

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JUNE SHEW, *et al*,

Plaintiffs,

v.

DANNEL P. MALLOY, *et al*,

Defendants.

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Case No. 3:13-cv-00739-AVC

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

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

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.

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.

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

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).

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.

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 IZHMAISH 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

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.

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..

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.

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 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

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:

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

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.*

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 ($11 \text{ seconds} / 2.86 = 3.85$). *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.*

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)

(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

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).

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

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.

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

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

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 hidere 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.

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.

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

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

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-lcfd.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

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:

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

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

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

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.

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

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.*

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.

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 its 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 find 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

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

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.*

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.

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.

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

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.

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.

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).

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

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*

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,

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

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

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

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

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

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.*

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.

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

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).

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:

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:

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:

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:

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:

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."

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

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

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).

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:

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

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

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:

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'

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:

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).

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.

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.

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

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

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

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"

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

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

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:

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.

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

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

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"

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%.

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

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

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.*

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.*

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:

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.

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.

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

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

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

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.*

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.*

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

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.

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 misquoted 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,

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

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.

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, Sweeney 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

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).

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

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

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.

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.

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

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:

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

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.*

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

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:

109.1 The Defendants' concerns about the risks involved in the use of "assault weapons" for home defense are unfounded: any gun suitable for home defense would raise the same concerns about overpenetration. Rossi Supp'l Decl. at 10.

109.2 The risks identified in this paragraph (overpenetration, down range injuries, and disproportionate response by civilians) are not risks that are limited to an LCM; they can occur with magazines having 10 or less rounds. *Id.*

See also response to ¶¶ 37-43, 90, and 107, 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 those paragraphs, and also for the reasons stated here, Defendants' ¶109 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

Plaintiff's Response:

Objection: Defendants' ¶110 is merely a repetition of the "material facts" asserted in Defendants' ¶¶ 37-43 and 107. For this reason alone, Defendants' ¶110 should be disregarded.

Subject to this objection, and without waiving the same, Plaintiffs respond to Defendants' ¶110 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 ¶¶ 37-43, 90 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, as well as for the reasons stated here, Defendants' ¶110 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

Plaintiff's Response:

Disputed in part. Plaintiffs admit that there are certain alternatives to the use of LCMs that 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.

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:

111.1 Plaintiffs deny that changing magazines or using multiple firearms is a simple or effective process when an attack in the home is underway. Rossi Decl. at 6-9. *See also* Plaintiffs' Local Rule 56(a)1 Statement dated 08/23/13 (Doc. #68), ¶¶ 144-163.

111.2 A homeowner under the extreme duress of an armed and advancing attacker is likely to fire at, but miss, his target. *Id.* at 6-9. The following factors contribute to this likelihood: (1) nervousness and anxiety; (2) lighting conditions; (3) the presence of physical obstacles that obscure a "clean" line of sight to the target; and (4) the mechanics of retreat. *Id.* at 6. Given the likelihood of missing her attacker, a homeowner must have quick and ready access to

ammunition magazines with cartridge quantities sufficient to provide a successful defense of self, family and property. *Id.* A homeowner under attack must also have the capability to quickly and efficiently re-load a firearm after all of the rounds it holds are fired. *Id.* However, many homeowners cannot re-load quickly or efficiently because of age, physical limitations, and the stress/anxiety produced by a potentially life-threatening situation. *Id.* Indeed, many homeowners may possess only one firearm and a single magazine.

111.3 Violent criminal attacks frequently occur suddenly and without warning, leaving the victim with very little time to fire the handgun to save herself. Rossi Decl. at 6-9. While reaction time under stress is complicated by many physiological, psychological and environmental concerns, there are three primary factors: the ability for an individual to perceive a threat (Perceptual Processing), the ability to make a decision (Cognitive Processing), and the ability of the brain to send messages to the muscles to react (Motor Processing). *Id.* This processing takes, minimally, several seconds without consideration to other factors such as distractions, noise, multiple assailants, lighting conditions, nervousness and fatigue. *Id.*

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

111.5 Several Plaintiffs in this case have handicaps which negatively impact their ability to re-load firearms.

111.6 Plaintiff Stephanie Cypher is physically disabled. See Declaration of Stephanie Cypher (attached to Plaintiffs' Motion for Preliminary Injunction as "Exhibit F") (Doc.

#15-8). *See also* Plaintiffs' Local Rule 56(a)1 Statement dated 08/23/13 (Doc. #68), ¶¶ 155-157.

111.7 She lost her right arm to cancer at 12-years-old. *Id.* Her disability makes it extremely difficult to change magazines quickly with ease. *Id.* Because Ms. Cypher can only use her left hand, she takes more time to exchange an empty magazine for a full one than an able-bodied person. *Id.* at 2.

111.8 Ms. Cypher owns a Saiga shotgun with a magazine capable of holding more than ten rounds. *Id.* In order to change a spent magazine, Ms. Cypher must place her firearm down on a bench or table, press the magazine eject button, wiggle the magazine free, exchange the spent magazine for a new one, and then pick up the firearm. *Id.* Only then does she have the ability to continue shooting. *Id.*

111.9 Plaintiff Peter Owens is also disabled; when he was four-years-old he suffered a stroke and, as a result, lost the functional use of the left side of his body. *See* Declaration of Peter Owens (attached to Plaintiffs' Motion for Preliminary Injunction as "Exhibit H") (Doc. #15-10). *See also* Plaintiffs' Local Rule 56(a)1 Statement dated 08/23/13 (Doc. #68), ¶¶ 153-154.

111.10 This disability prevents Mr. Owens from changing magazines quickly or easily. *Id.* Mr. Owens takes more time to exchange an empty magazine for a full one than an able-bodied shooter. *Id.* at 2.

111.11 Mr. Owens owns a Steyr M9A1 9mm caliber semiautomatic handgun, which comes standard with a 16-round magazine. *Id.* at 1. He also own a Beretta 92 FS 9mm caliber semiautomatic handgun. *Id.* These firearms are equipped with 16-round magazines. *Id.* In order to change a magazine on either, Mr. Owens must discard the spent magazine from his firearm, tuck the empty firearm under his left arm, pick up a new magazine with his right hand, insert the new

magazine into the firearm, and then continue firing. *Id.* at 2.

111.12 Other factors that impact the ability to effectively aim and re-load include the physiological reaction to the “stress flood” produced by an armed attack, the time delay caused by loading/re-loading a firearm, the loss of defensive use of the non-dominant arm and hand during loading/re-loading, and the attention distraction caused by loading/re-loading a firearm. Rossi Decl. at 6-9. *See also* Plaintiffs’ Local Rule 56(a)1 Statement dated 08/23/13 (Doc. #68), ¶¶ 144-163. These factors affect both able-bodied gun owners and those who are handicapped. *Id.*

111.13 Life or death encounters produce a “stress flood” during which blood within a person’s body is re-routed to the larger muscles so as to allow a “flee or fight” response. Rossi Decl. at 8-9. This physiological reaction to extreme stress causes significant reloading difficulty during an attack due to loss of fine motor control in the fingers. *Id.* Trying to push a magazine release or align a magazine with the magazine well with fingers that are shaking and weakened due to blood loss is very difficult for a seasoned veteran soldier or police officer who expects this phenomenon. *Id.* It is far more difficult for a civilian who has never been trained that such changes will occur, or trained during realistic scenario-based training, or who is experiencing a life-threatening attack for the first time. *Id.*

111.14 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 ¶90, 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' ¶111 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

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:

112.1 The exemptions discussed here, as well as the Defendants' admission in ¶92 (above) underscore the reality that 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* ¶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.

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' ¶112 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

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:

113.1 The exemptions discussed here, as well as the Defendants’ admission in ¶92 (above) underscore the reality that 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* ¶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.

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’ ¶113 should be disregarded in its entirety.

Par. # **Defendants’ Statement of “Material Fact”**

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

Plaintiff's Response:

Objection #1: A law enforcement officer's source of funding is irrelevant to whether the Act's exemption of law enforcement officers from the Act's prohibitions violates the Equal Protection Clause. For this reason alone, Defendants' ¶114 should be disregarded by the Court.

Objection #2: How an individual police department chooses to allocate its resources is irrelevant to whether the Act's exemption of law enforcement officers from the Act's prohibitions violates the Equal Protection Clause. For this reason also, Defendants' ¶114 should be disregarded by the Court.

Objection #3: The portion of the statement that police agencies "cannot afford" to buy an assault rifle for each officer is not a factual statement capable of being proven true or false; rather, certain police agencies have chosen to allocate their resources to allow for the purchase of these firearms for their officers, while others have not. Because this is not a fact statement, Defendants' ¶114 should be disregarded 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' ¶114 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:

114.1 The fact that law enforcement officers use their own money to purchase firearms banned by the Act, as well as the Defendants' admission in ¶92 (above) underscore the reality that 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* ¶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.

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' ¶114 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

Plaintiff's Response:

Objection: the amount of training a law enforcement officers must undergo is irrelevant to whether the Act's exemption of law enforcement officers from the Act's prohibitions violates the Equal Protection Clause. For this reason alone, Defendants' ¶115 should be disregarded by the Court.

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 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"**

116. Law enforcement officers are never truly "off-duty", and have a professional obligation to respond to emergencies or criminal activity whenever and wherever they arise. (Rovella Aff. at ¶¶45-47, 50; Mello Aff. at ¶¶39, 43; Delehanty Aff. at ¶¶16-17).

Plaintiff's Response:

Objection #1: This is not a statement of fact, but a matter of opinion. As such, it is not subject to being proved true or false, and may not be properly asserted as a fact statement for purposes of summary judgment. For this reason alone, Defendants' ¶116 should be disregarded by the Court.

Objection #2: This is a blatant mis-statement of the law, and is simply incorrect. For this reason, too, Defendants' ¶116 should be disregarded by the Court.

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' ¶116 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:

116.1 It is simply untrue that law enforcement officers are never truly "off duty;" there are several cases in tort, labor and employment, and contracts that stand for the proposition that officers can and do have "off duty" status. *See, e.g., Aponte v Golas*, 2004 Conn. Super. LEXIS 759 (2004) (off-duty police officer riding as a passenger in a motor vehicle driven outside his jurisdiction by an intoxicated driver has no duty to prevent driver from operating vehicle while

intoxicated; the off-duty officer who is being driven outside the municipality where he is employed is not required to enforce the motor vehicle laws that his host driver may be violating). For this reason alone, Defendants' ¶116 should be disregarded by the Court.

See also responses to ¶¶ 91 and 92, 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' ¶116 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

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:

See responses to ¶¶ 91, 92, and 116, 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' ¶117 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

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:

118.1 Armed criminals pose just as much of a threat to the life of a civilian as they do to police officers (whether on duty or off duty). There is no difference. Rossi Supp'l Decl. at 11. Common sense and experience show that civilians (who are not as highly trained, organized or suitably armed as police officers) are more frequently victimized by criminals than police officers .
Id.

See also responses to ¶¶ 91, 92, and 116, 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' ¶118 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

Plaintiff's Response:

Admitted. 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:

119.1 Citizens are not required to wait and see if an armed criminal who is threatening them with a gun will actually shoot them before exercising their right to self-defense. Rossi Supp'l Decl. at 11.

119.2 The Act prevents a citizen who is faced with the threat of a criminal who is illegally armed with an "assault weapon" and/or LCM criminalized under the Act from responding

to that threat with firepower that is equal or superior to the threat itself. Rossi Supp'1 Decl. at 11.

Par. # **Defendants' Statement of "Material Fact"**

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

Plaintiff's Response:

Objection: The phrase "information about" is not defined with any particularity, so it is unclear if by using this phrase the Defendants are referring to capability, fire power, duplicates and copies, or some other information. For this reason, Defendants' ¶120 is not subject to a meaningful response.

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' ¶120 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:

120.1 Information about all extant "duplicates and copies" of a particular firearm is not engraved on any firearm.

120.2 Information about all the functionality or capability of "duplicates and copies" of a particular firearm is not readily available to prospective firearms purchasers in Connecticut.

120.3 Current regulations require a manufacturer to engrave the "model" of a firearm thereon only "if such designation has been made" 27 C.F.R. § 478.92(a)(1)(ii)(A).

120.4 The make and model inscribed on a firearm fails to inform a person about characteristics of the firearm that may have changed over time, both prior to, on, and after the

effective date of the Act, even though the same make and model is inscribed on the firearm.

120.5 The make and model inscribed on a firearm fails to inform a person whether it is a copy or duplicate of a firearm named in the Act as an “assault weapon” with the capability of any such named firearm that was in production prior to or on the effective date of the Act.

Par. # **Defendants’ Statement of “Material Fact”**

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

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:

121.1 The serial number engraved on a firearm gives a person no information about the make and model of a firearm.

See also response to ¶120, 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’ ¶121 should be disregarded in its entirety.

Par. # **Defendants’ Statement of “Material Fact”**

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

Objection: The phrase “information about” is not defined with any particularity, so it is unclear if by using this phrase the Defendants are referring to capability, fire power, duplicates

and copies, or some other information. For this reason, Defendants' ¶122 is not subject to a meaningful response.

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' ¶122 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:

122.1 A firearm manufacturer and a federally-licensed firearm dealer have no legal duty to provide information about a firearm to members of the public. *See* Gun Control Act, 18 U.S.C. § 921 et seq.

122.2 The Special Licensing and Firearms Unit at DESPP has no legal duty to provide to members of the public who provide a serial number any information about a firearm's "make, model, and other information."

See also response to ¶120, 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' ¶122 should be disregarded in its entirety.

Par. # **Defendants' Statement of "Material Fact"**

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

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:

123.1 When an owner's magazine is lost or defective, such person cannot "simply buy a new magazine that is lawful under the Act" if magazines holding no more than ten rounds are not commercially available, which would be the case with many firearms that were never manufactured with such magazines and which are no longer being manufactured.

Par. # **Defendants' Statement of "Material Fact"**

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

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 magazines. Since Defendants' ¶124 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' ¶124 as follows:

Disputed. Plaintiffs make no such concession. Plaintiffs admit that, in the specific context of discussing how non-banned firearms could still accept "large capacity magazines" Dr. Kleck had 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.*

II. DISPUTED ISSUES OF MATERIAL FACT

1. 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.

2. 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.

3. 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.

4. 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.

5. Many gun manufacturers emphasize the military origins and uses of many assault weapons in their marketing campaigns.

6. 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.

7. 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.

8. A folding or telescoping stock allows a shooter to make a long gun much more

compact, and therefore more concealable.

9. 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.

10. A flash suppressor suppresses the flash caused by the firing of the weapon, and thereby helps a shooter avoid detection in a dark environment.

11. 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.

12. 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."

13. 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.

14. 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.

15. The NRA estimates that assault weapons more broadly account for roughly 2% of the current gun stock.

16. 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.

17. Sixty percent of assault rifle owners own several of them, and nearly 44% of the owners are current or former military/law enforcement.

18. 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.

19. Household gun ownership rates have declined over the past four decades.

20. 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.

21. 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.

22. Reducing gun homicides or shootings by just 1% would amount to preventing about 650 shootings nationwide annually.

23. 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.

24. 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.

25. Therefore, even a 1% decrease in shootings could result in roughly \$650 million in cost savings to society from shootings prevented each year.

26. 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.

27. 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.

28. 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.

29. 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.

30. Some studies place the percentage of assault weapons used in killings of law enforcement at as high as 20%.

31. 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.

32. 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.

33. 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.

34. The federal government has determined that LCMs are a crime problem.

35. 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.

36. 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.

37. 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.

38. Assault weapons and LCM's are used disproportionately in two destructive aspects of crime and violence: mass shootings and murders of police.

39. 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.

40. 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.

41. More than half of all mass public shooters between 1982 and 2012 possessed high-capacity magazines, assault weapons, or both.

42. In the 62 mass public shootings in the United States since 1982, more than three quarters of those guns used were obtained legally.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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,

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. Studies indicate that the federal ban on assault weapons substantially reduced the use of such weapons in gun crime.

56. 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%.

57. There is evidence that a ban on LCMs will result in a decline in the criminal use of LCMs over the long-run.

58. 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%.

59. 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.

60. 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).

61. 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.

62. 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.

63. 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.

64. The vast majority of defensive-use-of-gun incidents do not involve the use of assault pistols, rifles or shotguns.

65. 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.

66. Assault weapons and LCMs are not necessary for reasonable home and self defense by citizens.

67. Conventional handguns, the vast majority of which remain legal in Connecticut, are adequate for lawful self defense.

68. 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.

69. There are more than one thousand different firearms that remain available to Connecticut citizens for lawful self defense.

70. Home owners like Plaintiffs still can use their “grandfathered” LCMs for self defense. Alternatively, they can use multiple smaller magazines and simply replace the magazines when they are emptied, a process that takes only seconds for most people.

71. Law enforcement officers are never truly “off-duty”, and have a professional

obligation to respond to emergencies or criminal activity whenever and wherever they arise.

72. Law enforcement officers face enhanced threats to their personal safety, both on duty and off-duty, because they actively engage with and apprehend dangerous criminals every day.

73. Information about the make and model of a firearm is engraved on most firearms.

74. Plaintiffs concede that many rifles and handguns that can accept detachable LCMs also can accept magazines that have a capacity of 10 rounds or less.

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Respectfully Submitted,

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CERTIFICATION

I hereby certify that on December 10, 2013, a copy of the foregoing **LOCAL RULE 56(a)2 STATEMENT** was filed electronically and served by mail upon anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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