals to engage in fully and mutually consensual private sexual conduct. The holding does not affect a state's legitimate interest and indeed, duty, to interpose when consent is in doubt."), even though similar bans on competent adults would interfere with the right to have children and the right to sexual autonomy.

277 See supra note 215.

278 See id.

279 See supra notes 215-216 and accompanying text.

280 The South Carolina Supreme Court did hold that a ban on handgun possession by under-21-year-olds didn't violate the state constitutional right to bear arms, "because persons under the age of 21 have access to other types of guns." State v. Bolin, 662 S.E.2d 38, 39 (S.C. 2008). (The court went on to still strike down the ban, because it violated S.C. Const. art. XVII, §14, which provided that "[e]very citizen who is eighteen years of age or older...shall be deemed sui juris and endowed with full legal rights and responsibilities." Id. at 39-40.) But I think Heller has the better view here, for reasons given in Part II.A.4; courts should recognize that handgun bans impose a substantial burden on state constitutional rights to keep and bear arms in self-defense as well as on the federal right.

281 See Larry D. Barnett, The Roots of Law, 15 Am. U. J. Gender Soc. Pol'y & L. 613, 681-86 (2007). A few states had the age of majority set at 18 for women, but 21 for men. Id. In the early 1970s, almost all the states lowered the age of majority to 18. Id.

282 The exceptions are Alaska, Delaware, Maine, Nebraska, Nevada, New Hampshire, North Dakota, West Virginia, and Wisconsin, which enacted right-to-bear-arms provisions (or in the cases of Alaska and Maine, an expressly individual right-to-bear-arms provision) for the first time after the age of majority was decreased, and Florida, Idaho, Louisiana, New Mexico, and Utah, which substantially revised the texts of their individual right-to-bear-arms provisions after the age of majority was decreased. See Volokh, supra note 2. Note that in one of these states, Nebraska, the age of majority is 19 rather than 18. Neb. Rev. Stat. §43-2101 (2004).

283 Garance Franke-Ruta, Age of Innocence Revisited, Wall St. J., May 4, 2007, at W11.

284 Mississippi law provides that "[t]he term 'minor,' when used in any statute, shall include any person, male or female, under twenty-one years of age," and then bans encouraging minors to participate in pornography production. Miss. Code Ann. §§1-3-27, 97-3-54.1(1)(c) (2005). Nebraska bans encouraging minors to participate in pornography production, Neb. Rev. Stat. §§28-707, 28-831 (Supp. 2006), and defines "minor" to be under 19 unless otherwise specified, Neb. Rev. Stat. §43-2101 (2004); State v. Johnson, 695 N.W.2d 165, 174-75 (Neb. 2005); cf. Neb. Rev. Stat. §28-807 (1995) (defining "minor" to "mean any unmarried person under the age of eighteen years," but limiting the definition to §28-807 through §28-829, the sections having to do with the distribution or display of pornography to minors).

285 See Neb. Rev. Stat. §§42-105, 43-2101 (2004).

286 Allam v. State, 830 P.2d 435 (Alaska Ct. App. 1992) (upholding such a law).

287 See McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (age 18 for proceedings in juvenile court without a jury under one statute, see Pa. Stat. Ann. §243(2) (West 1965) (repealed 1972) and age 16 under another, see N.C. Gen. Stat. §110-21 (1943) (repealed 1973)); Ginsberg v. New York, 390 U.S. 629 (1968) (age 17 for receipt of sexually themed materials); Prince v. Massachusetts, 321 U.S. 158 (1944) (age 18 for girls, 12 for boys, for the right to sell literature--including literature that one felt a religious obligation to distribute--on public streets); Abe Fortas, Equal Rights--for Whom?, 42 N.Y.U. L. Rev. 401, 406 (1967) (age 18 for delinquency adjudications through the juvenile justice system, which generally omitted many constitutional protections).

288 Missouri law only allows people age 23 and above to get a license to carry concealed firearms, Mo. Ann. Stat. §571.101(2)(1) (West Supp. 2009), and St. Louis bars all open carrying of firearms on public streets, St. Louis, Mo., Rev. Code § 15.130.040 (2008).

289 Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, WISQARS Injury Mortality Reports, 1999-2006, http:// webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html (last visited Apr. 5, 2009) (select injury cause "firearm," years 1999 to 2006, custom age range 15 to 39, output group "age").

290 See, e.g., Craig v. Boren, 429 U.S. 190 (1976) (finding a denial of equal protection in a law allowing 18-to-20-year old women, but not men, to purchase 3.2 percent beer).

291 See, e.g., Bureau of Justice Statistics, supra note 270, at tbls.38, 40.

292 If anything, noncitizens face a slightly greater deterrent than citizens do, because they risk deportation as well as criminal punishment if they misuse their guns. A very few noncitizens pose special national security threats, but those people--saboteurs and terrorists--are precisely the ones who would have the least trouble evading gun laws.

293 See, e.g., Ala. Const. art. I, §26; Ariz. Const. art. II, §26; Ark. Const. art. II, §5.

294 Colo. Const. art. II, §13.

295 The right to keep and bear arms when "legally summoned" to "aid... the civil power" is limited to those whom the government chooses by law to summon, and might thus exclude noncitizens (and others). But the right to keep and bear arms in defense of home, person, and property is not so limited.

296 People v. Nakamura, 62 P.2d 246 (Colo. 1936); People v. Zerillo, 189 N.W. 927, 928 (Mich. 1922) (interpreting a provision that "[e]very person has a right to bear arms for the defense of himself and the state").

297 494 U.S. 259 (1990).

298 Id. at 265.

299 District of Columbia v. Heller, 128 S. Ct. 2783, 2790-91 (2008). Heller also repeatedly spoke of the right of the people to bear arms as a right of "citizens," see United States v. Guerrero-Leco, No. 3:08cr118, 2008 WL 4534226, at *1 & n.2 (W.D.N.C. Oct. 6, 2008) (stressing this in holding that illegal aliens aren't covered by the Second Amendment), but this alone means little. "Citizen" is often used casually to mean any person, especially contrasted with a government official. Heller itself said, for instance, that "we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose," 128 S. Ct. at 2799, even though the First Amendment has long been read as applying to noncitizens. Bridges v. Wixon, 326 U.S. 135, 148 (1945). Likewise, the Court has discussed the Sixth Amendment as "protect[ing] a right of citizens," Doggett v. United States, 502 U.S. 976 (1991), even though it expressly applies to any "accused" and has always been understood as covering noncitizen criminal defendants as well as citizens. See also United States v. Gouveia, 467 U.S. 180, 195 (1984) (same as Doggett); Berkemer v. McCarty, 468 U.S. 420, 435 n.22 (1984) (speaking of "a citizen's Fifth Amendment rights," though the relevant Fifth Amendment clause speaks generally of the right of "any person"). None of this suggests that "citizen" always means "person"; it plainly doesn't. But it does suggest that the Court may casually speak of the rights of "citizens," in a case in which citizenship status is not at issue, without deliberately choosing to limit the right to citizens to the exclusion of aliens.

300 See, e.g., Verdugo-Urquidez, 494 U.S. at 274-75 (holding that the Fourth Amendment does not apply to aliens in foreign countries).

301 See United States v. Boffil-Rivera, No. 08-20437-CR-Graham/Torres, 2008 U.S. Dist. LEXIS 84633 (S.D. Fla. Aug. 12, 2008) (holding that the Second Amendment does not protect illegal aliens); Guerrero-Leco, 2008 WL 4534226 (likewise).

302 State v. Vlacil, 645 P.2d 677 (Utah 1982).

303 See Pratheepan Gulasekaram, Aliens With Guns: Equal Protection, Federal Power, and the Second Amendment, 92 Iowa L. Rev. 891 (2007), for an extended treatment. State courts have split on the Equal Protection Clause question. For decisions holding that bans on noncitizen gun possession or carrying violate the Equal Protection Clause, see People v. Rappard, 28 Cal. App. 3d 302, 305 (Ct. App. 1972) (concealed carry); Chan v. City of Troy, 559 N.W.2d 374, 376-77 (Mich. Ct. App. 1996) (possession); State v. Chumphol, 634 P.2d 451 (Nev. 1981) (concealed carry). For decisions upholding such bans, see Patsone v. Pennsylvania, 232 U.S. 138, 143 (1914) (possession); State v. Vlacil, 645 P.2d 677, 679-81 (Utah 1982) (possession); State v. Hernandez-Mercado, 879 P.2d 283, 287-90 (Wash. 1994) (possession).

304 Some of these exempt certain categories of people, such as bodyguards, or give the police discretion to give certain people licenses; but the laws remain broad bans on public possession by those people who aren't fortunate enough to be exempted or licensed.

305 See Volokh, supra note 61.

306 See District of Columbia v. Heller, 128 S. Ct. 2783, 2816 (2008).

307 See Clayton E. Cramer, Concealed Weapon Laws of the Early Republic 143-52 (1999).

308 See, e.g., Robertson v. Baldwin, 165 U.S. 275, 281-82 (1897):
The law is perfectly well settled that...the 'Bill of Rights[' was] not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had, from time immemorial, been subject to certain well-recognized exceptions, arising from the necessities of the case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus,...the right of the people to keep and bear arms (Article 2) is not infringed by laws prohibiting the carrying of concealed weapons....

309 See the Indiana, Kentucky, Vermont, and West Virginia cases cited infra note 312.

310 128 S. Ct. at 2793; see also O'Shea, supra note 198, at 377-79.
Michael C. Dorf, Does Heller Protect a Right to Carry Guns Outside the Home?, 59 Syracuse L. Rev. 225, 231-33 (2008), makes what is essentially a scope argument for "confin[ing]" the right to bear arms "to home possession," based on "the fact that the Court's individual rights jurisprudence more broadly treats the home as special." But the cases that article cites, Stanley v. Georgia, 394 U.S. 557 (1969), Griswold v. Connecticut, 381 U.S. 479 (1965), and Lawrence v. Texas, 539 U.S. 558, 562 (2003), are inapposite. Stanley protected home possession even of material--obscenity-- that the Court had, earlier and later, said lacks constitutional value. See, e.g., Paris Adult Theatre I v. Slaton, 413 U.S. 49, 67 (1973); Roth v. United States, 354 U.S. 476, 484 (1957). Nothing in Stanley suggests that constitutionally valuable speech can only be possessed in the home, and not in public; Stanley sets forth a narrow form of extra protection for obscenity, not a reason for restriction of constitutionally valuable speech. Stanley thus offers no analogy for restriction of guns in public, when those guns can be used for constitutionally valuable self-defense.
Likewise, Griswold and Lawrence dealt with conduct (sex and contraception) that has throughout American history been restricted to private places; moreover, restricting such conduct to private places doesn't materially burden the values that the Court pointed to as justifying recognition of the right-- people remain free to plan their reproductive lives, engage in martial intimacy, and use sex to create intimate relationships even if they must do so in private. Barring the possession of guns for self-defense in public, on the other hand, does seriously burden the ability to defend oneself, for the reasons discussed in the following pages: Self-defense at home is no substitute for self-defense on a public sidewalk when the sidewalk is where you are attacked; having sex at home is for nearly all of us an adequate substitute for having sex on the sidewalk. And of course the legal tradition, both the constitutional tradition I note below and the broader tradition of legally allowed carrying (though often with a license requirement), has been to allow gun possession in most public places but to forbid sex in most public places. In this respect, original meaning and tradition both point to treating gun rights very differently from sexual rights.

311 Colo. Const. art. II, §13; Idaho Const. art. I, §11; Ky. Const. §1; La. Const. art. I, §11; Miss. Const. art. III, §12; Mo. Const. art. I, §23; Mont. Const. art. II, §12; N.M. Const. art. II, §6; N.C. Const. art. I, §30; Okla. Const. art. II, §26; see also Tenn. Const. art. I, §26 (authorizing the legislature to "regulate the wearing of arms with a view to prevent crime," which suggests that "bear[ing] arms" includes "wearing" them, which is to say carrying them in public, though subject to regulations); Tex. Const. art. I, §23 (same).

312 For cases or attorney general opinions holding or suggesting that there is a right to carry openly, see State v. Reid, 1 Ala. 612, 619 (1840) (dictum), reaffirmed, Hyde v. City of Birmingham, 392 So. 2d 1226, 1228 (Ala. Crim. App. 1980); Dano v. Collins, 802 P.2d 1021 (Ariz. Ct. App. 1990), review granted but later dismissed as improvidently granted, 809 P.2d 960 (Ariz. 1991); Nunn v. State, 1 Ga. 243 (1846), reaffirmed, Strickland v. State, 72 S.E. 260, 264 (Ga. 1911); In re Brickey, 70 P. 609 (Idaho 1902); Holland v. Commonwealth, 294 S.W.2d 83, 85 (Ky. 1956) (dictum); State v. Chaisson, 457 So. 2d 1257 (La. Ct. App. 1984); City of Las Vegas v. Moberg, 485 P.2d 737 (N.M. Ct. App. 1971); State v. Kerner, 107 S.E. 222 (N.C. 1921); State v. Nieto, 130 N.E. 663, 664 (Ohio 1920) (dictum), reaffirmed, Klein v. Leis, 795 N.E.2d 633, 638 (Ohio 2003); Glasscock v. City of Chattanooga, 11 S.W.2d 678 (Tenn. 1928); State ex rel. City of Princeton v. Buckner, 377 S.E.2d 139 (W. Va. 1988); La. Op. Att'y Gen. No. 80-992 (1990); Wisconsin Department of Justice Advisory Memorandum (Apr. 20, 2009), http://www.doj.state.wi.us/news/files/FinalOpenCarryMemo.pdf. For cases holding the right extends even to carrying a concealed weapon, though perhaps regulated through a nondiscretionary licensing

regime, see Kellogg v. City of Gary, 562 N.E.2d 685, 705 (Ind. 1990); Schubert v. DeBard, 398 N.E.2d 1339 (Ind. Ct. App. 1980); Bliss v. Commonwealth, 12 Ky. (2 Litt.) 90 (1822), abrogated as to concealed carry but not as to open carry by Ky. Const. of 1850, art. XIII, §25; State v. Rosenthal, 55 A. 610, 610-11 (Vt. 1903); State v. Vegas, Case No. 07 CM 687 (Cir. Ct. Milwaukee County Sept. 24, 2007), available at http://www.law.ucla.edu/volokh/vegas.pdf (concluding that under State v. Hamdan, 665 N.W.2d 785 (Wis. 2003), the right to bear arms may include the right to concealed carry in some narrow circumstances, especially where the person is engaging in dangerous activity such as delivering pizzas in high-crime areas). Oregon courts take the view that the right extends to carrying weapons openly, but allows restrictions on carrying loaded guns, so long as the law allows the carrying of both an unloaded gun and ammunition. See State v. Delgado, 692 P.2d 610, 614 (Or. 1984) (striking down total ban on carrying switchblade knives); Barnett v. State, 695 P.2d 991 (Or. Ct. App. 1985) (per curiam) (striking down a total ban on carrying blackjacks); State v. Boyce, 658 P.2d 577, 578-79 (Or. Ct. App. 1983) (upholding a requirement that handguns be carried unloaded).

Chaisson struck down a very limited carrying ban--one that applied only while hunting frogs at night--but its reasoning suggested that there was a constitutional right to carry for self-defense (including self-defense against alligators). 457 So. 2d at 1259; see also State v. Chandler, 5 La. Ann. 489, 490 (1850) (taking this view with regard to the Second Amendment). City of Lakewood v. Pillow, 501 P.2d 744 (Colo. 1972), also struck down a carry ban because it was broad enough to ban gun stores, ban people "from transporting guns to and from such places of business," and ban people from "possess[ing] a firearm in a vehicle or in a place of business for the purpose of self-defense"; the court concluded that "[s]everal of these activities are constitutionally protected," which suggests that carrying in a car might have been protected. Id. This is consistent with the Colorado right to bear arms' express exclusion of "the practice of carrying concealed weapons," Colo. Const. art. II, §13, which suggests that carrying weapons unconcealed would be presumptively protected.

All these cases speak of carrying in most public places; they often leave room for restrictions on carrying in particular places, such as businesses that serve liquor, churches, or polling places. See infra note 342.

313 See City of Cape Girardeau v. Joyce, 884 S.W.2d 33 (Mo. Ct. App. 1994); Pierce v. State, 275 P. 393 (Okla. Crim. App. 1929); Commonwealth v. Ray, 272 A.2d 275, 278-79 (Pa. Super. Ct. 1970), vacated 292 A.2d 410 (Pa. 1972); Masters v. State, 685 S.W.2d 654 (Tex. Crim. App. 1985) (per curiam); see also In re Bastiani, 2008 WL 5455690, at *2 (N.Y. County Ct. Dec. 15, 2008) (applying Second Amendment). But see Cockrum v. State, 24 Tex. 394, 401-02 (1859) (taking the view that the right to bear arms includes the right to carry them); Galloway v. State, 69 S.W.2d 89, 90 (Tex. Crim. App. 1933) (per curiam) (likewise).

314 See Robert Dowlut & Janet A. Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okla. City U. L. Rev. 177, 215-16 (1982); Lund, supra note 171, at 73-74.

315 Bureau of Justice Statistics, supra note 270, at tbl.61.

316 Id.

317 E.g., Boyce, 658 P.2d at 578-79.

318 The ordinance in Boyce applied whenever a person carried a loaded magazine together with an unloaded gun, see Portland, Or., Municipal Code §14A.60.010(B) (2009), but some such statutes only apply when the ammunition is physically present in or attached to the gun, see, e.g., Cal. Penal Code §§12001(a)(1), (c), (j), 12031(a)(1), (g) (West 2000 & Supp. 2009); People v. Clark, 53 Cal. Rptr. 2d 99, 104 (Ct. App. 1996); Case Alert Memorandum From Paul R. Coble, Law Firm of Jones & Mayer, to All California Police Chiefs and Sheriffs, (Dec. 4, 2008), http:// www.hoffmang.com/firearms/carry/CPOA-Client-Alert-12042008.pdf.

319 A requirement that one carry the gun unloaded would be much more burdensome than the requirement that one carry only a 6- or 8-round magazine, and reload if that magazine is emptied, see supra pp. 1487-88. The initial loading would be required whenever the gun is needed for self-defense; the reloading would be required only in the very rare circumstances, see id., when more than six or eight rounds are needed.

320 Not while driving very safely, but presumably those enraged enough to contemplate shooting would be enraged enough to depart from the safest course of driving conduct.

321 Nat'l Ctr. for Injury Prevention & Control, supra note 289 (intent or manner of the injury 'unintentional,' cause or mechanism of the injury 'firearm,' years 1999 to 2005); id. (intent or manner of the injury 'homicide,' cause or mechanism of the injury 'firearm,' years 1999 to 2005).

322 Cf. Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Village of Stratton, 536 U.S. 150, 169 (2002) (rejecting the government's argument that a licensing requirement for door-to-door noncommercial solicitors was necessary to stop criminals who might pretend to be such solicitors, by pointing out that criminals would likely just shift to pretending to "ask for directions or permission to use the telephone" or to "pos[ing] as surveyers [sic] or census takers"); McIntyre v. Ohio Elec. Comm'n, 514 U.S. 334, 352-53 (1995) (rejecting the government's argument that a ban on anonymous speech was necessary to prevent fraud and libel, by pointing out that the defrauders and libelers would likely not abide by the requirement that they sign their true names, and would instead "use false names and addresses in an attempt to avoid detection").

323 Nat'l Research Council, supra note 95, at 150; Hahn et al., supra note 96, at 54. Even Philip Cook, probably the leading American pro-gun-control criminologist, takes the view that "Whether the net effect of relaxing concealed-carry laws is to increase or reduce the burden of crime, there is good reason to believe that the net [change] is not large," and that concealed carry permit holders "are at fairly low risk of misusing guns, consistent with the relatively low arrest rates observed to date for permit holders." Philip J. Cook, Jens Ludwig & Adam M. Samaha, Gun Control After Heller: Threats and Sideshows From a Social Welfare Perspective, 56 UCLA L. Rev. 1041, 1082 (2009). This should be at least as true as to a regime that allowed open carry, perhaps with a nondiscretionary licensing scheme (much like the nondiscretionary licensing scheme that Cook is discussing when he refers to concealed carry permit holders).

324 See State v. Hamdan, 665 N.W.2d 785, 809 (Wis. 2003) ("Requiring a storeowner who desires security on his own business property to carry a gun openly or in a holster is simply not reasonable. Such practices would alert criminals to the presence of the weapon and frighten friends and customers."). And the risk of frightening others would remain even when someone is carrying outside his property, though State v. Cole, 665 N.W.2d 328, 344 (Wis. 2003), holds that this burden on the right is justifiable when the carrying is outside one's business.

325 In Texas, for instance, over 300,000 people have concealed carry licenses. See Texas Department of Public Safety, Demographic Information (Jan. 5, 2009), http://www.txdps.state.tx.us/administration/crime_ records/chl/PDF/ActLicAndInstr/ ActiveLicandInstr2008.pdf. In Florida, the number is over 500,000. See Florida Department of Agriculture and Consumer Services, Number of Licensees by Type, http:// licgweb.doacs.state.fl.us/stats/licensetypecount.html (last visited May 11, 2009). This is only about 1.5-3 percent of the adult population, but chances are that someone in Texas or Florida will come across a concealed carry licenseholder every day.

326 One piece of evidence for this is that, in states that allow concealed carry, 1 to 4 percent of the adult population gets a license. See, e.g., supra note 325. But in states that allow only open carry, open carry appears to be much rarer. As in NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)--where the Court found a First Amendment problem with the government's forcing the NAACP to list its members--"it is not sufficient to answer...that whatever repressive effect compulsory [self-identification of gun carriers] follows not from state action but from private community pressures. The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power represented by the [open-carry requirement] that private action takes hold." Id. at 463.

327 See, e.g., Donna Lewinwand, Four States Considering Open-Carry Gun Laws, USA Today, Feb. 12, 2009, at 3A; OpenCarry.org, A Right Unexercised Is a Right Lost, http://opencarry.org (last visited Mar. 6, 2009).

328 See, e.g., Mary Bowers, Getting It Off Your Chest, Guardian (U.K.), Apr. 23, 2008, (Comment & Features), at 16.

329 See, e.g., Buckley v. Am. Constitutional Law Found., Inc., 525 U.S. 182, 199 (1999); McIntyre v. Ohio Elec. Comm'n, 514 U.S. 334, 341-42 (1995); NAACP v. Alabama ex rel. Patterson, 357 U.S. at 462-63.
Police stops of someone who is carrying openly might not be ill-motivated the way that police harassment of unpopular speakers might be: A police officer might be reasonably interested in a visibly armed person's intentions, even if being openly armed isn't a crime. But the burden on the exercise of constitutional rights stemming from such police reaction remains present.

330 On Wearing Concealed Arms, Daily Nat'l Intelligencer, Sept. 9, 1820, at 2 (paragraph breaks added).

331 Willie Nelson, Pancho & Lefty, on Pancho & Lefty (Sony Records 1990) ("Pancho was a bandit boy / his horse was fast as polished steel / He wore his gun outside his pants / for all the honest world to feel"). This is a modern source, of course, but one that also captures well the 1800s sentiments.

332 State v. Smith, 11 La. Ann. 633 (1856).

333 See District of Columbia v. Heller, 128 S. Ct. 2783, 2815-17 (2008).

334 See, e.g., Akhil Reed Amar, The Second Amendment: A Case Study in Constitutional Interpretation, 2001 Utah L. Rev. 889, 907-09.

335 Under this view, the right to bear arms should now be read as protecting concealed carry, albeit perhaps with a shall-issue licensing scheme, see infra Part II.H, though not necessarily protecting open carry, which unduly worries observers and can be prohibited without interfering with people's ability to defend themselves by concealed carry. Some states in fact allow licensed concealed carry, and make licenses broadly available to law-abiding adults, but ban open carry. See, e.g., Ark. Code Ann. §§5-73-301, - 309, -315 (Supp. 2007) (providing for broadly available licenses to carry concealed firearms); Ark. Code Ann. §5-73-120 (2005) (otherwise banning the carrying of firearms, including open carrying).

336 See, e.g., State v. Dees, 669 P.2d 261, 264 (N.M. Ct. App. 1983) (upholding this as a reasonable regulation); Clark v. State, 527 S.W.2d 292, 294 (Tex. Ct. App. 1975) (doing likewise); Second Amendment Found. v. City of Renton, 668 P.2d 596 (Wash. Ct. App. 1983) (likewise); Tenn. Op. Att'y Gen. No. 04-020 (2000) (taking the view that such a regulation is constitutionally permissible).

337 See, e.g., State v. Lake, 918 P.2d 380, 382-83 (N.M. Ct. App. 1996) (upholding such a law even when "sales of liquor were not permitted at the time [the gun carrier] was in the store and he did not intend to purchase or possess alcohol within the store," using a tenuous argument based on the hypothetical risk that some other patron may be drunk and come back to the store while the gun carrier is there).

338 Compare, e.g., City of Baton Rouge & East Baton Rouge Parish, La. Code of Ordinances §13:95.3(a), (c) (2009) (banning guns from the premises of places "where alcoholic beverages are sold and/or consumed on the premises," and specifically including parking lots) with Mich. Comp. Laws Ann. §28.425*o*(1)(d), (3) (West Supp. 2009) (banning guns from the premises of bars or taverns "where the primary source of income of the business is the sale of alcoholic liquor by the glass and consumed on the premises," but specifically excluding parking lots).

339 See, e.g., Shaila Dewan, Suspect Kills 3, Including Judge, at Atlanta Court, N.Y. Times, Mar. 12, 2005, at A1.

340 See, e.g., United States v. Davis, No. 05-50726, 2008 U.S. App. LEXIS 26934 (9th Cir. Nov. 21, 2008) (upholding conviction for carrying a gun onto an airplane); Minich v. County of Jefferson, 919 A.2d 356, 360-61 (Pa. Commw. Ct. 2007) (upholding county's decision to ban members of the public from bringing guns into a courthouse).

341 I say "nearly" because no security system is foolproof. See, e.g., Jeannette Rivera-Lyles et al., Man Sneaks 14 Guns Into Jet's Cabin at OIA, Orlando Sentinel, Mar. 7, 2007, at A1.

342 See Isaiah v. State, 58 So. 2d 53, 56 (Ala. 1912) (McClellan, J., concurring); Strickland v. State, 72 S.E. 260, 264 (Ga. 1911); Hill v. State, 53 Ga. 473 (1874); State v. Shelby, 2 S.W. 468 (Mo. 1886), characterizing State v. Wilforth, 74 Mo. 528 (1881); State v. Kerner, 107 S.E. 222, 225 (N.C. 1921); Walter v. State, 16 Ohio C.C. (n.s.) 523, 524 (Cir. Ct. 1905); Andrews v. State, 50 Tenn. (3 Heis.) 165 (1871); English v. State, 35 Tex. 473, 478-79 (1872); Weapon Searches in Courthouses, Alaska Op. Att'y Gen. (Inf.) 241 (1991).

343 128 S. Ct. 2783, 2816-17 (2008); see also William Van Alstyne, The Second Amendment and the Personal Right to Arms, 43 Duke L.J. 1236, 1254 (1994) (defending a broad view of the right to bear arms, but suggesting that restrictions on carrying guns "in courtrooms or in public schools" are constitutional).

344 See, e.g., Kristin Bender, Suspect Faces Trial in Wife's Shooting at Oakland Church, Oakland Trib., Mar. 14, 2008.

345 18 U.S.C.A. §§921(a)(25), 922(q) (West 2000 & Supp. 2008). An earlier version of the Act was struck down on Commerce Clause grounds by United States v. Lopez, 514 U.S. 549 (1995), but the statute was reenacted to prohibit possession of a "firearm that has moved in or that otherwise affects interstate or foreign commerce," and this has since been upheld against a Commerce Clause challenge, see, e.g., United States v. Dorsey, 418 F.3d 1038 (9th Cir. 2005). For the rare case considering the constitutionality of the Act under the Second Amendment, see United States v. Lewis, Crim. No. 2008-45, 2008 WL 5412013, at *2 (D.V.I. Dec. 24, 2008) ("It is beyond peradventure that a school zone, where Lewis is alleged to have possessed a firearm, is precisely the type of location of which Heller spoke. Indeed, Heller unambiguously forecloses a Second Amendment challenge to that offense under any level of scrutiny."); Government's Opposition to Defendant's Motion to Suppress at 2, United States v. Lewis, Crim. No. 2008-45, 2008 WL 5412013 (D.V.I. Dec. 24, 2008) (noting that the gun was found in the car defendant was driving, with no mention that the car was actually being driven on school property).

346 18 U.S.C. §§922(q)(2)(B)(i)-(ii) (2006).

347 See Nat'l Rifle Ass'n Inst. for Legislative Action, Compendium of State Firearm Laws (2003), http://www.nraila.org/media/misc/Compendium.htm.

348 See Nat'l Rifle Ass'n Inst. for Legislative Action, Fact Sheet: Right-to-Carry (2008), http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=18.

349 Montana tries to avoid the effect of the federal law by providing, in Mont. Code Ann. §45-8-360 (2007), that "[i]n consideration that the right to keep and bear arms is protected and reserved to the people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent, felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act." This, though, likely doesn't exempt Montanans from the federal Act, which seems to require some individualized investigation for each license: 18 U.S.C. §922(q)(2)(B)(ii) (2006) exempts license-holders only if "the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license."

350 One can fault the federal government for this, or fault the state governments for not providing an easy licensing system that allows people to get licenses that would exempt them from federal law. But in any event, gun carrying is indeed banned within one thousand feet of schools in those states, albeit by a combination of federal and state legal regimes.

351 Cal. Penal Code §626.9 (West Supp. 2009); Wis. Stat. Ann. §948.605 (West 2008).

352 See supra note 318.

353 See Nat'l Rifle Ass'n Inst. for Legislative Action, supra note 347.

354 La. Rev. Stat. Ann. §14:95.2(A), (C)(5), (E) (2004). The law applies to people of all ages, but excludes carrying under a concealed handgun permit; such permits are unavailable to 18-to-20-year-olds, La. Rev. Stat. Ann. §40:1379.3(C)(4) (2008). The law exempts "[a]ny constitutionally protected activity which cannot be regulated by the state, such as a firearm contained entirely within a motor vehicle," La. Rev. Stat. Ann. §14:95.2(C)(5), but this just means that 18-to-20-year-olds may carry near a school only if the right to bear arms is read as protecting such carrying. There is also an exception for university students possessing firearms in their dormitory rooms, or on their way to or from their cars. Id. §14:95.2(C)(8).

355 Aurora, Ill., Code of Ordinances §29-43(a)(4), (12) (2009).

356 See, e.g., Doe v. Portland Hous. Auth., 656 A.2d 1200, 1201 (Me. 1995) (holding such a lease condition to be preempted by state firearms law); Stipulation Re Settlement, Doe v. S.F. Hous. Auth., No. 3:08-cv-03112-THE (N.D. Cal. June 27, 2008) (agreeing to eliminate such a lease condition); Richmond Tenants Org., Inc., v. Richmond Redevelopment & Hous. Auth., 751 F. Supp. 1204 (E.D. Va. 1990) (upholding such a lease condition against a statutory challenge, but not considering the Virginia Constitution's right to bear arms), aff'd, 947 F.2d 942, 1991 WL 230214 (4th Cir. 1991) (unpublished); H.R. 4062, 103d Cong. (1994) (proposing that public housing tenants be allowed to vote on whether to ban gun possession in the projects in which they live); S.B. 730, Gen. Assem., Jan. Sess. (Conn. 1995) (proposing ban on gun possession in public housing); Tex. Op. Att'y Gen. DM-71 (1991) (concluding such a lease condition is barred by state law); Robert Dowlut, Bearing Arms in State Bills of Rights, Judicial Interpretation, and Public Housing, 5 St. Thomas L. Rev. 203, 212-14 (1993) (describing and criticizing such a policy in Chicago); Lloyd L. Hicks, Guns in Public Housing: Constitutional Right or Prescription for Violence?, 4 J. Affordable Housing & Community Dev. L. 153, 163 (1995) (discussing these policies without closely analyzing the constitutional question).

357 See 720 Ill. Comp. Stat. Ann. §§5/24-1(a)(10) (West 2003); Volokh, supra note 192 (discussing how the right to bear arms, as well as other rights, should apply to restrictions on stun gun possession and irritant spray possession).

358 Aurora, Ill., Code of Ordinances §29-43(a)(4), (12).

359 La. Admin. Code tit. 4, § 1729(B)(3)(c)(iv) (2009); Lincoln, Neb., Mun. Code § 9.36.140 (2008).

360 See, e.g., Estes v. Vashon Maury Island Fire Prot. Dist. No. 13, No. 55950-8-I, 2005 WL 2417641 (Wash. Ct. App. Oct. 3, 2005) (upholding a ban on possession by visitors to fire stations).

361 In 2006, for instance, there were 11 homicides in national parks, see Crime in National Parks, Wash. Post, Feb. 28, 2008, available at http:// www.washingtonpost.com/wp-dyn/content/graphic/2008/02/28/GR2008022800363.html, though there were only 13.2 million overnight stays. See U.S. Census Bureau, Statistical Abstract of the United States: 2009, tbl.1212 (2009), http:// www.census.gov/compendia/statab/tables/09s1212.pdf; National Park Serv., Director's Order #82: Public Use Data Collecting and Reporting Program, http:// www.nps.gov/policy/DOrders/DO-82draft.htm (last visited Apr. 5, 2009) (defining overnight stay as "[o]ne night within a park by a visitor"). If even two of the homicides were of overnight visitors (a subject on which we can only speculate, since the National Park Service doesn't collect data on whether the victims were overnight visitors), this would yield an annualized homicide rate of 5.5 per 100,000 people per year, roughly comparable to a national rate of 5.7 per 100,000 people per year. FBI, U.S. Dep't of Justice, Crime in the United States tbl.1 (2006), http://www.fbi.gov/ucr/cius2006/data/table_01.html; E-mail From Amy Atchison, UCLA Law Library to Author (Feb. 6, 2009, 14:51 PST) (on file with author) (reporting on Atchison's conversation with the National Park Service).

362 See Mich. Coal. for Responsible Gun Owners v. City of Ferndale, 662 N.W.2d 864, 871 (Mich. Ct. App. 2003) (suggesting that the government might be able to "create gun-free zones," in case involving ban on possession in city buildings, but not definitively reaching the constitutional question because it found the ordinance was preempted); Tenn. Op. Att'y Gen. No. 04-020, at *2 (2004) (concluding that "the State has authority to prohibit or regulate the possession and use of firearms on property that it owns").

363 Lincoln Park Hous. Comm'n v. Andrew, No. 244259, 2004 WL 576260, at *3 (Mich. Ct. App. Mar. 23, 2004) (citations omitted).

364 Mich. Const. art. 1, §6, provides, "Every person has a right to keep and bear arms for the defense of himself and the state," which clearly includes an individual self-defense right. See also People v. Zerillo, 189 N.W. 927, 929 (Mich. 1922) (using this provision to strike down a ban on gun possession by noncitizens).

365 The same criticism applies to the Maine Superior Court's conclusion that a ban on gun possession in public housing is constitutional. Doe v. Portland Hous. Auth., No. CV-92-1408, 1993 Me. Super. LEXIS 359 (Me. Super. Ct. Dec. 29, 1993), rev'd on statutory grounds, 656 A.2d 1200 (Me. 1995). There too the court's reasoning would have equally upheld gun prohibitions imposed even on private property (not just government-owned property), though perhaps limited to dangerous apartment buildings: The court reasoned that the ban was a "reasonable...regulation" given that (1) the housing complexes "have unique tendencies for violence and even criminal behavior that specially threaten the health, safety and welfare of the residents," stemming from "the congregate closeness of the living arrangements and the resulting relationships among the residents[, which] tend to generate an atmosphere of volatility," and (2) the special complexes for "senior citizens and the disabled" house many people who have "mental or emotional problems" which leads "to assault, vandalism, rowdyism and similar disturbances." Id. at *19, 21-22. But it's hard to see how the Maine Constitution's expressly individual right to bear arms could rightfully be denied to non-criminal, non-mentally-ill people simply because they have the poor fortune to live around dangerous people--precisely the scenario where the right to bear arms is most useful to a law-abiding citizen.

Certain kinds of guns and ammunition may be especially dangerous in apartment buildings, whether publicly or privately owned, because the apartments are separated by only a single wall; this increases the risk that a bullet would injure or kill a neighbor. But this concern has never been seen as justifying total bans on all gun possession in all apartment buildings. And it would in any case not justify bans on shotguns, which fire small pellets that are highly unlikely to go through a wall or retain their lethality even if they do. Likewise, it wouldn't justify bans on handguns that are loaded with special frangible ammunition, which is designed to similarly not go through walls.

366 46 Or. Op. Att'y Gen. 122, 127-28 (1988) (citation omitted).

367 See Ark. Op. Att'y Gen. No. 94-093 (1994) (expressing uncertainty about whether a ban on firearms in public housing would be unconstitutional, but not discussing the government's proprietary rights).

368 See Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995) (discussing public high school athletes); Wyman v. James, 400 U.S. 309 (1971) (discussing welfare recipients).

369 See Snepp v. United States, 444 U.S. 507 (1980).

370 See Webster v. Reproductive Health Servs., 492 U.S. 490 (1989); see also Nordyke v. King, 563 F.3d 439, 460 (9th Cir. 2009) (citing Harris v. McRae, 448 U.S. 297, 315-16 (1980), which held that the government could refuse to fund abortions using government

money, for the proposition that the government should have broad authority to restrict arms possession on government property, at least "where high numbers of people might congregate").

371 See Int'l Soc'y for Krishna Consciousness (ISKCON) v. Lee, 505 U.S. 672 (1992).

372 Cf. 46 Or. Op. Att'y Gen. 122, 131-32 (1988) (concluding that it is probably permissible to ban visitors to public housing from bringing guns).

373 E.g., Resident Action Council v. Seattle Hous. Auth., 174 P.3d 84 (Wash. 2008) (striking down ban on posting material on the outside of one's apartment door).

374 E.g., Pratt v. Chicago Hous. Auth., 848 F. Supp. 792 (N.D. Ill. 1994) (holding that warrantless searches for guns in public housing units are likely unconstitutional, and silently assuming that the Fourth Amendment rules are the same in publicly owned housing as they are in other homes).

375 See, e.g., Nordyke, 563 F.3d at 460 (taking the view that at least those parks "where high numbers of people might congregate" are "sensitive places" where the government may indeed ban private gun carrying).

376 Va. Op. Att'y Gen. No. 05-078 (2006) (ban on carrying concealed weapons by university students and employees is permissible, though not discussing possession in dorm rooms).

377 La. Op. Att'y Gen. No. 94-131 (1994) (suggesting that Second Amendment protects university student's right to possess guns in dorm rooms).

378 D.C. Code §7-2507.02 (2001).

379 See, e.g., Conn. Gen. Stat. §29-37i (2003); 46 Or. Op. Att'y Gen. No. 122, 131 (1988) (suggesting this would be constitutional, at least as to housing projects--though maybe more broadly--and as to children under 16).

380 See, e.g., Conn. Gen. Stat. §29-37i. But see District of Columbia v. Heller, 128 S. Ct. 2783, 2818-19 (2008) (taking the view that the D.C. law did not allow such actions even when self-defense was necessary, and thus presumably allowed guns to be kept at home only to be used at target ranges or for hunting).

381 See supra Part II.C.1. Fla. Op. Att'y Gen. 2000-42 (2000), opines that "[a] requirement that gun owners secure their firearms with a gun lock would not appear to interfere with that right [to bear arms]," but doesn't explain why this is so. When someone is woken in the middle of the night when an intruder is breaking into his house, even the few seconds it takes to unlock the lock may indeed be a substantial "interfere[nce]" with "[t]he right of the people to keep and bear arms in defense of themselves," Fla. Const. art. I, §8(a).

382 See Heller, 128 S. Ct. at 2819-20 (acknowledging the Framing-era laws restricting the storage of gunpowder in order to prevent fire, and noting that the Court's analysis does not "suggest the invalidity of laws regulating the storage of firearms to prevent accidents," but not discussing exactly what sorts of regulations would remain valid and what sorts would be too burdensome to be constitutional).

383 See Nat'l Research Council, supra note 95, at 217-20 (noting the conflict in the studies, and concluding that "until independent researches can perform an empirically based assessment of the potential statistical and data related problems, the credibility of the existing research cannot be assessed").

384 See supra Part I.C.2.b.

385 Cf. Robinson v. Pioche, Bayerque & Co., 5 Cal. 460, 460 (1855).

386 But see Beckett v. People, 800 P.2d 74, 83 (Colo. 1990) (Kirshbaum, J., dissenting) (asserting a constitutional right to pick up a gun for immediate self-defense even when intoxicated).

387 For cases holding that the right to bear arms doesn't apply to carrying or possession on the person while intoxicated, see Gibson v. State, Nos. A-6082, A-6162, 1997 WL 14147 (Alaska Ct. App. Jan. 17, 1997) (holding that the right does not apply to possession on the person while intoxicated, as applied in the home, but reserving the question whether this would apply to constructive possession); People v. Garcia, 595 P.2d 228, 230-31 & n.4 (Colo. 1979) (likewise as to possession on the person while intoxicated, but noting that mere ownership doesn't suffice under the statute for possession, and that possession must be determined by looking at "the proximity

of the defendant to the firearm," "the ordinary place of storage of the firearm," "the defendant's awareness of the presence of the firearm," and "locks or other physical impediments which preclude ready access to the firearm"); City of Salina v. Blaksley, 72 Kan. 230 (1905) (holding that the right does not apply as to carrying while intoxicated); State v. Shelby, 2 S.W. 468 (Mo. 1886) (likewise as to carrying while intoxicated); State v. Rivera, 853 P.2d 126, 130 (N.M. 1993) (likewise as to possessing "on the person, or in close proximity thereto, so that the weapon is readily accessible for use" while intoxicated); State v. Kerner, 107 S.E. 222, 225 (N.C. 1921) (dictum) (likewise as to carrying while intoxicated); State v. Paolantonio, No. KS-2006-0262A, 2006 WL 2406735 (R.I. Super. Aug. 15, 2005) (likewise as to carrying while intoxicated).

388 Something many friends might be reluctant to do, for instance if they have children at home and no gun safe, or if they are worried that the requester is trying to hide a gun that had been used in crime.

389 Such people are of course unlikely to be caught unless they misuse their guns while drunk. But some of them might be caught: Imagine, for instance, that someone with a grudge against an ex-lover or an ex-boss calls the police to accurately report that the person is drunk and is known to keep a gun in the home. And if the answer to that hypothetical is that the police rightly would not investigate this unless there was evidence the person was actually a danger to others, then this just reinforces the notion that a law banning possession while intoxicated is too broad.

390 See, e.g., Conn. Gen. Stat. §53-206d (2007); Idaho Code Ann. §18-3302B (2004).

391 Mo. Ann. Stat. §571.030.1(5) (West 2008).

392 E.g., id. §571.020.1 (banning possession of classes of weapons, including machine guns).

393 See, e.g., District of Columbia v. Heller, 128 S. Ct. 2783, 2812-13 (2008) (endorsing the statement in United States v. Cruikshank, 92 U.S. 542, 553 (1876), that the Second Amendment protected a right to possess guns for "a lawful purpose"); United States v. Jackson, 555 F.3d 635, 636 (7th Cir. 2009); United States v. Bowers, No. 8:05CR294, 2008 WL 5396630, at *2 (D. Neb. Dec. 23, 2008); Cockrum v. State, 24 Tex. 394, 401-03 (1859); State v. Daniel, 391 S.E.2d 90, 97 (W. Va. 1990).

394 See, e.g., Biddinger v. State, 846 N.E.2d 271, 278 (Ind. Ct. App. 2006) (holding that mere possession of a firearm may not be used as an aggravating factor at sentencing).

395 See Dawson v. Delaware, 503 U.S. 159 (1992).

396 People v. Atencio, 878 P.2d 147, 150 (Colo. Ct. App. 1994); State v. Blanchard, 776 So. 2d 1165, 1174 (La. 2001); State v. Gurske, 118 P.3d 333, 335 (Wash. 2005) (one in a long line of Washington state cases on the subject); see also Brewer v. Commonwealth, 206 S.W.3d 343, 347-48 (Ky. 2006) (relying partly on the right to bear arms in holding that a firearm may not be forfeited based on the owner's conviction of a crime unless there's a nexus between the firearm and the crime).

397 Gurske, 118 P.3d at 335-36.

398 Cal. Penal Code §§12071(b)(3)(A), 12072(c)(1) (Deering Supp. 2009); Haw. Rev. Stat. Ann. §134-2(e) (LexisNexis Supp. 2008); 720 Ill. Comp. Stat. Ann. 5/24-3(A)(g) (West 2003); R.I. Gen. Laws. §§11-47-35(a)(i), -35.1, -35.2 (Supp. 2008); Legal Community Against Violence, Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws 134 (2008), http:// www.lcav.org/library/reports_analyses/regulating_guns.asp.

399 See Fla. Stat. Ann. §790.0655(1) (West Supp. 2009); Iowa Code Ann. §724.20 (West 2003); Md. Code Ann., Pub. Safety §§ 5-123, 5-124 (LexisNexis 2003); Minn. Stat. Ann. §624.7132, subdivs. 4, 12 (West 2003); N.J. Stat. Ann. §§2C:58-2a(5)(a), -3f (West 2005); S.D. Codified Laws §23-7-9 (2006); Wis. Stat. Ann. §175.35(2)(d), (2g)(c) (West 2006); Legal Community Against Violence, supra note 398, at 134-35. The Maryland and Minnesota laws also cover so-called "assault weapons," but not most rifles and shotguns. Conn. Gen. Stat. Ann. §29-37a (West 2003) covers only long guns, not handguns.

400 Consider Ernest Hemingway and Kurt Cobain. Each year, over 30 percent of the gun suicides for which a specific gun type is reported in Injury Facts are shotgun suicides, and over 10 percent are rifle suicides. See Nat'l Safety Council, Injury Facts 17 (1999) (1994-96 data).

401 See Hahn et al., supra note 96, at 52.

402 See N.Y. Penal Law §§265.00.3, 400.00 (McKinney 2008); Mass. Ann. Laws ch. 140, §129B(3) (LexisNexis 2007); Wis. Stat. Ann. §175.35(2) (West 2006). Of course, both the background check and the cooling off period rationale only make sense when the buyer doesn't already own a gun (or if the buyer doesn't already own a handgun, assuming the check is focused on handguns). If the buyer already owns a gun, then any possible benefit in delaying his acquisition of another gun is likely to be vanishingly slight. See generally Gary Kleck, Point Blank: Guns and Violence in America 333 (1991).

403 See, e.g., U.S. Dep't of Justice, Office of Justice Programs, Background Checks for Firearm Transfers, 2005, at 4 (2006).

404 Compare Ky. Op. Att'y Gen. No. 2-271 (1982) (stating a waiting period is constitutional, without detailed discussion), and Tenn. Op. Att'y Gen. No. 89-34 (1989) (likewise), with State v. Kerner, 107 S.E. 222, 225 (N.C. 1921) (rejecting license requirement for carrying a gun because of a risk that one may immediately need to carry a gun in circumstances that leave one no time to get a permit).

405 See, e.g., 137 Cong. Rec. 10,288, 10,291 (1991) (discussing an incident in which a woman, Bonnie Elmasri, wanted to buy a gun after a death threat from her husband, was told there was a 2-day waiting period, and was killed the next day, together with her two sons, by her husband); Inge Anna Larish, Why Annie Can't Get Her Gun: A Feminist Perspective on the Second Amendment, 1996 U. Ill. L. Rev. 467, 496.

406 That's what fourteen days ends up approximately being, for a person of average age.

407 Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992).

408 Compassion in Dying v. Washington, 79 F.3d 790, 833 (9th Cir. 1996).

409 Or. Rev. Stat. §127.840 (2007).

410 E.g., 42 C.F.R. §441.253(d) (2007) (requiring a 30-day waiting period for sterilizations for which federal payment is provided).

411 See, e.g., In re Grady, 426 A.2d 467 (N.J. 1981) (so holding).

412 See Alaska Stat. §§25.05.091, 25.05.161 (2008) (three days, unless the court waives the waiting period); 750 Ill. Comp. Stat. Ann. 5/207 (West Supp. 2009) (one day, unless the court waives the waiting period); Wis. Stat. Ann. §765.08 (West 2008) (5 days, unless the county clerk waives the waiting period).

413 See In re Kilpatrick, 375 S.E.2d 794, 795 n.1 (W. Va. 1988) (noting that a challenge to a three-day waiting period was made but was not addressed in the brief and was therefore waived).

414 Burns v. Fortson, 410 U.S. 686, 687 (1973) (upholding the requirement but suggesting that "the 50-day registration period approaches the outer constitutional limits in this area").

415 See, e.g., Douglas v. Brownell, 88 F.3d 1511, 1523-24 (8th Cir. 1996) (striking down a requirement of 5 days' notice); Grossman v. City of Portland, 33 F.3d 1200, 1204-07 (9th Cir. 1994) (striking down a requirement of 7 days' notice for demonstrations, when requirement covered even small groups); NAACP v. City of Richmond, 743 F.2d 1346, 1356-57 (9th Cir. 1984) (striking down a requirement of 20 days' notice and suggesting that the upper bound might be as low as two or three days). Lower courts have also suggested that permit requirements would be impermissible for groups of a few people, who don't materially implicate the city's interests in traffic control or adequate policing. Douglas, 88 F.3d at 1524;Grossman, 33 F.3d at 1206-08;Rosen v. Port of Portland, 641 F.2d 1243, 1248 n.8 (9th Cir. 1981) (holding that even a 24-hour notice requirement would be unconstitutional for small groups).

416 See Planned Parenthood of Middle Tenn. v. Sundquist, 38 S.W.3d 1, 24 (Tenn. 2000).

417 See United States v. Nation, 9 C.M.A. 724, 727 (1958) ("For a commander to restrain the free exercise of a serviceman's right to marry the woman of his choice for six months just so he might better reconsider his decision is an arbitrary and unreasonable interference with the latter's personal affairs which cannot be supported by the claim that the morale, discipline, and good order of the command require control of overseas marriages."); Carter v. Dutton, No. 93-5703, 1994 WL 18006, at *1 (6th Cir. Jan. 21, 1994) (noting trial court decision striking down a one-year waiting period for marriages between inmates and non-inmates).

418 See, e.g., Church of the Am. Knights of the Ku Klux Klan v. City of Gary, 334 F.3d 676, 682 (7th Cir. 2003). See generally Shuttlesworth v. City of Birmingham, 394 U.S. 147, 163 (1969) (Harlan, J., concurring) ("[T]iming is of the essence in politics. It is almost impossible to predict the political future; and when an event occurs, it is often necessary to have one's voice heard promptly,

if it is to be considered at all. To require Shuttlesworth to submit his parade permit application months in advance would place a severe burden upon the exercise of his constitutionally protected rights.").

419 See, e.g., Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 880 (1992); Women's Med. Prof'l Corp. v. Voinovich, 130 F.3d 187, 203 (6th Cir. 1997); Planned Parenthood of Del. v. Brady, 250 F. Supp. 2d 405 (D. Del. 2003).

420 Cf., e.g., Fla. Stat. Ann. §790.33(2)(d)(6) (West 2007) (exempting from the waiting period, which would normally be up to 3 days, "[a]ny individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement"); Minn. Stat. Ann. §624.7132 subdiv. 4 (West 2003) (providing that "the chief of police or sheriff may waive all or a portion of the five business day waiting period in writing if the chief of police or sheriff finds that the transferee requires access to a pistol or semiautomatic military-style assault weapon because of a threat to the life of the transferee or of any member of the household of the transferee"); Ohio Rev. Code Ann. §2923.1213 (West 2006 & Supp. 2008) (providing for a temporary emergency license to carry a concealed weapon when the applicant provides a sworn statement "that the [applicant] has reasonable cause to fear a criminal attack upon the [applicant] or a member of the [applicant's] family, such as would justify a prudent person in going armed," or other evidence of such a threat); cf. 18 U.S.C. §922(s)(1)(B) (2006) (exempting transferees from the waiting period for gun purchases if they stated that they "require[] access to a handgun because of a threat to the life of the transferee or any member of the household of the transferee"; this was in effect during the pre-instant-background check era, see id. §922(t)(1)).

421 Cook, Ludwig & Samaha, supra note 323, at 1085; see also Philip J. Cook & Jens Ludwig, The Social Costs of Gun Ownership, 90 J. Pub. Econ. 379, 389-90 (2006) (suggesting that such a tax might vary from $100 to $1800 per household).

422 See Ill. H.B. 0687, 96th Gen. Assem., Reg. Sess. (2009).

423 See Martin v. City of Struthers, 319 U.S. 141, 146 (1943) (striking down ban on door-to-door solicitation, partly on the grounds that "[d]oor to door distribution of circulars is essential to the poorly financed causes of little people"); see also City of Ladue v. Gilleo, 512 U.S. 43, 57 (1994) (striking down ban on display of signs at one's home, partly on the grounds that "[r]esidential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute").

424 See Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (applying substantial burden analysis to a requirement that an abortion be performed by a physician rather than by a physician's assistant); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 886 (1992) (controlling opinion of O'Connor, Kennedy, and Souter, JJ.) (applying the substantial burden analysis to a recordkeeping restriction imposed on abortion providers); id. at 884-85 (applying the substantial burden analysis to a requirement that various information be given to the patient by physicians and not by the physicians' staff); Jackson Women's Health Org. Inc. v. Amy, 330 F. Supp. 2d 820, 824-26 (S.D. Miss. 2004) (finding a substantial burden on women's rights to an abortion in a state law that barred any place other than a hospital or a licensed ambulatory care facility from performing abortions). But see Caswell & Smith v. State, 148 S.W. 1159, 1161, 1163 (Tex. Civ. App. 1912) (upholding--in my view incorrectly--a 50 percent gross receipts tax on the sale of pistols, simply on the grounds that the law "does not infringe or attempt to infringe the right on the part of the citizen to keep and bear arms," including "the right to carry a pistol openly," and reasoning even that "absolute[] prohibit[ion]" of the business of selling pistols would be constitutional).

425 Cook, Ludwig & Samaha, supra note 323, at 1085.

426 See, e.g., Ark. Writers' Project, Inc. v. Ragland, 481 U.S. 221 (1987).

427 E.g., Sullivan v. City of Augusta, 511 F.3d 16, 35-36 (1st Cir. 2007) (demonstrations); National Awareness Found. v. Abrams, 50 F.3d 1159, 1167 (2d Cir. 1995) (charitable fundraising); Stonewall Union v. City of Columbus, 931 F.2d 1130, 1137 (6th Cir. 1991) (demonstrations).

428 See, e.g., Boynton v. Kusper, 494 N.E.2d 135, 138 (Ill. 1986) (striking down a $10 tax on marriage licenses, aimed at funding services for victims of domestic violence, but stressing in dictum that this part of the license fee "has no relation to the county clerk's service of issuing, sealing, filing, or recording the marriage license"); D'Antoni v. Comm'r, N.H. Dep't of Health & Human Servs., 917 A.2d 177, 183 (N.H. 2006) (upholding a $38 marriage license fee because the fee was less than the "incidental expenses related to issuing the licenses").

429 Lubin v. Panish, 415 U.S. 709 (1974).

430 See Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992).

431 Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 886 (1992) (plurality opinion of O'Connor, Kennedy, and Souter, JJ.).

432 Webster v. Reproductive Health Servs., 492 U.S. 490, 517-20 (1989) (plurality opinion); id. at 529-30 (O'Connor, J., concurring in part and concurring in the judgment).

433 Casey, 505 U.S. at 886.

434 See, e.g., id. at 874, 886.

435 See, e.g., Sullivan v. City of Augusta, 511 F.3d 16, 38 (1st Cir. 2007); E. Conn. Citizens Action Group v. Powers, 723 F.2d 1050, 1056 (2d Cir. 1983); Fernandes v. Limmer, 663 F.2d 619, 633 (5th Cir. 1981); see also Murdock v. Pennsylvania, 319 U.S. 105, 113-14 (1943) (so suggesting); Cox v. New Hampshire, 312 U.S. 569, 577 (1941) (likewise).

436 See Lubin v. Panish, 415 U.S. 709, 718-19 (1974) (requiring exemption from filing fee for indigent political candidates); Cent. Fla. Nuclear Freeze Campaign v. Walsh, 774 F.2d 1515, 1523 (11th Cir. 1985) (same as to demonstration permit fee).

437 The right to speak does protect bookstores, but only because they themselves (unlike the paper sellers or computer sellers) are seen as speaking by distributing material that they want to distribute.

438 See District of Columbia v. Heller, 128 S. Ct. 2783, 2816-17 (2008) (stating that "laws imposing conditions and qualifications on the commercial sale of arms" are constitutional); Or. Att'y Gen. Op. Request OP-5881 (1985) (concluding that ban on non-dealer transfers to people who aren't "personally known" to seller, and bans on non-dealers engaging in the business of selling guns, would be constitutional).

439 Compare Caswell & Smith v. State, 148 S.W. 1159, 1161, 1163 (Tex. Civ. App. 1912) (upholding a 50 percent gross receipts tax on the sale of pistols, simply on the grounds that the law "does not infringe or attempt to infringe the right on the part of the citizen to keep and bear arms," including "the right to carry a pistol openly," and reasoning even that "absolute[] prohibit[ion]" of the business of selling pistols would be constitutional), with Dowlut & Knoop, supra note 314, at 215 (arguing that Caswell & Smith was wrong, on the grounds that the tax was "confiscatory"), and Stephen P. Halbrook, The Right to Bear Arms in Texas: The Intent of the Framers of the Bill of Rights, 41 Baylor L. Rev. 629, 683 (1989) (likewise).

440 See, e.g., City of University Heights v. O'Leary, 429 N.E.2d 148 (Ohio 1981) (4-3) (upholding identification card requirement for nonresidents); Mosher v. City of Dayton, 358 N.E.2d 540 (Ohio 1976) (upholding such a requirement for possession); Photos v. City of Toledo, 250 N.E.2d 916 (Ohio Ct. Com. Pl. 1969) (same). But see O'Leary, 429 N.E.2d at 153 (Celebrezze, C.J., dissenting) (arguing that the requirement should be struck down because the law should "require that all limitations [on the right to keep and bear arms] not only be reasonable, but also necessary").

441 See, e.g., State v. Mendoza, 920 P.2d 357 (Haw. 1996) (upholding such a requirement); 50 N.C. Op. Att'y Gen. No. 69, 70 (1981) (stating registration of handguns would be constitutional, because it would be "reasonable" and "would not prohibit the right to keep and bear arms"); see also State v. Hamlin, 497 So. 2d 1369 (La. 1986) (upholding registration requirement for shotguns with barrel of less than eighteen inches).

442 See, e.g., State v. Comeau, 448 N.W.2d 595 (Neb. 1989) (upholding ban on defacing serial number); United States v. Marzzarella, 595 F. Supp. 2d 596 (W.D. Pa. 2009) (likewise).

443 These are sometimes called "ballistic fingerprinting," but this is likely too optimistic a term: The pattern of marks that a gun creates can apparently be changed quite easily, see Eugene Volokh, Crime-Facilitating Speech, 57 Stan. L. Rev. 1095, 1117 & n.100 (2005), though one might guess that a substantial number of criminals will nonetheless fail to do this.

444 Such microstamping would in principle make it easier to find which gun was used in a shooting, if the brass were found at the crime scene. See, e.g., Cal. Penal Code §12126(b)(7) (West Supp. 2009); Cook, Ludwig & Samaha, supra note 323, at 1090. It is unlikely that this will practically do much to fight crime, since people who anticipate using guns for criminal purposes will just buy either an older semiautomatic or a revolver; revolvers don't eject the brass after firing, so microstamping requirements for them would be

useless. But perhaps microstamping might catch some criminals, for instance people who bought the gun for lawful purposes and thus didn't worry about microstamping, or chose a new semiautomatic (perhaps because they liked the semiautomatic's greater capacity, which is usually ten or more rounds as opposed to six to eight rounds for a typical revolver) but then used it for criminal purposes without having the time to buy another gun.

445 See, e.g., Dowlut & Knoop, supra note 314, at 216-17 (reasoning that state constitutions should be read to protect open carrying of a weapon even without a license, but on the grounds that "licensing officials can be very creative in frustrating applicants" and that the exercise of constitutional rights "'cannot be made subject to the will of the sheriff'" (quoting People v. Zerillo, 189 N.W. 927, 928 (Mich. 1922))).

446 Cf. Reynolds, supra note 230, at 481 (defending licensing laws and background checks on originalist grounds); Don B. Kates, Jr., Handgun Prohibition and the Original Meaning of the Second Amendment, 82 Mich. L. Rev. 204, 265 (1983) (likewise).

447 See, e.g., Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 900-01 (1992) (suggesting that reporting requirements are constitutional to the extent they "respect a patient's confidentiality and privacy").

448 See, e.g., Cox v. New Hampshire, 312 U.S. 569 (1941).

449 See, e.g., Buckley v. Am. Constitutional Law Found., Inc., 525 U.S. 182, 191-92 (1999).

450 See, e.g., Riley v. Nat'l Fed'n of the Blind of N.C., Inc., 487 U.S. 781 (1988).

451 See, e.g., Buckley v. Valeo, 424 U.S. 1 (1976).

452 See, e.g., Cal. Pro-Life Council, Inc. v. Randolph, 507 F.3d 1172 (9th Cir. 2007).

453 See, e.g., Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Village of Stratton, 536 U.S. 150, 166-67 (2002).

454 See supra Part II.C.2.

455 I set aside the question whether making gun ownership or concealed carry license records public under state open records acts might be unconstitutional. See generally Kelsey M. Swanson, Comment, The Right to Know: An Approach to Gun Licenses and Public Access to Government Records, 56 UCLA L. Rev. 1579 (2009).

456 This could also happen if the right to bear arms isn't incorporated against the states, and a state doesn't have a right-to-bear-arms provision; in that case, though, the right to bear arms should not stand in the way of registration and confiscation, precisely because there is no constitutional right to bear arms in the state. And it could happen if the right to bear arms isn't incorporated, and a state repeals its right-to-bear-arms provision after registration is implemented (or if a federal constitutional amendment is enacted to repeal the Second Amendment). But a court ought not prohibit registration on right-to-bear-arms grounds for fear that the people will later repeal the right to bear arms; the people are entitled to change the Constitution, and the current Constitution ought not be read as entrenching itself against future constitutional amendments.

457 See, e.g., Vincent Blasi, The Pathological Perspective and the First Amendment, 85 Colum. L. Rev. 449 (1985).

# EXHIBIT 64

The New York Times

March 9, 2013

# Share of Homes With Guns Shows 4-Decade Decline

By SABRINA TAVERNISE and ROBERT GEBELOFF

The share of American households with guns has declined over the past four decades, a national survey shows, with some of the most surprising drops in the South and the Western mountain states, where guns are deeply embedded in the culture.

The gun ownership rate has fallen across a broad cross section of households since the early 1970s, according to data from the General Social Survey, a public opinion survey conducted every two years that asks a sample of American adults if they have guns at home, among other questions.

The rate has dropped in cities large and small, in suburbs and rural areas and in all regions of the country. It has fallen among households with children, and among those without. It has declined for households that say they are very happy, and for those that say they are not. It is down among churchgoers and those who never sit in pews.

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 and 35 percent in the 2000s, according to the survey data, analyzed by The New York Times.

In 2012, the share of American households with guns was 34 percent, according to survey results released on Thursday. Researchers said the difference compared with 2010, when the rate was 32 percent, was not statistically significant.

The findings contrast with the impression left by a flurry of news reports about people rushing to buy guns and clearing shop shelves of assault rifles after the massacre last year at an elementary school in Newtown, Conn.

“There are all these claims that gun ownership is going through the roof,” said Daniel Webster, the director of the Johns Hopkins Center for Gun Policy and Research. “But I suspect the

increase in gun sales has been limited mostly to current gun owners. The most reputable surveys show a decline over time in the share of households with guns."

That decline, which has been studied by researchers for years but is relatively unknown among the general public, suggests that even as the conversation on guns remains contentious, a broad shift away from gun ownership is under way in a growing number of American homes. It also raises questions about the future politics of gun control. Will efforts to regulate guns eventually meet with less resistance if they are increasingly concentrated in fewer hands — or more resistance?

Detailed data on gun ownership is scarce. Though some states reported household gun ownership rates in the 1990s, it was not until the early 2000s that questions on the presence of guns at home were asked on a broad federal public health survey of several hundred thousand people, making it possible to see the rates in all states.

But by the mid-2000s, the federal government stopped asking the questions, leaving researchers to rely on much smaller surveys, like the General Social Survey, which is conducted by NORC, a research center at the University of Chicago.

Measuring the level of gun ownership can be a vexing problem, with various recent national polls reporting rates between 35 percent and 52 percent. Responses can vary because the survey designs and the wording of questions differ.

But researchers say the survey done by the center at the University of Chicago is crucial because it has consistently tracked gun ownership since 1973, asking if respondents "happen to have in your home (or garage) any guns or revolvers."

The center's 2012 survey, conducted mostly in person but also by phone, involved interviews with about 2,000 people from March to September and had a margin of sampling error of plus or minus three percentage points.

Gallup, which asks a similar question but has a different survey design, shows a higher ownership rate and a more moderate decrease. No national survey tracks the number of guns within households.

Andrew Arulanandam, a spokesman for the National Rifle Association, said he was skeptical that there had been a decline in household ownership. He pointed to reports of increased gun

sales, to long waits for gun safety training classes and to the growing number of background checks, which have surged since the late 1990s, as evidence that ownership is rising.

“I’m sure there are a lot of people who would love to make the case that there are fewer gun owners in this country, but the stories we’ve been hearing and the data we’ve been seeing simply don’t support that,” he said.

Tom W. Smith, the director of the General Social Survey, which is financed by the National Science Foundation, said he was confident in the trend. It lines up, he said, with two evolving patterns in American life: the decline of hunting and a sharp drop in violent crime, which has made the argument for self-protection much less urgent.

According to an analysis of the survey, only a quarter of men in 2012 said they hunted, compared with about 40 percent when the question was asked in 1977.

Mr. Smith acknowledged the rise in background checks, but said it was impossible to tell how many were for new gun owners. The checks are reported as one total that includes, for example, people buying their second or third gun, as well as those renewing concealed carry permits.

“If there was a national registry that recorded all firearm purchases, we’d have a full picture,” he said. “But there’s not, so we’ve got to put together pieces.”

The survey does not ask about the legality of guns in the home. Illegal guns are a factor in some areas but represent a very small fraction of ownership in the country, said Aaron Karp, an expert on gun policy at the Small Arms Survey in Geneva and at Old Dominion University in Norfolk, Va. He said estimates of the total number of guns in the United States ranged from 280 million to 320 million.

The geographic patterns were some of the most surprising in the General Social Survey, researchers said. Gun ownership in both the South and the mountain region, which includes states like Montana, New Mexico and Wyoming, dropped to less than 40 percent of households this decade, down from 65 percent in the 1970s. The Northeast, where the household ownership rate is lowest, changed the least, at 22 percent this decade, compared with 29 percent in the 1970s.

Age groups presented another twist. While household ownership of guns among elderly Americans remained virtually unchanged from the 1970s to this decade at about 43 percent, ownership among young Americans plummeted. Household gun ownership among Americans

under the age of 30 fell to 23 percent this decade from 47 percent in the 1970s. The survey showed a similar decline for Americans ages 30 to 44.

As for politics, the survey showed a steep drop in household gun ownership among Democrats and independents, and a very slight decline among Republicans. But the new data suggest a reversal among Republicans, with 51 percent since 2008 saying they have a gun in their home, up from 47 percent in surveys taken from 2000 through 2006. This leaves the Republican rate a bit below where it was in the 1970s, while ownership for Democrats is nearly half of what it was in that decade.

Researchers offered different theories for these trends.

Many Americans were introduced to guns through military service, which involved a large part of the population in the Vietnam War era, Dr. Webster said. Now that the Army is volunteer and a small fraction of the population, it is less a gateway for gun ownership, he said.

Urbanization also helped drive the decline. Rural areas, where gun ownership is the highest, are now home to about 17 percent of Americans, down from 27 percent in the 1970s. According to the survey, just 23 percent of households in cities owned guns in the 2000s, compared with 56 percent of households in rural areas. That was down from 70 percent of rural households in the 1970s.

The country's changing demographics may also play a role. While the rate of gun ownership among women has remained relatively constant over the years at about 10 percent, which is less than one-third of the rate among men today, more women are heading households without men, another possible contributor to the decline in household gun ownership. Women living in households where there were guns that were not their own declined to a fifth in 2012 down from a third in 1980.

The increase of Hispanics as a share of the American population is also probably having an effect, as they are far less likely to own guns. In the survey results since 2000, about 14 percent of Hispanics reported having a gun in their house.

*Allison Kopicki contributed reporting.*

# EXHIBIT 65

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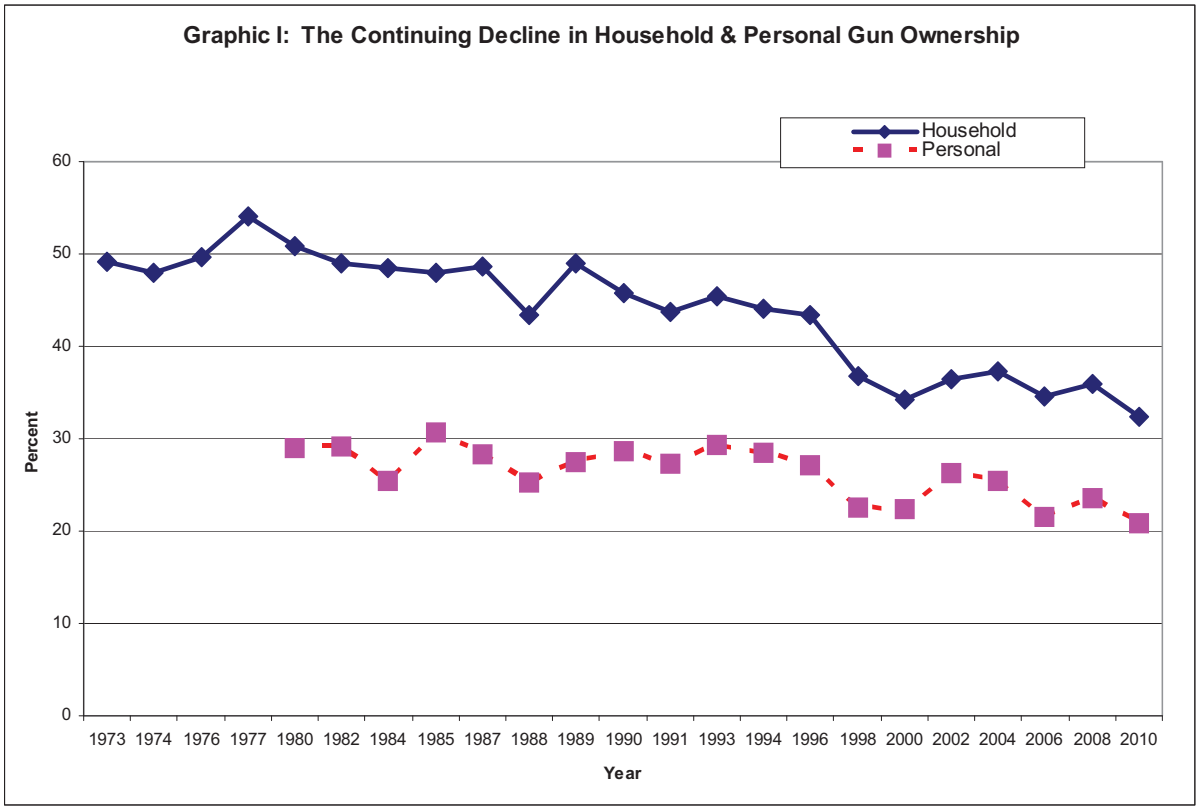
# A Shrinking Minority

## The Continuing Decline of Gun Ownership in America




Gun ownership in America is declining. This is the unavoidable conclusion from new, comprehensive, national data spanning nearly 40 years contained in the General Social Survey (GSS) conducted by the National Opinion Research Center (NORC) at the University of Chicago. The GSS started in 1972 and completed its 28th round in 2010. According to NORC, "Except for the U.S. Census, the GSS is the most frequently analyzed source of information in the social sciences."[1]

[1] General Social Survey (GSS) gun ownership data contained in this study was obtained in March 2011 from the National Opinion Research Center (NORC) by the Violence Policy Center. According to NORC, "The General Social Survey (GSS) is one of NORC's flagship surveys and our longest running project...For the last third of a century the GSS has been monitoring social change and the growing complexity of American society. The GSS is the largest project funded by the Sociology Program of the National Science Foundation. Except for the U.S. Census, the GSS is the most frequently analyzed source of information in the social sciences...It is the only survey that has tracked the opinions of Americans over an extended period of time. The GSS is also a major teaching tool. We know of over 14,000

## Household Gun Ownership

Since the early 1970s the General Social Survey has asked the question: "Do you happen to have in your home (if house: or garage) any guns or revolvers?" According to the GSS data available[2] for the years 1973 to 2010 detailed in the chart below:

- From 1977 to 2010, the percentage of American households that reported having any guns in the home dropped more than 40 percent.
- During this period household gun ownership hit its peak in 1977, when more than half (54 percent) of American households reported having any guns. By 2010, this number had dropped more than 20 percentage points to a low during this period of 32.3 percent of American households reporting having any guns in the home.
- In 2010, less than a third of American households reported having a gun in the home.

**Graphic II: Household Gun Ownership in the United States, 1973 to 2010**

| Year | Percent Households | Year | Percent Households | Year | Percent Households |
|---|---|---|---|---|---|
| 1973 | 49.1 | 1987 | 48.6 | 1998 | 36.7 |
| 1974 | 47.9 | 1988 | 43.4 | 2000 | 34.3 |
| 1976 | 49.7 | 1989 | 48.9 | 2002 | 36.4 |
| 1977 | 54.0 | 1990 | 45.8 | 2004 | 37.3 |
| 1980 | 50.8 | 1991 | 43.7 | 2006 | 34.5 |
| 1982 | 48.9 | 1993 | 45.5 | 2008 | 36.0 |
| 1984 | 48.5 | 1994 | 44.0 | 2010 | 32.3 |
| 1985 | 48.0 | 1996 | 43.4 | | |

research uses such as articles in academic journals, books, and Ph.D. dissertations based on the GSS and about 250,000 students annually who use it in their classes." See http://www.norc.org/gss+website/about+gss/about+gss.htm, downloaded April 14, 2011.

[2] Data contained in chart represent years for which the question was asked during the period cited.

## Personal Gun Ownership

Since 1980, General Social Survey respondents who state that they have a gun in their home are then asked, "Do any of these guns personally belong to you?" The GSS data available for the years 1980 to 2010[3] detailed in the chart below presents information on overall personal gun ownership, male personal gun ownership, and female personal gun ownership.

**Graphic III: Personal Gun Ownership in the United States, 1980 to 2010**

| *Year* | *Percent Overall Personal Ownership* | *Percent Male Personal Ownership* | *Percent Female Personal Ownership* | *Year* | *Percent Overall Personal Ownership* | *Percent Male Personal Ownership* | *Percent Female Personal Ownership* |
|---|---|---|---|---|---|---|---|
| 1980 | 29.0 | 51.7 | 10.5 | 1994 | 28.4 | 46.3 | 12.6 |
| 1982 | 29.1 | 47.2 | 14.3 | 1996 | 27.2 | 44.1 | 12.5 |
| 1984 | 25.5 | 45.2 | 10.8 | 1998 | 22.6 | 37.7 | 10.7 |
| 1985 | 30.7 | 51.9 | 11.9 | 2000 | 22.3 | 37.7 | 9.3 |
| 1987 | 28.3 | 47.4 | 12.6 | 2002 | 26.3 | 37.5 | 11.8 |
| 1988 | 25.2 | 44.2 | 11.1 | 2004 | 25.5 | 41.3 | 11.6 |
| 1989 | 27.4 | 49.4 | 9.3 | 2006 | 21.6 | 34.9 | 10.6 |
| 1990 | 28.7 | 52.4 | 9.5 | 2008 | 23.6 | 38.4 | 10.9 |
| 1991 | 27.3 | 47.7 | 10.1 | 2010 | 20.8 | 33.2 | 9.9 |
| 1993 | 29.4 | 48.5 | 13.6 | | | | |

### *Overall Personal Gun Ownership*

- From 1985 to 2010, the percentage of Americans who reported personally owning a gun dropped more than 32 percent.
- During this period, personal gun ownership hit its peak in 1985, when 30.7 percent of Americans reported personally owning a gun. By 2010, this number had dropped nearly 10 percentage points to a low during this period of 20.8 percent.
- In 2010, slightly more than one out of five Americans reported personally owning a gun.

[3] Data contained in chart represent years for which the question was asked during the period cited.

***Male Personal Gun Ownership***

- From 1990 to 2010, the percentage of males who reported personally owning a gun dropped nearly 37 percent.
- During this period, male gun ownership hit its peak in 1990, when 52.4 percent of males reported personally owning a gun. By 2010, this number had dropped more than 19 percentage points to a low during this period of 33.2 percent.
- In 2010, only one out of three American males reported personally owning a gun.

***Female Personal Gun Ownership***

- Female personal gun ownership remained relatively rare, fluctuating within a narrow range with no recent signs of increase. Female personal gun ownership peaked at 14.3 percent in 1982. In 2010, the female personal gun ownership rate was 9.9 percent.
- In 2010, only one out of 10 American females reported personally owning a gun.

## Reasons for the Decline

Key factors contributing to the continuing decline in household and personal gun ownership in America include the following.

- The aging of the current-gun owning population—primarily white males—and a lack of interest in guns by youth.
- The end of military conscription.
- The decreasing popularity of hunting.
- Land-use issues that limit hunting and other shooting activities.
- Environmental and zoning issues that force shooting ranges to close and limit new range construction.
- The increase in single-parent homes headed by women.

# EXHIBIT 66

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

SHAWN J. TARDY, et al.

PLAINTIFFS

VS. CIVIL NO. CCB-13-2841

MARTIN J. O'MALLEY, in his official capacity as Governor of the State of Maryland, et al.

DEFENDANTS

- - - - - - - - - - - - - - -

JANE DOE, et al.

PLAINTIFFS

VS. CIVIL NO. CCB-13-2861

MARTIN J. O'MALLEY, in his official capacity as Governor of the State of Maryland, et al.

DEFENDANTS

Baltimore, Maryland

October 1, 2013

The above-entitled case came on for a Temporary Restraining Order proceedings before the Honorable Catherine C. Blake, United States District Judge

Gail A. Simpkins, RPR
Official Court Reporter

of the effective date of only the prohibited paragraphs of Section 5-117.1(b) and (c), and allow the State to go ahead and process applications.

Thank you, Your Honor.

THE COURT: Thank you very much.

All right. Thank you all for your arguments. I'm going to take about a ten-minute recess, and I'll come back and give you a ruling.

(A recess was taken.)

THE COURT: Let me start by thanking counsel for their thorough arguments and briefing on short notice. I am here to consider the request for a temporary restraining order first in the Tardy v. O'Malley case and then in the Doe case.

Starting, of course, with the standards for a temporary restraining order, which will be the same in both cases, it is clear under current law, and I think this at least is not debated, that the plaintiffs have the burden of making a clear showing on all four factors in regard to a TRO or, for that matter, a preliminary injunction:

First, that they are likely to succeed on the merits; second, that they are likely to suffer irreparable harm; third, that a balance of hardships tips in the plaintiffs' favor; and fourth, that the

injunction is in the public interest, paying particular regard for the public consequences.

A couple of cases to cite for that are a 2013 Fourth Circuit case, Pashby versus Delia, 709 F.3d 307, and, of course, The Real Truth about Obama, 575 F.3d 343, simply for the standard.

It is also worth noting that in terms of the TRO request, this is extraordinary relief. You need to demonstrate a true emergency, and I will point out again that it seems to me the plaintiffs have known for months that this law would take effect October 1st, but the challenge was not filed until last Friday.

What the law does, and I am speaking now of the law at issue in Tardy, the challenge in Tardy, generally speaking, and I am not going to be precise about every statutory provision, but generally on and after October 1st, this law prohibits the sale and possession and receipt of assault weapons. These are defined as certain semiautomatic pistols, which are not the subject of the challenge. There are also certain semiautomatic rifles and shotguns that are defined as assault weapons and are affected by this new law.

The new law also generally prohibits sale and

receipt of detachable magazines with the capacity of over ten rounds of ammunition.

The law imposes criminal penalties for violation, but it permits individuals to retain, without penalty, all such long guns that were lawfully acquired, or where the purchase has been applied for prior to October 1st. Again, the assault pistol issue is not challenged.

So turning to the likelihood of success on the Second Amendment challenge, let me review some of the relevant case law. Of course, Heller, a Supreme Court case, established that the core element of the Second Amendment is an individual's right to use weapons in the defense of their home. Those weapons are those commonly possessed by law-abiding responsible citizens for that purpose, and the Court noted that handguns are far and away the preferred self-defense weapon for persons in their homes.

Heller, of course, involved a total ban on handguns.

This challenged law, the aspect of the law that is challenged, does not prohibit an entire class of weapons. It is a subclass of long guns only, classified as assault rifles.

The Second Amendment, as the Supreme Court

explained, does not protect dangerous and unusual weapons, which the Court in that Heller opinion at least mentioned included short barreled shotguns.

Heller was followed by the McDonald case, which described Heller as holding that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense, and, of course, held the Second Amendment applicable to the states under the due process clause of the Fourteenth Amendment. So that's in part why we are here.

Counsel have referred to, and I agree it is a very significant Fourth Circuit opinion, U.S. versus Chester, 628 F.3d 673, from the Fourth Circuit, in 2010. The Fourth Circuit adopted, as a number of other circuits have done, a two-part test, which is first whether the challenged law imposes a burden on conduct that falls within the scope of the Second Amendment's guarantee.

If it does not, and the example they gave was carrying a sawed-off shotgun, then the law is valid. At least it is not subject to a Second Amendment challenge.

If it does burden conduct within the scope of the Second Amendment, then the Court needs to determine, and then apply, the appropriate level of

means-end scrutiny.

In Chester, which, as you all know, criminalized possession of a firearm after a misdemeanor conviction for a crime of domestic violence, the Fourth Circuit chose intermediate scrutiny. The Court explained that the level of scrutiny to be applied depends on both the nature of the conduct that is being regulated and the degree to which the challenged law burdens those rights.

Under intermediate scrutiny, of course, the government has to demonstrate a reasonable fit between the challenged law and a substantial government objective.

In that case, the Fourth Circuit remanded to permit the government to offer evidence to establish that relationship.

I would note that in that case, one of the judges on the panel, Judge Davis, concurred, but added that he thought strict scrutiny would be unwarranted in a Second Amendment case.

Since then there have been other challenges to these criminal statutes. In Section 922(g) convictions, challenges have been denied by the Fourth Circuit under intermediate scrutiny. An example of that is United States versus Mahin, at 668 F.3d 119.

Now another case that counsel appropriately referred to, and I may or may not also pronounce it correctly, is United States versus Masciandaro, at 638 F.3d 458, which applied intermediate scrutiny to uphold a conviction for carrying a loaded firearm in a car, in violation of National Park regulations. The Court did assume, but not decide in that case, that strict scrutiny would apply to any law that burdened the fundamental core right of self-defense in the home by law-abiding citizens.

Similarly, we have Woollard versus Gallagher -- I believe that's the most recent one here from the Fourth Circuit -- 712 F.3d 865, where the Fourth Circuit again upheld under intermediate scrutiny the requirement that a person show good and substantial reason to wear and carry a handgun outside the home, again assuming, without deciding, that strict scrutiny would apply if the requirement were applied to carrying handguns inside the home. Again, a broader and different class of weapons was involved.

So it seems to me the question here first, on likelihood of success, when I at some point get to an actual decision on the merits, is whether the Second Amendment applies to these assault weapons at all or whether these are unusual and dangerous, like the

sawed-off shotgun; assuming, and again, a number of courts have just gone on to that second prong and assumed that some Second Amendment protection applies, what's the level of scrutiny?

I think an extremely persuasive opinion in this regard is Heller versus D.C., the D.C. Circuit case, at 670 F.3d 1244. Again, simply at this point for purposes of the temporary emergency relief and the factors that I need to look at, likelihood of success, I am likely to agree with the D.C. Circuit -- assuming that the Second Amendment applies at all, intermediate scrutiny is the correct standard; though, I am not making that determination at this point.

I note that despite some of the language about strict scrutiny in the Fourth Circuit cases, if you go back to the Chester case, the Fourth Circuit tells you that you also have to look at the degree to which the conduct burdens a core right, and this law is a prohibition only of a limited number of long guns that we are talking about. It does not affect law-abiding, responsible citizens' right to possess handguns in the home for self-defense, and the Supreme Court has told us that's the weapon of choice for self-defense. It does not impinge on law-abiding, responsible citizens' right to possess most long guns in the home for

self-defense as well.

Of course, those citizens can still have magazines that fire up to ten rounds without reloading.

The Heller case, assessing a very similar law, did note that assault rifles were in common use, and in this case plaintiffs have presented some evidence about the sale and common purchase of these kind of rifles; but the D.C. Circuit noted that they were not necessarily in common use for self-defense.

Plaintiffs' counsel tells me that they will be able to provide that evidence. There is certainly no evidence of that yet, that it is necessary or common for assault rifles and high capacity magazines to be used for self-defense in the home.

The D.C. Circuit decided that even if the Second Amendment were implicated, this ban on assault rifles and high capacity magazines was not a substantial burden on a core Second Amendment right, and that the government had showed 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, and there were a number of studies that were cited for that proposition in the

D.C. case.

So I do not find at this point that the plaintiffs have made a clear showing of a likelihood of success on the merits, as would be required to grant the extraordinary relief they seek, nor have they made a clear showing of the likelihood of irreparable harm.

First of all, I do believe that the delay in bringing this suit undercuts their argument of irreparable harm. This could have been brought months ago and was not.

Second of all, the individuals, and particularly the individual plaintiffs here, still have the assault weapons and high capacity magazines that were acquired legally before October 1st and have those available for self-defense.

There is a very limited amount of potentially economic harm that has been proffered on behalf of the dealers. Again, we are talking about not a necessarily lengthy period of time, so I don't think that's an irreparable harm that has been shown by the plaintiffs.

So turning for the moment to the public interest, I believe there is a strong public interest in upholding a duly enacted law that is directed at

the protection of public safety, including lessening the risk of mass tragedies, like Newtown, and others in the news, and lessening the risk of harm to law enforcement officers.

In some of the information and evidence provided by the State, which they have said they may wish to supplement, there is even reference to the fact that a necessity to pause to reload has enabled citizens in some instances to intervene and disarm people who are involved in these horrific crimes.

In any event, I do not find that the balance of harm, therefore, tips in favor of the plaintiffs, quite the contrary.

I don't find the plaintiffs' need to be able to fire more bullets, again, in the absence of some kind of evidence that this is necessary for self-defense, the need to fire more bullets in defense of the home, which appears to be based on the lack of accuracy that they propose the citizens would have in firing these weapons, I can't see that as tipping the balance in favor of the plaintiffs, or arguing against the strong public interest here.

The equal protection argument, to the extent that it is here to be made, I think the State has clearly shown a rational basis for distinction between

retired law enforcement officers and other citizens. Just to mention the training that they receive would be one element of that distinction.

And it is not a general right, as I understand it, for retired law enforcement officers to purchase any assault weapon they might want to in the future. It has to be connected to their retirement.

In terms of the vagueness challenge and likelihood of success, it appears that the law on copies has been the same since 1996, and it has not been shown that it has been difficult for the plaintiffs in this case, particularly dealers, and those experienced in firearms, to understand those definitions. The copycats are fairly clearly defined under the law, I believe, in terms of the features that are required.

Again, just in terms of likelihood of success, I am not making a final ruling, and I will certainly look at the Sixth Circuit case that the plaintiffs have mentioned, as well as any other information they might want to present about these definitions; but I do not, on the current record, believe that the plaintiffs have met the requirements for a temporary restraining order, for the reasons that I have just stated.

In terms of a preliminary injunction hearing, I think the most sensible thing for me to do is to ask counsel to confer and contact chambers, and we will set up a conference call to discuss a reasonable schedule for a preliminary injunction and what evidence either side might want to present, and again, the question of whether it should be purely a preliminary injunction hearing or a hearing on the merits. We can talk about that more with a conference call and consider further all the issues that both sides have raised today.

I will enter a separate very brief order -- this is obviously my oral opinion -- denying the temporary restraining order in the Tardy case.

Regarding the Doe case, I will also find that the plaintiffs have failed to meet the requirements for a temporary restraining order. This seems to me at this stage particularly speculative. The plaintiffs have not shown any irreparable harm.

There's a handgun qualification licensing system that is not challenged. It begins today. There is no showing yet of any unreasonable delay.

There is an administrative delay in place now for processing the applications. That is not the issue. That's not part of the new law. Of course,

that is caused by the extreme increase in applications for guns of various kinds that has occurred between the enactment of this law and the effective date here in October.

But as far as the handgun qualification licensing requirement, on the record in front of me, it is up and running today. Whether, or what degree of delay there will be, at this point is speculative.

With no challenge to the underlying constitutionality of the handgun qualification licensing requirements, and there being no right to immediate possession of even handguns, and no harm that I can see shown from the Maryland State Police saying that they may choose not to enforce some provisions in this law, I certainly can't see that there is a sufficient showing of likelihood of imminent harm, or a likelihood of success on the merits that would outweigh the public interest in permitting, again, a duly enacted law that is aimed at protecting public safety and keeping guns out of the hands of criminals from proceeding in effect as it is today.

So I will do a separate short order denying that and again can discuss with counsel in a separate conference call what schedule may be necessary for

further proceedings on that issue.

Anything I have not addressed, anything else anybody needs to say? I understand you disagree, but anything you feel I have not addressed or would like me to clarify?

MR. SWEENEY: Nothing further, Your Honor. Thank you.

MS. WOODWARD: Thank you, Your Honor.

MR. FADER: Nothing further, Your Honor.

THE COURT: All right. Thank you all.

(The proceedings concluded.)

# EXHIBIT 67

# The Relationship Between Gun Ownership and Firearm Homicide Rates in the United States, 1981–2010

Michael Siegel, MD, MPH, Craig S. Ross, MBA, and Charles King III, JD, PhD

*Objectives.* We examined the relationship between levels of household firearm ownership, as measured directly and by a proxy—the percentage of suicides committed with a firearm—and age-adjusted firearm homicide rates at the state level.

*Methods.* We conducted a negative binomial regression analysis of panel data from the Centers for Disease Control and Prevention's Web-Based Injury Statistics Query and Reporting Systems database on gun ownership and firearm homicide rates across all 50 states during 1981 to 2010. We determined fixed effects for year, accounted for clustering within states with generalized estimating equations, and controlled for potential state-level confounders.

*Results.* Gun ownership was a significant predictor of firearm homicide rates (incidence rate ratio = 1.009; 95% confidence interval = 1.004, 1.014). This model indicated that for each percentage point increase in gun ownership, the firearm homicide rate increased by 0.9%.

*Conclusions.* We observed a robust correlation between higher levels of gun ownership and higher firearm homicide rates. Although we could not determine causation, we found that states with higher rates of gun ownership had disproportionately large numbers of deaths from firearm-related homicides. (*Am J Public Health*. Published online ahead of print September 12, 2013: e1–e8. doi:10.2105/AJPH.2013.301409)

The December 14, 2012, tragic shooting of 20 children and 7 adults in Newtown, Connecticut, brought the issue of controlling firearm-related mortality to the forefront.[1–5] The National Rifle Association responded by calling for armed guards and teachers in all schools.[6] Hundreds of teachers have flocked to gun-training classes, motivated by the contention that increasing the presence of guns can reduce firearm-related deaths.[7] Firearms are responsible for more than 31 000 deaths and an estimated 74 000 nonfatal injuries among US residents each year,[8] most of which are violence related. Understanding the relationship between the prevalence of gun ownership (and therefore the availability of guns) and firearm-related mortality is critical to guiding decisions regarding recently proposed measures to address firearm violence.

Several lines of research have explored the relationship between firearm prevalence and homicide rates.[9] Studies have shown that individual gun ownership is related to an increased risk of being a homicide victim.[10–12] These studies are limited because they only examine the individual risks or benefits of gun ownership. They cannot be used to assess whether the prevalence of gun ownership in the population affects overall homicide rates.[9] Ecological studies have correlated higher levels of gun ownership rates in the United States with higher national rates of homicide than are experienced in other countries.[13–19] Although these studies suggest a relationship between gun ownership and homicide, they are severely limited because of inadequate adjustment for confounding factors.[9]

Examination of variation in homicide rates between cities, regions, or states within the United States in relation to differences in gun ownership provides a stronger line of research. A few studies have used a time-series design to investigate the relationship between firearm ownership and homicide over a period of years, either analyzing changes over time within cities or states[20–23] or examining changes over time across states.[24–29] Several studies used cross-sectional analyses to detect a positive relationship between the prevalence of gun ownership at the neighborhood,[30] county,[31,32] regional,[31,33–36] or state level[32,34–45] and homicide rates, with control for differences in factors associated with homicide (e.g., urbanization, race/ethnicity, unemployment, poverty, crime, and alcohol use). Most data used in these studies represented only a cross-section in time; only 4 contained panel data over multiple years. Sorenson and Berk used data from 1972 to 1993,[23] Bordura examined data for 1973 to 1981,[31] Miller et al. published 3 analyses of panel data from 1988 to 1997,[34–36] and Cook and Ludwig used panel data for 1980 to 1999.[32] None of the existing panel studies examined data more recent than 1999.[32]

Studies analyzing data over long periods are valuable because they assess the effects of variation in gun availability not only between states but within states over time. Although we are aware of no multiyear studies of interstate variation in gun ownership and homicide rates since 1999, national data from the General Social Survey show that the prevalence of household gun ownership has decreased by approximately 12% since then.[46] This presents an opportunity not only to bring the existing literature up to date, but also to investigate temporal changes in gun ownership to explore its potential relationship with changes in homicide rates, within and between states. Annual, state-specific homicide data are readily available from as early as 1981 and as recently as 2010.[8] During this period, the prevalence of gun ownership decreased by about 36%.[46] Thus, it is feasible and useful to study the relationship between gun availability and homicide across states over the entire period 1981 to 2010.

We expanded on previous work by incorporating the most recent data, analyzing data over 3 decades, and controlling for an extensive panel of annual, state-specific factors that might confound the association between gun ownership and firearm homicide rates. We

examined the relationship between gun ownership and age-adjusted firearm homicide rates across all 50 states during the 30-year period 1981 through 2010, with adjustment for age, gender, race/ethnicity, urbanization, poverty, unemployment, income, education, income inequality, divorce rate, alcohol use, violent crime rate, nonviolent crime rate, hate crime rate, number of hunting licenses, age-adjusted nonfirearm homicide rate, incarceration rate, and suicide rate. To the best of our knowledge, this was the most comprehensive study to date, both in number of years in the analysis and breadth of control variables.

## METHODS

We assembled a panel of annual data for 1981 to 2010 for each of the 50 states. We modeled the adjusted firearm homicide rate in a given year for a given state as a function of the gun ownership level in that state during that year, with adjustment for factors that could confound the association. We used a negative binomial regression model, entering fixed effects for each year. We accounted for clustering of observations among states with a generalized estimating equation (GEE) approach.

### Variables and Data Sources

The outcome variable was the age-adjusted firearm homicide rate, obtained from the Centers for Disease Control and Prevention's Web-Based Injury Statistics Query and Reporting Systems database.[8] Although death classification changed from the 9th to the 10th revision of the *International Classification of Diseases*[47,48] during the study period, a comparability analysis showed no significant differences in the classification for either suicide or homicide.[49]

The main predictor variable was the prevalence of household firearm ownership. Because no annual survey assessed the level of household firearm ownership in all 50 states during the entire study period, we used a well-established proxy: the percentage of suicides committed with a firearm (firearm suicides divided by all suicides, or FS/S). This measure has been extensively validated in the literature[13,14,32,37,44,50–54] and has been determined to be the best proxy available of many that have been tested.[50] The ratio of firearm suicides to all suicides has been shown to correlate highly with survey measures of household firearm ownership,[13,14,32,36,50–54] including state-specific measures of firearm ownership,[36,50] and has been used extensively as a proxy for state-specific gun availability in previous studies.[32,34–37,39,43,44,54–56]

In 2001, 2002, and 2004, the Behavioral Risk Factor Surveillance System surveys measured the prevalence of household gun ownership in all 50 states. We found the correlation between our proxy measure, FS/S, and the surveillance system estimates for the 50 states for 2001, 2002, and 2004 to be 0.80.

We controlled for the following factors, which have been identified in previous literature[29,32,34–37,41–45,54,56,57] as being related to homicide rates: proportion of young adults (aged 15–29 years),[8] proportion of young males (aged 15–29 years),[8] proportion of Blacks,[8] proportion of Hispanics,[58] level of urbanization,[59] educational attainment,[60] poverty status,[61] unemployment,[62] median household income,[63] income inequality (the Gini ratio),[64] per capita alcohol consumption,[65] nonhomicide violent crime rate (aggravated assault, robbery, and forcible rape),[66] nonviolent (property) crime rate (burglary, larceny–theft, and motor vehicle theft),[66] hate crime rate,[67] prevalence of hunting licenses,[68] and divorce rate.[69] To account for regional differences, we controlled for US Census region.[70] In addition, to capture unspecified factors that may be associated with firearm homicide rates, we controlled for the annual, age-adjusted rate of nonfirearm homicides in each state.[8] We also controlled for state-specific incarceration rates[71] and suicide rates.[8] The definitions and sources of these data are provided in Table 1.

Where values of a variable in some years were missing or unavailable, we interpolated data from surrounding years or extrapolated from the 2 closest years. All interpolations and extrapolations were linear. We did not, however, impute values for the outcome variable. State-level mortality data obtained through the Web-Based Injury Statistics Query and Reporting Systems for 2008 to 2010 are subject to a stringent censoring threshold not applied for earlier years in the study period, and results are not reported if fewer than 10 homicide deaths occurred. This resulted in a total of 13 missing data points for the outcome variable during the final 3 years of the study period. We excluded these data points; therefore, our data set had a total of 1487 observations.

### Model and Statistical Analysis

Because the outcome variable—the age-adjusted firearm homicide rate—was skewed rather than normally distributed, and because overdispersion was present in the data (the variance greater than the mean), we modeled this outcome with a negative binomial model, following the approach taken in previous studies.[34–36,41,55,57,72,73] Estimation of the overdispersion parameter confirmed our choice of a negative binomial model over a Poisson model,[74] following Miller et al.[34]

Clustering in our data could have arisen in 2 ways: by year (30 levels) and by state (50 levels). We entered year as a fixed effect in the regression model. This allowed us to control for any national, secular changes that could affect firearm homicide rates. To account for clustering of observations among states, we used a GEE approach.[75] This procedure accounts for correlation of data within state clusters, avoiding a type 1 error that would be introduced if this correlation were ignored.[76] We used an exchangeable (compound symmetry) working correlation matrix to model the correlation among observations within states. We used robust variance estimators (the Huber–White sandwich estimator of variance) to produce consistent point estimates[75,77] and SEs[75,77,78] even if the working correlation matrix was misspecified. Our approach followed that of Miller et al., who used a GEE approach to account for clustering by region in their study of the impact of gun ownership on suicide rates.[55]

Because our primary aim was to examine the relationship between gun prevalence and homicide rates, with adjustment for all identified potential confounding variables, we first ran a full model that incorporated all variables, regardless of their contribution to the model. To develop a final, more parsimonious model, we first entered all variables found to be significant in bivariate analyses (we used a Wald test at a significance level of .10) into 1 model. We then deleted variables found not to be significant in the presence of the other variables, assessing the significance of each

**TABLE 1—Variables and Data Sources in Study of Gun Ownership and Firearm Homicide Rates: United States, 1981–2010**

| Variable | Definition | Source | Notes |
|---|---|---|---|
| Firearm homicides | Rate/100 000 population, adjusted to 2000 age distribution | WISQARS[8] | Missing data for NH 2008–2010; ND 2008–2010; VT 2008–2010; WY 2008, 2010; HI 2010; SD 2010 |
| Prevalence of gun ownership | Proportion of suicides committed with a firearm | WISQARS[8] | Complete panel series[a] |
| Age | Percentage of population aged 15–29 y | WISQARS[8] | Complete panel series[a] |
| Gender | Percentage of population aged 15–29 y who are male | WISQARS[8] | Complete panel series[a] |
| Race/ethnicity | | | |
| Black | Percentage of Blacks in population | WISQARS[8] | Complete panel series[a] |
| Hispanic | Percentage of Hispanics in population | US Census Bureau[58] | Complete panel series[a] |
| Poverty | Percentage of population living in poverty | US Census Bureau[61] | Complete panel series[a] |
| Unemployment | Percentage unemployed among civilian labor force, aged ≥ 16 y | US Bureau of Labor Statistics[62] | Complete panel series[a] |
| Household income | Median household income (in 2010 dollars) | US Bureau of the Census[63] | Data extrapolated for 1981–1983 |
| Educational attainment | Percentage of adults aged ≥ 25 y with college degree (≥ bachelor's) | US Census Bureau[60] | Data interpolated for 1981–1988 and 1992 |
| Income inequality | Gini coefficient | US Census Bureau[64] | Data interpolated for 1981–1988, 1990–1998, 2000–2005; variable rescaled in final model to ease interpretation of parameter estimate |
| Urbanization | Percentage of population living in urbanized area or urban cluster | US Census Bureau[59] | Data interpolated for 1991–1999 and 2001–2009; data extrapolated for 1981–1989 because 1980 Census definition of urban was different |
| Alcohol | Per capita alcohol consumption among persons aged ≥ 14 y | National Institute of Alcoholism and Alcohol Abuse[65] | Complete panel series[a] |
| Violent crime | Rates of aggravated assault, robbery, and forcible rape/100 000 population | Federal Bureau of Investigation[66] | Complete panel series[a]; variable rescaled in final model to ease interpretation of parameter estimate |
| Nonviolent crime | Rate of property crime (burglary, larceny-theft, and motor vehicle theft)/100 000 population | Federal Bureau of Investigation[66] | Complete panel series[a]; variable rescaled in final model to ease interpretation of parameter estimate |
| Hate crime | Rate of hate crimes against persons/1 000 000 population | Federal Bureau of Investigation[67] | Data available for 1995–2010; data from 1995 used for 1981–1994 |
| Divorce | Rate/1000 population | National Center for Health Statistics[69]; US Census Bureau[59] | Data interpolated for 1986 in all states, interpolated for many years for CA, GA, HI, IN, LA, and MN |
| Hunting licenses | Proportion of population aged ≥ 15 y licensed | US Fish and Wildlife Service[68] | Complete panel series[a] |
| Region | Census region | US Census Bureau[70] | Complete panel series[a] |
| Nonfirearm homicides | Rate/100 000 population, adjusted to 2000 age distribution | WISQARS[8] | Missing data for NH 2008–2010; ND 2008–2010; VT 2008–2010; WY 2008, 2010; HI 2010; SD 2010 |
| Incarceration | Prisoners with sentence of > 1 y/100 000 population | Bureau of Justice Statistics[71] | Data interpolated for 1981, 1982, and 1992 |
| Suicide | No./100 000 population | WISQARS[8] | Complete panel series[a] |

*Note.* WISQARS = Web-Based Injury Statistics Query and Reporting Systems.
[a]All 50 states, 1981–2010.

variable with a Wald test at a significance level of .05. Finally, we added each of the excluded variables into the model, 1 at a time, to assess whether it became significant when included in a model with the other variables. We included fixed effects for year and clustering by state in all models.

As a check on the robustness of the results, we also ran a negative binomial model with fixed effects for both year and state. Because of the large number of variables in this model, we reported only the statistically significant predictors in this version of the final model. We conducted all analyses with the XTNBREG and NBREG procedures in Stata version 12 (StataCorp LP, College Station, TX).

## RESULTS

Over the 30-year study period, the mean estimated percentage of gun ownership (measured by the FS/S proxy) ranged from a low of 25.8% in Hawaii to a high of 76.8% in Mississippi, with an average over all states of 57.7% (Appendix A, available as a supplement to the online version of this article at http://www.ajph.org). Among the 50 states, the average percentage of gun ownership (measured by the FS/S proxy) decreased from 60.6% in 1981 to 51.7% in 2010. By decade, this percentage declined from 60.6% in 1981 to 1990 to 59.6% in 1991 to 2000 to 52.8% in 2001 to 2010.

Over the study period, the mean age-adjusted firearm homicide rate ranged from a low of 0.9 per 100 000 population in New Hampshire to a high of 10.8 per 100 000 in Louisiana, with an average over all states of 4.0 per 100 000 (Appendix A). Among the 50 states, the average firearm homicide rate decreased from 5.2 per 100 000 in 1981 to 3.5 per 100 000 in 2010. By decade, this rate was 4.2 per 100 000 in 1981 to 1990, 4.3 per 100 000 in 1991 to 2000, and 3.4 per 100 000 in 2001 to 2010.

In a bivariate analysis (a GEE negative binomial model with year fixed effects and accounting for clustering by state, but without any other predictor variables besides gun ownership), the gun ownership proxy was a significant predictor of firearm homicide rates (incidence rate ratio [IRR] = 1.011; 95% confidence interval [CI] = 1.005, 1.018).

The final GEE negative binomial model revealed 6 significant predictors of firearm homicide rates: gun ownership proxy (IRR = 1.009; 95% CI = 1.004, 1.014), percentage Black, income inequality, violent crime rate, nonviolent crime rate, and incarceration rate (Table 2). This model indicates that for each 1 percentage point increase in the gun ownership proxy, the firearm homicide rate increased by 0.9%.

In the final model, rerun with standardized predictor variables to ease interpretation of results, the IRR for the gun ownership proxy was 1.129 (95% CI = 1.061, 1.201), indicating that for each 1-SD increase in the gun ownership proxy, the firearm homicide rate increased by 12.9% (Table 3).

After we controlled for all the measured potential confounding variables, rather than just those found significant in the final model, the gun ownership proxy was still a significant predictor of firearm homicide rates (IRR = 1.008; 95% CI = 1.004, 1.012; Table 4). This result did not change after we excluded the 6 states with missing data for homicide rates in 1 or more years. When we restricted the analysis to 2001, 2002, and 2004 (years for which the Behavioral Risk Factor Surveillance System directly measured household gun ownership in all 50 states), the magnitude of the IRR estimated with the proxy measure (FS/S) was similar to that estimated with the survey measure of state-specific household gun ownership, but it was not statistically significant. The IRR associated with gun ownership also remained the same when we executed the full model with PROC GENMOD in SAS version 9.1 (SAS Institute, Cary, NC) rather than the XTNBREG procedure in Stata. We also found little change in the results when we omitted all variables with 1 or more interpolated or extrapolated values from the analysis.

When we lagged the gun ownership proxy by 1 year, it remained a significant predictor of firearm homicide rates (IRR = 1.009; 95% CI = 1.005, 1.013; Table 4). When we lagged the gun ownership proxy by 2 years, its effect was attenuated, although still positive and significant (IRR = 1.005; 95% CI = 1.001, 1.009).

We found little change in the magnitude or significance of the parameter estimate for the gun ownership proxy variable when we introduced linear and quadratic time variables into the analysis to model temporal changes in homicide rates or when the data were weighted by the square root of state population (Table 4). Use of a Poisson rather than a negative binomial model did not alter the results.

In a negative binomial model with both year and state fixed effects, the gun ownership proxy

**TABLE 2—Results of Final Model for Significant Predictors of Age-Adjusted Firearm Homicide Rate: United States, 1981–2010**

| Variable | IRR (95% CI) | *P* | Interpretation |
|---|---|---|---|
| Gun ownership | 1.009 (1.004, 1.014) | .001 | For each 1 percentage point increase in proportion of household gun ownership, firearm homicide rate increased by 0.9% |
| Percentage Black | 1.052 (1.037, 1.068) | .001 | For each 1 percentage point increase in proportion of Black population, firearm homicide rate increased by 5.2% |
| Gini coefficient | 1.046 (1.003, 1.092) | .037 | For each 0.01 increase in Gini coefficient, firearm homicide rate increased by 4.6% |
| Violent crime rate | 1.048 (1.010, 1.087) | .013 | For each increase of 1/1000 in violent crime rate, firearm homicide rate increased by 4.8% |
| Nonviolent crime rate | 1.008 (1.003, 1.013) | .002 | For each increase of 1/1000 in nonviolent crime rate, firearm homicide rate increased by 0.8% |
| Incarceration rate | 0.995 (0.991, 0.999) | .027 | For each increase of 1/10 000 in incarceration rate, firearm homicide rate decreased by 0.5% |

*Note.* CI = confidence interval; IRR = incidence rate ratio. Final model incorporated only variables whose parameter estimates were significant at the $P < .05$ level. Model included fixed effects for year and adjustment for clustering within states.

**TABLE 3—Results of Final Model for Significant Predictors of Age-Adjusted Firearm Homicide Rate, Using Standardized Predictor Variables: United States, 1981–2010**

| Variable | IRR (95% CI) | *P* | Interpretation |
|---|---|---|---|
| Gun ownership | 1.129 (1.061, 1.201) | .001 | For each 1-SD increase in proportion of household gun ownership, firearm homicide rate increased by 12.9% |
| Percentage Black | 1.828 (1.536, 2.176) | .001 | For each 1-SD increase in proportion of black population, firearm homicide rate increased by 82.8% |
| Gini coefficient | 1.129 (1.007, 1.266) | .037 | For each 1-SD increase in Gini coefficient, firearm homicide rate increased by 12.9% |
| Violent crime rate | 1.154 (1.031, 1.291) | .013 | For each 1-SD increase in violent crime rate, firearm homicide rate increased by 15.4% |
| Nonviolent crime rate | 1.100 (1.036, 1.168) | .002 | For each 1-SD increase in nonviolent crime rate, firearm homicide rate increased by 10.0% |
| Incarceration rate | 0.928 (0.868, 0.992) | .027 | For each 1-SD increase in incarceration rate, firearm homicide rate decreased by 7.8%. |

*Note.* CI = confidence interval; IRR = incidence rate ratio. Final model incorporated only variables whose parameter estimates were significant at the $P < .05$ level. Model included fixed effects for year and adjustment for clustering within states.

remained a significant predictor of firearm homicide rates (IRR = 1.010; 95% CI = 1.001, 1.019). Percentage Black and violent crime rate were also significant predictors of firearm homicide in this model (data not shown).

To investigate whether our proxy measure of gun ownership also predicted non–firearm-related homicides, we repeated the analyses with the age-adjusted nonfirearm homicide rate as the outcome variable. The gun ownership proxy was not a significant predictor of nonfirearm homicide rates in either the full (IRR = 1.001; 95% CI = 0.998, 1.005; $P = .52$) or final (IRR = 0.999; 95% CI = 0.996, 1.003; $P = .78$) models (data not shown).

To address the potential problem of serial autocorrelation, we ran a set of 30 year-specific negative binomial regressions. Because of the small number of data points, we ran parsimonious models with only a few predictors. Starting with our final model, we included only covariates that were significant predictors of homicide rates in at least 2 of the year-specific regressions (percentage Black, income inequality, violent crime rate, and gun ownership proxy). The gun ownership proxy was statistically significant in 26 of the 30 year-specific models, with an IRR in these 30 regressions ranging from 1.009 to 1.022.

## DISCUSSION

To the best of our knowledge, ours is the most up-to-date and comprehensive analysis of the relationship between firearm ownership and gun-related homicide rates among the 50 states. Our study encompassed a 30-year period, with data through 2010, and accounted for 18 possible confounders of the relationship between gun ownership and firearm homicide. We found a robust relationship between higher levels of gun ownership and higher firearm homicide rates that was not explained by any of these potential confounders and

**TABLE 4—Effects of Gun Ownership Level on Age-Adjusted Firearm Homicide Rate: United States, 1981–2010**

| Gun Ownership Level | IRR (95% CI) | *P* |
|---|---|---|
| Current gun ownership | | |
| Full model[a] | 1.008 (1.004, 1.012) | .001 |
| Excluding states with missing data[b] | 1.009 (1.005, 1.014) | .001 |
| Restricted to years 2001, 2002, and 2004[c] | 1.023 (1.014, 1.032) | .001 |
| Survey measure of gun ownership used instead of proxy measure (years 2001, 2002, and 2004 only)[d] | 1.016 (0.997, 1.036) | .1 |
| Full model executed in SAS[e] | 1.009 (1.004, 1.014) | .001 |
| Variables with interpolated or extrapolated values omitted from analysis[f] | 1.009 (1.005, 1.014) | .001 |
| Control for temporal trends in homicide rates (linear and quadratic terms for time included in model) | 1.010 (1.005, 1.014) | .001 |
| Individual data points weighted by square root of state population | 1.011 (1.005, 1.017) | .001 |
| Poisson model instead of negative binomial model | 1.008 (1.004, 1.013) | .001 |
| Gun ownership in previous years | | |
| Lagged 1 y | 1.009 (1.005, 1.013) | .001 |
| Lagged 2 y | 1.005 (1.001, 1.009) | .024 |

*Note.* CI = confidence interval; IRR = incidence rate ratio.
[a]Included fixed effects for year, adjustment for clustering within states, and controls for percentage young (aged 15–29 y), percentage young males, percentage Black, percentage Hispanic, poverty, unemployment, household income, educational attainment, income inequality, level of urbanization, alcohol consumption, violent crime rate, nonviolent crime rate, hate crime rate, divorce rate, hunting licenses, region, age-adjusted nonfirearm homicide rate, incarceration rate, and suicide rate.
[b]Excluded data from states with missing data for age-adjusted firearm homicide rate in any year: New Hampshire, North Dakota, Vermont, Wyoming, Hawaii, and South Dakota.
[c]Years for which Behavioral Risk Factor Surveillance System (BRFSS) data on household gun ownership were available.
[d]Main predictor variable was proportion of households with guns according to BRFSS in 2001, 2002, and 2004; proxy measure (firearm suicides divided by all suicides) was not used in this model.
[e]Model run with PROC GENMOD in SAS version 9.1 (SAS Institute, Cary, NC), with empirical SEs.
[f]Variables with interpolated or extrapolated values were household income, educational attainment, income inequality, level of urbanization, hate crime rate, divorce rate, and incarceration rate.

was not sensitive to model specification. Our work expanded on previous studies not only by analyzing more recent data, but also by adjusting for clustering by year and state and controlling for factors, such as the rate of nonfirearm homicides, that likely capture unspecified variables that may be associated with both gun ownership levels and firearm homicide rates.

The correlation of gun ownership with firearm homicide rates was substantial. Results from our model showed that a 1-SD difference in the gun ownership proxy measure, FS/S, was associated with a 12.9% difference in firearm homicide rates. All other factors being equal, our model would predict that if the FS/S in Mississippi were 57.7% (the average for all states) instead of 76.8% (the highest of all states), its firearm homicide rate would be 17% lower. Because of our use of a proxy measure for gun ownership, we could not conclude that the magnitude of the association between actual household gun ownership rates and homicide rates was the same. However, in a model that incorporated only survey-derived measures of household gun ownership (for 2001, 2002, and 2004), we found that each 1-SD difference in gun ownership was associated with a 24.9% difference in firearm homicide rates.

Our results were consistent with, but generally lower than, previous estimates of the effect of gun ownership on homicide rates. We were able to replicate Miller et al.'s study by restricting our analysis to 1988 to 1997 and controlling for the same variables as they did. We obtained an IRR of 1.36 (95% CI = 1.20, 1.54) for the gun ownership proxy; their result was 1.41 (95% CI = 1.27, 1.57).[34] After adjusting for clustering by state with GEEs, incorporating year fixed effects, and including additional significant predictors, we obtained an IRR of 1.17 (95% CI = 1.11, 1.24).

## Limitations

We used a proxy measure of firearm ownership that did not perfectly correlate with survey-derived measures and was therefore not ideal. We have 2 reasons for believing that the observed relationship between gun ownership and homicide rates was not an artifact of the use of this proxy measure. First, when we restricted the analysis to 2001, 2002, and 2004 and relied on a survey measure of gun ownership, the parameter estimate for gun ownership was similar to (but higher than) that obtained with the proxy measure. Second, the observed relationship between the proxy measure of gun ownership and homicide rates was specific to firearm homicides. We detected no significant relationship between gun ownership and nonfirearm homicide rates.

We conducted an ecological study with large aggregates (states) representing the units of analysis. This introduced the possibility that an unknown confounder could explain the observed relationship. For this to occur, a putative confounder would have to be strongly correlated with both gun ownership and firearm homicide rates, but not highly correlated with any of the other variables we measured. Because of the number of predictor variables we incorporated in our analysis, this seems unlikely. The likelihood was lessened further by our failure to find a significant relationship between gun ownership and nonfirearm homicide rates. Nevertheless, the possibility remains that an omitted variable confounded the observed relationship.

A reverse causal association was also possible. For example, increases in firearm homicide rates could have led to efforts by state residents to acquire guns, thus increasing gun ownership levels.[9,25,29,32,34–36,41,79,80] We addressed this question with a lagged variable and found that gun ownership, lagged by either 1 or 2 years, was still a significant predictor of firearm homicide rates. This is consistent with, but does not prove, the hypothesis that changes in gun ownership rates affect subsequent firearm homicide rates. It is not possible in a panel study such as ours to determine causality. Furthermore, although this was a panel study, the variation occurred mainly in the cross section, because the differences in firearm homicide across states were greater than the changes over time.

## Conclusions

Our study substantially advances previous work by analyzing recent data, examining the longest and most comprehensive panel of state-specific data to date, and accounting for year and state clustering and for a wide range of potential confounders. We found a robust relationship between gun ownership and firearm homicide rates, a finding that held whether firearm ownership was assessed through a proxy or a survey measure, whether state clustering was accounted for by GEEs or by fixed effects, and whether or not gun ownership was lagged, by up to 2 years. The observed relationship was specific to firearm-related homicide. Although we could not determine causation, we found that states with higher levels of gun ownership had disproportionately large numbers of deaths from firearm-related homicides. ■

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## Contributors

M. Siegel obtained and analyzed the data. All authors conceptualized and designed the study, interpreted the results, wrote the article, and critically reviewed and commented on the article.

## Human Participant Protection

Institutional review board approval was not needed for this study because secondary data sources were used.

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# EXHIBIT 68

Mother Jones

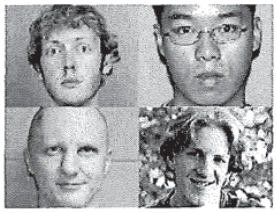
# More Guns, More Mass Shootings—Coincidence?

*The unthinkable massacre in Connecticut adds to what is now the worst year of mass shootings in modern US history.*

By Mark Follman | Wed Sep. 26, 2012 3:00 AM PDT

In the fierce debate that always follows the latest mass shooting, it's an argument you hear frequently from gun rights promoters: If only more people were armed, there would be a better chance of stopping these terrible events. This has plausibility problems—what are the odds that, say, a moviegoer with a pack of Twizzlers in one pocket and a Glock in the other would be mentally prepared, properly positioned, and skilled enough to take out a body-armored assailant in a smoke- and panic-filled theater? But whether you believe that would happen is ultimately a matter of theory and speculation. Instead, let's look at some facts gathered in a five-month investigation by *Mother Jones*.

In the wake of the massacres this year at a Colorado movie theater, a Sikh temple in Wisconsin, and Sandy Hook Elementary School in Connecticut, we set out to track mass shootings in the United States over the last 30 years. We identified and analyzed 62 of them [1], and one striking pattern in the data is this: In not a single case was the killing stopped by a civilian using a gun. And in other recent (but less lethal) rampages in which armed civilians attempted to intervene, those civilians not only failed to stop the shooter but also were gravely wounded or killed. Moreover, we found that the rate of mass shootings has increased in recent years—at a time when America has been flooded with millions of additional firearms and a barrage of new laws has made it easier than ever to carry them in public places, including bars, parks, and schools.

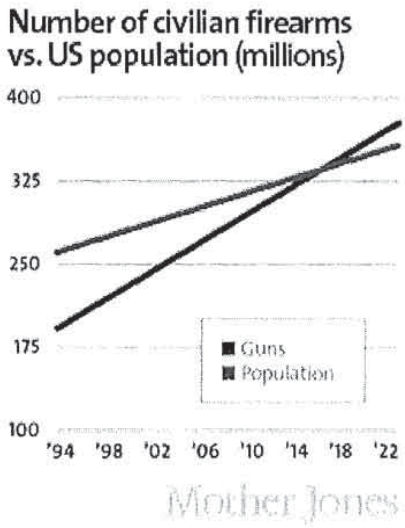


[1]

***MoJo's* map, timeline, and analysis of 30 years of mass shootings in America.** [1]

America has long been heavily armed relative to other societies, and our arsenal keeps growing. A precise count isn't possible because most guns in the United States aren't registered and the

government has scant ability to track them, thanks to a legislative landscape shaped by powerful pro-gun groups such as the National Rifle Association. But through a combination of national surveys and manufacturing and sales data, we know that the increase in firearms has far outpaced population growth. In 1995 there were an estimated 200 million guns in private hands. Today, there are around 300 million—about a 50 percent jump. The US population, now over 314 million, grew by about 20 percent in that period. At this rate, there will be a gun for every man, woman, and child before the decade ends.




There is no evidence indicating that arming Americans further will help prevent mass shootings or reduce the carnage, says Dr. Stephen Hargarten, a leading expert on emergency medicine and gun violence at the Medical College of Wisconsin. To the contrary, there appears to be a relationship between the proliferation of firearms and a rise in mass shootings: By our count, there have been two per year on average since 1982. Yet, 25 of the 62 cases we examined have occurred since 2006. In 2012 alone there have been seven mass shootings [2], and a record number of casualties, with more than 140 people injured and killed.

Armed civilians attempting to intervene are actually more likely to increase the bloodshed, says Hargarten, "given that civilian shooters are less likely to hit their targets than police in these circumstances." A chaotic scene in August at the Empire State Building put this starkly into perspective when New York City police officers trained in counterterrorism [3] confronted a gunman and wounded nine innocent bystanders in the process [4].

Surveys suggest America's guns may be concentrated in fewer hands today: Approximately 40 percent of households had them in the past decade, versus about 50 percent in the 1980s. But far more relevant is a recent barrage of laws that have rolled back gun restrictions throughout the country. In the past four years, across 37 states, the NRA and its political allies have pushed through 99 laws making guns easier to own, carry, and conceal from the government [5].

Among the more striking measures: Eight states now allow firearms in bars. Law-abiding Missourians can carry a gun while intoxicated and even fire it if "acting in self-defense." In Kansas, permit holders can carry concealed weapons inside K-12 schools, and Louisiana allows them in houses of worship. Virginia not only repealed a law requiring handgun vendors to submit sales records, but the state also ordered the destruction of all such previous records. More than two-thirds of these laws were passed by Republican-controlled statehouses, though often with bipartisan support.

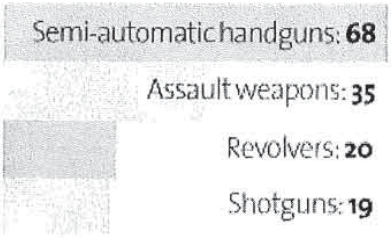
**The NRA surge: 99 recent laws rolling back gun regulations in 37 states.** [5]

The laws have caused dramatic changes, including in the two states hit with the recent carnage. Colorado passed its concealed-carry measure in 2003, issuing 9,522 permits that year; by the end of last year the state had handed out a total of just under 120,000, according to data we obtained from the County Sheriffs of Colorado. In March of this year, the Colorado Supreme Court ruled that concealed weapons are legal on the state's college campuses. (It is now the fifth state explicitly allowing them [6].) If former neuroscience student James Holmes were still attending the University of Colorado today, the movie theater killer—who had no criminal history and obtained his weapons legally—could've gotten a permit to tote his pair of .40 caliber Glocks straight into the student union. Wisconsin's concealed-carry law went into effect just nine months before the Sikh temple shooting in suburban Milwaukee this August. During that time, the state issued a whopping 122,506 permits, according to data from Wisconsin's Department of Justice. The new law authorizes guns on college campuses, as well as in bars, state parks, and some government buildings.

And we're on our way to a situation where the most lax state permitting rules—say, Virginia's, where an online course now qualifies for firearms safety training and has drawn a flood of out-of-state applicants [7]—are in effect national law. Eighty percent of states now recognize handgun permits from at least some other states. And gun rights activists are pushing hard for a federal reciprocity bill [8]—passed in the House late last year, with GOP vice presidential candidate Paul Ryan among its most ardent supporters—that would essentially make any state's permits valid nationwide.

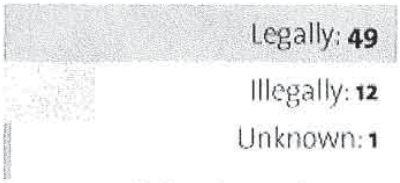
Indeed, the country's vast arsenal of handguns—at least 118 million of them as of 2010—is increasingly mobile, with 69 of the 99 new state laws making them easier to carry. A decade ago, seven states and the District of Columbia still prohibited concealed handguns; today, it's down to just

**Guns possessed by mass shooters***




*Includes multiple weapons. Assault weapons include machine pistols.

**How killers got their guns**




Mother Jones

Illinois and DC. (And Illinois recently passed an exception [9] cracking the door open to carrying). In the 62 mass shootings we analyzed, 54 of the killers had handguns—including in all 15 of the mass shootings since the surge of pro-gun laws began in 2009.

In a certain sense the law was on their side: nearly 80 percent of the killers in our investigation obtained their weapons legally.

We used a conservative set of criteria to build a comprehensive rundown of high-profile attacks in public places—at schools, workplaces, government buildings, shopping malls—though they represent only a small fraction of the nation's overall gun violence. The FBI defines a mass murderer [10] as someone who kills four or more people in a single incident, usually in one location. (As opposed to spree or serial killers, who strike multiple times.) We excluded cases involving armed robberies or gang violence; dropping the number of fatalities by just one, or including those motives, would add many [11], many [12] more [13] cases [14]. (More about our criteria here [15].)

There was one case in our data set in which an armed civilian played a role. Back in 1982, a man opened fire at a welding shop in Miami, killing eight and wounding three others before fleeing on a bicycle. A civilian who worked nearby pursued the assailant in a car, shooting and killing him a few blocks away (in addition to ramming him with the car). Florida authorities, led by then-state attorney Janet Reno, concluded that the vigilante had used force justifiably, and speculated that he may have prevented additional killings. But even if we were to count that case as a successful armed intervention by a civilian, it would account for just 1.6 percent of the mass shootings in the last 30 years.

More broadly, attempts by armed civilians to stop shooting rampages are rare—and successful ones even rarer. There were two school shootings in the late 1990s, in Mississippi and Pennsylvania, in which bystanders with guns ultimately subdued the teen perpetrators, but in both cases it was after the shooting had subsided. Other cases led to tragic results. In 2005, as a rampage unfolded inside a

shopping mall in Tacoma, Washington, a civilian named Brendan McKown confronted the assailant with a licensed handgun he was carrying. The assailant pumped several bullets into McKown and wounded six people before eventually surrendering to police after a hostage standoff. (A comatose McKown eventually recovered after weeks in the hospital.) In Tyler, Texas, that same year, a civilian named Mark Wilson fired his licensed handgun at a man on a rampage at the county courthouse. Wilson—who was a firearms instructor—was shot dead by the body-armored assailant, who wielded an AK-47. (None of these cases were included in our mass shootings data set because fewer than four victims died in each.)

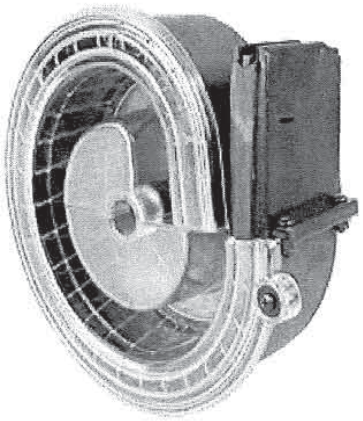
Appeals to heroism on this subject abound. So does misleading information. Gun rights die-hards frequently [16] credit [17] the end of a rampage in 2002 at the Appalachian School of Law in Virginia to armed "students" who intervened—while failing to disclose that those students were also current and former law enforcement officers [18], and that the killer, according to police investigators, was out of bullets by the time they got to him. It's one of several cases commonly cited as examples of ordinary folks with guns stopping massacres that do not stand up to scrutiny [19].

How do law enforcement authorities view armed civilians getting involved? One week after the slaughter at the *Dark Knight* screening in July, the city of Houston—hardly a hotbed of gun control—released a new Department of Homeland Security-funded video instructing the public on how to react to such events [20]. The six-minute production foremost advises running away or otherwise hiding, and suggests fighting back only as a last resort. It makes no mention of civilians using firearms.

Screen shot: City of Houston video on mass shooters. [21]

Law enforcement officials are the first to say that civilians should not be allowed to obtain particularly lethal weaponry, such as the AR-15 assault rifle and ultra-high-capacity, drum-style magazine used by Holmes to mow down Batman fans. The expiration of the Federal Assault Weapons Ban under President George W. Bush in 2004 [22] has not helped that cause: Seven killers since then have wielded assault weapons in mass shootings [1].

But while access to weapons is a crucial consideration for stemming the violence, stricter gun laws are no silver bullet. Another key factor is mental illness. A major *New York Times* [23] investigation [23] in 2000 examined 100 shooting rampages and found that at least half of the killers showed signs of serious mental health problems. Our own data reveals that the majority of mass shootings are murder-suicides: In the 62 cases we analyzed, 36 of the shooters killed themselves. Others may have committed "suicide by cop"—seven died in police shootouts. Still others simply waited, as Holmes did in the movie theater parking lot, to be apprehended by authorities.



**Drum-style magazine for assault rifles** Brownells.com [24]

Mental illness among the killers is no surprise, ranging from paranoid schizophrenia to suicidal depression. But while some states have improved their sharing of mental health records with federal authorities, millions of records reportedly are still missing from the FBI's database for criminal background checks [25].

Hargarten of the Medical College of Wisconsin argues that mass shootings need to be scrutinized as a public health emergency so that policy makers can better focus on controlling the epidemic of violence. It would be no different than if there were an outbreak of Ebola virus, he says—we'd be assembling the nation's foremost experts to stop it.

But real progress will require transcending hardened politics [26]. For decades gun rights promoters have framed measures aimed at public safety—background checks, waiting periods for purchases, tracking of firearms—as dire attacks on constitutional freedom. They've wielded the gun issue so successfully as a political weapon that Democrats hardly dare to touch it [27], while Republicans have gone to new extremes in their party platform [28] to enshrine gun rights. Political leaders have failed to advance the discussion "in a credible, thoughtful, evidence-driven way," says Hargarten.

In the meantime, the gun violence in malls and schools and religious venues [12] continues apace. As a superintendent told his community in suburban Cleveland this February, after a shooter at Chardon High School snuffed out the lives of three students and injured three others [29], "We're not just any old place, Chardon. This is every place. As you've seen in the past, this can happen anywhere."

*Additional research contributed by Deanna Pan and Gavin Aronsen.*

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**Source URL:** http://www.motherjones.com/politics/2012/09/mass-shootings-investigation

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[1] http://www.motherjones.com/politics/2012/07/mass-shootings-map
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[14] http://www.jsonline.com/news/crime/multiple-victims-shot-near-brookfield-square-le7a3b4-175147441.html
[15] http://www.motherjones.com/mojo/2012/08/what-is-a-mass-shooting
[16] http://johnrlott.tripod.com/postsbyday/7-4-03.html
[17] http://dailyanarchist.com/2012/07/31/auditing-shooting-rampage-statistics/
[18] http://www.cse.unsw.edu.au/%7Elambert/guns/appalachian/nd/tackle/gun/use/index.html
[19] http://www.motherjones.com/politics/2012/12/armed-civilians-do-not-stop-mass-shootings
[20] http://www.tylerpaper.com/article/20120729/NEWS01/120729768/0/FEATURES09
[21] http://www.youtube.com/watch?v=5VcSwejU2D0&feature=youtu.be
[22] http://www.usatoday.com/news/washington/2004-09-12-weapons-ban_x.htm
[23] http://www.nytimes.com/2000/04/09/us/they-threaten-seethe-and-unhinge-then-kill-in-quantity.html?pagewanted=all&src=pm
[24] http://www.brownells.com/.aspx/pid=23282/Product/AR-15-M16-90-ROUNDER-reg-MAGAZINE
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# EXHIBIT 69

# 1986 FBI Miami shootout

From Wikipedia, the free encyclopedia

Coordinates: 25°39′24.55″N 80°19′34.75″W

‹ The template *Infobox civilian attack* is being considered for merging. ›

The **1986 FBI Miami shootout** was a gun battle that occurred on April 11, 1986 in an unincorporated region of Dade County in south Florida (renamed Miami-Dade on November 13, 1997) between eight FBI agents and two serial bank robbers. During the firefight, FBI Special Agents Jerry L. Dove and Benjamin P. Grogan were killed, while five other agents were wounded. The two robbery suspects, William Russell Matix and Michael Lee Platt, were also killed.

The incident is infamous in FBI history and is well-studied in law enforcement circles. Despite outnumbering the suspects 4 to 1, the agents found themselves pinned down by rifle fire and unable to respond effectively. Although both Matix and Platt were hit multiple times during the firefight, Platt fought on and continued to injure and kill agents. This incident led to the introduction of more powerful handguns in the FBI and many police departments around the United States.

**1986 FBI Miami shootout**

Jerry Dove (left) and Ben Grogan, the FBI agents killed during the shootout

| | |
|---|---|
| **Location** | Pinecrest, Florida, U.S. |
| **Date** | April 11, 1986<br>09:30 (UTC-5) |
| **Target** | FBI agents |
| **Attack type** | Resisting arrest |
| **Weapon(s)** | Ruger Mini-14, S&W M586 revolver, Dan Wesson .357 Magnum revolver |
| **Deaths** | 4 (both perpetrators and two FBI agents) |
| **Injured (non-fatal)** | 5 |
| **Perpetrators** | William Russell Matix and Michael Lee Platt |

**Contents** [hide]



## Background [edit]

**Michael Lee Platt** (February 3, 1954 – April 11, 1986) and **William Russell Matix** (June 25, 1951 – April 11, 1986) met while serving in the U.S. Army at Fort Campbell, Kentucky. Matix first served in the U.S. Marine Corps from 1969 to 1972 working as a cook in the officers' mess and was later honorably discharged reaching the rank of Staff Sergeant. In 1973, Matix enlisted in the U.S. Army and served in the military police. Matix was honorably discharged from the Army in 1976. Platt enlisted in 1972 as an infantryman and served with the U.S. Army Rangers during the Vietnam War

where he was noted for "High Combat Proficiency". Platt was honorably discharged in 1979. Both of their spouses had died under mysterious circumstances.[1] Matix's wife, Patricia Buchanich, was stabbed to death along with a co-worker on December 30, 1983 at Riverside Methodist Hospital in Columbus, Ohio, where both women worked. Matix told investigators that he suspected Platt had carried on an affair with his wife. Matix was a suspect in her murder but was never charged.[2]

After his wife's death Matix moved to Miami at the urging of Michael Platt and remarried to a woman named Brenda Horne and had one daughter, Christy Lou. After relocating to Homestead, Florida, Matix began a landscaping and tree removal business called The Yankee Clipper with Platt.[3] In December 1984, Platt's second wife Regina E. Lylen-Platt (married from 1975-1984), was found shot dead with a shotgun from a single shot in the mouth. He had been married before, his first unidentified wife ending in divorce. Her death was ruled a suicide.[4] He married his third wife Brenda in January 1985.

Prior to embarking on their crime spree neither Platt nor Matix had a criminal record.[5] At the time of Platt's killing, his wife had no idea that her husband and friend Matix were bank robbers, and he was a father to an infant son that he never met.

On October 5, 1985, Platt and Matix murdered 25-year-old Emelio Briel while he was target shooting at a rock pit. The pair stole Briel's car and used it to commit several robberies. Briel's remains were found on March 1, 1986 but were not positively identified until May 1986.

On October 16, 1985, Platt and Matix attempted to rob a Wells Fargo armored truck in front of a Winn-Dixie supermarket. One of the pair shot a guard in the leg with a shotgun. Two other guards returned fire. Neither Platt nor Matix was injured. No money was taken in the botched robbery.

On November 8, 1985, Platt and Matix robbed a teller station outside a branch of the Florida National Bank. Ninety minutes later, Platt and Matix robbed a branch of the Professional Savings Bank. The pair used Briel's car in the second robbery.

On January 10, 1986, Platt and Matix robbed a Brinks armored truck. One suspect shot the guard with a shotgun while the other shot him with a rifle. The guard survived. Platt and Matix used Briel's car in this incident. The pair were followed from the scene by a citizen who saw them switch to a white Ford F-150 pickup truck.

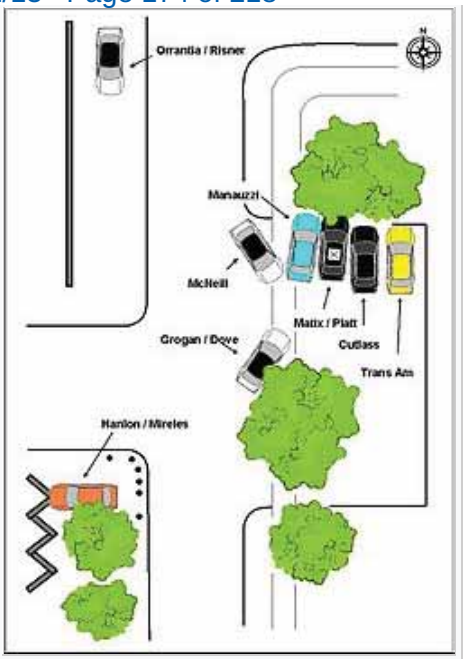
On March 12, 1986, Platt and Matix robbed and shot Jose Collazo while Collazo was target shooting at a rock pit. The pair left Collazo for dead and stole his car, a black 1979 Chevrolet Monte Carlo. Collazo survived the shooting and walked three miles to get help.[6]

On March 19, 1986, the pair used Collazo's car to rob the Barnett Bank at 13595 South Dixie Highway.

## The shootout [edit]

At 8:45 a.m on Friday April 11, 1986, a team of FBI agents led by Special Agent Gordon McNeill assembled at a Home Depot to initiate a rolling stakeout searching for the black Monte Carlo (Collazo's stolen car). The agents did not know the identity of the suspects at the time. They were acting on a hunch that the pair would attempt a robbery that morning.

A total of fourteen FBI agents in eleven cars participated in the search. Eight of these FBI agents took part in the actual shootout and were paired as follows;




Relative positions of FBI agents' and suspects' vehicles after felony car stop at 12201 Southwest 82nd Avenue, Pinecrest, Miami, Florida. Illustration is not to scale.

- Supervisory Special Agent Gordon McNeill alone in his car
- Special Agent Richard Manauzzi alone in his car
- Special Agent Benjamin Grogan, with Special Agent Jerry Dove
- Special Agent Edmundo Mireles, Jr., with Special Agent John Hanlon
- Special Agent Gilbert Orrantia, with Special Agent Ronald Risner

Around 9:30 a.m., agents Grogan and Dove spotted the suspect vehicle, and began to follow. Two other stakeout team cars joined them, and eventually an attempt was made to conduct a felony traffic stop of the suspects, who were forced off the road following collisions with the FBI cars of agents Grogan/Dove, agents Hanlon/Mireles and agent Manauzzi. This sent the suspect car nose first into a tree in a small parking area in front of a house at 12201 Southwest 82nd Avenue, pinned against a parked car on its passenger side and Manauzzi's car on the driver side.

Of the eight agents at the scene, two had Ithaca Model 37 shotguns in their vehicles (McNeill and Mireles), three were armed with semi-automatic Smith & Wesson Model 459 9mm pistols (Dove, Grogan, and Risner), and the rest were armed with Smith & Wesson revolvers. Two of the agents had backup revolvers (Hanlon and Risner) and both would use them at some point during the fight.

The initial collision that forced the suspects off the road caused some unforeseen problems for the agents, as the FBI vehicles sustained damage from the heavier, older car driven by Matix.[7] Just prior to ramming the Monte Carlo, Manauzzi had pulled out his service revolver and placed it on the seat in anticipation of a shootout,[7] but the force of the collision flung open his door and sent his weapon flying. Hanlon lost his .357 Magnum service revolver during the initial collision, though he was still able to fight with his Smith & Wesson Model 36 backup gun. The collision knocked off Grogan's eye glasses, and there is speculation his vision was so bad that he was unable to see clearly enough to be effective. (A claim disputed by the FBI's Medical Director, who stated that Grogan's vision was "not that bad".) Grogan, however, is credited with landing the first hit of the gunfight, wounding Matix in the forearm as he leaned out of the Monte Carlo to fire the shotgun at Grogan & Dove.[8]

Manauzzi was wounded when Platt fired several rounds from his Mini-14 that penetrated the door of Manauzzi's car. McNeill fired over the hood of Manauzzi's car but was wounded by return fire from Platt's Ruger Mini-14 rifle. Platt then fired his rifle at Mireles who was running across the street to join the fight. Mireles was hit in the left forearm, creating a severe wound.[7] Platt then pulled back from the window, giving Matix opportunity to fire. Due to collision damage, Matix could only open his door partially, and fired one shotgun round at Grogan and Dove, striking their vehicle. Matix was

then shot in the right forearm, probably by Grogan.[9] McNeill returned fire with six shots from his revolver, hitting Matix with two rounds in the head and neck. Matix was apparently knocked unconscious by the hits and fired no more rounds.[10] McNeill was then shot in the hand, and due to his wound and blood in his revolver's chambers, could not reload.[7]

As Platt climbed out of the passenger side car window, one of Dove's 9 mm rounds hit his right upper arm and went on to penetrate his chest, stopping an inch away from his heart. The autopsy found Platt's right lung was collapsed and his chest cavity contained 1.3 liters of blood, suggesting damage to the main blood vessels of the right lung. Of his many gunshot wounds, this first was the primary injury responsible for Platt's eventual death.[11] The car had come to a stop against a parked vehicle, and Platt had to climb across the hood of this vehicle, a Cutlass. As he did so, he was shot a second and third time, in the right thigh and left foot. The shots were believed to have been fired by Dove.[12]

Platt took up position by the passenger side front fender of the Cutlass. He fired a .357 Magnum revolver at agents Ronald Risner and Gilbert Orrantia, and was shot a fourth time when turning to fire at Hanlon, Dove and Grogan. The bullet, fired by Risner or Orrantia, penetrated Platt's right forearm, fractured the radius bone and exited the forearm. This wound caused Platt to drop his revolver.[13] It is estimated that Platt was shot a fifth time shortly afterwards, this time by Risner. The bullet penetrated Platt's right upper arm, exited below the armpit and entered his torso, stopping below his shoulder blade. The wound was not serious.[14]

Platt fired one round from his Mini-14 at Risner and Orrantia's position, wounding Orrantia with shrapnel created by the bullet's passage, and two rounds at McNeill. One round hit McNeill in the neck, causing him to collapse and leaving him paralyzed for several hours. Platt then apparently positioned the Mini-14 against his shoulder using his uninjured left hand.[15]

Dove's 9 mm pistol was rendered inoperative after being hit by one of Platt's bullets. Hanlon fired at Platt and was shot in the hand while reloading. Grogan and Dove were kneeling alongside the driver's side of their car. Both were preoccupied with getting Dove's gun working and did not detect that Platt was aggressively advancing upon them. When Platt rounded the rear of their car he killed Grogan with a shot to the chest, shot Hanlon in the groin area and then killed Dove with two shots to the head. Platt then entered the Grogan/Dove car in an apparent attempt to flee the scene.[16] As Platt entered Grogan and Dove's car, Mireles, able to use only one arm, fired the first of five rounds from his pump-action shotgun, wounding Platt in both feet.[7] At an unknown time, Matix had regained consciousness and he joined Platt in the car, entering via the passenger door. Mireles fired four more rounds at Platt and Matix, but hit neither.[17]

Around this time, Metro-Dade Police Officers Leonard Figueroa and Martin Heckman arrived. Heckman covered McNeill's paralyzed body with his own.[18]

Platt's actions at this moment in the fight have been debated. A civilian witness described Platt leaving the car, walking almost 20 feet and firing at Mireles three times at close range. Mireles does not remember this happening. Officer Heckman does not remember Platt leaving the Grogan/Dove car. Risner and Orrantia, observing from the other side of the street, stated that they did not see Platt leave the car and fire at Mireles.[19] However, it is known for certain that Platt pulled Matix's Dan Wesson revolver at some point and fired three rounds.[15][20]

Platt attempted to start the Grogan/Dove car. Mireles drew his .357 Magnum revolver, moved parallel to the street and then directly toward Platt and Matix. Mireles fired six rounds at the suspects. The first round missed, hitting the back of the front seat. The second hit the driver's side window post and fragmented, with one small piece hitting Platt in the scalp. The third hit Matix in the face, and fragmented in two, with neither piece causing a serious wound. The fourth hit Matix in the face next to his right eye socket, travelled downward through the facial bones, into the neck, where it entered the spinal column and severed the spinal cord. The fifth hit Matix in the face, penetrated the jaw

bone and neck and came to rest by the spinal column.[21] Mireles reached the driver's side door, extended his revolver through the window, and fired his sixth shot at Platt. The bullet penetrated Platt's chest and bruised the spinal cord, ending the gunfight.[22]

The shootout involved ten people: two suspects and eight FBI agents. Of the ten, only one, Special Agent Manauzzi, did not fire any shots (firearm thrown from car in initial collision), while only one, Special Agent Risner, was able to emerge from the battle without a wound. The incident lasted under five minutes yet approximately 145 shots were exchanged.[7][23]

Toxicology tests showed that the abilities of Platt and Matix to fight through multiple traumatic gunshot wounds and continue to battle and attempt to escape were not achieved through any chemical means. Both of their bodies were drug-free at the time of their deaths.[24]

## Aftermath [edit]

The subsequent FBI investigation placed partial blame for the agents' deaths on the lack of stopping power exhibited by their service handguns. The FBI soon began the search for a more powerful caliber and cartridge. Noting the difficulties of reloading a revolver while under fire, the FBI specified that agents should be armed with semiautomatic handguns. The Smith & Wesson 1076, chambered for the 10mm Auto round, was chosen as a direct result of the Miami shootout. The sharp recoil of the 10mm Auto later proved too much for most agents to control effectively, and a special reduced velocity loading of the 10mm Auto round was developed, commonly referred to as the "10mm Lite" or "10mm FBI".

Soon thereafter, Smith and Wesson realized the long case of the 10mm Auto was not necessary to produce the decreased ballistics of the FBI load. Smith and Wesson developed a shorter cased cartridge based on the 10mm that would ultimately replace the 10mm as the primary FBI service cartridge, the .40 S&W. The .40 S&W became more popular than its parent due to the ability to chamber the shorter cartridge in standard frame automatic pistols designed initially for the 9 mm Parabellum. Other than a .142" reduction in overall case length, resulting in less gunpowder capacity in the .40 S&W; the 10mm and .40 S&W are identical in projectile diameter, both using a 0.400" caliber bullet.

In addition to the changes made at the FBI, this incident contributed to the increasing trend of law enforcement agencies switching from revolvers to semi-automatic pistols across the nation. [1]

Other issues were brought up in the aftermath of the shooting. Despite being on the lookout for two violent felons who were known to use firearms during their crimes, only two of the FBI vehicles contained shotguns (in addition to Mireles, McNeill had a shotgun in his car, but was unable to reach it before the shootout began), and none of the agents were armed with rifles. Only two of the agents were wearing ballistic vests, and the armor they were wearing was standard light body armor, which is designed to protect against handgun rounds, not the .223 Remington rounds fired by Platt's Mini-14 rifle. While heavier armor providing protection against rifle rounds would normally have been hot and uncomfortable to wear on patrol in Miami's April climate, the agents spending the day sitting in air conditioned vehicles on the lookout for a single target were facing more ideal conditions for its use.

The other six agents involved in the stakeout in five vehicles, who did not reach the shootout in time to participate, did have additional weaponry including Remington shotguns, Heckler & Koch MP5 submachine guns, and M16 rifles.[7]

## Weaponry and injuries [edit]

### Agents [edit]

- Richard Manauzzi: lost control of weapon in the initial vehicle collision, no shots fired. Minor

injuries from shotgun pellets.[7]

- Gordon McNeill: Smith & Wesson Model 19 .357 Magnum revolver, six rounds .38 Special +P fired. Seriously injured by .223 gunshot wounds to the right hand and neck.
- Edmundo Mireles: Remington M870 12-gauge shotgun, five rounds 00 buckshot fired, .357 Magnum revolver, Smith & Wesson Model 686 (despite not being FBI-issue), six rounds .38 Special +P fired. Seriously injured by a .223 gunshot wound to the left forearm.
- Gilbert Orrantia: S&W (model unknown, likely a Model 13, as it was an issued weapon at the time) .357 Magnum revolver, 12 rounds .38 Special +P fired. Injured by shrapnel and debris produced by a .223 bullet near miss.
- John Hanlon: Smith & Wesson Model 36 .38 Special revolver, 2-inch barrel, five rounds .38 Special +P fired. Seriously injured by .223 gunshot wounds to the right hand and groin.
- Benjamin Grogan: Smith & Wesson Model 459 9mm pistol, nine rounds fired. Killed by a .223 gunshot wound to the chest.
- Jerry Dove: Smith & Wesson Model 459 9mm pistol, 20+ rounds fired. Killed by two .223 gunshot wounds to the head.
- Ronald Risner: Smith & Wesson Model 459 9mm pistol, 14 rounds fired, S&W Model 60 .38 Special revolver, one round .38 Special +P fired. Uninjured.

### Suspects [edit]

- William Matix: Smith & Wesson Model 3000 12-gauge shotgun, one round #6 shot fired. Killed after being shot six times.
- Michael Platt: Ruger Mini-14 .223 Remington carbine, at least 42 rounds fired, S&W M586 .357 Magnum revolver, three rounds fired, Dan Wesson .357 Magnum revolver, three rounds fired. Killed after being shot 12 times.

## Lawsuit [edit]

After the shooting, the families of Jerry Dove and Benjamin Grogan sued the estates of Platt and Matix for damages. The lawsuit was dismissed.[25]

## Memorial [edit]

In 2001, the Village of Pinecrest, Florida, which incorporated in 1996, honored the two agents by co-designating a portion of Southwest 82nd Avenue as Agent Benjamin Grogan Avenue and Agent Jerry Dove Avenue. Street signs and a historical marker commemorate the naming of the roadway in honor of the two agents.

## In popular culture [edit]

This section **does not cite any references or sources**. Please help improve this section by adding citations to reliable sources. Unsourced material may be challenged and removed. *(October 2013)*

- In 1988, NBC produced a made-for-television movie, *In the Line of Duty: The F.B.I. Murders* depicting the circumstances leading up to and including the shootout, one of several films in the *In the Line of Duty* series produced during the 1980s and 1990s. Michael Gross portrayed William Matix and David Soul portrayed Michael Platt. Ronny Cox portrayed Ben Grogan, and Jerry Dove was portrayed by Bruce Greenwood.
- An episode of the short lived TV series, *FBI: The Untold Stories*, featured a portrayal of the shootout.
- The incident is featured in the novel *Unintended Consequences* by John Ross.

- The event is one of several shootouts documented by firearms instructor Massad Ayoob in his 1995 book, *The Ayoob Files: The Book*.
- The event is the subject of an episode of the Discovery Channel's *The FBI Files*.
- In 2012, Investigation Discovery aired an episode of *Real Vice Miami* that recounts the shootout in detail. Rey Hernandez portrayed William Matix and Nestor Lao portrayed Michael Platt. Robb Erwin portrayed Ben Grogan and Jerry Dove was portrayed by Alexis Aguilar. The program includes first-person commentary by retired FBI Special Agents Gil Orrantia and John Hanlon, who both survived the gunfight.

## See also [edit]

1980s portal | Miami portal | Death portal | Government of the United States portal | Law enforcement portal

- Shootout
- North Hollywood shootout
- Norco shootout

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## External links [edit]

- Shootout Scene from In the Line of Duty
- FBI Hall of Honor
- Detailed article from Firearms Tactical
- *In The Line Of Duty: The FBI Murders* at the Internet Movie Database
- The Ultimate After Action Report! at The Gun Zone
- Pinecrest Street Names
- FBI inquiry into the incident
- *Real Vice Miami: The Bloodiest Day*

v · t · e Federal Bureau of Investigation [show]

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# Firearms Tactical Institute

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## Tactical Briefs #7, July 1998

Updated 6-25-99: Link to Dr. Anderson's web site, in which selected pages from his book are published, has been added to the end of the literature report below.

### Literature Report

**Anderson, W. French, M.D.: Forensic Analysis of the April 11, 1986, FBI Firefight. W. French Anderson, M.D., 1996 (127 pages, paperback)**

This publication (softcover book) was researched, written and published entirely by Dr. Anderson, who is a professor of Biochemistry and Pediatrics at the University of Southern California School of Medicine. Dr. Anderson's report is the most thoroughly researched and documented account of the FBI-Miami shoot-out that has ever been made public.

*Note: Ordering instructions appear at the end of this article.*

For the benefit of those of you who are unfamiliar with the circumstances leading up to this shoot-out, the following is a summary of the incident (this is not part of Dr. Anderson's book):

> *Two FBI agents were killed and five wounded in Miami during a confrontation with robbery suspects at approximately 9:45 a.m. on April 11. Prior to the shootings, the Agents, along with officers of the Metro-Dade Police Department, were conducting a mobile surveillance, attempting to locate two males believed to have committed a number of violent bank and armored car robberies. Observing a vehicle matching the description of one that had been stolen and used in previous robberies, an attempt was made to stop the car. When the Agents in three FBI vehicles subsequently forced the suspects' vehicle to a halt, two males, aged 32 and 34, emerged firing weapons. They used a 12-gauge shotgun with a modified pistol grip stock equipped to fire eight rounds; a .223-caliber semiautomatic rifle with 30 round magazine; and two .357-caliber handguns. The resultant gun battle left the two assailants and two Agents dead, as well as five Agents wounded. The victim Agents, both killed by rifle fire, were 53 and 30 years of age with 24 and 3 years of service, respectively.* Law Enforcement Officers Killed and Assaulted, 1986. United States Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports, Washington, D.C., 1986, p. 27.

Dr. Anderson's publication neither addresses nor examines the tactical aspects of the confrontation and ensuing gunfight. Instead, according to Dr. Anderson the purpose of his work is, "to establish the facts concerning what is known about the injuries incurred by Michael Platt and William Matix," and "to present a reasonable hypothesis, based on those facts, of what actually happened from a forensic medicine perspective to these two individuals".

We're publishing this literature report as our comprehensive interpretation of Dr. Anderson's findings. Whereas many of the general facts about the shoot-out are well known as they have been publicly reported in several magazine articles, news reports, a made for television movie, etc., Dr. Anderson's book closely examines the wounds inflicted on Matix and Platt and attempts to correlate the time, location and exact body positions of both Matix and Platt when they were struck by FBI gunfire, and also attempts to identify which FBI agent fired the shot that caused the

particular wound. Our intent is not to infringe upon Dr. Anderson's work or copyright, but to report about his findings. In order to accomplish this, we have to report his findings in more detail than a typical "literature review" would provide. Also, we attempt to "paint pictures with words" in describing each of the graphic illustrations and photographs.

**Introduction**

Dr. Anderson's book begins by reviewing the background information about the gun battle, and includes information about the participants, the weapons used, the injuries incurred by the suspects and FBI agents, and the location and positioning of the suspect and FBI vehicles:

FBI Agents:

| | |
|---|---|
| Richard Manauzzi | Injured (unspecified injuries). |
| Gordon McNeill | Seriously injured by .223 gunshot wounds to the right hand and neck |
| Edmundo Mireles | Seriously injured by a .223 gunshot wound to the left forearm. |
| Gilbert Orrantia | Injured by shrapnel and debris produced by a .223 bullet near miss. |
| John Hanlon | Seriously injured by .223 gunshot wounds to the right hand and groin. |
| Benjamin Grogan, 53 | Killed by a .223 gunshot wound to the chest. |
| Gerald Dove, 30 | Killed by two .223 gunshot wounds to the head. |
| Ron Risner | Uninjured. |

Suspects:

| | |
|---|---|
| William Matix, 34 | Killed by multiple gunshot wounds. |
| Michael Platt, 32 | Killed by multiple gunshot wounds. |

Weapons involved in the gunfight:

Suspects:

| | |
|---|---|
| Matix: | S&W M3000 12 gauge shotgun (1 round #6 shot fired). |
| Platt: | Ruger Mini-14 .223 Remington carbine (at least 42 rounds fired),<br><br>S&W M586 .357 Magnum revolver (3 rounds fired),<br><br>Dan Wesson .357 Magnum revolver (3 rounds fired). |

FBI:

| | |
|---|---|
| McNeill: | S&W M19-3 .357 Magnum revolver, 2-inch barrel (6 rounds .38 Special +P fired). |
| Mireles: | Remington M870 12 gauge shotgun (5 rounds 2 3/4 inch 00 buckshot fired),<br><br>.357 Magnum revolver (make & model unknown), (6 rounds .38 Special +P fired). |
| Grogan: | S&W M459 9mm automatic pistol (9 rounds fired). |
| Dove: | S&W M459 9mm automatic pistol (20 rounds fired). |
| Risner: | S&W M459 9mm automatic pistol (13-14 rounds fired?),<br><br>S&W (model unknown) .38 Special revolver (1 round .38 Special +P fired). |
| Orrantia: | S&W (model unknown) .357 Magnum revolver, 4 inch barrel (12 rounds .38 Special +P fired). |
| Hanlon: | S&W (model unknown) .38 Special revolver, 2-inch barrel (5 rounds .38 Special +P fired). |
| Manauzzi: | Apparently lost possession of his handgun during the vehicle collision and was unable to locate and recover it during the gunfight (0 rounds fired). |

From the time in which Grogan and Dove first spotted the Monte Carlo occupied by Platt and Matix to the time in which the last gunshot was fired by Mireles, approximately nine and a half minutes elapsed. The gun battle itself lasted over four minutes.

In the Introduction section, there are three color illustrations depicting the crime scene and five color photographs of the actual crime scene. The following is a description of these illustrations and photographs:

> Plate A (prepared by Metro-Dade Police Department) is an overhead view illustration that shows major geographical features of the crime scene (structures, roads, trees, etc.) as well as the location and positioning of Matix/Platt's Monte Carlo, the FBI agents' cars, and two uninvolved civilian vehicles (a Cutlass and a Trans Am) parked at the crime scene during the shoot-out.
>
> *In an effort to help you follow the events of the shoot-out, we've prepared and published a simple illustration that is based on Plate A. Our illustration is published below. Please keep in mind that our illustration is not to scale and is intended to provide you a coarse representation of the crime scene.*
>
> Plate B (prepared by Metro-Dade Police Department) is an overhead view illustration of the crime scene that depicts the locations and positioning of the vehicles and the bodies of the deceased, and provides color coded graphic symbols to identify the location of spent firearms cartridge cases found at the scene, the locations of weapons found on the scene, the locations and calibers of projectiles recovered at the crime scene and in the bodies of the deceased.
>
> Plate C (prepared by Metro-Dade Police Department) is an overhead view illustration of the crime scene that depicts the locations of blood found on the grounds, vehicles, and weapons. The illustration provides color coded graphics that identify the person from whom the blood originated.

Plate D is an overhead view crime scene photograph (color) that was taken from a position almost directly behind McNeill's car. It shows the locations and positioning of the Monte Carlo, Manauzzi's car, McNeill's car, Cutlass, and Grogan/Dove's car. Grogan/Dove's car is seen displaced from it's location during the gunfight; it's front bumper is in contact with the rear bumper of Manauzzi's car.

*(According to Dr. Anderson, Grogan/Dove's car had rolled forward in the moments immediately after the gun battle. We asked Dr. Anderson about this and he queried Orrantia, McNeil and Mireles. All three Agents agreed that the likely scenario was that the transmission was in neutral, and when the driver's and passenger's doors were violently flung open by Risner and Agent Bob Ross to remove the bodies of Platt and Matix, the momentum of the doors being opened caused the car to roll forward until it contacted the rear bumper of Manauzzi's car. When the car came to a halt, Ross removed Platt's body and Risner removed the Matix's body.)*

The contrast between bright sunlight and deep shade under the trees is clearly visible. A white sheet and a yellow sheet are visible in the shade covering Dove's and Grogan's bodies. The deep shade obscures the view of Platt's body laying on the ground (face side up) outside the driver's side door of Grogan/Dove's car. In the bright sunlight out in the street, Mireles' shotgun is partially visible behind the passenger side corner of the rear bumper of McNeill's car. A large pool of blood is also visible to the right of the shotgun.

Plate E is a crime scene photograph (color) view taken from the approximate perspective of where Hanlon/Mireles' car is located. McNeill's car in the foreground almost totally obscures the view of Manauzzi's car in the background. The rear passenger compartment of the Monte Carlo is visible above the hood of McNeill's car. The rear passenger compartment of the Cutlass is visible behind the Monte Carlo's trunk. Grogan/Dove's car is touching Manauzzi's car. Platt's body is barely visible in the deep shade laying on the ground outside the driver's side door of Grogan/Dove's car. A white sheet covering Dove's body and a yellow sheet covering Grogan's body are visible in the deep shade behind their car.

Plate F is a crime scene photograph (color) close-up view taken from a similar angle as the Plate E photo and shows essentially the same details.

Plate G is a crime scene photograph (color) view taken from behind Grogan/Dove's car. The trunk of a large tree is visible, located immediately behind the passenger side rear fender of Grogan/Dove's car. Large blood smears and blood splatters are visible on the rear of Grogan/Dove's car. Grogan's body is visible on the ground, partially covered by a yellow sheet. Dove's body is visible on the ground, partially covered by a yellow sheet and a white sheet. Platt's body is uncovered and partially visible; his bare upper torso can be seen (paramedics apparently tore off his shirt) and an endotracheal tube is visible sticking out of his mouth. The contrast between bright sunlight and deep shade is very evident.

Plate H is a crime scene photograph (color) taken from a location in the parking lot behind the Trans Am. Grogan/Dove's car is visible on the left of the photo, the driver's side corner of the front bumper is touching the driver's side rear bumper of Manauzzi's car; the front hood and windshield of McNeill's car is visible behind Manauzzi's and Grogan/Dove's cars; Manauzzi's car is visible to the immediate left of the Monte Carlo. The Monte Carlo's entire passenger side is visibly wedged hard against the Cutlass; the rear passenger side of the Monte Carlo is sagging. The rear

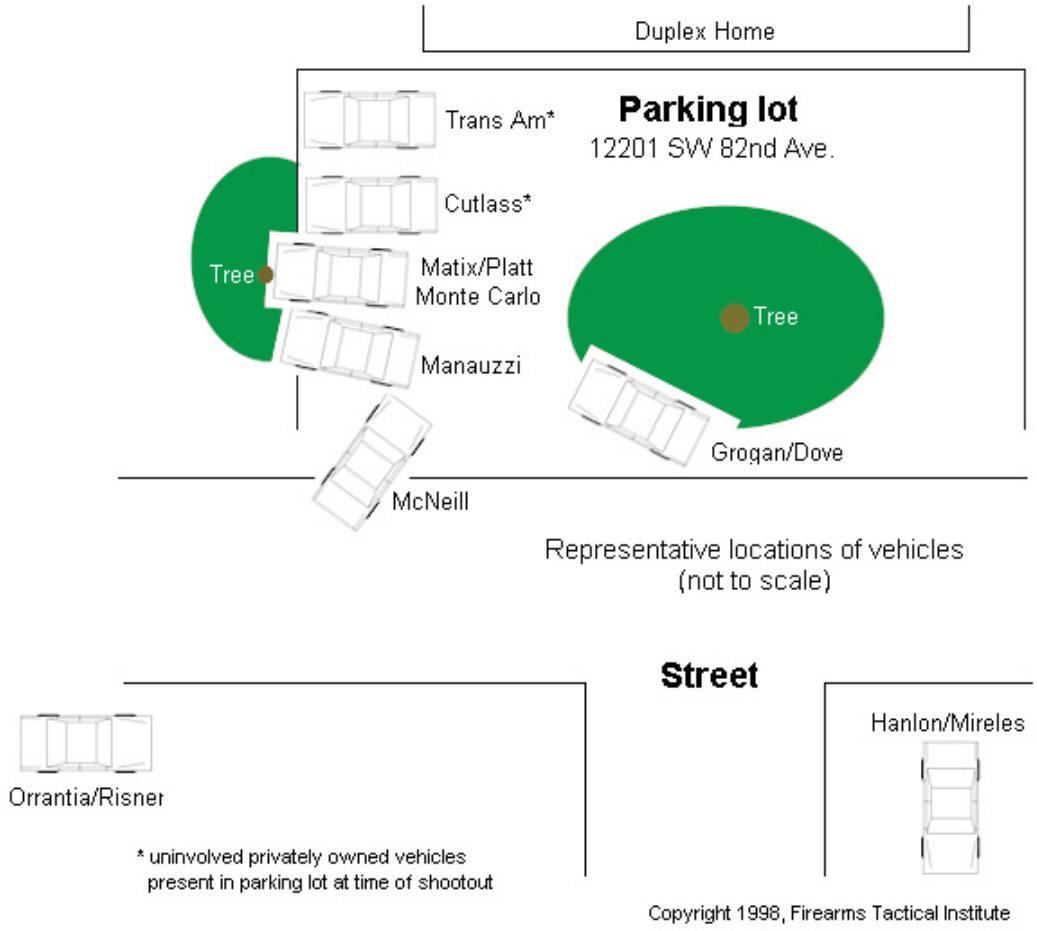
window of the Monte Carlo has been almost completely shot out. Shattered glass fragments can be seen covering the trunk of the Monte Carlo.

**The Injuries of Michael Platt and William Matix**

The gunshot wounds present on Matix's body (six wounds, A-F) and Platt's body (12 wounds, A-L) are identified and detailed in alphabetical sequence in the autopsy reports prepared by Dade County Medical Examiner Jay Barnhart, M.D. These reports have been reproduced in Dr. Anderson's book. Dr. Anderson refers to each wound using the same identification letter and terminology as documented in the autopsy reports.

Dr. Anderson's book follows the chronology of the gunfight and addresses each of Matix's and Platt's wounds in the chronological order in which each was inflicted. He has broken the gunfight down into four distinct phases as follows:

| | |
|---|---|
| I. | The first encounter: Platt and Matix inside the Monte Carlo (estimated duration: approximately 1 minute) |
| II. | The initial hits on Platt: Platt exiting the Monte Carlo (estimated duration: several seconds) |
| III. | Platt's devastating attack: Platt outside the Monte Carlo (estimated duration: approximately 1½ minutes) |
| IV. | The final fusillade: Platt and Matix in Grogan/Dove's car (estimated duration of approximately 1½ - 2 minutes). |




**Tactical Briefs #7, Figure 1. FBI-Miami Shootout Crime Scene**

## I. The First Encounter: Platt and Matix Inside the Monte Carlo

Matix's 1st gunshot wound (right forearm wound E) - Grogan
Matix's 2nd gunshot wound (right head wound F) - McNeill
Matix's 3rd gunshot wound (right neck/chest wound B) - McNeill

Immediately after Matix/Platt's Monte Carlo was forced off the road by three FBI vehicles (occupied by Special Agents Grogan/Dove, Manauzzi, and Hanlon/Mireles), it sideswiped a Cutlass sedan and collided head-on into a tree. Platt (sitting in the passenger seat) then fired 13 rounds from his Mini-14 through the closed driver's side window of the Monte Carlo at Manauzzi in the car directly beside them, then at Supervisory Special Agent McNeill's approaching car, then at McNeill (hitting his shooting hand), and then at Mireles (who fell to the ground after being hit in his left forearm). Dr. Anderson conjectures that Platt might have felt he'd sufficiently suppressed the threats emanating from the left front of the Monte Carlo, and he pulled back from the window. This would have given Matix the opportunity to fire towards the left rear at Grogan and Dove with his 12 gauge shotgun.

Because the driver's side door had been damaged during the collision with Manauzzi's car (as well as the proximity of Manauzzi's car immediately beside the Monte Carlo), Matix could only partially open his door. He leaned out from his sitting position and fired one round of #6 shot towards Grogan and Dove, which hit the grill of Grogan's car. Dr. Anderson feels this is most likely when Matix received his first wound, right forearm wound E, which entered his right forearm just

above the wrist. Dr. Anderson believes Grogan fired this shot, which hit Matix from a distance of approximately 25 feet. Grogan's bullet entered Matix's forearm on the little finger side, traveled just beneath the ulnar and radius bones, cut the ulnar artery, and exited the forearm on the thumb side.

Dr. Anderson speculates that Matix probably withdrew back inside the Monte Carlo to examine the wound. At this point, McNeill (who'd already fired four shots across the hood of Manauzzi's car and into the cab of the Monte Carlo when he was hit in his gun hand by one of Platt's .223 bullets) apparently saw Matix's movement and fired the last two rounds out of his revolver at Matix. The bullet from McNeill's shot number 5 is believed to have caused Matix's 2nd wound, head wound F.

As Matix pulled back inside after firing at Grogan and Dove, who were positioned behind the Monte Carlo, Matix's head and upper torso were still rotated to the left when McNeill's bullet hit him, producing head wound F. The bullet hit Matix just forward of his right ear, below the temple, shattered the cheek bone, hit and fractured the base of the cranium, and entered the right sinus cavity under the eye. This hit bruised the brain (but did not penetrate the cranium or brain) and Dr. Anderson believes it most probably knocked Matix instantly unconscious.

McNeill's sixth shot hit Matix, causing the third wound, right neck/chest wound B. The bullet entered the right side of his neck after he slumped unconscious momentarily forward against the driver's side door. It penetrated his neck at a downward angle and severed the blood vessels behind the collar bone, ricocheted off the first rib near the spine and came to rest in the chest cavity. It bruised but did not penetrate the right lung. This wound interrupted the blood supply to his right arm and might have also disrupted the brachial plexus to cause dysfunction of the nerves that supply the arm. Dr. Anderson speculates that Matix's right arm was probably paralyzed by this injury, either immediately by disruption of the nerves or eventually by total loss of blood circulation to the arm. Dr. Anderson feels this wound would have ultimately been fatal, due to the severed blood vessels. Bleeding from this injury during the next 2-3 minutes caused almost a liter of blood to accumulate in the chest cavity. However, for the next minute, it is believed that Matix slumped over onto his back and lay unconscious on the front seat of the Monte Carlo.

Dr. Anderson observes that although Platt fired 13 rounds of .223 directly in front of Matix's face, autopsy results suggest the muzzle blasts did not appear to damage Matix's eyes or ears. His corneas were intact and there was no blood in his ear canals to indicate that his eardrums had been ruptured.

Platt's blood was not found anywhere inside the Monte Carlo, and because of this Dr. Anderson believes Platt did not receive any bullet wounds while he occupied the passenger compartment.

The following is a description of photographs and illustrations published in Chapter I:

> Figure I-1 (Matix forearm wound E) is an overhead illustration that depicts the location and positioning of the Monte Carlo, Manauzzi's car, McNeill's car, Grogan/Dove's car and an uninvolved civilian car (Cutlass). Grogan is depicted firing his gun at Matix from behind his open car door and shows the path of the bullet from the muzzle of Grogan's gun, across the hood of Grogan's car, across the trunk of Manauzzi's car and hitting Matix's forearm.
>
> Figure I-2 (Matix forearm wound E) is a close-up, overhead illustration that shows the path of Grogan's bullet through Matix's forearm while Matix is leaning out of the

partially opened driver's door of the Monte Carlo. Matix is depicted holding the shotgun in a firing position with his whole upper torso rotated to the left at the waist. The pistol grip held in his right hand. His left hand is supporting the shotgun's receiver.

Figure I-3 (Matix forearm wound E) contains three separate illustrations. The first is a medical illustration that depicts a cross section of Matix's forearm to show major anatomical structures and the wound path of Grogan's bullet. The second illustration depicts Grogan's bullet having passed through Matix's forearm and how it cut the ulnar artery. The third illustration is a left side view that shows Matix twisted around to his left facing backwards in the driver's seat of the Monte Carlo, firing his shotgun while Grogan's bullet enters his forearm on the little finger side, passes through the forearm, and exits the thumb side.

Figure I-4 (Matix head and neck/chest wounds F and B) is an overhead illustration that depicts the location and positioning of the Monte Carlo, Manauzzi's car, McNeill's car, Grogan/Dove's car and an uninvolved civilian car (Cutlass). McNeill is depicted kneeling beside the left front fender of Manauzzi's car firing shots 5 and 6 across the hood at Matix, who's sitting in the driver's seat of the Monte Carlo.

Figure I-5 (Matix head wound F) is a close-up, overhead view that shows the path of McNeill's bullet from shot number 5, as it impacts the right side of Matix's head while he's turned around facing backwards.

Figure I-6 (Matix head wound F) is a side view illustration of Matix's bust (head and shoulders) that shows the bullet from McNeill's shot number 5 striking his head just forward of his right ear and the wound path of the bullet into the sinus.

Figure I-6 (sic) (Matix head wound F) is a medical illustration that depicts a profile of Matix's head as viewed from the right front quadrant. The skull and brain are detailed to show the anatomical structures disrupted by the bullet from McNeill's shot number 5.

Figure I-7 (Matix head wound F) is a photograph (black & white) of a bullet fragment recovered from the right side of Matix's face.

Figure I-8 (Matix head wound F) is a photograph (black & white) of a bullet fragment recovered from Matix's right maxillary sinus.

Figure I-9 (Matix neck/chest wound B) is a close-up overhead illustration view that shows the path of McNeill's bullet from shot number 6 as it impacts the right side of Matix's neck while he's slumped against the driver's door facing McNeill.

Figure I-10 (Matix neck/chest wound B) is a side view illustration of Matix's bust that shows the bullet from McNeill's shot number 6 striking his neck and the wound path of the bullet into the chest.

Figure I-11 (Matix neck/chest wound B) is a medical illustration that depicts the major anatomical structures disrupted by the bullet from McNeill's shot number 6.

Figure I-12 (Matix neck/chest wound B) is a photograph (black & white) of a bullet fragment recovered from the front right side of the neck.

Plate I-A is a crime scene photograph (color) view of the damaged Monte Carlo's

driver's side door taken from the right rear fender of Manauzzi's car. It shows the Monte Carlo from the approximate perspective of Grogan and Dove.

Plate I-B is a crime scene photograph (color) close-up view of the limited ability of the Monte Carlo's driver's side door to open.

Plate I-C (Matix right forearm wound E) is an autopsy photograph (color) of the entry wound to the right forearm produced by Grogan's bullet.

Map of Plate I-C (Matix right forearm wound E) is an illustration of right forearm entry wound photograph Plate I-C.

Plate I-D (Matix right forearm wound E) is an autopsy photograph (color) of the exit wound to the right forearm produced by Grogan's bullet.

Map of Plate I-D (Matix right forearm wound E) is an illustration of right forearm exit wound photograph Plate I-D.

Plate I-E is a crime scene photograph (color) of the view of the Monte Carlo driver's window from across the engine compartment hood of Manauzzi's car.

Plate I-F is a crime scene photograph (color) of the hood of Manauzzi's car that shows the muzzle blast soot deposits of McNeill's six shots.

Plate I-G is an autopsy photograph (color) of the right side of Matix's face showing gunshot wounds A, B, C and F.

Plate 1-H is an autopsy photograph (color) of the right front quadrant of Matix's bust showing gunshot wounds A, B, C, D and F. A wire probe has been inserted into neck/chest wound B.

Plate I-I is a crime photograph (color) showing Matix's body laying on the ground (face side up) as viewed from the right side after Risner removed him from Grogan/Dove's car.

Map of Plate I-I is an illustration of the blood patterns present on Matix's head and upper torso as seen in crime scene photograph I-I.

**II. The Initial Hits on Platt: Platt Exiting the Monte Carlo**

Platt's 1st gunshot wound (right upper arm/chest wound B) - Dove
Platt's 2nd gunshot wound (right thigh wound L) - Dove?
Platt's 3rd gunshot wound (left foot wound I) - Dove?
Platt's 4th gunshot wound (back wound K) - Orrantia?

Dr. Anderson theorizes that when Platt saw Matix slump over after being hit by McNeill's bullets he might have decided that his chances of getting away were better if he exited the Monte Carlo.

As Platt crawled through the passenger side window, one of Dove's 9mm bullets hit his right upper arm, just above the inside crook of the elbow. According to Dr. Anderson, the bullet passed under the bone, through the deltoid, triceps and teres major muscles, and severed the brachial arteries and veins. The bullet exited the inner side of his upper arm near the armpit, penetrated his chest between the fifth and sixth ribs, and passed almost completely through the right lung before stopping. The bullet came to a rest about an inch short of penetrating the wall of the heart.

*(However, the accompanying autopsy report states that the bullet passed through the biceps muscle, and the autopsy photograph seems to support the medical examiner's observation. The autopsy photograph shows an entry wound of the upper right arm, just above the inside bend of the elbow, in the location where the biceps muscle begins to show definition. The photograph suggests that the bullet passed through the biceps muscle of the upper arm in front of the bone. We discussed our observation with Dr. Anderson and he agreed with us. He stated that he would correct this error in a future revision to his report.)*

At autopsy, Platt's right lung was completely collapsed and his chest cavity contained 1300 ml of blood, suggesting damage to the main blood vessels of the right lung. Dr. Anderson believes that Platt's first wound (right upper arm/chest wound B) was unsurvivable, and was the primary injury responsible for Platt's death.

The Monte Carlo came to a stop with it's passenger side wedged against an uninvolved vehicle (Cutlass) that was parked in the driveway of a duplex home where the incident took place. After Platt crawled out the window and was rolling off the front hood of the Cutlass, Dr. Anderson believes he has hit twice more, most probably by Dove, in the right rear thigh and left foot, (right rear thigh wound L and left foot wound I, respectively).

The bullet that produced the thigh wound entered the inside back surface of the right thigh and exited the outside surface of the leg, and involved only muscle tissue.

The bullet that hit Platt's left foot entered behind the little toe and passed laterally through the foot from left to right, exiting above the big toe.

Dr. Anderson feels Platt's fourth gunshot wound (back wound K) might have incurred shortly after he exited the Monte Carlo. The wound is a left to right grazing wound to the back, and may have been inflicted by Orrantia, who was in a position across the street and in front of the Monte Carlo. Orrantia's bullet might have hit Platt after he got back onto his feet in front of the Cutlass and was turning to his left. The bullet abraded the skin just to the right of the spine in the location of the upper shoulder blade.

The following is a description of photographs and illustrations published in Chapter II:

Figure II-1 (Platt right upper arm/chest wound B) is an overhead illustration that depicts the location and positioning of the Monte Carlo, McNeill's car, Manauzzi's car, Grogan/Dove's car, and an uninvolved civilian car (Cutlass). Dove is depicted firing his gun at Platt from behind his open passenger side door and shows the path of the bullet leaving the muzzle of Dove's gun, across the trunk of the Monte Carlo, through the rear passenger compartment window of the Monte Carlo, through a passenger side window of the Monte Carlo and hitting Platt's right upper arm as he's crawling out the passenger side window of the Monte Carlo.

Figure II-2 (Platt right upper arm/chest wound B) is a close-up side view illustration of Platt crawling out the passenger side window of the Monte Carlo, holding the Mini-14 rifle in his right hand. The trajectory of Dove's bullet is shown passing through the right upper arm and into the right side of the chest.

Figure II-3 (Platt right upper arm/chest wound B) contains two separate illustrations. The upper drawing is a medical illustration that depicts the major body structures (major nerves and blood vessels of the of the right upper arm, rib cage, right lung, etc.) disrupted by Dove's bullet as it passed through Platt's right upper arm and into his chest. The second drawing is a medical illustration that depicts a cross section of

Platt's right upper arm to show major anatomical structures and the wound path of Dove's bullet through the arm.

Figure II-4 (Platt right upper arm/chest wound B) is an autopsy x-ray of Platt's chest showing a mushroomed bullet in the hilum of Platt's right lung. Also visible is another bullet (Platt right forearm/chest wound C) that was inflicted at a later point in the gunfight.

Figure II-5 (Platt right rear thigh wound L and left foot wound I) is an overhead illustration that depicts the location and positioning of the Monte Carlo, McNeill's car, Manauzzi's car, Grogan/Dove's car and uninvolved civilian vehicle (Cutlass). Dove is depicted behind his open car door firing his gun at Platt. The trajectory of the two bullets that hit Platt are shown exiting the muzzle of Dove's gun, across the trunk of the Monte Carlo, through the rear passenger compartment window of the Monte Carlo, and hitting Platt after he's exited the Monte Carlo and he's rolling off the front hood of the Cutlass with Mini-14 in hand.

Figure II-6 (Platt right rear thigh wound L and left foot wound I) is a close-up, overhead illustration that shows the paths of Dove's two bullets through Platt's right thigh and left foot while Platt is rolling off the front hood of the Monte Carlo with Mini-14 (fitted with collapsing/folding stock) in hand.

Figure II-7 (Platt right rear thigh wound L) is a medical illustration that shows Dove's bullet passing from left to right through the musculature of the back of Platt's right thigh.

Figure II-8 (Platt back wound K) is an illustration showing Orrantia's bullet grazing Platt's back from left to right, abrading and bruising the skin.

Plate II-A (Platt right upper arm/chest wound B) is an autopsy photograph (color) of Platt's outstretched right upper arm. A metal probe is seen inserted through the entry and exit wounds, following the wound path produced by Dove's bullet.

Map of Plate II-A (Platt right upper arm/chest wound B) is an illustration of Platt's right upper arm as seen in photograph Plate II-A.

Plate II-B (Platt right upper arm/chest wound B) is an autopsy photograph (color) of Platt's right armpit. A metal probe is seen inserted through the path of Dove's bullet from the exit wound of the right upper inside arm and into the entry wound of the right side chest. The exit wound of the arm is jagged. Bruising and abrasions caused by the temporary cavity formed in the upper arm by the 115 grain Winchester Silvertip bullet are visible on the skin of the inside arm and armpit side of the chest.

Map of Plate II-B (Platt right upper arm/chest wound B) is an illustration of Platt's armpit as seen in photograph Plate II-B.

Plate II-C (Platt right upper arm/chest wound B) is a crime scene photograph (color) of the rear passenger side of Grogan/Dove's car. A large quantity of Platt's blood is seen splattered on the passenger side rear door and rear fender. According to Dr. Anderson's caption: "Platt only leaned against this car for a few seconds. His right brachial artery had to have been actively spurting blood at the time to have left these blood patterns."

Plate II-D (Platt right upper arm/chest wound B) is a crime scene photograph (color) close-up of the rear passenger side door, fender and trunk hood of Grogan/Dove's car. In addition to the spurting blood patterns described above, there are also large smears of blood on the fender and trunk hood deposited by Platt when he leaned against the car to fire at Grogan.

Plate II-E (Platt right upper arm/chest wound B) is a crime scene photograph (color) of the rear of Grogan/Dove's car. Large splatters of Platt's blood are visible on the trunk hood, tail lights and rear bumper. Platt's body is partially visible laying on the ground, face-up, outside the partially open driver's door.

Plate II-F (Platt right rear thigh wound L) is an autopsy photograph of Platt's left and right rear thighs. A metal probe has been inserted through the wound track of the right rear thigh, from exit wound to entry wound respectively.

Plate II-G (Platt left foot wound I) is an autopsy photograph (color) of the top of Platt's left foot. A metal probe has been inserted through the wound track, and a toe tag that has been tied around the big toe is visible.

Map of Plate II-G (Platt left foot wound I) is an illustration of Platt's left foot as seen in photograph Plate II-G.

Plate II-H (Platt left foot wound I) is an autopsy photograph (color) of the entrance wound side of Platt's left foot. A metal probe is seen protruding out the entrance wound.

Map of Plate II-H (Platt left foot wound I) is an illustration of Platt's left foot as seen in photograph Plate II-H.

Plate II-I (Platt back wound K) is an autopsy photograph (color) of the superficial bullet wound to the back.

**III. Platt's Devastating Attack: Platt Outside the Monte Carlo**

Platt's 5th wound (right forearm wound D) - Risner?/Orrantia?
Platt's 6th wound (right upper arm/chest wound C) - Risner
Platt's 7th, 8th, 9th and 10th wounds (right foot wounds E, F; and left foot wounds G and H) - Mireles

After Platt crawled out of the Monte Carlo and rolled off the front hood of the Cutlass, he took a position at the passenger side front fender of the Cutlass. He fired a .357 Magnum revolver at Risner and Orrantia, who were both across the street shooting at him. Dr. Anderson believes that the revolver would have been easier for Platt to manipulate due to the injury incurred to his right upper arm by Dove's bullet (Platt right upper arm/chest wound B).

Dr. Anderson feels Platt received his fifth wound (Platt right forearm wound D) when, after shooting at Risner and Orrantia, he turned to fire at Grogan, Dove and Hanlon (who'd by now joined up with Grogan and Dove after running across the street with Mireles). The bullet, fired by either Risner or Orrantia, hit the outside of Platt's right forearm (midway between the wrist and the elbow) fractured the radius bone (the bone in the forearm on the thumb side), and exited the forearm.

The bullet also affected the muscles that control the thumb's ability to grip causing Platt to drop his .357 Magnum revolver. The revolver was found at the passenger side front fender of the

Cutlass after the shoot-out.

Dr. Anderson believes that shortly thereafter, Platt incurred his sixth wound (Platt right upper arm/chest wound C), which was inflicted by Risner. The bullet entered the back of Platt's right upper arm (mid arm), passed through the triceps muscle and exited below the armpit. It then entered the muscles in the side of his chest and came to a rest in the soft tissues of the right side back, below the shoulder blade. The bullet did not penetrate the rib cage and the resultant wound was not serious.

Platt then apparently positioned the Mini-14 against his shoulder using his uninjured left hand and manipulated the trigger with a barely functioning finger on his right hand, and fired three shots. One shot was directed at Orrantia and Risner's location, which hit the steering wheel of their car. Orrantia was injured by flying debris from this bullet. Two shots were fired at McNeill. The first bullet missed McNeill, but the second hit his neck. The second bullet stunned McNeill's spinal cord causing him to collapse, and he was temporarily paralyzed for several hours afterwards. McNeill recounts that Platt was smiling at him as he was shot.

Platt left his position at the passenger side front fender of the Cutlass, moving between the Cutlass and Trans Am, and began rapidly closing distance with Grogan, Dove and Hanlon who were behind Grogan/Dove's car. *(A Mini-14 magazine was recovered adjacent to the passenger side front fender of the Cutlass suggesting that Platt reloaded before he began his charge.)*

At this point in the gunfight, Dove had relocated from behind the passenger side door of his car, around the back of the car and had taken a position near the driver's side door. *(Dove's gun, a S&W model 459 9mm automatic, had been hit by one of Platt's bullets. Whether or not this occurred before or after he moved to the opposite side of the car is unknown.)* Grogan had moved to occupy a position near the driver's side rear fender. Hanlon had fired his gun dry after shooting at Platt from around the passenger side rear fender/bumper and was hit by one of Platt's bullets in his gun hand while reloading. Hanlon then rolled over onto his back behind the car. Within moments he saw Platt's feet standing at the passenger side rear of the vehicle. Dr. Anderson states that it was at this time when Platt left large smears of blood as well as arterial blood spurt patterns on the rear of the vehicle. As Hanlon attempted to push himself under the left rear trunk to maximize his cover against Platt, he heard Grogan cry out, "Oh my God!" Platt killed Grogan with a single shot to the chest. Platt then rounded the rear fender, saw Hanlon, and fired one shot into Hanlon's groin area. Hanlon rolled over onto right side into a fetal position expecting to be shot again and killed. However, Platt immediately shifted his attention to Dove, firing twice directly into Dove's head. Dove instantly collapsed; his head coming to rest just inches away from Hanlon's face. According to Dr. Anderson, Hanlon recalls that Platt fired several more rounds, apparently at Risner and Orrantia. The spent cases from Platt's Mini-14 fell onto Hanlon's body.

After firing at Risner and Orrantia, Platt opened the driver's side door of Grogan/Dove's Buick. Just as he was stepping to enter the car, Mireles fired the first of five rounds of 00 buckshot from the Remington 870 shotgun he was carrying when he was hit in the forearm at the beginning of the gunfight by one of Platt's bullets. Dr. Anderson feels this first shot by Mireles caused Platt right foot wounds E and F, and left foot wounds G and H. These wounds did not knock Platt off his feet.

Sometime during the gunfight, Matix regained consciousness and apparently crawled, unseen by the FBI agents, out the same window Platt had used to exit the Monte Carlo. Orrantia reported that Matix remained near the passenger side front fender of the Monte Carlo for awhile without ever firing a shot. When Platt entered the driver's side of Grogan/Dove's car, Matix joined him by entering the passenger side door. According to Dr. Anderson, forensic evidence indicates that

Matix never fired a weapon after he received his initial injuries while occupying the driver's seat of the Monte Carlo.

The following is a description of photographs and illustrations published in Chapter III:

Figure III-1 (Platt right forearm wound D and right upper arm/chest wound C) is an overhead view illustration that shows the location and positioning of the Monte Carlo, Manauzzi's car, McNeill's car, Grogan/Dove's car, Orrantia's/Risner's car, the Cutlass and the Trans Am. Risner is depicted positioned on the passenger side of his car firing over the front hood at Platt, who's across the street near the passenger side front fender of the Cutlass. The trajectory of two bullets is shown leaving Risner's gun and hitting Platt in the right forearm and right upper arm. Platt is depicted pointing his .357 Magnum revolver at Grogan/Dove/Hanlon . Also shown are the positions of Orrantia (occupying a position on the driver's side of the Orrantia/Risner car), Hanlon (who's behind Grogan/Dove's car), Grogan (near the driver's side rear fender of his car), and Dove (near the driver's side door of his car). Dr. Anderson notes that the drawing is based on speculation that Risner fired the bullet that hit Platt's forearm. The bullet passed completely through his arm and was never recovered. Therefore, there's no ballistic evidence to prove that Risner inflicted this wound on Platt.

Figure III-2 (right forearm wound D) is a close-up overhead view illustration showing Platt firing, using only his right hand, at Grogan/Dove/Hanlon. The trajectory of Risner's or Orrantia's bullet is shown passing through his right forearm.

Figure III-3 (Platt right upper arm/chest wound C) is a close-up overhead view illustration showing Platt standing in the same position as when he was hit in the forearm, however his shooting arm is hanging limp against his body. The trajectory of Risner's bullet is shown hitting and penetrating Platt's right side.

Figure III-4 (Platt right forearm wound D) is a medical illustration that depicts two views of the anatomical structures damaged by the bullet that perforated his right forearm. The upper illustration is an overhead view of Platt's forearm showing the bullet's wound path through the ulnar bone and damaging the muscle that controls the thumb. The lower illustration is a side view perspective that presents the same information.

Figure III-5 (Platt forearm wound D and right upper arm/chest wound C) is an autopsy x-ray that shows the huge wound channel blasted through the ulnar bone by the impacting bullet, which shattered the bone. Bone fragments can be seen scattered in the soft tissues on the exit wound side of the bone (inside surface of the forearm). Also visible is Risner's bullet that produced right upper arm/chest wound C.

Figure III-6 (Platt right upper arm/chest wound C) is a medical illustration that depicts the wound path of Risner's bullet through the musculature of the back of Platt's right upper forearm and into the subcutaneous tissues of the middle/rear upper torso under the shoulder blade.

Figure III-7 (Platt right upper arm/chest wound C) is an autopsy x-ray showing the bullet lodged in the tissues of Platt's back, external to the rib cage.

Figure III-8 (Platt right foot wounds E, F, and left foot wounds G, H) is an overhead view illustration that shows the location and positioning of Manauzzi's car, McNeill's

car and Grogan/Dove's car. Mireles is depicted laying on his right side behind McNeill's car firing a 12 gauge shotgun at Platt when he's stepping with his right foot to enter the driver's side door of Grogan/Dove's car.

Figure III-9 (Platt right foot wounds E, F, and left foot wounds G, H) is a side view perspective illustration showing four 00 buckshot pellets passing through Platt's feet (two pellets through each foot) when Platt is stepping into Grogan/Dove's car with his right foot.

Figure III-10 (Platt right foot wounds E, F, and left foot wounds G, H) is an autopsy x-ray of Platt's right and left feet showing pellet fragments and several broken bones.

Figure III-11(Platt right foot wounds E and F) is a medical illustration that depicts two views of the anatomical structures damaged by the 00 shotgun pellets fired by Mireles. The top illustration depicts the right foot from a left side perspective that shows the wound path of a shotgun pellet entering the top of the foot at the second joint of the big toe, passing through the joint, and exiting the bottom of the foot (right foot wound F). The lower illustration depicts the right foot from an overhead view perspective that shows the wound paths of two shotgun pellets: one pellet passing through the second joint of the big toe (right foot wound F); the second pellet is depicted entering the center of the top of the foot and exiting the right outer surface below the ankle (right foot wound E).

Figure III-12 (Platt left foot wounds G, H and I) is a medical illustration that depicts two views of the anatomical structures damaged by the 00 shotgun pellets fired by Mireles and the 9mm bullet fired by Dove. The top illustration shows the left foot from a back side perspective that shows the wound path of a shotgun pellet entering the right inner surface below the ankle and exiting at the point where the Achilles tendon attaches to the heel bone (left foot wound H). The lower illustration depicts the left foot from a right side perspective that shows left foot exit wound I (inflicted earlier by Dove) and the wound paths of two shotgun pellets: one pellet entering the inside of the foot below the ankle and behind the arch and exiting the heel (left foot wound H); the second pellet is shown entering the top inside above the big toe and exiting just below the ankle and above the arch, almost directly above left foot entry wound H (left foot wound G).

Figure III-12 (Platt left foot wounds G, H and I) is a medical illustration that depicts the anatomical structures damaged by the 00 shotgun pellets fired by Mireles and the 9mm bullet fired by Dove. The left foot is shown from an overhead view perspective.

Plate III-A (Platt right forearm wound D) is an autopsy photograph (color) of Platt's right forearm. A metal probe is seen inserted through the entry and exit wounds, following the path of the bullet through the forearm. Also, Platt right upper arm/chest wound B entry site is visible at the base of the biceps muscle.

Map of Plate III-A (Platt right forearm wound D) is an illustration of the forensic details of Platt's right forearm as seen in photograph Plate III-A.

Plate III-B (Platt right upper arm/chest wound C) is an autopsy photograph (color) of Platt's right upper arm. Visible on the upper arm are the entry wounds of right upper arm/chest wound C and right upper arm/chest wound B. Dr. Anderson points out that the upper arm is very swollen and the swelling was caused by internal bleeding from

the ruptured brachial vessels.

Map of Plate III-B (Platt right upper arm/chest wound C) is an illustration of the forensic details of Platt's right forearm as seen in photograph Plate III-B.

Plate III-C (Platt right foot wounds E, F and left foot wounds G, H and I) is an autopsy photograph (color) showing Platt's feet and legs from mid-thigh down. All five wounds to the feet are visible.

Plate III-D (Platt right foot wound E) is an autopsy photograph (color) close-up of Platt's right foot. A metal probe has been inserted through entrance wound D, through the wound track, and out exit wound D.

Plate III-E (Platt right foot wound F) is an autopsy photograph (color) close-up of Platt's right foot from an overhead view perspective. A metal probe is inserted through entrance wound F at the base of the big toe.

Plate III-F (Platt right foot wound F) is an autopsy photograph (color) close-up of the bottom of Platt's right foot. A metal probe is seen protruding out the exit wound of the center of the foot pad immediately behind the big toe.

Plate III-G (Platt left foot wound G) is an autopsy photograph (color) close-up of Platt's left foot from a right side view perspective. A metal probe is inserted through entrance wound G, through the wound track, and out exit wound G.

Plate III-H (Platt left foot wound H) is an autopsy photograph (color) close-up of Platt's left foot from a right side view perspective. A metal probe is inserted through exit wound H, through the wound track, and out entrance wound H.

Map of Plates III-C through III-H (Platt right foot wounds E, F and left foot wounds G, H and I) is several illustrations of the forensic details of Platt's feet injuries seen in the autopsy photographs.

## IV. The Final Fusillade: Platt and Matix in Grogan/Dove's Car

Platt's 11th wound, scalp wound A - Mireles
Matix's 4th wound, face wound D - Mireles
Matix's 5th wound, face/spine wound C - Mireles
Matix's 6th wound, face/neck wound A - Mireles
Platt's 12th wound, chest/spine wound J - Mireles

Mireles fired a total of five rounds from his Remington 870 shotgun from a range of about 25 feet. With his first shot it appears he struck Platt in both feet when Platt was about to enter the driver's seat of Grogan/Dove's car. Mireles fired the remaining four shots at the windshield and driver's window, but according to Dr. Anderson there's no compelling forensic evidence to indicate that any of the pellets from Mireles' shots 2-5 hit Platt or Matix. Dr. Anderson speculates that Platt might have ducked below the window openings, possibly in Matix's lap, to have avoided being hit by the buckshot.

At about this moment in the gunfight, Metro-Dade police patrol officers Martin Heckman and Leonard Figueroa arrived on the scene. Shortly thereafter, Heckman covered McNeill with his own body to protect McNeill from being hit again. The actions of Figueroa are not documented by Dr. Anderson.

Platt's specific actions at this stage of the gunfight have been subject to controversy. Civilian witness Sidney Martin described Platt as leaving Grogan/Dove's car and walking more than 20 feet to Mireles' position and firing three shots from a revolver at almost point blank range at Mireles and then returning to Grogan/Dove's car. Mireles does not recall this happening. McNeill recalls seeing what appeared to be bullets striking the pavement. Heckman does not remember Platt being outside the car, but he does recall Platt pointing a gun out the driver's window at him and their eyes meeting. Risner and Orrantia, who were both across the street, state that they never saw Platt approach Mireles and fire at him.

In Cautionary Note #2 (four paragraphs that are published in the Introduction section), Dr. Anderson postulates that Platt exited the driver's side door of Grogan/Dove's car, staggered out a few steps, fired three shots from Matix's .357 Magnum revolver (using his left hand) towards the general direction of Mireles and/or McNeill without hitting anyone, and then immediately got back into the driver's seat of Grogan/Dove's car. Dr. Anderson feels that the bones broken in Platt's feet by Mireles' first shotgun blast (as well as the large amount lost blood) would have prevented him from walking very far. He goes on to explain that the effects of deep shade, position and angles of the participants/witnesses, obstructed views, etc., probably influenced individual perceptions of Platt's actions.

After Platt got back into Grogan/Dove's car he attempted to start the engine. Dr. Anderson observes that the injuries to Platt's right arm probably prevented him from being able to use his right hand to turn the ignition key. This forced Platt to lean away from the driver's side window to use left hand to turn the key on the steering column. Matix was apparently attempting to help Platt start the car.

Mireles then drew his .357 Magnum revolver, got to his feet, moved laterally about 15 feet parallel with the street, clear of McNeill's car, and then began walking directly towards Platt and Matix, who were sitting in Grogan/Dove's car. Mireles fired six rounds of .38 Special +P from his revolver. Mireles revolver shots 1 and 2 were fired at Platt, shots 3, 4 and 5 at Matix, and shot 6 at Platt. Five of the six bullets hit Platt or Matix.

Mireles first shot at Platt hit the back of the front seat behind Platt's left shoulder. Dr. Anderson theorizes that the sound of the gunshot would have caused Platt to turn his head to the left to look for the source of the gunfire. Mireles second shot then hit Platt above the outer edge of the right eyebrow (Platt scalp wound A). The weight of the projectile that was recovered from Platt's scalp was about 19 grains, suggesting that the bullet hit the driver's side window post and fragmented. After the fragment penetrated the skin it ricocheted off the curvature of the right side of Platt's forehead, and traveled between the skin and the exterior surface of the skull for a distance of about 2 inches before it stopped above the right temple. The fragment did not penetrate the cranium.

Dr. Anderson postulates that Platt then laid back on the front bench seat of Grogan/Dove's car, placing his head and shoulders (face side up) in Matix's lap on the passenger side, in attempt to use the driver's side door as cover against Mireles' gunfire. Platt's movement and positioning trapped Matix upright on the seat with his back against the passenger side door. Mireles third shot hit Matix's face just below the left cheekbone and adjacent to the left nostril (Matix face wound D). The projectile fragmented in two; the largest embedded in the bone beside the nose, a smaller fragment penetrating the left sinus cavity. According to Dr. Anderson, this wound was not significant, and probably was inflicted as Matix was looking at the approaching Mireles. The size and weight of the two fragments suggests the bullet probably hit the driver's side window frame before it hit Matix.

Matix then apparently tried to make himself as small a target as possible. He tucked his chin into his chest and pressed his back against the passenger side door to slide his buttocks on the bench seat in attempt to get as low as he could. Dr. Anderson claims this would have accounted for the wound path caused by Mireles' fourth bullet (Matix face/spine wound C). The bullet hit Matix's face just outside the lower right edge of the right eye socket, at about seven o-clock. The bullet traveled downward through the facial bones, through the right side of the lower jaw, into the neck, and entered the spinal column between cervical vertebra number 7 (C7) and thoracic vertebra number 1 (T1) where it severed the spinal cord at the base of T1.

Matix's body would have immediately relaxed, according to Dr. Anderson, causing his head to tilt backwards. His face would have risen upwards by the time Mireles' fifth bullet hit him in the face (Matix face wound A). The bullet hit Matix's chin just below the right corner of the mouth, penetrated the jaw bone and into the neck where it came to rest beside the right side of the spinal column at C7. The bullet did not damage the spinal cord.

By this time Mireles had reached the driver's side door of Grogan/Dove's car when he fired his sixth and final shot. Mireles extended his gun through the driver's side window and fired at Platt (Platt chest/spine wound J). The bullet penetrated Platt's chest just below the left collar bone, traveled through the musculature of the shoulder and neck and stopped in the fifth cervical vertebra (C5), where it bruised the spinal cord. Dr. Anderson observes that the wound path of this bullet through Platt's body could only have occurred if Platt were lying on his back on the front seat.

Mireles' sixth and final shot ended the gunfight. Platt and Matix both lay on the front seat of Grogan/Dove's car. If Matix was not already dead, he would be shortly. Arriving paramedics came to the aid of the FBI agents first and then shifted their attention to Platt and Matix. According to Dr. Anderson, paramedics found no signs of life in Grogan, Dove or Matix and no first aid was attempted. Whereas, Platt appears to have still had a heartbeat because paramedics inserted an airway tube and began administering intravenous fluids. Platt died at the scene without regaining consciousness.

The following is a description of photographs and illustrations published in Chapter IV:

> Figure IV-1 (Platt scalp wound A) is an overhead illustration that depicts the positioning of Manauzzi's car, McNeill's car and Grogan/Dove's car. Mireles is shown coming out from behind McNeill's car firing his gun at Platt and Matix, who are in the front seat of Grogan/Dove's car. With his right arm so badly damaged, Platt is shown attempting to turn the ignition key using his left hand; Matix is shown assisting him.
>
> Figure IV-2 (Platt scalp wound A) is a close-up overhead view perspective illustration showing Platt sitting in the driver's seat of Grogan/Dove's car attempting to start the car with his left hand. Matix is depicted sitting directly next to him on the passenger side leaning forward attempting to turn the key in the ignition. The trajectory of Mireles first two shots that he fired from his handgun are shown. Bullet one enters the passenger compartment through the driver's side window and hits the back of the front seat near Platt's left shoulder. The second bullet is shown entering the passenger compartment though the driver's window and hitting Platt in the right forehead . Platt is depicted looking at Mireles while he's bent forward trying to turn the ignition key. The bullet is shown hitting the right side of Platt's head, ricocheting off the curved external surface of the skull but being trapped between the skull and scalp, stopping just above the right temple.

Figure IV-3 (Platt scalp wound A) is a medical illustration that portrays Platt from a left side view looking over his left shoulder while he's sitting in a slightly hunched over position. Mireles shot number 2 is shown striking the forehead above the right eye (about 11 o'clock position in reference to the eye socket). The bullet fragment is depicted penetrating the skin, glancing off the outer surface of the curvature of the right side of the forehead and traveling between the skin and the outer surface of the skull for about 2 inches where it lodged under the scalp over the right temple. An overhead view of just the skull is also presented which shows the same information from a different perspective.

Figure IV-4 (Platt scalp wound A and chest/spine wound J) is an autopsy x-ray of Platt's bust. The bullet fragment that caused scalp wound A is visible and the bullet that caused chest/spine wound J can be seen embedded in the spinal column at C5.

Figure IV-5 is an overhead illustration that portrays Platt moving from an upright sitting position on the front seat of Grogan/Dove's car to take a position where he's laying with his back on the seat and his head and shoulders resting in Matix's lap. The illustration depicts the action Platt took to avoid Mireles' gunfire after shots 1 and 2, as theorized by Dr. Anderson.

Figure IV-6 (Matix face wound D) is an overhead crime scene illustration that depicts the location and positioning of Manauzzi's car, McNeill's car and Grogan/Dove's car. Mireles is shown walking out from behind McNeill's car, traveling a path that is parallel to the street for about 15 feet to a point where he is almost directly even with the driver's side door of Grogan/Dove's car. Mireles is shown firing shot 3 using his right hand only from a distance of about 15 feet away. Matix is depicted sitting upright on the passenger side of the front seat of Grogan/Dove's car with has back against the closed passenger side door looking directly at Mireles. Platt is depicted laying on his back on the front seat with his head and upper torso in Matix's lap, trapping Matix. The trajectory of Mireles' bullet is shown exiting the gun, entering the passenger compartment through the driver's side window and hitting Matix in the left side of his face.

Figure IV-7 (Matix face wound D) is an overhead close-up perspective illustration that details the body positions of Matix and Platt on the front seat of Grogan/Dove's car at the moment when Mireles fired the third shot from his revolver. The trajectory of the bullet is shown entering the driver's side window and hitting Matix in the left side of his face.

Figure IV-8 (Matix face wound D) is an illustration that depicts a perspective of Matix and Platt as they would be seen by someone sitting in the back seat of Grogan/Dove's car. Matix is seen sitting on the front bench seat sideways, with his back against the inside surface of the closed passenger side door. Only his shoulders and head are exposed above the top edge of the front seat. Platt's upper face is barely visible as he's shown laying face up in Matix's lap with the top of his head pressing against Matix's chest. The trajectory of Mireles shot number 3 is shown entering through the driver's side window and hitting Matix in the left cheek.

Figure IV-9 (Matix face wound D) is a medical illustration that depicts a profile of the left side of Matix's head with a detailed view of the skull. The wound path of Mireles bullet from shot number 3 is shown hitting and perforating the facial bone of Matix's left cheek right next to the left nostril and below the cheekbone. Bullet fragments are

depicted embedded in the left sinus cavity.

Figure IV-10 (Matix face wound D) is a photograph (black & white) of a bullet fragment recovered from Matix's left facial area.

Figure IV-11 (Matix face wound D) is a photograph (black & white) of a bullet fragment recovered from Matix's left sinus cavity.

Figure IV-12 (Matix face/spine wound C) is similar to Figure IV-6, except Mireles is has now turned to his left and has taken a couple steps as he directly approaches the driver's side door of Grogan/Dove's car. Matix and Platt are shown in the same positions on the front seat, however Matix is shown with his head tilted forward tucking his chin into his chest. The trajectory of the bullet from Mireles shot number 4 is shown leaving the muzzle of the revolver, passing through the driver's side window and striking Matix in the right side of his head.

Figure IV-13 (Matix face/spine wound C) is an overhead close-up perspective illustration that details the body positions of Matix and Platt on the front seat of Grogan/Dove's car at the moment when Mireles fired the fourth shot from his revolver. The trajectory of the bullet is shown entering the driver's side window, hitting Matix in the right side of his head, and the wound path of the bullet from the entry point to where it stopped embedded in the spinal column at the base of T1.

Figure IV-14 (Matix face/spine wound C) is an illustration that depicts a perspective of Matix and Platt as they would be seen by someone viewing them through the windshield of Grogan/Dove's car. Matix is seen sitting on the front bench seat sideways, with his back against the inside surface of the closed passenger side door. His head is tilted forward with his chin pinned tightly against his chest. Platt is laying face up in Matix's lap with the top of his head pressing against Matix's chest. The trajectory of Mireles shot number 4 is shown entering through the driver's side window, hitting Matix below the right eye, passing through his face and neck and stopping in the spinal column.

Figure IV-15 (Matix face/spine wound C) is a medical illustration that shows three different details. The upper illustration depicts a profile of the right side of Matix's head and neck, with a detailed view of the skull and spinal column, as it would appear if he had his head tilted forward as postulated by Dr. Anderson. The wound path of Mireles bullet from shot number 4 is shown hitting and perforating the facial bone just below Matix's right eye socket, passing though the maxillofacial structures of the skull, hitting the lower jaw bone, passing through the soft tissues of the neck, penetrating the spinal column between C7 and T1, and stopping between T1 and T2. The second illustration details the spinal column, from C4 to T3, as viewed from behind. The wound path of Mireles' bullet is shown chipping a small piece of bone off the right upper side of C7, entering the spinal column between C7 and T1, and penetrating T1 until it came to a stop at the base of T1. The third illustration details the right side of Matix's skull showing Mireles' bullet hitting Matix's face at the bottom right corner of the right eye socket, at a position of about 7 o'clock.

Figure IV-16 (Matix face/spine wound C) is a photograph (black & white) of two bullet fragments recovered from Matix's spinal cord at T2.

Figure IV-17 is an autopsy x-ray of Matix's head and neck showing bullet fragments in

the sinus cavity (Matix face wound D), a bullet embedded in the left half of the spine (Matix face/spine wound C), a mushroomed bullet lodged in the neck just to the immediate right side of the spinal column (Matix face/neck wound A), and a small bullet fragment just below the mushroomed bullet (Matix right neck/chest wound B).

Figure IV-18 (Matix face/neck wound A) is similar to Figure IV-12, except Mireles has advanced a few more feet as he directly approaches the driver's side door of Grogan/Dove's car. Matix and Platt are shown in the same positions on the front seat. The trajectory of the bullet from Mireles shot number 5 is shown leaving the muzzle of the revolver, passing through the driver's side window and striking Matix in the right side of his head.

Figure IV-19 (Matix face/neck wound A) is an overhead close-up perspective illustration that details the body positions of Matix and Platt on the front seat of Grogan/Dove's car at the moment when Mireles fired the fifth shot from his revolver. The trajectory of the bullet is shown entering the driver's side window, hitting Matix in the right side of his head, and the wound path of the bullet from the entry point to where it stopped embedded in the neck.

Figure IV-20 (Matix face/neck wound A) is an illustration that depicts a perspective of Matix and Platt as they would be seen by someone viewing them through the windshield of Grogan/Dove's car. Matix is seen sitting on the front bench seat sideways, with his back against the inside surface of the closed passenger side door. His head has tilted backwards causing his face to rise slightly. Platt is laying face up in Matix's lap with the top of his head pressing against Matix's chest. The trajectory of Mireles shot number 5 is shown entering through the driver's side window, hitting Matix in the chin just below the right corner of the lips, passing through his lower jaw and stopping in the back of the neck.

Figure IV-21 (Matix face/neck wound A) is a medical illustration that shows three different details. The upper illustration depicts a profile of the front of Matix's head, neck and shoulders, with a detailed view of the skull, spinal column and major blood vessels. The wound path of Mireles bullet from shot number 5 is shown hitting and perforating the chin and lower jaw bone, passing through the soft tissues of the neck, and coming to rest at the right side of the spinal column at C7. The second illustration portrays the position of Matix's head at the time the bullet hit him, and the resultant wound track produced. The third illustration is a frontal profile of Matix's neck and shoulder region, and details the cervical and thoracic vertebrae of the spinal column. The wound path of the bullet is traced through the lower jaw, penetrating downward through the soft tissues of the neck where it came to a stop just above the first rib and adjacent to the right side of C7.

Figure IV-22 (Platt chest/spine wound J) shows the location and positioning of Manauzzi's car, McNeill's car and Grogan/Dove's car. Mireles is shown having walked up to a position immediately outside the driver's side door of Grogan/Dove's car. Platt is laying face up on the front seat with his head and shoulders in Matix's lap. Mireles has thrust his gun through the driver's side window and the trajectory of this last shot is shown leaving the muzzle and entering the upper left chest of Platt.

Figure IV-23 (Platt chest/spine wound J) is an illustration that depicts a perspective of Matix and Platt as they would be seen by someone viewing them through the windshield of Grogan/Dove's car. Matix is seen sitting on the front bench seat

sideways, with his back against the inside surface of the closed passenger side door; his head slumped forward. Platt is laying face up in Matix's lap with the back of his head pressing against Matix's chest. The barrel of Mireles' revolver is visible inside the passenger compartment. The trajectory of Mireles shot number 6 is shown exiting the muzzle and hitting Platt's chest, just below the left collar bone.

Figure IV-24 is a medical illustration that shows three different details related to Platt chest/spine wound J. The upper illustration depicts a right side profile of Platt's head and upper torso as he was laying on Matix's lap. Mireles' bullet is shown entering Platt's body just below the left collar bone and penetrating the soft tissues of the shoulder and neck where it embeds itself in the spinal cord at C5. The second illustration is a cross section of a healthy, undamaged C5 vertebral body. The third illustration shows Mireles' bullet penetrating and lodging in C5, and the resultant fractures to the vertebral body and compression and bruising of the spinal cord.

Plate IV-A (Platt scalp wound A and chest/spine wound J) is an autopsy photograph (color) close-up of Platt's face as viewed from his right side. An oblong entrance wound is visible above the right edge of the eyebrow. There are several abrasions visible on his face. The entrance to chest/spine wound J is visible.

Map of Plate IV-A is an illustration of the wound trauma to Platt's head and chest as seen in autopsy photograph IV-A.

Plate IV-B (Matix face wound D) is an autopsy photograph (color) close-up of the left side of Matix's face. The entrance wound is visible immediately adjacent to his left nostril.

Map of Plate IV-B is an illustration of the wound trauma to Matix's left face as seen in autopsy photograph IV-B.

Plate IV-C (Matix face/spine wound C) is an autopsy photograph (color) of Matix's dissected spinal column at vertebral body T2. A lead bullet is visible embedded in the spinal bones.

Plate IV-D is an autopsy photograph (color) of Matix's head and shoulders showing gunshot wounds A, B, C, D and F. A wire probe has been inserted through the entrance wound of face/neck wound A. The entire right side of Matix's face is sagging due to the damaged facial structures from wounds C and F.

Plate IV-E (Platt chest/spine wound J) is an autopsy photograph (color) of the left side of Platt's head and upper torso. Chest/spine entrance wound J is visible just below his neck. The left side of his face exhibits several large cuts and abrasions. His left sideburn has been shaved off to reveal an abrasion/cut above the left ear.

Map of Plate IV-E is an illustration of the Platt's body as seen in autopsy photograph IV-E, however the only wound trauma depicted is chest/spine entrance wound J.

Plate IV-F is a crime scene photograph (color) showing Platt's body laying on the ground (face side up) directly outside the driver's side door of Grogan/Dove's Buick. His shirt has been cut/torn away, an artificial airway breathing tube is taped into his mouth, and an intravenous fluid needle has been inserted into his left arm. A large pool of blood is visible along the right side of his body.

Map of Plate IV-F is an illustration of crime scene photograph IV-F.

**Conclusions**

Dr. Anderson concludes his forensic analysis of the gunfight by pointing out the remarkable accuracy of the FBI agents in achieving solids hit on both Platt and Matix, despite the fact that the suspects were obscured by deep shade, dust and gunsmoke. He provides specific examples of accurate shooting by five of the eight Agents involved: Grogan, McNeill, Dove, Risner and possibly Orrantia.

He also points out the ability of several of the people involved in the shoot-out, both suspects and FBI Agents, to continue to perform both physically and mentally through sheer willpower after having sustained severe gunshot wound trauma, and provides specific examples of determination on both sides.

*(Note: toxicology tests conducted on the body fluids of Matix and Platt revealed neither was under the influence of chemical intoxicants. Both were alcohol and drug free at the time of the shoot-out.)*

**Appendix I: Medical Examiner's Notes**

The complete autopsy reports (including notes and diagrams) for the bodies of William Matix and Michael Platt, conducted and prepared by Dr. Jay Barnhart, have been re-printed. At the request of Dr. Anderson, Dr. Barnhart re-examined the reports prior to publication and corrected several small errors.

**Appendix II: Ballistic Analysis**

At Dr. Anderson's request, Metro-Dade Police Department, Firearms Evidence Examiner Robert. H. Kennington re-examined the projectile fragments that produced Matix right head wound F. The fragments were recovered from Matix's right lower sinus cavity. Mr. Kennington discovered suggestions of rifling and bullet base which seem to support Dr. Anderson's theory that the wound was produced by a bullet fired by McNeill. A copy of Mr. Kennington's letter and ballistic report sheet have been re-printed here.

**Appendix III: Personal Statements**

Dr. Anderson requested the FBI Agents involved in the shoot-out to review his findings. Three letters authored by McNeill, Orrantia and Mireles have been reprinted. These letters offer personal opinions about Dr. Anderson's report, and they also seek to clarify several misunderstandings about some of the Agents' actions. Included in some of the remarks are personal observations about the gunfight that were not part of the Agents' official statements.

Click here to go to Dr. Anderson's web site

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## Dr. Anderson's Ordering Instructions for Obtaining Forensic Analysis of the April 11, 1986, FBI Firefight

If an individual is a member of the FBI, he/she can get a copy from the FBI Academy in Quantico VA; if they are a member of the American Society of Law Enforcement Trainers (ASLET) or the International Wound Ballistics Association (IWBA), they can get a copy by contacting the main office of the organization. Any other law enforcement officer (of any type, in any country) can receive a copy (at least until the supply runs out; 23,000 have already been distributed) by

sending a request on their department or company leaderhead together with a self-addressed stamped ($1.24, Book Rate) 10" x 12" envelope to me at:

W. French Anderson, M.D.
Norris Cancer Center, #612
USC School of Medicine
Los Angeles CA 90033

Because of the color prints, the Reports are fairly expensive to produce and so I cannot afford to give them free to the general public. If any library might want a copy, I would be happy to send one to them under the same criteria as above.

*Note: Dr. Anderson will also send a copy of his report to any law enforcement officer who is unable to obtain official agency letterhead. The officer must send a photocopy of his official department identification card.*

*If you are a private citizen who wants to see this report, you should contact your local public library and request them to order a free copy from Dr. Anderson by following the ordering instructions above.*

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***Delivering you informative multimedia essays about the "battlefield problem-solving" tactical aspects of armed self-defense.***

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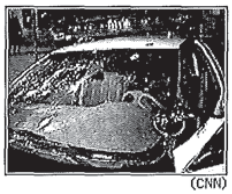
U.S. NEWS
STORY PAGE

# Stunned police, residents cope with aftermath of L.A. shootout

March 1, 1997
Web posted at: 11:30 p.m. EST


(CNN)

LOS ANGELES (CNN) -- All was quiet Saturday in West Hollywood, although scores of bullet-ridden cars and buildings served as silent reminders of a bloody bank heist shootout here Friday.

Armen Iskaudaryan, who was depositing $85 at an automatic teller machine when gunmen burst into the Bank of America branch, returned Saturday to drive home his car, a late model Acura Legend he had saved for six years to buy.

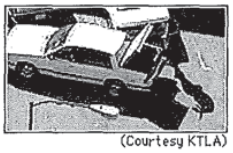
(1.7M/43 sec. QuickTime movie)

It was riddled with bullets and except for the rear passenger window, every piece of glass in the car had been blown away.

He changed a flat tire and tried to drive away. Gasoline leaked. Oil leaked. The Fire Department had to be called.

"It was my only car," he said. "It don't know. I cannot fix it."

## LAPD unprepared


(Courtesy KTLA)

Like Iskaudaryan, the Los Angeles Police Department was unprepared for the frightening firepower displayed by two bank robbers, who fired hundreds of rounds at police after the heist went awry.

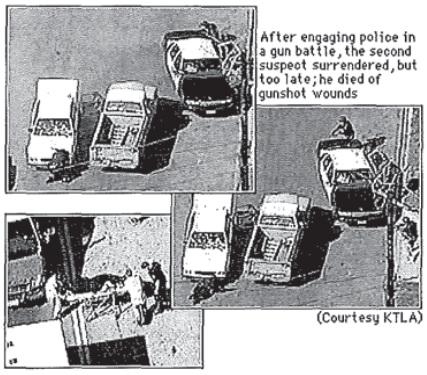
"These guys obviously were committed to getting away and were prepared to do so," police Chief Willie Williams said Saturday. "They emptied a 100-round drum before they even left the door of the bank."

Police refused to identify the two robbers, who wounded 16

officers and civilians Friday along their escape route. He wouldn't comment on whether they were part of any organized group, but said investigators believed they were acting alone.

"We're just beginning now to take a look at their background," Williams said. "These two guys made up their mind: Get away, or go down at the scene."

Police suspect the two gunmen were the same who committed bank robberies last year. Both eventually were killed in the shootout with police.



After engaging police in a gun battle, the second suspect surrendered, but too late; he died of gunshot wounds

(Courtesy KTLA)

Williams commended the skill and bravery of more than 200 officers who took part in the seige. "When they were faced with overwhelming firepower they had to do some things that weren't in the book," the chief said.

**Police badly outgunned**

That none were more seriously hurt was remarkable, considering that until the heavily armed SWAT units arrived, patrol officers with pistols were up against automatic rifles and armor-piercing ammunition.

Police were still sorting out the gunmen's arsenal, but it appeared that each man had at least one AK-47 automatic rifle or a similar SKS rifle, and had 100-round ammunition drums and 30-round clips, Lt. Nicholas Zingo said.

Friday's heavily-armed robbers reminded many of the 1974 standoff with the Symbionese Liberation Army, the group that kidnapped Patty Hearst

(CNN library)

Both weapons, originally designed for the Soviet military but widely cloned by gunmakers worldwide, fire powerful 7.62x39mm cartridges.

The gunmen fired steel-jacketed bullets easily capable of penetrating body armor worn by patrol officers, Cmdr. Tim McBride said.

"Maybe an armored tank would stop these rounds," Zingo said. "If our officers were hit in the chest cavity area they would have been dead..."

The mismatch prompted Zingo to send officers out for more firepower. The nearby gun shop, B&B Sales, provided two AR-15s, the civilian version of the Army's M-16 assault rifle,

a shotgun and rifles with telescopic sights.

"We can't give all our officers AK-47s," said the LAPD's Williams. "But we are outgunned, and we need to find ways to narrow the gap."


Layton (CNN)

Added Sgt. Sam Layton of the LAPD: "I'm going to be carrying more ammo with me."

The police are on the defensive as bank robbers are becoming increasingly well-armed and ruthless. The number of bank robberies has gone down steadily from its peak in 1992, but the violent nature of many robberies has gone up.

"It's gone away from the single-note passing day of 'just give me the money'...to this type of gang take-over with heavily-armed individuals," said Bill Wipprecht of the California Bankers Association.

*The Correspondent Jim Hill & Associated Press contributed to this report.*

# North Hollywood shootout

From Wikipedia, the free encyclopedia

Coordinates: 34°11′31″N 118°23′47″W

*This article is about the real-life incident. For the Blues Traveler album, see North Hollywood Shootout.*

‹ The template *Infobox civilian attack* is being considered for merging. ›

The **North Hollywood shootout** was an armed confrontation between two heavily armed and armored bank robbers and officers of the Los Angeles Police Department (LAPD) in the North Hollywood district of Los Angeles on February 28, 1997. Both robbers were killed, eleven police officers and seven civilians were injured, and numerous vehicles and other property were damaged or destroyed by the nearly 2,000 rounds of ammunition fired by the robbers and police.[2]

**North Hollywood shootout**

Larry Phillips Jr (left) and Emil Mătăsăreanu (right) engaged LAPD officers in a firefight after robbing a branch of Bank of America.

| | |
|---|---|
| **Location** | North Hollywood, Los Angeles, California, U.S., 34°11′29″N 118°23′46″W |
| **Date** | 1997 February 28<br>9:17 AM – 10:01 AM (UTC-8) |
| **Target** | A branch of Bank of America. |
| **Attack type** | Bank robbery, shootout, suicide (Phillips) |
| **Deaths** | 2: both Mătăsăreanu (shot) and Phillips (self-inflicted gunshot wound) |
| **Injured (non-fatal)** | 18[1] |
| **Perpetrators** | Larry Eugene Phillips Jr<br>Emil Decebal Mătăsăreanu |

At 9:17 AM, Larry Phillips Jr and Emil Mătăsăreanu entered and robbed the North Hollywood Bank of America branch. Phillips and Mătăsăreanu were confronted by LAPD officers when they exited the bank and a shootout between the officers and robbers ensued. The two robbers attempted to flee the scene, Phillips on foot and Mătăsăreanu in their getaway vehicle, while continuing to engage the officers. The shootout continued onto a residential street adjacent to the bank until Phillips was mortally wounded, including by a self-inflicted gunshot wound; Mătăsăreanu was killed by officers three blocks away. Phillips and Mătăsăreanu are believed to have robbed at least two other banks using virtually identical methods by taking control of the entire bank and firing automatic weapons chambered in intermediate cartridges for control and entry past 'bullet-proof' security doors, and are possible suspects in two armored vehicle robberies.[3]

Local patrol officers at the time were typically armed with their standard issue 9 mm or .38 Special pistols, with some having a 12-gauge shotgun available in their cars. Phillips and Mătăsăreanu carried illegally modified fully automatic AKMs, a Bushmaster Dissipator, and a HK-91 rifle with high capacity drum magazines and ammunition capable of penetrating vehicles and police Kevlar vests. The bank robbers wore full suits of body armor which successfully deflected bullets and shells fired by the responding patrolmen. SWAT eventually arrived bearing sufficient firepower, and they commandeered an armored truck to evacuate the wounded. Several officers also appropriated AR-15 rifles from a nearby firearms dealer. The incident sparked debate on the need for patrol officers to upgrade their capabilities in similar situations in the future.[4]

Due to the large number of injuries, rounds fired, weapons used, and overall length of the shootout, it is regarded as one of the longest and bloodiest events in American police history.[5]

**Contents** [hide]



## Backgrounds [edit]

Larry Eugene Phillips Jr (born September 20, 1970) and Emil Decebal Mătăsăreanu (born July 19, 1966 in Romania) first met at a Gold's Gym in Venice, Los Angeles, California in 1989. They had a mutual interest in weightlifting and bodybuilding.[6]

On July 20, 1993 the pair robbed an armored car outside of a branch of FirstBank in Littleton, Colorado.[7]

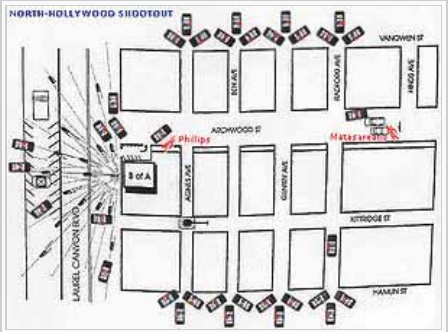
In October 1993, Phillips and Mătăsăreanu were arrested in Glendale, northeast of Los Angeles, California, for speeding.[8] A subsequent search of their vehicle—after Phillips surrendered with a concealed weapon—found two semi-automatic rifles, two handguns, more than 1,600 rounds of 7.62×39mm rifle ammunition, 1,200 rounds of 9×19mm Parabellum and .45 ACP handgun ammunition, radio scanners, smoke bombs, improvised explosive devices, body armor vests, and three different California licence plates.[9] Initially charged with conspiracy to commit robbery,[10] both served one hundred days in jail and were placed on three

years' probation.[11] After their release, most of their seized property was returned to them.[12]

On June 14, 1995, the pair ambushed a Brinks armored car, killing one guard, Herman Cook, in the robbery. In May 1996, they robbed two branches of Bank of America in the San Fernando Valley area of Los Angeles, CA, stealing approximately US$1.5 million.[13] Phillips and Mătăsăreanu were dubbed the "High Incident Bandits" by investigators due to the weaponry they had used in three robberies prior to their attempt in North Hollywood.[14]

## The events of February 28 [edit]

On the morning of Friday, February 28, 1997, after months of preparation, including extensive reconnoitering of their intended target—the Bank of America branch located at 6600 Laurel Canyon Boulevard—Phillips and Mătăsăreanu loaded five rifles, one handgun, and approximately 3,300 rounds of ammunition in box and drum magazines into the trunk of their vehicle: two modified Norinco Type 56 S rifles, a modified Norinco Type 56 S-1, a semi automatic HK91, and a modified Bushmaster Dissipator. Phillips holstered the handgun, a 9mm Beretta Model 92FS INOX, underneath his jacket.[15] Phillips wore a Type IIIA bulletproof vest and several pieces of home made body armor, covering his groin, shins, thighs, and forearms. To store box magazines for the rifles, in particular the HK91, he also wore a load bearing vest over the bulletproof one.[16] Mătăsăreanu wore only a Type IIA bulletproof vest, but included a metal trauma plate to protect vital organs. Additionally, both robbers had sewn watch faces onto the back of their gloves to check their timing inside the bank.[17] Before entering, they took the muscle relaxer phenobarbital to calm their nerves.[18]



Map of the area around the Bank of America and events during the shoot-out.

### The robbery [edit]

Phillips and Mătăsăreanu, driving a white 1987 Chevrolet Celebrity, arrived at the Bank of America branch office at the intersection of Laurel Canyon Boulevard and Archwood Street in North Hollywood around 9:17 AM, and set their watch alarms for eight minutes, which they estimated was the average police response time. Phillips had been using a radio scanner to listen to police transmissions to determine this timeframe.[18] This was not the case, as while the two were walking in, they were spotted by two officers, Loren Farrell and Martin Perello, in a patrol car driving down Laurel Canyon, and Officer Perello called out on the radio, "15-A-43, requesting assistance, we have a possible 211 in progress at the Bank of America." 211 is the code for an armed robbery.[19]

As they entered the bank, Phillips and Mătăsăreanu forced a customer leaving the ATM lobby near the entrance into the bank and onto the floor. A security guard inside saw the scuffle and the heavily-armed robbers and radioed his partner in the parking lot to call the police; the call was not received. Phillips and Mătăsăreanu opened fire into the ceiling to scare the approximately thirty bank staff and customers[2] and to discourage resistance.[20] Mătăsăreanu shot at the bulletproof door that gained access to the tellers and vault, and the door, designed to resist only small-calibre rounds, broke open. The robbers forced assistant manager John Villigrana to open the vault, all of this after firing at least 150 rounds into the ceiling and door. After Villigrana opened the vault and filled the robbers' money bag, Mătăsăreanu, enraged at the fact that only small amounts of money were in the safe, argued with Villigrana, demanding more. In another burst of anger, Mătăsăreanu reportedly fired a full drum magazine of 75 rounds into the bank's safe, destroying the rest of the money. They were only able to get US$303,305, instead of the expected US$750,000 because the bank had altered the delivery schedule.[14]

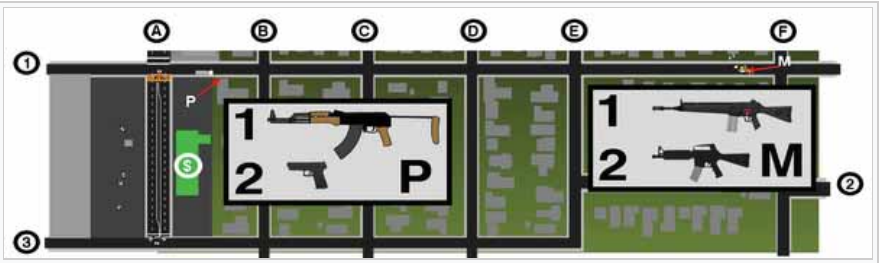
### The shootout [edit]

The first-responding officers outside heard the gunfire from the bank and made another radio call to summon additional units, and proceeded to take cover behind their patrol car, weapons trained on the bank doors. Additional patrol and detective units arrived while the robbers were inside the bank, taking strategic positions and surrounding the bank on all four corners. At around 9:32 AM, Phillips exited the bank through its north doorway and Mătăsăreanu through its south doorway. Both encountered several LAPD patrol officers, who had arrived after the first-responding officers radioed the "shots fired" call.[21] Television news helicopters responded to the "shots fired". SWAT commanders used the live helicopter broadcasts to pass critical, time-sensitive information to the officers on the scene. Officers shouted repeatedly for Phillips and Mătăsăreanu to drop their weapons, but none of the officers fired.

Phillips and Mătăsăreanu began to engage the officers, firing rounds into the patrol cars that had been positioned on Laurel Canyon in front of the bank.[15] Officers immediately returned fire. The patrol officers were armed with standard Beretta 92F and Beretta 92FS 9mm pistols and Smith & Wesson Model 15 .38 caliber revolvers. Some officers, notably Officer James Zaboravan, also carried a 12-gauge Ithaca Model 37 pump-action shotgun, but this weaponry could not penetrate aramid body armor worn by Phillips and Mătăsăreanu. The robbers' armor protected much of their bodies and provided more bullet resistance than standard-issue police Kevlar vests. The robbers' heads were the only vital organs that were unprotected, but most of the LAPD officers' service pistols had insufficient range and relatively poor accuracy.[14] Additionally, the officers were pinned down by the heavy spray of gunfire coming from the robbers, making it difficult to attempt a headshot. Multiple officers and civilians were wounded in the seven to eight minutes from when the shooting began to when Mătăsăreanu entered the robbers' white sedan to make a getaway. He ushered Phillips to get into the vehicle as well, but Phillips remained outside of it, retrieved a HK91 from the trunk, and continued firing on officers and helicopters while crouching behind the cars in the parking lot. As Phillips approached the driver side of getaway vehicle after

suppressing officers, possibly to give instructions to Mătăsăreanu, a shotgun blast hit him above the left wrist. In response, Phillips quickly backed away from the vehicle and continued firing, holding the rifle with his injured forearm against the magwell. Phillips fired roughly 60 to 120 rounds from the HK91 until it was struck in the receiver and magazine by police bullets. He later retrieved a Norinco Type 56 S-1 from the trunk of the Celebrity.[14]

After LAPD radio operators received the second "officer down" call from police at the shootout, a tactical alert was issued. The SWAT team had just started an exercise run when they received the call and had no time to change, and were thus wearing running shoes and shorts under their body armor. They arrived 18 minutes after the shooting had started, armed with AR-15s. The SWAT officers spotted and commandeered an armored truck that was doing its scheduled cash delivery, which they used to extract wounded civilians and officers from the scene towards the end of the shootout.[14]




Scale map of the area around the bank ($), final locations of Phillips (P) and Mătăsăreanu (M).
Streets-
A: Laurel Canyon Boulevard - B: Agnes Avenue - C: Ben Avenue - D: Gentry Avenue - E: Radford Avenue - F: Morella Avenue
1: Archwood Street - 2: Lemay Street - 3: Kittridge Street

At 9:52 Phillips, who had been using the getaway vehicle as cover, split from Mătăsăreanu, turned east on Archwood Street, took cover behind a parked truck, and continued to fire at the police with his AKM.[22] However, the gun suffered a malfunction. Erroneously reported as a "stovepipe" jam, in reality a round had become jammed while feeding into the chamber, also trapping the spent cartridge from the previous round. He made an attempt to remove the drum and clear the jam, but ultimately discarded the weapon after failing to clear it, possibly due to being wounded in the left hand and forearm. After abandoning the rifle, Phillips drew a Beretta 92FS pistol and continued firing at police. He was then shot in the right hand, briefly dropped the pistol, retrieved it, and placed the muzzle of his pistol under his chin and shot himself. As his body fell in a crouch-like demeanor, a police bullet hit him in the back of the neck, and several others struck him as he was down. After the firing stopped, officers in the area surrounded Phillips, cuffed him, and removed his ski mask. His body was later covered with plastic sheeting.

Mătăsăreanu's vehicle was rendered nearly inoperable after its tires were shot out.[14] At 9:56, he attempted to carjack a yellow 1963 Jeep Gladiator pickup truck on Archwood, three blocks east of where Phillips died, and transferred all of his weapons and ammunition from the getaway car into the truck.[23] However, sources say Mătăsăreanu was unable to start the truck, because the driver had turned the vehicle and fuel pumps off, leaving the keys in the ignition[24] while others say that it was because the driver had taken the keys with him after fleeing the car.[23] As KCBS and KCAL helicopters hovered overhead, a patrol car driven by SWAT officers quickly arrived. Mătăsăreanu left the truck, took cover behind the original getaway car, and engaged them for 2 1/2 minutes of almost uninterrupted gunfire. Mătăsăreanu's chest armor deflected a bullet from one of the SWAT officers. At least one SWAT officer fired his AR-15 below the cars and wounded Mătăsăreanu in his unprotected lower legs; he was soon unable to continue and put his hands up to show surrender.[14] Seconds after his defeat, officers swarmed him to pin him down. As he was being cuffed, SWAT officers asked for his name, to which he simply replied "Pete". When asked if there were any more suspects, he reportedly laughed and retorted "Fuck you! Shoot me in the head!".[25] The police radioed for an ambulance, but Mătăsăreanu, swearing erratically and still goading the police to shoot him, died before the ambulance could reach the scene almost seventy minutes later. Later reports showed that Mătăsăreanu was shot over 20 times in the legs and died from trauma due to excessive blood loss coming from 2 gunshot wounds in the thigh.[26]

Most of the incident, including the death of Phillips and the death of Mătăsăreanu, was broadcast live by news helicopters, which hovered over the scene and televised the action as events unfolded.[15] Over 300 law enforcement officers from various forces had responded to the city-wide TAC alert.[27] By the time the shooting had stopped, Phillips and Mătăsăreanu had fired about 1,100 rounds, approximately a round every two seconds.[14]

## Aftermath and controversy [edit]

An inventory of the weapons used:

- An AR-15 converted to fire automatically with two 100-round Beta Magazines
- A semiautomatic HK-91 rifle with several 30-round magazines
- A Beretta 92FS Inox with several magazines
- Three different AK-47 rifles converted to fire in fully automatic mode with several 75 to 100-round drum magazines, as well as 30 round box magazines.

It was speculated that Phillips had legally purchased two of the AK-47s (and then illegally converted them to full automatic). However, as Phillips was a convicted felon it was not possible for him to legally purchase firearms.[14][28][29]

The two well-armored men had fired approximately 1,100 rounds, while approximately 650

The illegally modified automatic AR-15 with a 100-round Beta Magazine used by Mătăsăreanu, photographed at the location he was shot down. The #25 evidence marker in the background is his ski mask.

rounds were fired by police.[2] The responding patrol officers directed their fire at the "center of mass," or torsos, of Mătăsăreanu and Phillips. However, aramid body armor worn by Phillips and Mătăsăreanu covered all of their vitals (except their heads) while providing more bullet resistance than standard-issue police Kevlar vests, enabling them to deflect pistol bullets and shotgun pellets, while Mătăsăreanu's chest armor even successfully withstood a hit from a SWAT operator's AR-15. Each man was shot and penetrated by at least ten bullets, yet both were able to continue shooting. The ineffectiveness of the standard police patrol weaponry in penetrating the robbers' body armor led to a trend in the United States toward arming selected police patrol officers with semi-automatic 5.56 mm AR-15 type rifles.[14] Seven months after the incident, the Department of Defense gave 600 surplus M16s to the LAPD, which were issued to each patrol sergeant;[30] other cities, such as Miami, also moved to supply patrol officers, not just SWAT teams, with heavier firepower.[31] LAPD patrol vehicles now carry AR-15s as standard issue, with bullet-resistant Kevlar plating in their doors as well.[32] Also as a result of this incident LAPD authorized its officers to carry .45 ACP caliber semiautomatic pistols as duty sidearms, specifically the Smith and Wesson Models 4506 and 4566. Prior to 1997, only LAPD SWAT officers were authorized to carry .45 ACP caliber pistols, specifically the Model 1911A1 .45 ACP semiautomatic pistol.[33]

The LAPD did not allow Mătăsăreanu to receive medical attention, stating that ambulance personnel were following standard procedure in hostile situations by refusing to enter "the hot zone," as Mătăsăreanu was still considered to be dangerous.[14] Some reports indicate that he was lying on the ground with no weapons for approximately an hour before ambulances arrived.[34] A lawsuit on behalf of Mătăsăreanu's offspring was filed against members of the LAPD, claiming that Mătăsăreanu's civil rights had been violated and that he was allowed to bleed to death.[35] The lawsuit was tried in United States District Court in February and March 2000, and ended in a mistrial with a hung jury.[36] The suit was later dropped when Mătăsăreanu's family agreed to dismiss the action with a waiver of malicious prosecution.[37]

The year following the shootout, 19 officers of the LAPD received the departmental Medal of Valor for their actions,[38] and met President Bill Clinton.[39] In 2003, a film about the incident was produced, titled *44 Minutes: The North Hollywood Shoot-Out*. In 2004, the Los Angeles Police Department Museum opened an exhibit featuring two life-size mannequins of Phillips and Mătăsăreanu fitted with the armor and clothing they wore and the weaponry they used.[40]

The getaway vehicle and some of the LAPD patrol cars involved in the shootout are now on display at the Los Angeles Police Historical Society Museum in Highland Park.

## See also [edit]

- *44 Minutes: The North Hollywood Shoot-Out* – the film based on this event
- 1986 FBI Miami shootout
- 2009 Pittsburgh police shootings
- 2009 shooting of Oakland police officers
- Newhall massacre
- Norco shootout
- Shootout

**Los Angeles portal**

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7. ^ "SHOOTOUT IN L.A. 2 "armed-for-war' robbers killed; 16 hurt in failed heist".
8. ^ Robinson, 3.
9. ^ Rehder and Dillow, 255–256; Robinson, 4–5.
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11. ^ Rehder and Dillow, 257.
12. ^ Rehder and Dillow, 257; Robinson, 12.
13. ^ Rehder and Dillow, 258–259; Robinson, 12.
14. ^ a b c d e f g h i j k *Critical Situation*, "North Hollywood Shoot-out".
15. ^ a b c *Critical Situation*, "North Hollywood Shoot-out"; *Shootout!*, residents cope with aftermath.
21. ^ *Critical Situation*, "North Hollywood Shoot-out"; LAPD Shoot-Out With Bank Robbers.
22. ^ LAPD Shoot-Out With Bank Robbers.
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31. ^ LAPD gets M16s; LAPD museum showcases department's good, bad, ugly.
32. ^ Prengaman, 2.
33. ^ "LAPD Swat".

"North Hollywood Shootout".

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17. ^ http://www.northhollywoodshootout.com/clothing---phillips.html
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19. ^ *Critical Situation*, "North Hollywood Shoot-out"; Hays and Sjoquist, 124.
20. ^ *Critical Situation*, "North Hollywood Shoot-out"; Stunned police,
34. ^ *Critical Situation*, "North Hollywood Shoot-out"; Jury Unsure If Cops Let Shooter Die.
35. ^ Lawsuit accuses L.A. police of letting wounded gunman die; Prengaman, 2.
36. ^ Jury Unsure If Cops Let Shooter Die; Mistrial Declared in Case Stemming From Shootout.
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Categories: 1997 crimes in the United States | Los Angeles Police Department | Los Angeles, California crime history | Bank robberies | Law enforcement operations in the United States | San Fernando Valley | Bank of America | Deaths by firearm in California | Filmed deaths | Filmed suicides | Robberies in the United States | Spree shootings in the United States

# Gunman William Spengler Used Bushmaster, Left Chilling Note

Dec. 25, 2012

By RUSSELL GOLDMAN via **WORLD NEWS**

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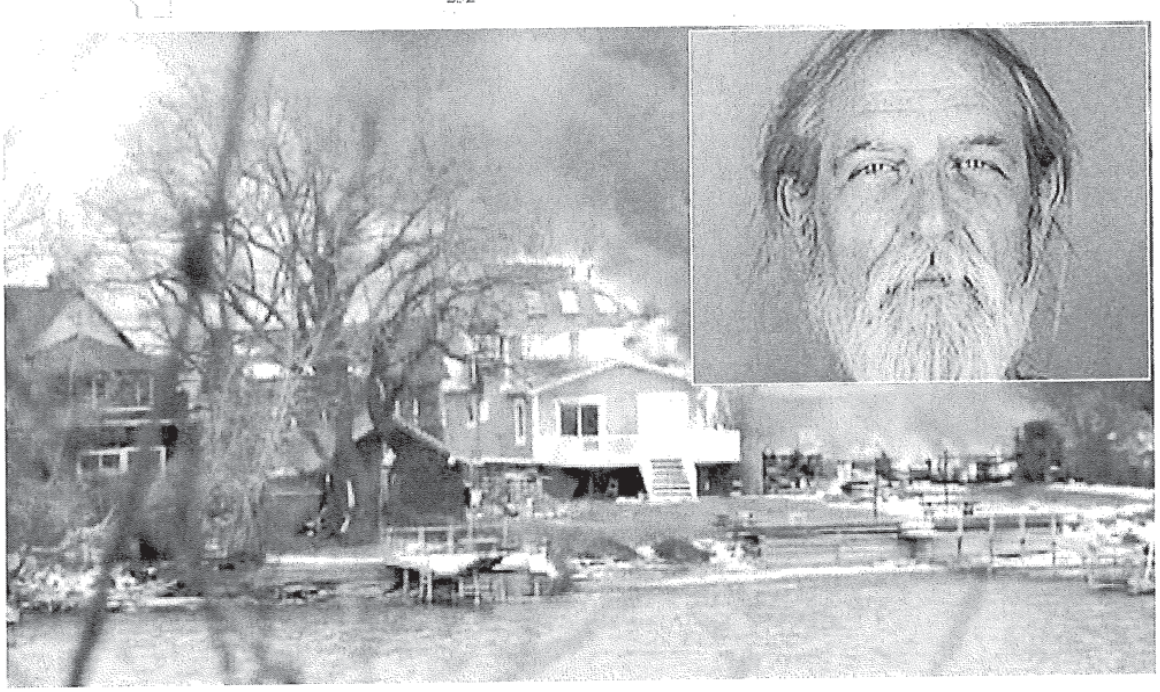

A convicted killer, who shot dead two firefighters with a Bushmaster assault rifle after leading them into an ambush when they responded to a house fire he set in Western New York, left behind a typewritten note saying he wanted to "do what I like doing best, killing people," police said.

William Spengler, 62, set his home and a car on fire early Monday morning with the intention of setting a trap to kill firefighters and to see "how much of the neighborhood I can burn down," according to the note he wrote and which police found at the scene. The note did not give a reason for his actions.

Spengler, who served 18 years in prison for beating his 92-year-old grandmother to death with a hammer in 1981, hid Monday morning in a small ditch beside a tree overlooking the sleepy lakeside street in Webster, N.Y., where he lived with his sister, police said today in a news conference.

Police said they found remains in the house, believed to be that of the sister, Cheryl Spengler, 67.

As firefighters arrived on the scene after a 5:30 a.m. 911 call on the morning of Christmas Eve, Spengler opened fire on them with the Bushmaster, the same semi-automatic, military-style weapon used in the Dec. 14 rampage killing of 20 children in Newtown, Conn.

"This was a clear ambush on first responders... Spengler had armed himself heavily and taken area of cover," said Gerald Pickering, the chief of the Webster Police Department.

Armed with a Smith & Wesson .38 caliber revolver, a 12-gauge shotgun, and the Bushmaster, Spengler killed two firefighters, and injured two more as well as an off-duty police officer at the scene.

As a convicted felon, Spengler could not legally own a firearm and police are investigating how he obtained the weapons.

One firefighter tried to take cover in his fire engine and was killed with a gunshot through the windshield, Pickering said.

Responding police engaged in a gunfight with Spengler, who ultimately died, likely by a self-inflicted gunshot wound to the head.

As police engaged the gunman, more houses along Lake Ontario were engulfed, ultimately razing seven of them. Some 33 people in adjoining homes were displaced by the fire.

SWAT teams were forced to evacuate residents using armored vehicles.

Police identified the two slain firefighter as Lt. Michael Chiapperini, a 20-year veteran of the Webster Police Department and "lifetime firefighter," according to Pickering, and Tomasz Kaczowka, who also worked as a 911 dispatcher.

Joseph Hofsetter was shot once. He sustained an injury to his pelvis and has "a long road to recovery," said Dr. Nicole A. Stassen, a trauma physician.

The second firefighter, Theodore Scardino, was shot twice and received injuries to his left shoulder and left lung, as well as a knee.

# 2012 Webster, New York shooting

From Wikipedia, the free encyclopedia

Coordinates: 43°14′13″N 77°31′22″W

‹ The template *Infobox civilian attack* is being considered for merging. ›

In the early morning of December 24, 2012, firefighters responding to a fire in West Webster, New York, a suburb of Rochester, were fired upon by 62-year-old William H. Spengler, who was believed to have deliberately set the fire. Two of the firefighters were killed.

**Contents** [hide]



**2012 Webster, New York shooting**

| | |
|---|---|
| **Location** | 191 Lake Road<br>Webster, New York, U.S. |
| **Coordinates** | 43°14′13″N 77°31′22″W |
| **Date** | December 24, 2012<br>c. 5:30 a.m.-c. 11:00 a.m. (EST) |
| **Attack type** | Murder-suicide, arson, shootout |
| **Weapon(s)** | • Bushmaster .223 semiautomatic rifle[1]<br>• Smith & Wesson .38-caliber revolver<br>• Mossberg 12-gauge shotgun |
| **Deaths** | 4 (including the perpetrator) |
| **Injured (non-fatal)** | 3 |
| **Suspected perpetrator** | William H. Spengler, Jr.[2] |

## Shooting [edit]

According to police, Spengler set his house on 191 Lake Road and the family car on fire in the early morning hours of Christmas Eve, and then armed himself with three guns: a Smith & Wesson .38-caliber revolver, a Mossberg 12-gauge shotgun, and a .223-caliber Bushmaster semiautomatic rifle.[3][4] When firefighters arrived shortly after 5:30 am, he ambushed them from his porch. Two firefighters were killed, and two others were injured.[5]

Spengler exchanged shots with police, who arrived with an armored truck to remove the firefighters and 33 nearby civilians.[4] Police say Spengler was then chased on foot, and died when he shot himself in the head. His body was discovered nearly six hours later.[6][7][8] Due to the shooting, fire crews were unable to resume fighting the blaze until 11:30 a.m. By then, six other houses had burned to the ground, and two others had been rendered uninhabitable.[9]

A severely burned body found inside Spengler's house is believed to be Spengler's 67-year-old sister Cheryl, with whom he was living.[5] The shooting was suspected to have followed an argument between Spengler and Cheryl.[4] A two-to-three-page typewritten letter written by Spengler was found at the scene. It reflected Spengler's intent to ambush first responders, but offered no motive for the shooting.[3] In it he wrote: "I still have to get ready to see how much of the neighborhood I can burn down, and do what I like doing best, killing people."[10]

### Victims [edit]

The two firefighters killed in the shooting were 43-year-old Lieutenant Michael Chiapperini, the public information officer for the Webster Police Department, and 19-year-old Tomasz Kaczowka, who also

worked as a 911 dispatcher. The two wounded firefighters were Joseph Hofstetter, who was shot in the pelvis (with the bullet then lodged in his spine), and Theodore Scardino, who was shot in the chest and knee. Both were hospitalized at Strong Memorial Hospital for serious injuries, and were declared to be in stable condition.[5] In addition to the two wounded firefighters, officer John Ritter was slightly injured when a bullet hit the windshield of his car.[4]

## Perpetrator [edit]

Police identified the gunman as 62-year-old local resident William H. Spengler, Jr.[7] Spengler previously spent 17 years in prison for murdering his 92-year-old grandmother with a hammer in 1980.[6][8][11] He had not attracted the attention of police since then. William Spengler "could not stand" his sister Cheryl, according to a friend, Roger Vercruysse. Spengler's mother Arline, to whom he was said to have been close, died two months earlier.[6]

Investigators immediately began focusing on how Spengler obtained the gun. New York, like nearly all other states, bars convicted felons from buying, owning or possessing a firearm. Before the day was out, agents with the Bureau of Alcohol, Tobacco and Firearms discovered that the Bushmaster and the shotgun had been purchased in June 2010 at Gander Mountain in Henrietta, another Rochester suburb. The owner of record was Dawn Nguyen, a neighbor of Spengler, who had recently moved to the suburb of Greece. In an interview with agents that night, Nguyen admitted buying the guns, but claimed they had then been stolen. However, according to investigators, the next day Nguyen texted a Monroe County sheriff's deputy and admitted buying the guns for Spengler in an illegal straw purchase. On December 28, William Hochul, the United States Attorney for the Western District of New York, announced that Nguyen had been arrested and charged with knowingly making a false statement in connection with the purchase of a firearm from a Federal Firearms Licensee. She also faces state charges of filing a false business record—the form she filled out stating that she was the owner of the guns.[12][13]

## Reaction [edit]

In a statement, New York Governor Andrew Cuomo said, "All of our thoughts and prayers go to the families and friends of those who were killed in this senseless act of violence." New York Attorney General Eric Schneiderman also said, "The contributions made by the fallen and injured officers in Webster will never be forgotten."[4]

## See also [edit]

- Gun violence in the United States

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v · t · e · **Shootings in the United States** [show]

**2010s portal** **New York portal** **Crime portal**

Categories: 2012 murders in the United States | Deaths by firearm in New York | Suicides by firearm in New York | Murder in New York | Arson in the United States | Murder–suicides in the United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

| | | |
|---|---|---|
| JUNE SHEW, *et al*, | : | |
| Plaintiffs, | : | Case No. 3:13-cv-00739-AVC |
| v. | : | |
| DANNEL P. MALLOY, *et al*, | : | |
| Defendants. | : | December 10, 2013 |

**PLAINTIFFS' LOCAL RULE 56(a)2 STATEMENT**

Plaintiffs, by and through counsel and pursuant to D.Conn.L.Civ.R. 56(a)2, hereby submit their response to the Defendants' Local Rule 56(a)(1) Statement dated October 11, 2013 (Doc. # 78-2).

## I. RESPONSE TO DEFENDANT'S LOCAL RULE 56(a)1 STATEMENT

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiffs' Response:**

**Objection**: This is an assessment of the law, not a statement of material fact. This legal assessment is not followed by a citation to admissible evidence that proves or disputes the existence of a material fact. Since this is neither a statement of material fact nor a citation to admissible evidence, its inclusion in Defendants' "Local Rule 56(a)1 Statement" violates Rules



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7(a)(1), 56(a)(1) and 56(a)(3) of the Local Rules of Civil Procedure for the District of Connecticut, as well as Rule 56(e) of the Federal Rules of Civil Procedure, which prohibit the inclusion of legal arguments in the "fact specific" portion of the papers required to support or oppose a Motion for Summary Judgment.

Since the Defendants have violated the rules regarding the intermingling of factual assertions and legal assessment in a single document, the Court should disregard this particular assertion in its entirety. *See, Giannullo v. City of New York*, 322 F.3d 139, 140 (2d Cir. 2003); *Holtz v. Rockefeller & Co., Inc.*, 258 F.3d 62, 73 (2d Cir. 2001) [where there are no citations of fact or where the cited materials do not support the factual assertions in the statements, the Court is free to disregard the assertion]. Since Plaintiffs are prohibited from including legal arguments either here or in their Local Rule 56(a)2 Statement, the Plaintiffs respectfully request that this particular assertion be deemed disputed for the purposes of resolving all motions for summary judgment.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶2 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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 |



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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.

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶3 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶4 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶5 should be disregarded in its entirety.



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| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

6.1 Rimfire and centerfire rifles are different based on where the firing pin strikes the round. *See* Supplemental Declaration of Guy Rossi ("Rossi Supp'l Decl.") [attached hereto as **"Exhibit A"**] at 2. A rimfire round is struck on the outside of the strike plate on the back of a round. *Id.* A centerfire round is struck in the center by the firing pin. *Id.* Both types fire quickly; the primary difference is price and reliability. *Id.* Rimfire rounds tend to be cheaper but less reliable, while centerfire rounds tend to be more expensive but more reliable. *Id.* This is why most large rounds used for hunting or self-defense (where reliability is worth the price) are centerfire rounds, while smaller target rounds (where price control is key) tend to be rimfire. *Id.*

6.2 By arbitrarily specifying that centerfire rifles are regulated, the Act pushes shooters towards less-reliable rimfires without any effect on the other attributes (rate of fire, magazine capacity, etc) that worry gun control proponents. *Id.* Less-reliable rounds hinder sport shooters and endanger those in self-defense situations. *Id.*

*See also* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as for the reasons stated here, Defendants' ¶6 should be disregarded in its entirety.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶7 should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 8. | Rimfire semiautomatic rifles continue to be regulated under the 2001 Act's two-feature test. *See* P.A. 13-220, § 3. |

**Plaintiff's Response:**

*See* responses to ¶¶ 1 and 6, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, Defendants' ¶8 should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the



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same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶9 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 10. | The Act prohibits the possession, sale, or transfer of large capacity magazines ("LCMs"). P.A. 13-3, § 23. |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶10 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶11 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |



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**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶12 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed In Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

13.1 The rate of fire for manually operated guns depends on the skill of the operator. Rossi Supp'l Decl. at 2. A revolver or a lever action or pump long gun may fire faster than a semiautomatic firearm in the hands of some persons. *Id.*

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1:** the Defendants have not specifically identified the number of the 183 enumerated firearms that were based on, or were variations of the M-16 / AK-47 military designs. Absent a specifically identified number, the Plaintiffs deny that "a majority" of these 183 firearms were based on or were variations of a military design.



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**Objection #2:** the phrase "…are based on, and are simply semiautomatic variations of…." is vague and un-defined and therefore not capable of a meaningful response.

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

14.1 The semiautomatic firearm design feature is in no manner based on or is a variation of the full automatic design feature. Rossi Supp'l Decl. at 2.

14.2 Although IZHMASH Saiga 12 Shotguns have a receiver that is similar to the AK-47, these firearms are shotguns and thus are not a "variation" of the AK-47, which is a selective fire rifle.

14.3 The US military has long allowed citizen access to its cutting-edge rifle designs. For example, the 1903 Springfield .308 caliber bolt action was America's front-line rifle from World War I through the beginning of World War II. Yet, as early as the 1920s and 1930s, civilians could purchase the 1903 Springfield "NRA Sporter" variant of the rifle. Rossi Supp'l Decl. at 3-4.

14.2 During World War II, the US military developed the M-1 carbine magazine-fed semi-automatic rifle for "combat situations" in World War II. Marines, paratroopers, and Special Forces preferred its light weight and high volume of fire. *Id.* Yet, by the 1950s, while the rifle was still in use by American servicemen in Korea and would later be used in Vietnam, the M1 became very popular as a ranch and varmint rifle. *Id.*

14.3 The Vietnam era M14 rifle is another example. Over 1 million of these firearms were produced for the Vietnam War, and variants of the rifle still serve today's Special Forces. *Id.* Yet by 1971, while the war in Vietnam raged, civilians could purchase a variant and



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sales have continued to today. *Id.*

14.4 Many other of the military's firearms that would not be banned under the Act are available in some form in the civilian market. Rossi Supp'l Decl. at 4. The Mossberg 500 is the US military's standard shotgun while a nearly identical commercial form is available. *Id.* The civilian market's version of the military's Remington 700 bolt-action sniper rifle is one of the most popular hunting rifles in the country. *Id.*

14.5 Though these arms originated in the military, they are also extremely useful for civilian purposes such as hunting, sporting competitions and self-defense, and are widely sought after by civilians for these purposes. *Id.* The AR-15 and similar rifles are not fundamentally different, and should not be treated differently. *Id.*

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed in Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

15.1 While some of the "other enumerated weapons" are variations of a military design, others are not, including the Intratec TEC-9 and Scorpion; the Iver Johnson Enforcer model 3000; the Ruger Mini-14/5F (folding stock model only); Street Sweeper and Striker 12 revolving cylinder shotguns; the USAS-12; the Weaver Arms Nighthawk; the Wilkinson "Linda" Pistol; Hi-Point Carbine Rifles; the Remington Tactical Rifle Model 7615 [this last rifle being a pump]; and the Wilkinson Arms Linda Carbine. Rossi Supp'l Decl. at 4.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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)). |

**Plaintiff's Response:**

**Objection:** Defendants have not defined the term "features" in any way. Since the term "features" is undefined, Plaintiffs cannot determine whether it refers to the action of a firearm (i.e., the functional ability of a firearm to shoot in fully automatic mode versus semi-automatic mode only), or whether the term "features" refers to various items (such as telescoping stocks, pistol grips, thumbhole stocks, grenade launchers, flash suppressors, and/or bayonet lugs) that can be added to or removed from firearm without affecting its operational ability to fire in semi-automatic mode only.

Subject to this objection, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, the Plaintiffs respond to Defendants' ¶16 as follows:

Disputed In Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

16.1 Plaintiffs admit that the designs of some of the firearms banned by the Act were derived from the designs of military weapons.

16.2 Plaintiffs dispute that the firearms banned the Act, particularly the AR-15, are military firearms designed for combat. This is because they lack the functional capability of shooting in full automatic or 3-round burst mode. *See*, Rossi Supp'l Decl. at 3-5..



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16.3 The defining characteristic of military weapons designed for combat – the characteristic that separates military weapons from civilian firearms - is their functional ability to fire in fully automatic mode, 3-round burst mode, or select fire mode (i.e., a mode that allows the shooter to switch between fully automatic or semi-automatic modes). *See*, Rossi Supp'l Decl. at 3-5. *See also*, Defendants ¶18, below, wherein Defendants admit that the functional difference between an M-16 and AR-15 is the ability to fire in fully automatic mode.

16.4 The significance of this functional difference cannot be understated: civilian firearms, like the AR-15, cannot fire in fully automatic mode and are therefore cannot be considered military weapons. *Id.*

16.5 Plaintiffs admit that certain items that can be attached to the banned "assault weapons," such as bayonet lugs and grenade launchers, are designed for combat purposes.

16.6 Plaintiffs dispute that other items banned by the Act (telescoping stocks, pistol grips, and thumbhole stocks) are military in nature.

16.7 Telescoping stocks, pistol grips and thumbhole stocks are components that are in widespread use on millions of firearms throughout the United States that are commonly used for lawful purposes such as self-defense, hunting and sporting competitions.

16.8 These items promote the safe and comfortable use of a firearm, and also promote firing accuracy. *See* Declaration of Guy Rossi ("Rossi Decl.") [attached to Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction as Exhibit C (Doc. #15-5)] at 2. *See also* Plaintiffs' Local Rule 56(a)1 Statement dated 08/23/13 (Doc. #68), ¶¶ 99-109.

16.9 Safety, accuracy and ease-of-use are characteristics that should be universal to all firearms. Rossi Supp'l Decl. at 4.



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16.10 Safety, accuracy and ease-of-use are characteristics that are not the exclusive province of firearms used by the military or law enforcement. *Id.*

16.11 The firearms banned by the Act, particularly the AR-15, are also significantly more accurate than non-banned firearms, are lighter (and therefore easier to aim and more safe to handle), and have far less recoil than non-banned firearms. *Id.* at 4-5. These characteristics greatly increase the functionality and ease-of-use of "assault weapons." *Id.*

16.12 The firearms banned by the Act, and the devices defined as "large capacity magazines" 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* Declaration of the CCDL's Scott Wilson ("Wilson Decl.") [attached to plaintiffs' Local Rule 56(a)1 Statement as Doc. #68-7]; Supplemental Decl. of June Shew ("Shew Supp'l Decl.") [attached to plaintiffs' Local Rule 56(a)1 Statement as Doc. # 68-9]; Declaration of Gary Roberts ("Roberts Decl.") [attached to plaintiffs' Local Rule 56(a)1 Statement as Doc. #68-11].

16.12 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 banned by the Act 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 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.*

16.13 The AR-15 is a very effective varmint rifle. Rossi Supp'l Decl. at 5. Its large



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capacity magazine, high velocity round, and accuracy at range is useful against prey ranging from feral pigs to woodchucks to coyotes. *Id.* When allowed under state hunting laws, a hunter can swap a larger-caliber barrel such as a .308 in place of the .223 caliber barrel for big game. *Id.*

16.14 In this sense, the argument that firearms banned by the Act and "LCMs" are solely used for crime, have no sporting purposes, and are not used by private citizens for sporting competitions is simply untrue. *Id.*

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Admitted, except that the term "version" should not be taken to minimize the fundamental functional difference between the AR-15's semiautomatic design and the M-16's full automatic design. The significance of this functional difference cannot be understated: civilian firearms, like the AR-15, cannot fire in fully automatic mode and are therefore cannot be considered military weapons. Rossi Supp'l Decl. at 2-4.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed in Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:



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18.1 The difference between semiautomatic fire and fully automatic fire is *extremely* significant. Rossi Supp'l Decl. at 2. [emphasis added]. The defining characteristic of military weapons designed for combat – the characteristic that separates military weapons from civilian firearms - is their functional ability to fire in fully automatic mode, 3-round burst mode, or select fire mode (i.e., a mode that allows the shooter to switch between fully automatic or semi-automatic modes). *See*, Rossi Supp'l Decl. at 2, 4. The significance of this functional difference cannot be understated: civilian firearms, like the AR-15, cannot fire in fully automatic mode and therefore cannot be considered military weapons. *Id.*

18.2 Another extremely significant difference is that fully automatic firing mode does not allow for aimed firing. *Id*. at 2. Instead, fully automatic firing mode allows only for "point shooting" and "spray firing." *Id*. Aimed firing, as the name suggests, involves the shooter aligning his or her eye with the firearm's sights and superimposing that sight picture upon the threat. *Id*. In point shooting, the shooter does not rely on the firearm's sites. *Id*. Point shooting is used for circumstances in which aimed fire is not possible. *Id*. These typically arise in close quarters (as the Tueller drill demonstrates) when the shooter is under attack and does not have time to acquire a site picture. *Id*. In other words, with point shooting the shooter does not have time to take an aimed or sighted shot, but instead merely points the firearm in the direction of the target. *Id*.

18.3 In full auto mode it is not possible to achieve aimed fire. *Id.* at 2-3. In full auto mode, it is possible only to spray fire (as in laying down suppressive fire), or to point shoot. *Id*.

18.4 In semi automatic mode it is possible to either aim fire or to point shoot, but it is not possible to spray fire. *Id.* Both aimed fire and point shooting have valid self-defense



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applications. *Id*. In terms of safety, however, aimed fire is the safest type of fire because the shooter has aligned the sights for a more accurate shot placement and has identified the target and what lies beyond it. *Id*.

18.5 There are several other important differences between the AR-15 and the M-16 (and its more modern counterpart, the M-4). *See* video clip attached hereto as **"Exhibit B"** and captioned "M16 AR15 Similarities and Differences."

18.6 The biggest difference is that the M-16 and the M-4 are designed for combat and can fire in full automatic mode, while the AR-15 is designed for civilian and sporting purposes and can only fire in semiautomatic mode. Rossi Supp'l Decl. at 3.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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)). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

19.1 The Defendants' ¶19 is not just incorrect, but it fails to account for the difference between "point fire" and "aimed fire."

19.2 The time within which a 30-round magazine can be emptied during full automatic fire by a highly skilled shooter is at least 2.8 seconds. Rossi Supp'l Decl. at 5. *See also*, video clip attached hereto as **"Exhibit C"** and captioned "M4 30 Round Full Auto." In that clip, the shooter emptied a 30-round magazine in 2.86 seconds. *Id.*



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19.3 The time within which the same 30-round magazine can be emptied from the same firearm by the same highly skilled shooter during semi-automatic fire utilizing "point firing" is no less than 11 seconds. *Id.* *See also*, video clip attached hereto as **"Exhibit D"** and captioned "Semi Auto M4 Point." Compared to the shooter in Exhibit C, it took the shooter in the Exhibit D video an additional 8.14 seconds to empty the 30 round magazine while point shooting in semi automatic mode. *Id.* The firing in semi auto mode was not twice as slow as referenced by Defendants in ¶19, but almost ***4 times slower*** than in full auto mode (11 seconds/2.86 = 3.85). *Id.* [emphasis added].

19.4 The time within which the same 30-round magazine can be emptied from the same firearm by the same highly skilled shooter during semi-automatic fire utilizing "aimed firing" is no less than 16 seconds. *Id.* *See also*, video clip attached hereto as **"Exhibit E"** and captioned "Semi Auto Aimed Fire 30 Rounds M4." NOTE: these videos show a highly experienced and highly trained professional demonstrating the speed at which a semi-automatic arm can be fired using point shooting. It is widely accepted that a layperson (who lacks the advanced training and experience of the shooter depicted in these video clips) will fire at a significantly slower rate.

19.5 A skilled shooter can empty and re-load three (3) ten-round magazines in less time than it takes an average shooter to empty and re-load one (1) thirty-round magazine. Rossi Supp'l Decl. at 6. *See also* video clip attached hereto as **"Exhibit F"** and captioned "30 Rd Aimed Fire vs 3x10 Round Magazines." This fact defeats the Act's presumption that limiting a criminal to possessing a ten-round magazine will reduce the lethality of crimes committed with firearms banned by the Act and/or LCMs. *Id*



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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)). |

**Plaintiff's Response:**

Disputed. A plain reading of the excerpted Army Training Manual cited by the Defendants shows that, rather than recommend that semiautomatic fire be used in all circumstances, the manual lists and describes the different circumstances under which the soldier should choose between semiautomatic fire, rapid semiautomatic fire and burst fire. *See, e.g.*, manual at § 7-13 ("With proper training, Soldiers can select the appropriate mode of fire: semiautomatic fire, rapid semiautomatic fire, or burst fire").

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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)). |

**Plaintiff's Response:**

**Objection #1**: Defendants have not established a proper evidentiary foundation for the admissibility of the Brady Report cited in support of this "material fact." The 2008 Brady Report is inadmissible hearsay and does not qualify as an exception to the hearsay rule under Fed.R.Evid. 803. The 2008 Brady Report lacks the proper evidentiary foundation to establish an exception even if one existed. *Collins v. Olin Corp.*, 434 F. Supp. 2d 97, 104 n.15 (D. Conn. 2006)



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(refusing to consider as part of a Rule 56(a)(1) statement inadmissible hearsay statements contained in a newspaper article where Plaintiffs did not provide an adequate foundation for the purported statement under an exception to the hearsay rule). For these reasons, the 2008 Brady Report should be disregarded in its entirety.

**Objection #2**: The 2008 Brady Report is neither objective, reliable, nor accurate, and amounts to nothing more than propaganda. For this reason, too, the 2008 Brady Report should be disregarded in its entirety.

**Objection #3**: The Violence Policy Center is an anti-Second Amendment lobbying group. *See* http://www.vpc.org/aboutvpc.htm (last visited Nov. 26, 2013). The VPC frequently files amicus briefs arguing against the Second Amendment (*id.*), and its publications (which are neither objective, reliable, nor accurate) amount to nothing more than propaganda. For this reason, the VPC report should be disregarded in its entirety.

**Objection #4**: the Defendants have failed to set forth affidavits from a single gun manufacturer (let alone the "many gun manufacturers" referenced here) reliably establishing what factors these manufacturers emphasize in their marketing campaigns.

**Objection #5**: the marketing strategies of gun manufacturers are not at issue in this litigation and are irrelevant to resolving the factual disputes in this case. As such, the statements contained within Defendants' ¶21 are not statements of material fact.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, the Plaintiffs respond to Defendants' ¶21 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional



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material facts as to which there exists a genuine triable issue:

21.1 Many gun manufacturers emphasize the usefulness of firearms banned by the Act for hunting, self-defense and sporting competition in their marketing campaigns. *See, e.g., https://ambushfirearms.com/* (last visited 12/07/13). *See also*, http://www.stiguns.com/the-sti-sporting-rifle/ (last visited 12/07/13); http://www.ar15hunter.com/ (last visited 12/07/13); http://www.rockriverarms.com/index.cfm?fuseaction=category.display&category_id=567 (last visited 12/07/13); http://www.coltcompetitionrifle.com/Firearms/ColtProModelCRP20.aspx (last visited 12/07/13); http://www.gunsamerica.com/blog/ambush-rifles-the-working-ar-15-for-year-round-hunters-new-gun-review/ (last visited 12/07/13); http://dailycaller.com/2011/11/18/gun-review-sti-tactical-sporting-rifle/ (last visited 12/07/13).

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection**: The Delahanty and Cooke affidavits fail to specify how "all" of the almost two hundred different (200) models of firearms qualify as "assault weapons." Conclusory allegations are insufficient to create an issue of fact, and affiants Delahanty and Cooke are required to proffer more than vague and non-specific claims in order to meet the Defendants' summary judgment burden. *See, e.g., Aguilar v Connecticut*, 2013 U.S. Dist. LEXIS 24315 (D.Ct. February 2013).



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Subject to this objection, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, the Plaintiffs respond to Defendants' ¶22 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

*See* response to ¶16, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶22 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

23.1 A pistol grip is a grip of a shotgun or rifle shaped like a pistol stock and allows a rifle to be held at the shoulder with more comfort and stability. Rossi Decl. at 2. Many rifles have pistol grips rather than straight grips. *Id.* *See also* Plaintiffs' Local Rule 56(a)1 Statement (Doc. # 68) at ¶¶ 103-107.

23.2 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



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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.*

23.3 The second function of the pistol grip is firearm retention, which is imperative when assailant(s) may attempt to disarm a citizen in close quarters. Rossi Decl. at 5. *See also*, Rossi Supp'l Decl. at 6; video clip attached hereto as **"Exhibit G"** and captioned "A Pistol Grip Allows the User Better Retention and Leverage Over a Long Gun."

23.4 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. See also*, video clip attached hereto as **"Exhibit H"** and captioned "Hip Fire." As that clip shows, whether firing a double-barreled shotgun, a pump action rifle or an AR-15, the shooter holds the firearm "at the hip" by using the crook of his arm / elbow to hug the firearm to his side. *Id. See also*, Rossi Supp'l Dec. at 6. Two of these three firearms do not even have pistol grips; for the third, the pistol grip on the AR-15 is not the means by which the shooter supports and holds the firearm to his hip. *Id.* As the video plainly shows, pistol grips play no role in "hip firing."

23.5 A pistol grip does not make a firearm more powerful or deadly. Rossi Decl. at 5.



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| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

24.1 There is a fundamental difference between a stock that folds and a stock that telescopes (or "collapses"). *See* Rossi Supp'l Decl. at 6. *See also* video clip attached here as **"Exhibit I"** and captioned "Stocks." Despite their differences, neither style of stock allows for true concealability. *Id.* This is particularly true of telescoping stocks. *Id.* The stock of the AR-15 is a telescoping (not folding) stock. *Id.*

24.2 The .223-caliber AR-15 is 35 inches long with the stock fully extended. *Id See also* Rossi Supp'l Decl. at 6-7. At a length of 35 inches an AR-15 cannot be concealed in one's clothing.

24.3 Typical collapsible stocks reduce the length of the rifle by three to four inches. *Id.*

24.4 While some AR-15 pistols fire pistol rounds and can be somewhat (perhaps 4 inches) shorter because they require a smaller space for the butt spring to compress, they are not "rifles" and are still too large to easily conceal. *Id.*

24.5 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



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the shoulder and the rear hand holds the grip and controls the trigger properly. Rossi Decl. at 4-5. *See also* Plaintiffs' Local Rule 56(a)1 Statement (Doc. # 68) at ¶¶ 101-102.

24.6 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.*

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

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed in Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

25.1 Shrouds allow a shooter to hold a firearm without his or her hands being burned. This is true regardless of whether the firearm is being shot "rapidly" or otherwise. Rossi Supp'l Decl. at 7.

25.2 All long guns have a "shroud" of some kind. *Id.* The pump actions found on shotguns and the forward-most section of the wooden stock underneath the barrel of a hunting rifle



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protect the hands of a shooter from the heat created when rounds fire through the barrel. *Id.* As an all-metal weapon, the AR-15 utilizes a metal barrel shroud that is serves an identical purpose. *Id.* The metal shroud is not inherently different than the more common wooden shroud. In fact, the first AR-15s utilized wooden shrouds. *Id.*

25.3 The style of shroud that the modern AR-15 uses does not change the rate of fire or allow more rounds to be fired. *Id.*

25.4 It does not "promote prolonged rapid firing by dispersing the heat" any more than the wooden front stock of a hunting rifle promotes rapid firing. *Id.* It simply protects the hands of the shooter. *Id.*

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed in Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

26.1 Flash hiders prevent a firearm owner who is shooting at night from being momentarily blinded while firing. Rossi Supp'l Decl. at 7.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 27. | A grenade or flare launcher allows a shooter to launch grenades or flares. (Sweeney Aff. at ¶14, 18; Rovella Aff. at ¶38). |

**Plaintiff's Response:**

Admitted.



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| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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)). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

28.1 Contrary to the Defendants' claim that "many jurisdictions" regulate "assault weapons," there are only nine (9) states that have bans: California, Colorado, Connecticut, the District of Columbia, Hawaii, Maryland, Massachusetts, New York and New Jersey. This is hardly "many."

*See also* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as those stated here, Defendants' ¶28 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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. |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶29 should be disregarded in its entirety.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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)). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶30 should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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)). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶31 should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶1, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that



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paragraph, Defendants' ¶32 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

*See* responses to ¶¶ 1 and 16, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, Defendants' ¶33 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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)). |

**Plaintiff's Response:**

**Objection #1**: Defendants have not set forth affidavits from a single gun manufacturer reliably establishing what factors these manufacturers consider in determining the design of certain firearms. For this reason, the 1994 ATF Report is inadmissible hearsay, does not qualify as an exception to the hearsay rule under Fed.R.Evid. 803, and lacks the proper evidentiary foundation to establish an exception even if one existed. *Collins v. Olin Corp.*, 434 F. Supp. 2d 97, 104 n.15 (D. Conn. 2006) (refusing to consider as part of a Rule 56(a)(1) statement inadmissible



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hearsay statements contained in a newspaper article where Plaintiffs did not provide an adequate foundation for the purported statement under an exception to the hearsay rule).

**Objection #2**: The purpose of certain designs of firearms are not at issue in this litigation and are irrelevant to resolving the factual disputes in this case. As such, the statements contained within Defendants' ¶34 are not statements of material fact.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, the Plaintiffs respond to Defendants' ¶34 as follows:

Disputed in Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

34.1 Since enactment of the Gun Control Act of 1968, ATF has been empowered to deny importation of firearms that it does not consider "particularly suitable for or readily adaptable to sporting purposes." ATF has been inconsistent in making such determinations.

*See also* response to ¶16, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as the reasons stated here, Defendants' ¶34 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* responses to ¶¶ 1 and 16, above, which are hereby incorporated by reference and



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with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, Defendants' ¶35 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 36. | In addition to the federal ban, many other jurisdictions have enacted bans on assault weapons and LCMs. (Exh. 22 at 20-27). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

36.1 Contrary to the Defendants' claim that "many jurisdictions" regulate "assault weapons," there are only nine (9) states that have bans: California, Colorado, Connecticut, the District of Columbia, Hawaii, Maryland, Massachusetts, New York and New Jersey. This is hardly "many."

*See* responses to ¶¶ 1 and 28 above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶36 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:



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37.1 Plaintiffs admit that certain firearms are not criminalized by the Act. However, to the extent the Act outlaws an entire class of firearms that are commonly possessed for lawful purposes, the existence of alternatives to those widely chosen by the Plaintiffs and other law-abiding citizens is irrelevant and immaterial.

37.2 In most instances, the alternatives available to the Plaintiffs are inferior to the firearms criminalized by the Act: they are not as accurate, are not as easy-to-use, and limit the ability of a law-abiding citizen to defend him or herself. *See*, Rossi Supp'l Decl. at 8.

37.3 The firearms characterized as "assault weapons," particularly the AR-15, are also significantly more accurate than non-banned firearms, are lighter (and therefore easier to aim and more safe to handle) and have far less recoil than non-banned firearms. Rossi Supp'l Decl. at 8. These characteristics greatly increase the functionality and ease-of-use of "assault weapons." *Id.* Forcing Plaintiffs to rely upon inferior firepower in order to defend themselves puts them at an unfair, and potentially deadly, disadvantage. *Id.*

**Par. #** **Defendants' Statement of "Material Fact"**

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).

**Plaintiff's Response:**

**Objection**: The Delahanty and Sweeney affidavits fail to proffer a specific, particularized basis for the claim that "more than one thousand different firearms" remain available. They have not identified these alternative arms by make or model. They have they identified the alternatives by type of action (e.g., single shot, pump, semi-auto, lever action, bolt action). Conclusory allegations are insufficient to create an issue of fact, and affiants Delahanty and



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Sweeney are required to proffer more than vague and non-specific claims in order to meet the Defendants' summary judgment burden. *See, e.g., Aguilar v Connecticut*, 2013 U.S. Dist. LEXIS 24315 (D.Ct. February 2013).

Subject to this objection, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, the Plaintiffs respond to Defendants' ¶38 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

38.1 The Defendants admit in ¶92 (below) that the firearms banned by the Act are superior self-defense firearms. In the Defendants' own words, police officers use the firearms banned by the Act for self-defense because they provide superior firepower and are the most effective firearms in a self-defense situation. *See*, Defendants' ¶92, below. Since the right of a law-abiding citizen to defend himself is at least equal to, if not greater than, the right of a police officer to do so, then it follows *a fortiori* that law-abiding citizens must also be allowed to use the firearms banned by the Act for self-defense purposes. Rossi Supp'l Decl. at 7, 11. This is particularly true given that – unlike police officers – law-abiding citizens must frequently confront criminals without any backup. *Id.*

38.2 The non-banned firearms that "remain available" under the Act are not as useful for self-defense, sporting competitions or hunting as the banned AR-15. Rossi Supp'l Decl. at 8, While handguns are useful for self-defense, a firearm such as an AR-15 provides key advantages that legitimate gun owners require. *Id.*

38.3 Intimidation: due to its larger size, assault weapons are more intimidating to



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criminals than handguns. Rossi Supp'l Decl. at 8. Military and police often use intimidation tactics to deter violence. *Id.* Sometimes the mere sight of such a weapon is enough to end a conflict before an innocent is hurt. *Id.*

38.4 Accuracy: handguns are inherently less accurate than long guns. *Id.* The shorter barrel of a pistol means that the round passes along fewer rifled groups, producing less velocity and less spin on the round. *Id.* The pistol rounds themselves are smaller and less aerodynamically shaped than rifle rounds. *Id.* Handguns are more difficult to steady because they lack a shoulder stock. *Id.* Due to their smaller size, handguns absorb less of the recoil and "kick" more, further reducing accuracy. *Id.* It is easier to put rounds on target with a rifle when the situation is stressful, even when the defenders are children or teenagers. *Id.*

38.5 Outmatch Criminals: most crimes are committed with handguns because they are concealable. Rossi Supp'l Decl. at 8. The aggressor has the advantage early in a confrontation because he or she has the initiative and has likely readied his or her mind for combat. *Id.* Since the victim is likely surprised or unprepared, he or she needs something to offset the aggressor's inherent advantages. *Id.* Legal gun owners do not have to worry about concealment at home. *Id.* They are not forced to carry smaller handguns because they have no need to hide their self-defense weapon at home. *Id.* They can counter the aggressor's advantages through firepower and intimidation using an assault rifle. *Id.*

38.6 Societal Breakdown: Americans tend to assume the authorities are always available to protect them. Rossi Supp'l Decl. at 8. However, multiple cities have seen social breakdowns and massive destruction in the last several decades. *Id.* Assault rifles are especially valuable when law and order break down and a person or community has to protect property or



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neighborhoods from looters, gangs, thieves, and mobs. *Id.* An assault rifle provides range, firepower, accuracy, and reliability that no handgun, shotgun, or hunting rifle can match. *Id.*

*See also* response to ¶37, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as for the reasons stated here, Defendants' ¶38 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶37, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶39 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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.*). |

**Plaintiff's Response:**

*See* response to ¶37, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶40 should be disregarded in its entirety.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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.*). |

**Plaintiff's Response:**

*See* response to ¶37, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶41 should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 42. | The firearms in Paragraphs 39-41 above are not an exhaustive list of firearms that remain lawful in Connecticut. (*Id.*). |

**Plaintiff's Response:**

*See* response to ¶37, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶42 should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection**: Defendants are citing Dr. Kleck's opinion out-of-context. Dr. Kleck's opinion was not given in the context of discussing the supposed suitability of non-banned firearms, but was provided as part of a discussion concerning criminal substitution of large capacity



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magazines. Since Defendants' ¶43 is a deliberate effort to distort Dr. Kleck's opinion, it should be disregarded in its entirety.

Subject to this objection, and without waiving the same, Plaintiffs respond to Defendants' ¶43 as follows:

43.1 The Defendants admit in ¶92 (below) that the firearms banned by the Act are superior self-defense firearms. In the Defendants' own words, police officers use the firearms banned by the Act for self-defense because they provide superior firepower and are the most effective firearms in a self-defense situation. Since the right of a law-abiding citizen to defend himself is at least equal to, if not greater than, the right of a police officer to do so, then it follows *a fortiori* that law-abiding citizens must also be allowed to use the firearms banned by the Act for self-defense purposes. This is particularly true given that – unlike police officers – law-abiding citizens must frequently confront criminals without any backup.

43.2 Plaintiffs admit that, in the specific context of discussing how non-banned firearms could still accept "large capacity magazines" Dr. Kleck has opined as quoted above. However, Dr. Kleck's statement regarding the availability of firearms that "function in essentially identical ways as the banned firearms" specifically referenced the fact that some unbanned firearms can still accept (now banned) LC magazines and be used to fire rounds that are just as lethal as those of the banned firearms. *See* Supplemental Declaration of Dr. Gary Kleck, attached hereto as **"Exhibit J."** Since unbanned firearms can still be misused by criminals to accept LC magazines, the Act places those who would use firearms lawfully for self-defense (i.e., those who would not use LCMs) at a distinct disadvantage. *Id.*



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: The rate of gun ownership in America is a very difficult subject for researchers to accurately identify. http://www.pewresearch.org/fact-tank/2013/06/04/a-minority-of-americans-own-guns-but-just-how-many-is-unclear/ (last visited November 24, 2013). *See also* http://blogs.wsj.com/numbersguy/guns-present-polling-conundrum-1223/ (last visited November 24, 2013). There is no definitive data source from the government or elsewhere on how many Americans own guns or how gun ownership rates have changed over time. http://www.people-press.org/2013/03/12/section-3-gun-ownership-trends-and-demographics/#profile-guns (last visited November 24, 2013). Also, public opinion surveys provide conflicting results: while some show a decline in the number of households with guns, others do not. *Id.* To the extent that the survey cited by the Defendants admits and cites to other surveys, the results of which contradict its own, the survey cited by the Defendants cannot be considered definitive by the Court.

**Objection #2**: The issue of a particular firearm's commonality is separate and distinct from the "popularity" of gun ownership relative to those who choose not to own firearms. Popularity of gun ownership in the U.S. is irrelevant to determining whether the Act violates the Second Amendment rights of the Plaintiffs and other law-abiding citizens. Thus, any comparative examination of the ratio of gun owners to non-gun owners is immaterial to the issues at bar.



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Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶44 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

44.1 Plaintiffs admit that the survey cited concludes that the accepted range of gun ownership in the U.S. is between 270 million to 310 million.

44.2 The current population of the United States is 319 million. *See* http://www.census.gov/popclock/ (last visited Nov. 24, 2013).

44.3 Self-reported gun ownership is at is highest rate since 1993. *See* http://www.gallup.com/poll/150353/self-reported-gun-ownership-highest-1993.aspx (last visited November 24, 2013).

44.4 Forty-seven percent of American adults currently report that they have a gun in their home or elsewhere on their property. *Id.* This is up from 41% a year ago and is the highest Gallup has recorded since 1993, albeit marginally above the 44% and 45% highs seen during that period. *Id.*

44.5 The Gallup Organization has been tracking gun ownership in their surveys since the early 1970s. See http://www.people-press.org/2013/03/12/section-3-gun-ownership-trends-and-demographics/ (last visited Nov. 24, 2013). The Gallup polls finds no consistent decline in gun ownership. *Id.* A Gallup survey in May 1972 found 43% reporting having a gun in their home. *Id.* The percentage subsequently fluctuated a great deal, reaching a high of 51% in 1993 and



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a low of 34% in 1999 – but the percentage saying they had a gun in their home last year was the same as it was 40 years earlier (43%). *Id.*

44.6 Data compiled by the National Shooting Sports Foundation ("NSSF") regarding U.S. firearm production of AR-15 platform Modern Sporting Rifles ("MSRs") shows that U.S. production of the AR-15 has dramatically increased in recent years. *See* Declaration of the NSSF's James Curcuruto and NSSF AR-15 production figures for 1990-2012, attached hereto as **"Exhibit K."**

44.7 As the figures show, in 2003 the annual total of AR-15 MSRs produced in the U.S. was 406,000. *Id.* By 2006, this figure had increased to 412,400. *Id.* By 2008, the number had jumped to 655,000 (an increase of 62.9% over the 2006 figure). *Id.* In 2011, the total number produced was 674,000; by 2012 this number increased to 997,000 (an increase of 67% over the prior year's production). *Id.*

44.8 To the extent production rates mirror demand, the NSSF AR-15 production figures demonstrate that the consumer demand for the AR-15 is skyrocketing. *Id.*

44.9 In addition, the prevalence of these indicates that they are in common use in the United States. *Id.* More than 4.8 million people in the United States own AR-type or AK-type rifles. *Id.*

44.10 In 2013, the NSSF published its Modern Sporting Rifle (MSR) Comprehensive Consumer Report 2013 ("MSR Comprehensive Report, 2013"). *Id.* The findings in the report were based on on-line responses from 21,942 owners of MSRs. Included among the findings were that nearly half of all owners of MSRs are current or former members of the military or law enforcement. *Id.* The survey found that three out of every four recently purchased MSRs are



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chambered for .223/5.56mm ammunition. *Id.* Eighty-five percent of survey respondent used magazines with capacities in excess of ten rounds. *Id.* Owners of these rifles consider accuracy and reliability to be the most important attributes of an MSR. *Id.* Other reasons cited by survey respondents for their purchase of MSRs include ergonomics, low recoil, ease with which they can be shot and their light weight. *Id.* Recreational target shooting was ranked as the number one reason why owners purchased an MSR, followed closely by home defense. *Id.* Other reasons for owning an MSR included varmint hunting, big game hunting, competitive target shooting and collecting. *Id.*

44.11 In 2013, the NSSF published its Firearms Retailer Survey Report ("Firearms Retailer Survey Report, 2013"). *Id.* The report set forth finding based on an on-line survey of 752 firearm retailers located in all 50 states. *Id.* Among the findings were that 92.5% of those responding to the survey currently sell new MSRs compared to 89.2% who sell new traditionally-styled rifles. *Id.* Of the MSRs sold, those chambered for .223 ammunition were by far the most commonly purchased. Respondents reported that 20.3% of the firearms they sold in 2012 were MSRs. In contrast, just 14% of the firearms sold were traditionally styled rifles. *Id.*

44.12 In 2013, the NSSF published its Sport Shooting Participation in the United States in 2012 Report ("Sport Shooting Participation Report"). *Id.* The findings in the report were based on telephonic responses from 8,335 U.S. residents. Included among the findings were that nearly half of all owners of MSRs are current or former members of the military or law enforcement. *Id.* The survey found that 5.1% of respondents had gone target shooting with an MSR during the year 2012, representing a 35% increase in target shooting with an MSR since 2009. *Id.*



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In addition, among those respondents who had reported engaging in target shooting in 2012, 33.5 percent responded that they had used an MSR when doing so. *Id.*

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: The Defendants have not established an accurate or precise figure identifying the "market presence" of banned firearms or LCMs, either currently or in 1994. Since Defendants have failed to establish a reliable baseline "market presence" for banned firearms or LCMs, they cannot argue that these items are used disproportionately in crime.

**Objection #2:** The Koper affidavit cited by the Defendants does not definitively establish either the "total civilian gun stock" as of 1994, or the percentage of privately owned federally banned firearms in 1994. *Id.* In ¶17 of his affidavit, Dr. Koper admits that "estimates [re assault weapon ownership] are imprecise," and that banned firearms represented 2.5% of all guns produced domestically between 1989 and 1993. *Id.* Based on these figures Dr. Koper "suggests" that banned firearms weapons "likely" accounted for 1% of the civilian gun stock at the time the federal ban took place. *Id.* Given the vagaries inherent in Dr. Koper's opinion, the Court should not accept Defendants' ¶45 as admissible or conclusive evidence concerning either the "total civilian gun stock" as of 1994, or the percentage of privately owned banned firearms in 1994.

**Objection #3**: Reliable estimates of the market presence of firearms criminalized by bans are also made difficult due to the fact that the few States that regulate the ownership of such firearms do so in inconsistent manners, using different definitions.



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*See also* responses and objections to ¶44, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, the Plaintiffs respectfully request that this particular assertion be deemed disputed for the purposes of resolving the Defendants' motion for summary judgment.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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)). |

**Plaintiff's Response:**

**Objection #1**: The Lawrence Tribe testimony cited by the Defendants does not establish either a figure representing the "current gun stock" in the U.S., nor does it accurately recite NRA estimates that the ratio of firearms criminalized by bans relative to the current gun stock (whatever that figure may be) is "roughly 2%." To the contrary, the Tribe testimony cited by Defendants references the "NRA's lobbyist arm estimates" that firearms criminalized by bans represent 15% of all firearms owned in the U.S. *See* Defendants' Exh. 61 at 24.

**Objection #2**: Lawrence Tribe is not authorized to speak on behalf of the NRA and was not speaking on behalf of the NRA during the testimony cited by the Defendants. As such, Defendants' ¶46 cannot form the basis of the NRA's estimates of the "current gun stock" or the ratio of firearms criminalized by bans to that stock.

**Objection #3**: Reliable estimates of the market presence of firearms criminalized by bans are also made difficult due to the fact that the few States that regulate the ownership of such arms do so in inconsistent manners, using different definitions.



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*See also* responses and objections to ¶44, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶46 as follows:

Disputed. Since Defendants have not established an accurate, reliable or precise figure identifying the "current gun stock" in the United States, Plaintiffs deny that that the NRA's estimates about banned firearm ownership account for 2% of the "current gun stock."

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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. |

**Plaintiff's Response:**

**Objection #1**: This is an inaccurate statement of fact and a deliberate mis-characterization of Mr. Overstreet's declaration. In ¶11 of his declaration, Mr. Overstreet makes "a conservative estimate" that approximately 3.97m AR-15 type rifles were produced between 1986 and March 2013, *excluding* production by Remington and Sturm Ruger. *Id.* [emphasis added].

**Objection #2**: Nowhere within the Overstreet declaration cited by the Defendants does Mr. Overstreet opine as to the "current gun stock" in the U.S. In ¶8 of his declaration, Mr. Overstreet notes that there were approximately 6.2 million firearms made in the U.S. and not exported in 2011, and that AR-15 type rifles accounted for 7% of the firearms (and 18% of the rifles) made in that year.

*See also* responses and objections to ¶44, above, which are hereby incorporated by



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reference and with the same force and effect as if fully re-stated here.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶47 as follows:

Disputed. Since the Defendants have not established an accurate, reliable or precise figure identifying the "current gun stock" in the United States, Plaintiffs deny that the 3.97 million AR-15 type rifles presently in the U.S. represent just over 1% of the "current gun stock."

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection**: The 2010 National Shooting Sports Foundation Consumer Report referred to by the Defendants surveyed 7,342 owners of modern sporting rifles and profiled their responses to numerous questions regarding consumer preference. *See* Pl. Prel. Inj. Exh. B at p.4. While Plaintiffs submit that the survey participants are accurately portrayed by the 2010 National Shooting Sports Foundation report, and that the report accurately depicts the consumer preferences of MSR owners, Plaintiffs have never represented to the Court that the 2010 National Shooting Sports Foundation report represents the gun ownership rates of *all* individuals in the United States who currently own "assault rifles." [emphasis added]. The 2010 National Shooting Sports Foundation report, by its own terms, makes no such efforts or representations. As such, the 2010 National Shooting Sports Foundation Consumer Report cannot form an evidentiary basis upon which to conclude that 60% of all of the assault rifle owners in the U.S. own several of them. For this reason, Defendants ¶48 must be disregarded in its entirety.



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Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶48 as follows:

Plaintiffs admit that 60% of the 7,342 respondents to the 2010 NSSF Consumer Survey own more than one MSR, and 44% of these 7,342 respondents are current or former military/law enforcement.

Plaintiffs deny that the 2010 NSSF report details the current rate of gun ownership in the U.S, or the ratio of "assault weapon" ownership" relative to overall gun ownership in the U.S.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* objections to ¶48, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶49 as follows:

Disputed In Part. Plaintiffs admit that 60% of the 7,342 respondents to the 2010 NSSF Consumer Survey own more than one MSR, and 44% of these 7,342 respondents are current or former military/law enforcement.

Plaintiffs deny that the 2010 NSSF report establishes that the number of actual "assault rifle" owners is less than the number of assault rifles produced.



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| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 50. | Household gun ownership rates have declined over the past four decades. (*See* Exhs. 64- 65). |

**Plaintiff's Response:**

**Objection #1**: The Violence Policy Center is an anti-Second Amendment lobbying group. *See* http://www.vpc.org/aboutvpc.htm (last visited Nov. 26, 2013). The VPC frequently files amicus briefs arguing against the Second Amendment (id.), and its publications (which are neither objective, reliable, nor accurate) amount to nothing more than propaganda. For this reason, too, the VPC report should be disregarded in its entirety.

Subject to this objection, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶50 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

*See* ¶¶ 44.1 thru 44.8, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, as well as for the reasons stated here, Defendants' ¶50 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |



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**Plaintiff's Response:**

*See* responses and objections to ¶¶ 44 and 50, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, Defendants' ¶51 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: the *Pediatrics* article cited by the Defendants in support of the "material fact" was published in 2005, and indicates that its information "is current as of September 8, 2005." *Id.* Further, the statistics recited in the article and relied upon by the Defendants estimate the prevalence of adults with household firearms as of the year 2002. *Id.* Since neither the article nor its data are current, the *Pediatrics* article does not constitute admissible evidence as to the current rate of household gun ownership in Connecticut and Defendants' par.52 should be disregarded in its entirety.

Subject to this objection, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶52 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

*See* responses to ¶¶ 44 and 50, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response



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to those paragraphs, Defendants' ¶52 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Admitted.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 54. | A 2013 study found a correlation between rates of gun ownership and gun death, particularly firearms related homicide. (Exh. 67). |

**Plaintiff's Response:**

Plaintiffs admit that the 2013 study cited by the Defendants finds a correlation between gun ownership rates and firearm homicide rates.

As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

54.1 The 2013 study cited by the Defendants found no causal relationship between gun ownership rates and firearm homicide rates. *Id.*

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 55. | Reducing gun homicides or shootings by just 1% would amount to preventing about 650 shootings nationwide annually. (*See* Koper Aff. ¶61). |

**Plaintiff's Response:**

**Objection #1**: Nowhere within his affidavit does Dr. Koper opine that the Act will reduce gun homicides or shootings in Connecticut by 1%. To the contrary, Dr. Koper expressly states in his affidavit that he has not undertaken any study or analysis of the effects of the Act. *See*



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Koper Aff. at par.71. Since Defendants' ¶55 is a deliberate distortion of Dr. Koper's opinion, it should be disregarded in its entirety.

**Objection #2**: The Supreme Court has established that Second Amendment rights are not to be subject to judicial interest balancing and, therefore, that resolving Second Amendment cases will not entail judicial analysis of difficult empirical questions on the effects of laws regulating the possession and use of firearms. *District of Columbia v Heller*, 554 U.S. at 634-635 (2008). For this reason, Defendants' ¶55 should be disregarded in its entirety.

**Objection #3**: This is not a statement of material fact, but a speculation that is incapable of being either proved or disproved. As such it is not subject to a meaningful response from the Plaintiffs.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶55 as follows:

Disputed.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: Nowhere within his affidavit does Dr. Koper opine that the Act will reduce the lifetime medical costs of assault-related gunshot injuries. To the contrary, Dr. Koper expressly states in his affidavit that he has not undertaken any study or analysis of the effects of the Act. *See* Koper Aff. at ¶71. Since Defendants' ¶56 is a deliberate distortion of Dr. Koper's opinion,



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it should be disregarded in its entirety.

*See also* Objection ## 2 and 3 contained in Plaintiffs' response to Defendants' ¶55, which are hereby incorporated by reference and with the same force and effect as if fully restated herein.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶56 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

56.1 The Defendants' ¶56 deliberately ignores the widespread societal benefits of gun ownership and defensive gun use.

56.2 Citing four separate studies between 1988-2004, an assessment from the Institute of Medicine and the National Research Council says crime victims who use guns in self-defense have consistently lower injury rates than victims who use other strategies to protect themselves (other strategies include stalling, calling the police or using weapons such as knives or baseball bats). *See*, http://www.usnews.com/news/articles/2013/06/25/study-using-guns-for-defense-leads-to-fewer-injuries (last visited 12/07/13). Lower injury rates lead directly to reduced medical costs, whether measured in current dollars or in "lifetime" figures.

56.3 In the most recent of those studies, Florida State University criminologist Gary Kleck and University of New Haven professor of criminal justice Jongyeon Tark examined whether the defensive use of guns resulted in property loss, minor injury to a victim, or serious injury. *Id.* Kleck and Tark found that using a gun reduced the risk of all three, and that injury



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resulted from self-protection with a gun in only 10 percent of cases. *Id.*

56.4 Other benefits of defensive gun use include preventing crimes before they happen, stopping a crime in progress, and defending one's self, loved ones, home and property. *See* http://www.dailykos.com/story/2013/10/03/1242314/-Defensive-Gun-Use-Part-V-A-Comparison-of-Two-Studies (last visited 12/07/13).

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: Nowhere within his affidavit does Dr. Koper opine that the Act will reduce the societal costs of gun violence in the State of Connecticut. To the contrary, Dr. Koper expressly states in his affidavit that he has not undertaken any study or analysis of the effects of the Act. *See* Koper Aff. at ¶71. Since Defendants' ¶57 is a deliberate distortion of Dr. Koper's opinion, it should be disregarded in its entirety.

*See also* Objection ## 2 and 3 contained in Plaintiffs' response to Defendants' ¶55, which are hereby incorporated by reference and with the same force and effect as if fully restated herein.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶57 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional



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material facts as to which there exists a genuine triable issue:

57.1 The Defendants' ¶57 deliberately ignores the widespread societal benefits of gun ownership and defensive gun use.

57.2 Citing four separate studies between 1988-2004, an assessment from the Institute of Medicine and the National Research Council says crime victims who use guns in self-defense have consistently lower injury rates than victims who use other strategies to protect themselves (other strategies include stalling, calling the police or using weapons such as knives or baseball bats). *See*, http://www.usnews.com/news/articles/2013/06/25/study-using-guns-for-defense-leads-to-fewer-injuries (last visited 12/07/13). Lower injury rates lead directly to reduced medical costs, whether measured in current dollars or in "lifetime" figures.

57.3 In the most recent of those studies, Florida State University criminologist Gary Kleck and University of New Haven professor of criminal justice Jongyeon Tark examined whether the defensive use of guns resulted in property loss, minor injury to a victim, or serious injury. *Id.* Kleck and Tark found that using a gun reduced the risk of all three, and that injury resulted from self-protection with a gun in only 10 percent of cases. *Id.*

57.4 Other benefits of defensive gun use include preventing crimes before they happen, stopping a crime in progress, and defending one's self, loved ones, home and property. *See* http://www.dailykos.com/story/2013/10/03/1242314/-Defensive-Gun-Use-Part-V-A-Comparison-of-Two-Studies (last visited 12/07/13).

*See also* objections and responses to ¶56, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, as well as those stated here, Defendants' ¶57 should be disregarded in



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its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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.*). |

**Plaintiff's Response:**

**Objection #1**: Nowhere within his affidavit does Dr. Koper opine that the Act will reduce gun homicides or shootings in Connecticut by 1%. To the contrary, Dr. Koper expressly states in his affidavit that he has not undertaken any study or analysis of the effects of the Act. *See* Koper Aff. at ¶71. Since Defendants' ¶58 is a deliberate distortion of Dr. Koper's opinion, it should be disregarded in its entirety.

*See also* Objection ## 2 and 3 contained in Plaintiffs' response to Defendants' ¶55, which are hereby incorporated by reference and with the same force and effect as if fully restated herein.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶58 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

58.1 The Defendants' ¶58 deliberately ignores the widespread societal benefits of gun ownership and defensive gun use.

58.2 Citing four separate studies between 1988-2004, an assessment from the Institute of Medicine and the National Research Council says crime victims who use guns in self-defense have consistently lower injury rates than victims who use other strategies to protect



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themselves (other strategies include stalling, calling the police or using weapons such as knives or baseball bats). *See* http://www.usnews.com/news/articles/2013/06/25/study-using-guns-for-defense-leads-to-fewer-injuries (last visited 12/07/13). Lower injury rates lead directly to reduced medical costs, whether measured in current dollars or in "lifetime" figures.

58.3 In the most recent of those studies, Florida State University criminologist Gary Kleck and University of New Haven professor of criminal justice Jongyeon Tark examined whether the defensive use of guns resulted in property loss, minor injury to a victim, or serious injury. *Id.* Kleck and Tark found that using a gun reduced the risk of all three, and that injury resulted from self-protection with a gun in only 10 percent of cases. *Id.*

58.4 Other benefits of defensive gun use include preventing crimes before they happen, stopping a crime in progress, and defending one's self, loved ones, home and property. *See* http://www.dailykos.com/story/2013/10/03/1242314/-Defensive-Gun-Use-Part-V-A-Comparison-of-Two-Studies (last visited 12/07/13).

*See also* objections and responses to ¶56, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, as well as those stated here, Defendants' ¶58 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection**: Defendants have not established an accurate or precise figure



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identifying the "market presence" of banned firearms or LCMs, either currently or in 1994. Since Defendants have failed to establish a reliable baseline "market presence" for assault weapons or LCMs, they cannot argue that these items are used disproportionately in crime.

Subject to this objection, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions Plaintiffs respond to Defendants' ¶59 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

59.1 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

59.2 Mass shootings, while a matter of great public interest and concern, account for only a very small share of shootings overall. *See* Pew Research Center, *Gun Homicide Rate Down 49% Since 1993 Peak; Public Unaware* (May 2013) ("Pew Report"), at 4. [A copy of the Pew Report is attached to Plaintiffs' Local Rule 56(a)1 Statement as Doc. #68-1]. *See also* Plaintiffs' Local Rule 56(a)1 Statement (Doc. #68) at ¶¶ 13-15, 24-39, 57-58, 61. Homicides that claimed the lives of three or more people accounted for less than 1% of all homicide deaths between 1980 and 2008. *Id.*



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59.3 Most scholarly and expert sources conclude that mass shootings are rare violent crimes. *See* Congressional Research Service, *Public Mass Shootings in the United States: Selected Implications for Federal Public Health and Safety Policy* (March 2013) ("CRS Report"). [A copy of the CRS Report is attached to the Plaintiffs' Local Rule 56(a)1 Statement as Doc. #68-3].

59.4 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].

59.5 Numerous studies have examined the use of federally banned firearms both before and after the implementation of the federal assault weapons law. *See, e.g.,* Koper 2004 (Doc. # 68-5) and Koper 1997 (Doc. #68-6).

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

59.7 The inclusion of federally banned firearms among crime guns is "rare." Koper 1997 at 69.

59.8 Federally banned firearms (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.



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59.9 Police officers are rarely murdered with federally banned firearms. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more police officers than the firearms banned by Act. *Id.*

59.10 The fraction of police gun murders perpetrated with federally banned firearms is only slightly higher than that for civilian gun murders. *Id.*

59.11 The argument that the arms banned by the Act 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.

59.12 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: FIREARMS AND THEIR CONTROL (1997) at 124-25 ("Targeting Guns"). 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



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

59.13 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.*

59.14 LCMs have been involved in 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.

59.15 The claim that firearms criminalized by bans are "used disproportionately in gun crime" is not meaningful given the radically different definitions of such arms passed by different legislatures. The expired federal law had relatively narrow definitions for "assault weapons," prior Connecticut law had significantly different definitions, and as of 2013 Connecticut's definitions were massively expanded.

59.16 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |



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**Plaintiff's Response:**

**Objection #1**: The Koper affidavit cited by the Defendants does not definitively establish either the "total civilian gun stock" as of 1994, or the percentage of privately owned firearms criminalized by the Federal Ban in 1994. *Id.* In ¶17 of his affidavit, Dr. Koper admits that "estimates [re banned weapon ownership] are imprecise," and that banned weapons represented 2.5% of all guns produced domestically between 1989 and 1993. *Id.* Based on these figures Dr. Koper "suggests" that criminalized arms "likely" accounted for 1% of the civilian gun stock at the time the federal ban took place. *Id.* Given the vagaries inherent in Dr. Koper's opinion, the Court should not accept Defendants' ¶45 as conclusive or admissible evidence concerning either the "total civilian gun stock" as of 1994, or the percentage of privately owned criminalized firearms in 1994.

**Objection #2**: The number of privately owned firearms criminalized by the Federal Ban in 1994 is irrelevant to the issue of whether the Act violates the Second Amendment rights of the Plaintiffs and other law-abiding citizens today. Since Defendants' ¶60 is irrelevant and immaterial, it should be disregarded in its entirety by the Court.

**Objection #3**: Defendants have not established an accurate, reliable or precise figure identifying the "current gun stock" in the United States. Since Defendants have failed to establish an accurate or reliable baseline "market presence" for criminalized arms or LCMs, they cannot argue that these items are used disproportionately in crime.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶60 as follows:



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Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

60.1 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

60.2 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

*See also* objections and responses contained in ¶¶ 44-52, 59, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in those paragraphs, as well as those stated here, Defendants' ¶60 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:



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61.1 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

61.2 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

*See also* objections and responses contained in ¶¶ 44-52, 59, and 60 above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. Subject to the objections raised in ¶¶ 44-52, 59, and 60, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, for the same reasons as are stated in ¶¶ 44-52, 59, and 60, as well as those stated here, Defendants' ¶61 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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)). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:



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62.1 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

62.2 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

*See also* objections and responses contained in ¶¶ 44-52, 59, and 60 above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. Subject to the objections raised in ¶¶ 44-52, 59, and 60, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, for the same reasons as are stated in ¶¶ 44-52, 59, and 60, as well as those stated here, Defendants' ¶62 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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")). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:



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63.1 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

63.2 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

*See also* objections and responses contained in ¶¶ 44-52, 59, and 60 above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. Subject to the objections raised in ¶¶ 44-52, 59, and 60, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, for the same reasons as are stated in ¶¶ 44-52, 59, and 60, as well as those stated here, Defendants' ¶63 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:



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64.1 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

64.2 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

*See also* objections and responses contained in ¶¶ 44-52, 59, and 60 above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. Subject to the objections raised in ¶¶ 44-52, 59, and 60, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, for the same reasons as are stated in ¶¶ 44-52, 59, and 60, as well as those stated here, Defendants' ¶64 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

65.1 The Koper Aff. at ¶25 comments on young purchasers of "assault pistols," without defining the term, and making no reference to long guns defined as "assault weapons."



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Given the millions of such firearms that are lawfully manufactured, and given that all of them are initially sold at retail to buyers who passed the National Instant Criminal Background Check (18 U.S.C. § 922(t)), criminals could not possibly "purchase assault weapons more frequently than law-abiding citizens.

65.2 The Defendants' ¶65 admits that firearms purchases by individuals with "long and violent" criminal histories are illegal. This significant admission by the Defendants only reinforces the point made by Plaintiffs in response to ¶74, below, which is that it is absurd to expect that the Act will deter even one criminal from illegally purchasing or criminally using an "assault weapon" or a "large capacity magazine."

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 66. | Assault pistols are at higher risk of being used in crime than other types of handguns. (*Id.* at ¶¶7, 17). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

66.1 No objective definition of "assault pistol" has been proffered by the Defendants, and conventional revolvers are used in a high proportion of crime.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional



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material facts as to which there exists a genuine triable issue:

67.1 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.

67.2 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.*

67.3 LCMs have been involved in 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.

67.4 Experienced shooters do not require 30 round magazines to maintain a high volume of fire. Rossi Supp'l Decl. at 9. *See also* Exhibit F. As the video plainly shows, an experienced shooter can empty three (3) ten-round magazines in less time than it takes to empty one (1) thirty-round magazine. In addition, a prepared aggressor who has likely planned an attack in advance will simply bring additional magazines or firearms to maintain a high rate of fire. *Id.*

67.5 The argument that it is "not typical, appropriate, or necessary for individuals



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to fire more than 10 rounds in lawful self defense" is incorrect. Rossi Supp'l Decl. at 9. While a prepared, experienced aggressor can make up for a lack of LCMs with speed reloading, multiple magazines, and multiple guns, an unprepared civilian in a home defense situation cannot. *Id.* Caught in bed or off-guard, they will not likely have extra magazines readily available on their person to allow for a speed reload. *Id.* They will likely have only one weapon, and have to rely on the rounds in their firearm at the start of the confrontation. *Id.* Finally, unlike the aggressor, they will not have mentally prepared a "combat mindset" and their accuracy will suffer as a result. *Id.*

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

68.1 Nowhere within the Koper Affidavit cited in support of this "fact" has an objective, reliable basis for this particular statistic been established. Conclusory allegations are insufficient to create an issue of fact, and Dr. Koper is required to proffer more than vague and non-specific claims in order to meet the Defendants' summary judgment burden. *See, e.g.,* Aguilar v Connecticut, 2013 U.S. Dist. LEXIS 24315 (D.Ct. February 2013).

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |



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**Plaintiff's Response:**

**Objection #1**: The assertions contained within the Defendants' ¶69 are not statements of "material fact" as much as hopeful predictions of one possible future impact of the Act. Since predictions are inherently unreliable, they should be disregarded in their entirety. Given its speculative nature, and its absence of provable or disputable fact, Defendants' ¶69 is not subject to a meaningful response by the plaintiffs.

*See also* Objection #2 contained in Plaintiffs' response to Defendants' ¶55, above, which is hereby incorporated by reference and with the same force and effect as if fully restated herein.

For the same reasons stated in that objection, as well as in this paragraph's Objection #1, Defendants' ¶69 is irrelevant and immaterial and should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed in Part. Numerous different kinds of firearms have been used by criminal gangs in Connecticut, including those banned by the Act and those that are not. Nowhere within the Sweeney Affidavit is a proportion established demonstrating that firearms criminalized by the Act are used more frequently than firearms not affected by the Act.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 71. | The federal government has determined that LCMs are a crime problem. (Exh. 20 at 10- 11; Exh. 19 at 3, 38). |

**Plaintiff's Response:**



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Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

71.1 Congress, the first branch of the federal government, does not regulate LCMs. Congress restricted manufacture of new LCMs for only a ten year period (1994-2004), grandfathering all old LCMs, and let the restrictions expire without reenactment.

71.2 The ATF approves for import numerous models of pistols and rifles with LCMs as "particularly suitable for or readily adaptable to sporting purposes" under 18 U.S.C. § 925(d)(3).

71.3 This assertion deliberately ignores the fact that ammunition magazines (like all inanimate objects) only function in the manner intended by the user. If the user of a large capacity magazine has a law-abiding intention, then it cannot be fairly stated that the large capacity magazine poses a "crime problem." Rossi Supp'l Decl. at 9.

71.4 Using a "large capacity magazine" in sporting competitions such as the three gun shoots that take place in Metacon, CT does not pose a "crime problem." Rossi Supp'l Decl. at 9.

71.5 Using a "large capacity magazine" to defend oneself against a criminal does not pose a "crime problem." *Id.*

71.6 In the hands of a law-abiding citizen, a "large capacity magazine" does not pose a "crime problem." *Id.*

71.7 "Large capacity magazines" are only a "crime problem" when they are intentionally used by criminals to break the law. *Id.*

71.8 Ordinary items found in households across the United States are routinely



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involved in deadly accidents and are regularly used to commit deadly crimes. *Id.*

71.9 Automobiles are an obvious example.

71.10 In the fiscal year 2011-2012, 12,131 people were charged with DUI in Connecticut, and of these 3,742 pleaded guilty. *See* http://www.jud.ct.gov/statistics/DUI/DUI_99-12.pdf (last visited 12/02/13). In the fiscal year 2010-2011, 12,488 people were charged with DUI in Connecticut and 4,006 pleaded guilty. *Id.* In the fiscal year 2009-2010, 12,671 individuals were charged with DUI in Connecticut, and 3,879 pleaded guilty. *Id.*

71.11 According to the U.S. Census Bureau's 2012 Statistical Abstract, in 2009 there 33,808 motor vehicle fatalities across in the United States, 223 of which occurred in Connecticut. *See*, http://www.census.gov/compendia/statab/cats/transportation/motor_vehicle_accidents_and_fatalities.html (last visited 12/02/13). In 2008, there were 37, 423 motor vehicle accidents, 302 of which occurred in Connecticut. *Id.* In 2007, the nationwide motor vehicle fatality number was 41,259, of which 296 occurred in Connecticut. *Id.*

71.12 Of the 33,308 people killed by motor vehicles in 2009, thirty percent (10,287) were killed in light trucks. *Id.* In 2008, twenty nine percent (10,816) of the 37,243 people killed by motor vehicles died in light trucks. *Id.* In 2007, thirty percent (12,458) of the 41,259 people killed by motor vehicles were killed by light trucks. *Id.*

71.13 Tens of thousands of cars are used each year in Connecticut to commit the deadly crime of DUI, but it is irrational to suggest for this reason that cars (as opposed to the intoxicated people who drive them) are a "crime problem." Rossi Supp'l Decl. at 10.

71.14 Tens of thousands of people are killed each year in the United States by light



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trucks, but it is irrational to suggest that light trucks should be outlawed for this reason. *Id.*

*See also* responses to ¶¶ 16 and 67, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, as well as for the reasons stated here, Defendants' ¶71 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed In Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

72.1 The phrase "large number of rounds" is relative – a 20 round magazine does not hold a "large number of rounds" compared to a 90 round drum.

72.2 A magazine holding 11 rounds is, according to the Act, an "LCM," but that hardly facilitates firing "large numbers of rounds."

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:



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*See* response to ¶67, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶73 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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)). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

74.1 It is ¶ absurd to suggest that the Act will have any deterrent effect on criminals. Criminals, by definition, will ignore the Act and its restrictions on criminalized firearms and "large capacity magazines." Rossi Supp'l Decl. at 10.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

75.1 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 (attached to Plaintiffs'



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Motion for Preliminary Injunction as Exhibit K) (Doc. #15-13). 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 5. A study of every large-scale mass shooting committed in the United States in the 10-year period from 1984 through 1993 found that the killers in 13 of these 15 incidents possessed multiple guns. Kleck Decl. at 5.

*See also* response to ¶74, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as for the reasons stated here, Defendants' ¶75 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection:** Defendants' ¶76 is merely a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason alone, Defendants' ¶76 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶76 as follows:



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Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

76.1 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

76.2 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and for the reasons stated here, Defendants' ¶76 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Admitted.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |



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**Plaintiff's Response:**

Disputed in Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

78.1 Connecticut has experienced the horrific effects of deranged criminals using various firearms, not limited to "assault weapons and LCMs," in mass killings on several occasions.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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. |

**Plaintiff's Response:**

**Objection #1:** Defendants' ¶79 is, in essence, a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶79 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶79 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

79.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.



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79.2 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

79.3 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶79 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection:** Defendants' ¶80 is merely a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶80 should be disregarded.



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Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶80 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

80.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

80.2 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

80.3 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that



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paragraph, and also for the reasons stated here, Defendants' ¶80 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection:** Defendants' ¶81 is, in essence, a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶81 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶81 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

81.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

81.2 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

81.3 The frequency of mass shootings is irrelevant to the question of whether the



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Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶81 should be disregarded in its entirety.

**Par. #** **Defendants' Statement of "Material Fact"**

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).

**Plaintiff's Response:**

**Objection:** Defendants' ¶82 is, in essence, a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶82 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶82 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

82.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount



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of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

82.2 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

82.3 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶82 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection:** Defendants' ¶83 is, in essence, a repetition of the "material facts"



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asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶83 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶83 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

83.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

83.2 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

83.3 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with



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the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶83 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection:** Defendants' ¶84 is, in essence, a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶84 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶84 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

84.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

84.2 Police officers and civilians are rarely murdered with banned weapons. Koper



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1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

84.3 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶84 should be disregarded in its entirety.

**Par. #** **Defendants' Statement of "Material Fact"**

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).

**Plaintiff's Response:**

**Objection:** Defendants' ¶85 is, in essence, a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶85 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶85 as follows:



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Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

85.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

85.2 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

85.3 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶85 should be disregarded in its entirety.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection:** Defendants' ¶86 is, in essence, a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶86 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶86 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

86.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

86.2 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

86.3 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully



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ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶86 should be disregarded in its entirety.

**Par. #** **Defendants' Statement of "Material Fact"**

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).

**Plaintiff's Response:**

**Objection:** Defendants' ¶87 is, in essence, a repetition of the "material facts" asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶87 should be disregarded.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶87 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

87.1 There is no evidence that the Act will have any impact on the lethality mass shootings. Despite the passage and enforcement of the Act, there will still be an abundant amount of illegal firearms and LCMs available in neighboring jurisdictions, as well as grandfathered



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firearms and LCMs within the State of Connecticut, that criminals can easily obtain and use to commit crimes.

87.2 Police officers and civilians are rarely murdered with banned weapons. Koper 1997 at 99. Revolvers and other firearms that are *not* banned by the Act kill many, many more civilians and police officers than the firearms banned by Act. *Id.*

87.3 The frequency of mass shootings is irrelevant to the question of whether the Act violates the Second Amendment rights of plaintiffs and other law-abiding citizens in Connecticut. By focusing on rare events like mass shootings, the Defendants are purposefully ignoring the widespread societal benefits of gun ownership and defensive gun use, such as prevention of crime, the stopping of crime in progress, reduction in injuries arising from crime, reduced medical costs, and the defense of self, loved ones, home and property. *See* ¶¶ 56.1 – 56.4, above.

*See also* response to ¶59, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶87 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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"). |

**Plaintiff's Response:**

**Objection #1:** Defendants' ¶88 is, in essence, a repetition of the "material facts"



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asserted in Defendants' ¶¶ 59 thru 64. For this reason, Defendants' ¶88 should be disregarded.

**Objection #2**: The source relied upon by Defendants (VPC's "Officer Down") is neither objective, reliable, nor accurate, and amounts to nothing more than propaganda. For this reason, too, the Officer Down Report, and any statistics which come from such report, should be disregarded in its entirety by the Court.

Subject to these objections, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶88 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

88.1 While even one law enforcement officer being killed is a tragedy, the Defendants and the VPC "Officer Down" report cited above grossly distort the number of law enforcement deaths attributable to assault weapons. For example, the "Officer Down" report from which the information is drawn includes certain firearms that were not banned by the 1994 federal law, such as the SKS (which accounted for 8 of officers killed), the Ruger Mini-14 (which accounted for 2 of the officers killed) and the M1 Carbine (which accounted for 4 officers killed). When these firearms are removed from the calculation, the actual number of officers killed with federally-defined assault weapons is 27 out of 211, which totals 12.8%, significantly less than the Defendants' cited figures. Furthermore, the study upon which these statistics are given did not include 72 law enforcement deaths resulting from the events of September 11, 2001. When these killings are added, the percentage of officer deaths resulting from assault weapons drops to 9.5%.



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88.2 The raw number of homicides committed against law enforcement officers using assault weapons (as that term is used in the 1994 federal law), indicates that during the four year period during which the study used above was conducted, a raw number of 27 law officers were killed with federally-defined assault weapons, an average of approximately 7 per year. While even one law enforcement officer being killed is a tragedy, 7 police officers over a population of 794,300 law enforcement officers nationwide (as stated by the Bureau of Labor Statistics for Police Officers and Detectives) represents 0.0008812 % of the law enforcement population. In other words, only one out of every 113,471 officers is killed with an assault weapon.

*See also* responses to ¶¶ 44-52, 59 and 80, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, and also for the reasons stated here, Defendants' ¶88 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed In Part. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

89.1 Defendants are again distorting facts: this statement refers to "incidents," but both of the affidavits relied upon by the Defendants refer only to one incident, the North Hollywood shootout which occurred in 1997.

89.2 The North Hollywood shootout was tragic, and occurred while the federal



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bans on assault weapons and large capacity magazines were in full effect.

89.3 The North Hollywood shootout occurred more than fifteen years before the Connecticut law was enacted, limiting the relevance of the incident to the Connecticut enactment.

89.4 The only individuals killed during the North Hollywood shootout were the criminals who perpetrated the bank robbery: no police officers or civilians were killed during this incident. *See, e.g.*, http://en.wikipedia.org/wiki/North_Hollywood_shootout (last visited 12/07/13).

89.5 An inventory of the firearms used by the bank robbers who perpetrated the shootout showed that the majority of the arms used were illegal. *Id.* The arms recovered included an AR-15 illegally converted to fire automatically, and three different civilian-model AK-47 rifles illegally converted to fire in fully automatic mode. *Id.*

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

90.1 The firearms banned by the Act encompass an extraordinarily wide range of pistols, rifles and shotguns that have extremely disparate sizes, lengths, and calibers. The "fire power" of these arms depends on numerous different factors, and it is extremely inaccurate to imply that all firearms that arguably fall within the definition of "assault weapon" can fire shots powerful enough to "penetrate walls," etc. *See*, generally, the declaration of Gary Roberts, attached as



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Exhibit K to Plaintiffs' Local Rule 56(a)1 Statement as Doc. #68-11. *See also* Plaintiffs' Local Rule 56(a)1 Statement dated 08/23/13 (Doc. #68), ¶¶ 126-128.

90.2 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 14-15. *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).

90.3 The AR-15 is chambered with a .223 caliber round is significantly less powerful than standard deer or big game rifle rounds. Rossi Supp'l Decl. at 10. It is also much less powerful than a shotgun loaded with a solid slug or buckshot. *Id. See also*, video attached hereto as **"Exhibit L**" and captioned "Multiple Weapons and Calibers Fired 3 Rounds." As the video shows, as between a .22 caliber rifle, an AR-15 chambered in .223, a .38 caliber revolver, a .9mm pistol, a .45 caliber pistol, a .12 gauge shotgun shooting buckshot, and a .12 gauge shotgun shooting slugs, the caliber that *clearly* does the most damage is .12 gauge shotgun slug. *Id.* [emphasis added].

90.4 Many firearms that are not banned by the Act fire rounds that can easily penetrate walls. *Id.* In fact, many firearms that are not banned by the Act are far more destructive, if not more destructive, than the firearms banned by the Act. *Id.*



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90.5 The AR15 .223/5.56 mm caliber carbine configuration is extremely common. Roberts Decl. at 14-15. 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.*

90.6 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 14-15. 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.*

90.7 The alleged threat of being able to shoot through police body armor is not as much a safety decision as it is a financial decision: the affidavits cited by Defendants indicate that Level II vests may not be sufficient to stop some of the ammunition; however they also indicate that Level III vests can more effectively stop such bullets, but these cost $2,600 each. *See* Mello Affidavit at ¶44. The affidavits never indicate how much more expensive these are than Level II vests. *Id*



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90.8 The suppression of a police response can be achieved just as expeditiously and effectively as an LCM by an individual with either multiple magazines or multiple firearms. A Report of the Virginia Tech Review Panel reviewing a deadly mass shooting that occurred April 16, 2007 at Virginia Tech found that forcing the shooter to use 10-round magazines "would have not made much difference in the incident." *See* http://www.governor.virginia.gov/tempcontent/techPanelReport-docs/FullReport.pdf at p.74 (last visited on 12/09/13). According to the review panel, even pistols with rapid loaders could have been about as deadly in this situation. *Id*.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection**: The affidavits relied upon in support of this statement do not support that these confrontations of organized groups of criminals occur "frequently." To the contrary, the information provided in the affidavits is anecdotal and dated. Since Defendants' ¶91 is contradicted by itself, it should be disregarded in its entirety by the Court

Subject to this objection, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶91 as follows:

Disputed in part. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

91.1 The first line of defense for all law-abiding citizens is the citizen himself:



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police officers have neither the legal obligation nor the practical ability to rescue all crime victims. *See* Declaration of Guy Rossi, attached as "Exhibit C" to Plaintiffs' Motion for Preliminary Injunction (Doc. # 15-5). *See also* Rossi Supp'l Decl. at 11. Citizens are not required to rely upon police officers to defend themselves against criminal attack and, as a practical matter, cannot do so when faced with the immediate threat of a criminal aggressor. *Id.*

91.2 Like police officers, citizens often confront criminals armed with the most dangerous weaponry, including firearms criminalized by the Act, and, in some instances, body armor that can stop many types of ammunition. Rossi Supp'l Decl. at 11. Often times, these confrontations occur without advance notice to the citizen, and often in the citizen's home.

91.3 A citizen's right to defend himself or herself, especially in the home, is equal to that of a police officer's. Rossi Supp'l Decl. at 11.

91.4 When faced with the threat of a criminal aggressor, especially in the home, a citizen's need to defend him- or herself is superior to that of a police officer's. Rossi Supp'l Decl. at 11.

91.4 The Defendants admit in ¶92 (below) that police officers use the firearms banned by the Act for self-defense because they provide superior firepower and are the most effective firearms in a self-defense situation. Since the right of a law-abiding citizen to defend himself is at least equal to, if not greater than, the right of a police officer to do so, then it follows *a fortiori* that law-abiding citizens must also be allowed to use the firearms banned by the Act for self-defense purposes. This is particularly true given that – unlike police officers – law-abiding citizens must frequently confront criminals without any backup.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed in part. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

92.1 Civilians need an advantage over the criminals against whom they must defend themselves, especially in the home, and should not be required or expected to defend themselves against dangerous criminals without superior, or at the very least comparable, firepower. Rossi Supp'l Decl. at 11.

92.2 The Defendants admit in ¶92 that police officers use the firearms banned by the Act for self-defense because they provide superior firepower and are the most effective firearms in a self-defense situation. Since the right of a law-abiding citizen to defend himself is at least equal to, if not greater than, the right of a police officer to do so, then it follows *a fortiori* that law-abiding citizens must also be allowed to use the firearms banned by the Act for self-defense purposes. This is particularly true given that – unlike police officers – law-abiding citizens must frequently confront criminals without any backup.

*See also* response to ¶91, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶92 should be disregarded in its entirety.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

Disputed in part. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

93.1 The need for police to equip and train officers on the use of firearms criminalized by the Act is not dependent on their legality: even if these firearms and magazines are illegal in Connecticut, police resources would still be used to combat them, as they could still be a threat to enter the state illegally from other states where they are legally possessed and sold. In addition, the firearms and LCMs in Connecticut that are grandfathered under the Act still present a need for police training. Thus, the passage of the Act does nothing to alter the reality that police need to train on how to use and respond to firearms banned by the Act.

93.2 However defined, the firearms criminalized by the Act and LCMs, when possessed by law-abiding citizens, are not used in crime and are not a drain on valuable police resources.

*See also* response to ¶91, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶93 should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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 |



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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).

**Plaintiff's Response:**

**Objection #1**: Nowhere within the paragraphs of the Koper affidavit cited by the Defendants does Dr. Koper state that the Act will reduce the lethality of gun crime incidents. *Id.* When discussing any possible impact of the Act, Dr. Koper's opinions are speculative at best: Dr. Koper opines that the Act "has the potential" to reduce the amount of gun crimes committed with assault weapons and LCMs (*see* Koper Affidavit at ¶10), and that the Act "could have" an impact on public safety. *Id.* at ¶75. These opinions are tentative and conditional, not definitive. To the extent that Defendants have intentionally mis-quoted Dr. Koper, their deliberate attempt to mis-lead the Court should be disregarded in its entirety.

**Objection #2**: Nowhere within the paragraphs of the Koper affidavit cited by the Defendants does Dr. Koper state that the Act will likely make a difference in the killing of law enforcement officers or in mass public shooting or mass killings. *Id.* To the extent that Defendants have intentionally mis-quoted Dr. Koper, their deliberate attempt to mis-lead the Court should be disregarded in its entirety.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶94 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:

94.1 Many of the anecdotal studies described in the Affidavit of Dr. Koper



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occurred during the period that the federal assault weapon and large capacity magazine bans were in effect.

94.2 Some of the most publicized mass shootings in U.S. history, such as the North Hollywood shootout in 1997, the Columbine High School shooting in 1999, and the Jonesboro, Arkansas school shooting in 1998, occurred while the federal assault weapon and large capacity magazine bans were in effect; thus it is not reasonable to assume that the enactment of a ban will automatically result in reduced mass shootings. This is especially true because, unlike the federal ban which was nationwide, a single state ban does nothing to prevent a criminal from obtaining a firearm or ammunition in another state and bringing it to Connecticut.

**Par. #** **Defendants' Statement of "Material Fact"**

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).

**Plaintiff's Response:**

**Objection**: This statement is plainly contradicted by the evidence upon which it relies. Despite alleging as a fact that the federal ban on assault weapons "substantially reduced" the use of such weapons in gun crime, Dr. Koper's 2013 Report states the opposite conclusion: "[T]he ban [which appears in this paragraph to refer to both the ban on assault weapons and large capacity magazines] did not appear to affect gun crime during the time it was in effect, but some evidence suggests it may have modestly reduced gunshot victimizations had it remained in place for a longer period." Koper, 2013, at 158. In addition, the study notes that the decline in crimes with assault weapons appeared to have been offset throughout at least the late 1990s by steady or rising use of other semi-automatics. Koper, 2013, at 164. Also, the studies upon which the conclusions are based refer to "guns recovered by police," which does not indicate that those guns were actually



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used in gun crimes. Last, the 2013 report indicates that other factors beyond the ban, such as market forces (e.g., lack of accessibility or affordability) may have accounted for the reduction of the recovery of these guns. Koper, 2013, at 162-63. To the extent that Defendants have intentionally misquoted Dr. Koper, their deliberate attempt to mislead the Court should be disregarded in its entirety.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶95 as follows:

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

95.1 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.*

95.2 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.*

95.3 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.*



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95.4 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.

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

95.6 Using a variety of national and local data sources, Dr. 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.*

95.7 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.

95.8 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.

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



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95.10 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.

95.11 If attacks with federally banned firearms and LCMs result in more shots fired and victims hit than attacks with other guns and magazines, Koper expected a decline in crimes with federally banned firearms 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.*

95.12 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.

**Par. #** **Defendants' Statement of "Material Fact"**

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).

**Plaintiff's Response:**

**Objection #1**: This statement is plainly contradicted by the evidence upon which it relies. Despite alleging as a fact that the federal ban on large capacity magazines "substantially reduced" the use of such magazines in gun crime, Dr. Koper's 2013 Report states the opposite conclusion: "[T]he ban [which appears in this paragraph to refer to both the ban on assault weapons and large capacity magazines] did not appear to affect gun crime during the time it was in effect, but



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some evidence suggests it may have modestly reduced gunshot victimizations had it remained in place for a longer period." Koper, 2013, at 158. Concerning magazines specifically, Koper's affidavit states that the criminal use of large capacity magazines "may have been starting to drop by the early 2000s." Koper Aff., at 56. Dr. Koper also admits that for the cities he studied, the data was "too limited and inconsistent to draw any clear overall conclusions." *Id*. Concerning the *Washington Post* study from which the 31% to 44% numbers are obtained, Koper admits that it is difficult to extrapolate data from one state to the entire country, and is only willing to admit that the large capacity magazine ban "may have been reducing the use of LCMs in gun crime by the time it expired in 2004." Koper Aff., at 59. To the extent that Defendants have intentionally misquoted Dr. Koper, their deliberate attempt to mislead the Court should be disregarded in its entirety.

**Objection #2**: The Koper opinion stated in Defendants' ¶96 is speculative and unreliable and should be disregarded in its entirety. Given its total absence of provable or disputable fact, Defendants' ¶96 is not subject to a meaningful response by the Plaintiffs.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶96 as follows:

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

*See* response to ¶95, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as for the reasons stated here, Defendants' ¶96 should be disregarded in its entirety.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: Nowhere within the paragraphs of the Koper affidavit cited by the Defendants does Dr. Koper state that a ban on LCMS will result in a decline in the criminal use of LCMs over the long run. *Id.* In ¶56 of his affidavit, Dr. Koper plainly states that in all four jurisdictions he studied the overall share of crime guns equipped with LCMs either rose or remained steady through at least the late 1990s. *Id.* To the extent that Defendants have intentionally mis-quoted Dr. Koper, their deliberate attempt to mis-lead the Court should be disregarded in its entirety.

**Objection #2**: the Koper opinion stated in Defendant's ¶97 is inherently speculative. Dr. Koper's unsupported opinion does not appear to account for the fact that any modest reduction of criminal use of LCMs which occurred after the enactment of the federal ban (assuming one actually occurred) may not be applicable or relatable to a state-wide ban. Rather than obtain a large capacity magazine made before 1994, which was grandfathered under 18 U.S.C. 921(a)(31)(A), 922(w)(2) §§ (1994-2004), and of which there were millions, a person seeking to circumvent the Connecticut state ban would merely have to purchase an LCM in a state that does not have a ban in effect (such as bordering Rhode Island, neighboring Vermont and two-hour drive away Pennsylvania, all of which have no LCM limitation), or obtain it from another person who did so. The comparative ease with which a person could obtain a large capacity magazine when a one-state ban is in effect as opposed to a national ban is not treated in any way in the data presented by Dr. Koper, rendering it unreliable and invalid. Given its absence of provable or disputable fact,



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Defendants' ¶97 is not subject to a meaningful response by the plaintiffs.

Subject to these objections, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶97 as follows:

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

*See* response to ¶95, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶97 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection**: The Koper opinion stated in Defendants' ¶ 98 is inherently speculative and unreliable and should be disregarded in its entirety. The study upon which Dr. Koper relies found that attackers using semi-automatic firearms to fire more than 10 shots were responsible for nearly 5% of gunshot victims in a particular sample. However, nowhere in Dr. Koper's report does it state what percentage of these shooting incidents involved LCMs (if any), how many of these involved LCMs from which more than 10 shots were discharged, and how many of these people were wounded or killed by a shot fired from a firearm that used an LCM in which more than 10 shots were discharged. Moreover, it is entirely speculative, unreasonable conjecture and defiance of



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logic for Defendants to assert in evidence that none of the 5% of the victims that were wounded or killed by individuals who fired more than 10 shots would have been wounded or killed if the ban on LCMs had remained in operation (which is what this statement assumes). Given its speculative nature, and its total absence of provable or disputable fact, Defendants' ¶98 is not subject to a meaningful response by the plaintiffs.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶98 as follows:

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

*See* response to ¶95, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, and also for the reasons stated here, Defendants' ¶98 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶98, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶99 should be disregarded in its entirety.



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| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* response to ¶98, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, Defendants' ¶100 should be disregarded in its entirety.

| Par. # | Defendants' Statement of "Material Fact" |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: Nowhere within the paragraphs of the Koper, Sweeny or Rovella affidavits cited by the Defendants do the affiants state that the Act will have a meaningful impact on public health and safety. *Id.* To the extent that Defendants have intentionally mis-quoted Dr. Koper, Chief Sweeney and Chief Rovella their deliberate attempts to mis-lead the Court should be disregarded.

**Objection #2**: The assertions contained within the Defendants' ¶101 are not statements of "material fact" as much as they are hopeful predictions of one possible impact of the



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Act. Since predictions are inherently unreliable, they should be disregarded in their entirety. Given its speculative nature, and its absence of provable or disputable fact, Defendants' ¶101 is not subject to a meaningful response by the plaintiffs.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶101 as follows:

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

101.1 While the more "robust" features of the Act directly impact the law-abiding citizen's ability to obtain and use the firearms criminalized by the Act and LCMs, it will have a dramatically lower impact on a criminal's ability to obtain and use the same (since criminals will, by definition, ignore and break the law). Thus, the Act will significantly handicap the law-abiding citizen's ability to defend him- or herself against an armed criminal who will ignore the Act.

*See also* response to ¶95, above, which is hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as for the reasons stated here, Defendants' ¶101 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |



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**Plaintiff's Response:**

**Objection**: the assertions contained within the Defendants' ¶102 are not statements of "material fact" as much as they are hopeful predictions of one possible impact of the Act. Dr. Koper's assertions fail to account for the fact that criminals, who are predisposed to breaking the law, will likely ignore the law, especially with weapons and magazines that are banned in Connecticut yet available in scores of other states. Significantly, this statement, through its use on multiple occasions of the word "could," concedes the lack of any established, credible evidence that the Act "will" reduce gunshot victimizations in Connecticut or "will" reduce the lethality and injuriousness of the gunshot victimizations. Since predictions are inherently unreliable, they should be disregarded in their entirety. Given its speculative nature, and its absence of provable or disputable fact, Defendants' ¶102 is not subject to a meaningful response by the plaintiffs.

Subject to this objection, and without waiving the same, to the extent this Court overrules this objection and a response is required to these assertions, Plaintiffs respond to Defendants' ¶102 as follows:

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

102.1 While the more "robust" features of the Act directly impact the law-abiding citizen's ability to obtain and use the firearms criminalized by the Act and LCMs, it will have a dramatically lower on a criminal's ability to obtain and use the same (since criminals will, by definition, ignore and break the law). Thus, the Act will significantly handicap the law-abiding citizen's ability to defend him- or herself against an armed criminal who will ignore the Act.

*See* response to ¶95, above, which is hereby incorporated by reference and with the



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same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as for the reasons stated here, Defendants' ¶102 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

*See* responses to ¶¶ 101 and 102, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, Defendants' ¶103 should be disregarded in its entirety.

103.1 The Defendants' ¶56 deliberately ignores the widespread societal benefits of gun ownership and defensive gun use.

103.2 Citing four separate studies between 1988-2004, an assessment from the Institute of Medicine and the National Research Council says crime victims who use guns in self-defense have consistently lower injury rates than victims who use other strategies to protect themselves (other strategies include stalling, calling the police or using weapons such as knives or baseball bats). *See*, http://www.usnews.com/news/articles/2013/06/25/study-using-guns-for-defense-leads-to-fewer-injuries (last visited 12/07/13). Lower injury rates lead directly to reduced medical costs, whether measured in current dollars or in "lifetime" figures.

103.3 In the most recent of those studies, Florida State University criminologist Gary Kleck and University of New Haven professor of criminal justice Jongyeon Tark examined



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whether the defensive use of guns resulted in property loss, minor injury to a victim, or serious injury. *Id.* Kleck and Tark found that using a gun reduced the risk of all three, and that injury resulted from self-protection with a gun in only 10 percent of cases. *Id.*

103.4 Other benefits of defensive gun use include preventing crimes before they happen, stopping a crime in progress, and defending one's self, loved ones, home and property. *See* http://www.dailykos.com/story/2013/10/03/1242314/-Defensive-Gun-Use-Part-V-A-Comparison-of-Two-Studies (last visited 12/07/13).

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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.*). |

**Plaintiff's Response:**

**Objection #1**: Nowhere within the paragraphs of the cited exhibits does it state that citizens who use a firearm defensively actually fire the weapon in less than 50% of the incidents. To the contrary, Exhibit 57 states that shots were fired by the defender in 72% of the incidents, while Exhibit 58 reports a 59% shots fired occurrence for the time period studied in that document. To the extent that Defendants have intentionally misquoted these statistics, their deliberate attempts to mislead the Court should be disregarded in its entirety.

**Objection #2**: The historical frequency of defensive use of firearms is irrelevant to the issue of whether the Act violates the Second Amendment rights of the Plaintiffs and other law-abiding citizens today. Since Defendants' ¶104 is irrelevant and immaterial, it should be disregarded in its entirety by the Court.



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Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶104 as follows:

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

104.1 The five year analysis relied upon by Defendants shows a maximum number of shots fired as 20 in one case.

104.2 The report attached as Exhibit 57 shows that 28% of the time firearms were used defensively in the home, multiple assailants were involved, with one group of serial home invaders having 7 individuals. Exhibit 57, p.4.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Objection #1**: Defendants have not established a proper evidentiary foundation for the admissibility of the Violence Policy Center report cited in support of this "material fact." The Violence Policy Center Report is inadmissible hearsay, does not qualify as an exception to the hearsay rule under Fed.R.Evid. 803. For this reason, the contents of the Violence Policy Center report should be disregarded in its entirety by the Court, and lacks the proper evidentiary foundation to establish an exception even if one existed. *Collins v. Olin Corp.*, 434 F. Supp. 2d 97, 104 n.15 (D. Conn. 2006) (refusing to consider as part of a Rule 56(a)(1) statement inadmissible hearsay statements contained in a newspaper article where Plaintiffs did not provide an adequate foundation for the purported statement under an exception to the hearsay rule). For this reason, too, the Violence Policy Center Report should be disregarded in its entirety by the Court.



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**Objection #2**: The Violence Policy Center is an anti-Second Amendment lobbying group. *See* http://www.vpc.org/aboutvpc.htm (last visited Nov. 26, 2013). The VPC frequently files amicus briefs arguing against the Second Amendment (id.), and its publications (which are neither objective, reliable, nor accurate) amount to nothing more than propaganda. For this reason, too, the VPC report should be disregarded in its entirety.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respectfully request that this particular assertion be deemed disputed for the purposes of resolving the Defendants' motion for summary judgment.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: Defendants have not defined or identified the characteristics that make up "the typical homeowner" in Connecticut. As such, Plaintiffs cannot meaningfully respond to this assertion of "material fact," and Defendants' ¶106 should be disregarded in its entirety by the Court.

**Objection #2**: Defendants have failed to establish a proper foundation for the admissibility of James Rovella's opinions concerning the "typical homeowner" in Connecticut. Chief Rovella is a highly decorated police officer, the Chief of Police for the City of Hartford, and an individual who was born, raised, educated and has been employed for the majority of his career in the City of Hartford. While Chief Rovella may be amply qualified to discuss matters implicating



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the Hartford Police Department, no showing has been made establishing his qualifications to discuss the firearms training of a "typical" Connecticut homeowner. For this reason, Defendants' ¶106 should be disregarded in its entirety by the Court.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respectfully request that this particular assertion be deemed disputed for the purposes of resolving the Defendants' motion for summary judgment.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: Defendants have failed to define the term "reasonable home and self-defense." In the absence of any definition, Defendants cannot provide a meaningful response. For this reason alone, Defendants' ¶107 must be disregarded in its entirety by the Court.

**Objection #2**: The assertion contained within Defendants' ¶107 is not a statement of material fact, but a sweeping and over-broad generalization that fails to account for the numerous different factual combinations of force and weaponry a Connecticut citizen might encounter during a self-defense scenario.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶107 as follows:



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Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

107.1 The Defendants admit in ¶92 (above) that the firearms banned by the Act are superior self-defense firearms. In the Defendants' own words, police officers use the firearms banned by the Act for self-defense because they provide superior firepower and are the most effective firearms in a self-defense situation. *See* Defendants' ¶92, above. Since the right of a law-abiding citizen to defend himself is at least equal to, if not greater than, the right of a police officer to do so, then it follows *a fortiori* that law-abiding citizens must also be allowed to use the firearms banned by the Act for self-defense purposes. This is particularly true given that – unlike police officers – law-abiding citizens must frequently confront criminals without any backup.

107.1 The report attached as Exhibit 57 to Defendants' response papers shows that 28% of the time firearms were used defensively in the home, multiple assailants were involved, with one group of serial home invaders having 7 individuals. Exhibit 57, p. 4.

107.2 If a citizen is confronted by a criminal armed with an "assault weapon" and a large capacity magazine it is unreasonable to require that citizen to defend herself with anything less than an "assault weapon" and a large capacity magazine. Rossi Supp'l Decl. at 8.

107.3 The Defendants' assertion that assault weapons are not ideal for self-defense implies that handguns are better suited for self-defense. While handguns are useful for self-defense, a weapon such as an AR-15 provides key advantages that legitimate gun owners require.

107.4 Intimidation: due to its larger size, assault weapons are more intimidating to criminals than handguns. Rossi Supp'l Decl. at 8. Military and police often use intimidation tactics to deter violence. *Id.* Sometimes the mere sight of such a weapon is enough to end a conflict



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before an innocent is hurt.

107.5 Accuracy: handguns are inherently less accurate than long guns. Rossi Supp'l Decl. at 8. The shorter barrel of a pistol means that the round passes along fewer rifled groups, producing less velocity and less spin on the round. *Id.* The pistol rounds themselves are smaller and less aerodynamically shaped than rifle rounds. *Id.* Handguns are more difficult to steady because they lack a shoulder stock. *Id.* Due to their smaller size, handguns absorb less of the recoil and "kick" more, further reducing accuracy. *Id.* It is easier to put rounds on target with a rifle when the situation is stressful, even when the defenders are children or teenagers. *Id.*

107.6 Outmatch Criminals: most crimes are committed with handguns because they are concealable. Rossi Supp'l Decl. at 8. The aggressor has the advantage early in a confrontation because he or she has the initiative and has likely readied his or her mind for combat. *Id.* Since the victim is likely surprised or unprepared, he or she needs something to offset the aggressor's inherent advantages. *Id.* Legal gun owners do not have to worry about concealment at home. *Id.* They are not forced to carry smaller handguns because they have no need to hide their self-defense weapon at home. *Id.* They can counter the aggressor's advantages through firepower and intimidation using an assault rifle. *Id.*

107.7 Societal Breakdown: Americans tend to assume the authorities are always available to protect them. Rossi Supp'l Decl. at 8. However, multiple cities have seen social breakdowns and massive destruction in the last several decades. *Id.* Assault rifles are especially valuable when law and order break down and a person or community has to protect property or neighborhoods from looters, gangs, thieves, and mobs. *Id.* An assault rifle provides range, firepower, accuracy, and reliability that no handgun, shotgun, or hunting rifle can match. *Id.*



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107.8 Overall, the AR-15 is no more or less dangerous than most firearms. *Id.* It is simply an effective and useful tool with an unfortunate reputation amongst those who are unfamiliar with it. *Id.*

*See also* responses to ¶37, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to that paragraph, as well as for the reasons stated here, Defendants' ¶107 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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). |

**Plaintiff's Response:**

**Objection #1**: The assertion contained within Defendants' ¶108 is a misstatement of the Court's opinion. Although the Supreme Court did state that handguns are the "quintessential self defense weapon," the Court did not make this statement in the context of determining that handguns were adequate as opposed to another prohibited class of firearms. For this reason alone, Defendants' ¶108 must be disregarded in its entirety by the Court.

**Objection #2**: The assertion contained within Defendants' ¶108 is a not a statement of material fact, but a sweeping and over-broad generalization that fails to account for the numerous different factual combinations of force and weaponry a Connecticut citizen might encounter during a self-defense scenario. For this reason alone, Defendants' ¶108 must be disregarded in its entirety



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by the Court.

Subject to these objections, and without waiving the same, to the extent this Court overrules these objections and a response is required to these assertions, Plaintiffs respond to Defendants' ¶108 as follows:

Disputed. As per D.Ct.L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine issue of triable fact:

*See* responses to ¶¶ 37 and 107, above, which are hereby incorporated by reference and with the same force and effect as if fully re-stated here. For the same reasons stated in response to those paragraphs, Defendants' ¶108 should be disregarded in its entirety.

| **Par. #** | **Defendants' Statement of "Material Fact"** |
|---|---|
| 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 |

**Plaintiff's Response:**

**Objection:** Defendants' ¶109 is merely a repetition of the "material facts" asserted in Defendants' ¶90, above. For this reason alone, Defendants' ¶109 should be disregarded.

Subject to this objection, and without waiving the same, Plaintiffs respond to Defendants' ¶109 as follows:

Disputed. As per D. Ct. L.R.Civ.P. 56(a)(2), Plaintiffs offer the following additional material facts as to which there exists a genuine triable issue:



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